30406 SERVICE DATE - OCTOBER 7, 1999
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SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42047

PROFESSIONAL LOGISTICS MANAGEMENT CO., INC.
— PETITION FOR DECLARATORY ORDER —
CERTAIN PRACTICES OF
KNIGHT TRANSPORTATION, INC.

Decided: October 4, 1999

By petition filed July 15, 1999, Professional Logistics Management Co., Inc. (petitioner), seeks a declaratory order to resolve a dispute over whether certain shipments transported by Knight Transportation, Inc. (Knight), a motor carrier of property, moved in interstate commerce or in intrastate commerce. These shipments are the subject of a lawsuit pending before the Superior Court of California, Contra Costa County, in Knight Transportation, Inc. v. Professional Logistics Management Co., Inc., No. C98-02153. The court has granted petitioner's motion to stay the proceedings and to refer the issue of interstate vs. intrastate commerce to the Board.

According to petitioner, Knight seeks to collect freight charges from petitioner for some 277 shipments made by Home Express, Inc., that moved between November 1995 and February 1996, of which 104 shipments moved within either Arizona or California, without crossing any state lines. Petitioner maintains that the shipments in question moved in interstate commerce, and that the claim is thus barred by the 18-month statute of limitations of 49 U.S.C. 14705(a).

DISCUSSION AND CONCLUSIONS

Under 5 U.S.C. 554(e), the Board has discretionary authority to issue a declaratory order to terminate controversy or remove uncertainty where the Board has subject-matter jurisdiction. While the Board has certain responsibilities under 49 U.S.C. 13710 to resolve disputes between shippers and motor carriers of property, it does not appear that the Board has jurisdiction over the subject matter at issue here. The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA), established the Board and transferred to it many but not all of the functions of the Interstate Commerce Commission (ICC), which it abolished. In particular, the ICC's jurisdiction over motor carriers was partitioned, and the Board received narrowly circumscribed responsibility which did not include, as pertinent here, the motor carrier licensing function (under former 49 U.S.C. 10922 and 10923). Instead, that function was replaced with motor carrier "registration" and transferred to the Secretary of Transportation (DOT Secretary) (under 49 U.S.C. 13902). Accordingly, disputes concerning whether operations were interstate or intrastate in nature, which could have been resolved by the ICC in the context of its pre-ICCTA motor carrier licensing

function, are not matters to be resolved by the Board, but rather appear to be matters within the jurisdiction of the DOT Secretary.

Although the Board is not in a position to resolve specific issues related to motor carrier licensing, which is within the DOT Secretary's jurisdiction, because the court has referred the matter to the Board, a brief reference to cases reflecting the ICC's guidance on the issue of interstate vs. intrastate commerce is included here. With this information, the court may be able to resolve this dispute in the first instance based on ICC and court precedent. The ICC's usual analysis of the pertinent distinction between interstate and intrastate commerce, in cases such as this, is set out in such decisions as Texas & N.O.R.R. v. Sabine Tram Co., 227 U.S. 111, 112 (1913); Baltimore & O.S.W.R.R. v. Settle, 260 U.S. 160, 177 (1922); Armstrong Inc.—Transportation within Texas, 2 I.C.C.2d 63, 69 (1986), aff'd sub nom. State of Tex. v. U.S., 866 F.2d 1546 (5th Cir. 1989); Certain For-Hire Motor Carrier Transp. Within Texas, 8 I.C.C.2d 476 (1992); and Pittsburgh-Johnstown-Altoona Express, Inc.—Petition for Declaratory Order, No. MC-C-30129 (ICC served Feb. 12, 1990), pet. for reh'g denied, 8 I.C.C.2d 815 (1992) (original decision reported, 8 I.C.C.2d at 821, as an appendix to the decision on the petition for rehearing) (PJAX). As explained in those decisions, whether transportation of property by motor vehicle between points in the same State is interstate (or foreign) transportation, subject to Federal regulatory jurisdiction, depends on the "essential character" of the shipment, based on the shipper's fixed and persisting intent at the time of the shipment. Shipments that moved from out of state to a distribution center for ultimate delivery to distributors within the same state were generally found to be in interstate commerce. See PJAX.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. A declaratory order proceeding will not be instituted, but the guidance of ICC decisions on the subject has been offered above, as discussed, to aid the court.

2. This decision is effective on its service date.

3. Petitioner shall notify the referring court of this decision in this matter.

4. A copy of this decision will be served on:

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By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary