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SEC

SERVICE DATE - OCTOBER 28, 1998

SURFACE TRANSPORTATION BOARD<sup>1</sup>

DECISION

No. 40658

CO-OPERATIVE SHIPPERS, INC.

v.

OLD DOMINION FREIGHT LINE, INC.

Decided: October 26, 1998

This matter arises out of a court action in the Circuit Court of Cook County, Illinois, County Department, Law Division, in Old Dominion Freight Line, Inc. v. Co-Operative Shippers, Inc., No. L. 20245. The court proceeding was instituted by Old Dominion Freight Line, Inc. (Old Dominion or defendant), to collect undercharges from Co-Operative Shippers, Inc. (Co-Op or complainant) for services rendered in transporting 41 shipments from the Chicago area to a government installation depot in Richmond, VA, between April and December 1989. By order dated June 11, 1991, the court stayed the proceeding and directed complainant to submit the rate matters at issue to the ICC for resolution.

Pursuant to the court order, Co-Op, on August 27, 1991, filed a complaint requesting the ICC to determine the applicability, reasonableness, and lawfulness of the rates that Old Dominion is attempting to assess. Both parties submitted statements of evidence and argument, and the record is closed.

By letter filed November 7, 1995, Mr. Robert L. Cope, counsel for Co-Op, advised the ICC that Co-Op was apparently out of business but did not request withdrawal of the Co-Op complaint.<sup>2</sup>

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<sup>1</sup> The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (the Act), which was enacted on December 29, 1995, and took effect of January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the Act provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the Act. This decision relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 13710(a).

<sup>2</sup> Mr. Cope stated in his letter:

The purpose of this letter is to inform you that we have attempted to discuss this case with our client, Co-Operative Shippers, Inc. Unfortunately, we have not been able to reach  
(continued...)

In a reply to Mr. Cope's letter filed November 13, 1995, counsel for Old Dominion, asserting the irrelevancy of Co-Op's operating status and the need for an ICC determination to resolve the court action, maintained that an ICC decision should be issued.

In the process of reviewing the record in this proceeding, the Board has become apprised of the fact that by order entered on May 13, 1994, the Circuit Court of Cook County, Illinois dismissed the underlying court proceeding for want of prosecution. In view of the court order of dismissal, we are directing the parties to show cause within 30 days why this Board proceeding should not be dismissed.

It is ordered:

1. Within 30 days of the date of service of this decision, the parties will show cause why this proceeding should not be dismissed.
2. This decision is effective on the date served.
3. A copy of this decision will be mailed to:

Clerk  
Circuit Court of Cook County  
50 West Washington  
Chicago, IL 60602

Re: No. 90 L 20245

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams  
Secretary

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<sup>2</sup>(...continued)

them and it appears that they are now out of business. We bring this information to the Commission's attention since it may lead the Commission to handle this case differently.