

34774
EB

SERVICE DATE - SEPTEMBER 28, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42085

CLIMATE MASTER INC. AND INTERNATIONAL ENVIRONMENTAL, INC.
— PETITION FOR DECLARATORY ORDER —
CERTAIN RATES AND PRACTICES OF TRANS TECH SOLUTIONS, INC., F&M BANK,
AND MIDLAND TRANSPORTATION CO.

Decided: September 24, 2004

By decision served on April 15, 2004 (April 15 decision), the Board instituted a declaratory order proceeding and established a procedural schedule to determine the legality of attempts by Trans Tech Solutions, Inc. (Trans Tech), and F&M Bank to collect additional freight charges concerning shipments of freight for the accounts of Climate Master, Inc. (Climate), and International Environmental, Inc. (International) (collectively, Petitioners), by Midland Transportation Co. (Midland). The Board treated the petition for a declaratory order as the opening statement in this proceeding and served the April 15 decision on Trans Tech. The April 15 decision was also mailed to the Bankruptcy Court and the Trustee. Neither Trans Tech nor the Trustee submitted a response.

BACKGROUND

At the time of the shipments at issue, Midland was an interstate motor carrier that provided freight services for Petitioners. On June 26, 2001, Midland filed a Voluntary Petition for Bankruptcy in the United States Bankruptcy Court for the Northern District of Iowa, Western Division, under Chapter 11 of the United States Bankruptcy Code. It was subsequently converted to a Chapter 7 Bankruptcy.

F&M Bank, a creditor of Midland and owner of the accounts at issue, hired Trans Tech to perform an audit of Midland's freight bills. According to Petitioners, Trans Tech made several demands to Petitioners, most recently in invoices dated February 19, 2003, and September 24, 2003, for payment of the difference between discounted freight charges that were billed by Midland (between June 4, 1999, and July 19, 2001) and paid by Petitioners (between 1999 and 2002) and the carrier's full, undiscounted rates for those services. According to Petitioners, Trans Tech asserts that Petitioners were not entitled to discounts because Petitioners did not pay the original freight bills within the 15-day credit period set out in 49 CFR 377.203, and that Climate thus still owes \$51,524.45 and International still owes \$7,147.91. However, Petitioners contend that, under the terms of transportation agreements between Midland and the Petitioners' parent company, LSB Industries, which is the only evidence of record, the Petitioners were entitled to pay a discounted rate if the freight charges were paid within the first 60 days after the

charges were billed. No party has challenged whether payments were actually made within the 60-day time period.

Accordingly, Petitioners request that the Board find that it is an unreasonable practice for Trans Tech and F&M Bank to disregard the agreement between Petitioners and Midland and attempt to collect the difference between the original charges and the undiscounted freight charges. Petitioners also assert that the attempt to collect additional freight charges from them is an unreasonable practice under 49 U.S.C. 13710(a)(3)(A), because the bill for additional charges was not issued within 180 days of receipt of the original bills. Finally, Petitioners request that, if the Board does not find an unreasonable practice, it hold that the rates charged by Midland were unreasonable.

DISCUSSION AND CONCLUSIONS

Petitioners have provided unrefuted evidence that Petitioners and Midland had mutually agreed to a longer period of time after the freight charges were billed in which Petitioners were entitled to pay the discounted rate. Therefore, based on the record before us, we find that it would be an unreasonable practice for Trans Tech and F&M Bank to collect additional charges based on the 15-day credit period. Additionally, F&M Bank and Trans Tech did not comply with the provision in the Transportation Industry Regulatory Reform Act of 1994, Pub. L. No. 103-311, now codified at 49 U.S.C. 13710(a)(3)(A), requiring carriers to rebill within 180 days of the original bill in order to preserve the right to collect additional charges. Therefore, even if Petitioners did not remit payment within 60 days of the bill date, Trans Tech may not collect the difference between the discounted rate and the billed rate.

Because we find that Trans Tech and F&M Bank are not entitled to collect the additional freight charges for these two reasons, we need not address Petitioners' unreasonable rate claim. While we find the actions of Trans Tech and F&M Bank constitute an unreasonable practice, we will not award Petitioners attorneys fees, expenses and costs. As our predecessor, the Interstate Commerce Commission, pointed out in another case involving efforts by interests associated with a bankrupt motor carrier to collect alleged undercharges, the Interstate Commerce Act does not provide for an award of these sorts of costs. See General Mills, Inc.—Petition for Declaratory Order, 8 I.C.C.2d 313, 325 (1992), aff'd sub nom. Bankruptcy Estate of United Shipping Co. v. General Mills, Inc., 34 F.3d 1383 (8th Cir. 1994).

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

It is ordered:

1. This proceeding is discontinued.
2. This decision is effective on its service date.
3. A copy of this decision will be served on: Melissa Bozeman, VP-Finance, Trans Tech Solutions, Inc., Administrative Dept., Post Office Box 890, Madison, TN 37116-0890,
Re: Midland Transportation Co.
4. A copy of this decision will be mailed to:

The Honorable William L. Edmonds, Bankruptcy Judge
United States Bankruptcy Court
Northern District of Iowa
320 6th Street, Federal Building
Sioux City, IA 51101
RE: Chapter 7 Bankruptcy No. 01-02613

Wil L. Forker, Trustee
505 Sixth Street, Suite 530
Sioux City, IA 51101.
RE: Chapter 7 Bankruptcy No. 01-02613

By the Board, Chairman Nober, Vice Chairman Mulvey, and Commissioner Buttrey.

Vernon A. Williams
Secretary