

SURFACE TRANSPORTATION BOARD ISSUES DECISION DENYING UNDERCHARGES TO MOTOR CARRIER

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board has issued a decision denying the request of an operating motor carrier for undercharges.

Until the mid-1990's, many motor carrier rates were embodied in published tariffs, and under the law, shippers were generally required to pay such tariff rates. Shippers could be excused from paying the tariff rate, however, under certain circumstances. If the party seeking undercharges (the difference between the filed tariff rate and the rate paid) was not an operating carrier (for example, if it was the bankruptcy trustee of a defunct motor carrier), then the shipper could take advantage of a variety of defenses, including the so-called "section 2(e)" defense. Under section 2(e) of the Negotiated Rates Act of 1993 (now codified at 49 U.S.C. 13711), the Board could excuse a shipper from paying the published tariff rate of a non-operating motor carrier if the shipper and the carrier had agreed upon a different, reduced rate, and if it would be unfair to later require the shipper to pay the filed tariff rate. Many undercharge cases are resolved by the Board under section 2(e).

Section 2(e) does not apply, however, to undercharge claims by operating carriers. Thus, it could not be used in this case, which arose out of a lawsuit filed by James B. Orr and Freightways Express, Inc. (Freightways), an operating carrier, to collect undercharges from UARCO, Incorporated (UARCO). Instead, in resolving this proceeding, the Board found, among other things, that it was improper for Freightways to seek to collect higher rates by hiring--without the shipper's knowledge--a cartage agent whose use triggered a Freightways tariff provision that applied a higher rate for transportation in which terminal carriers (here, the cartage agent) other than Freightways were involved. The Board also found that it was improper for Freightways to seek to deny the discounts it had earlier allowed on the ground that UARCO did not comply with a tariff provision requiring it to present a written claim requesting the discount; the Board held that such a requirement would be unfair inasmuch as Freightways routinely issued checks and written statements awarding discounts to UARCO. Finally, using its motor carrier rate reasonableness standards, the Board found that, in any event, the rates that Freightways sought to collect were unreasonably high, because they were out of line with the rates of other available carriers that UARCO could have used had it known that Freightways would seek to repudiate the discounts it had been offering.

The Board's decision was issued on June 25, 1999 in *UARCO Incorporated v. James B. Orr and Freightways Express, Inc.*, STB Docket No. 40819. It is available on the Board's web site at www.stb.dot.gov.

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