

ALJ/LEM/jc

Decision 89 07 004

JUL 6 1989

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of:)
 Ryder Distribution Resources, Inc.,)
 a Delaware corporation, for authority)
 to depart from the requirements of)
Rule 6.10(c) of General Order 147-A.)

JUL 6 1989
 Application 88-10-025
 (Filed October 11, 1988)

OPINION

By this application Ryder Distribution Resources, Inc. (Ryder) requests authority to depart from the provisions of Rule 6.10(c) of General Order (GO) 147-A. Rule 6.10(c) requires that a supplement or amendment to a contract shall contain the signatures of both shipper and carrier.

In support of its request, the applicant alleges generally as follows:

Ryder is a motor carrier of property conducting operations in interstate and intrastate commerce of various commodities. It holds authority from this Commission to operate as a highway contract carrier. It conducts operations under eight contracts. Concurrent with the filing of this request Ryder filed with the Commission's Truck Tariff Section three contract amendments pertaining to each of these eight contracts. This was done pursuant to the Commission's direction in Resolution TS-683 mandating contract carriers to increase their base truckload (TL) rates by 1.8%, in accordance with the 1988 Truck Freight Cost Index (TFCI) calculations.

Amendment No. 1 of Ryder is a clarification amendment. It states that the base rates in each contract to which the amendment relates are vehicle unit rates subject to a minimum volume of greater than 1,440 cubic feet and, as such, are TL rates subject to the 1.8% increase. Ryder states this is because each of the contracts is a transportation service contract describing

vehicle lease obligations in which minimum charges are not related to or determined by the volume of property transported or actual vehicle unit usage. The shipper's obligation under each contract contains a "performance guarantee" which is a fixed amount to be paid by the shipper whether any transportation services are rendered by Ryder.

The carrier's obligation under this fixed-fee arrangement is to provide and keep specific equipment available solely and exclusively for the movement of the shipper's goods. Under Resolution TS-683, common and contract carriers are ordered to increase by 1.8% those base and provisionally grandfathered rates for transportation which are subject to a minimum weight of 10,000 pounds or more or to a minimum volume of 1,440 cubic feet or more. Since the charges in each of the contracts are de facto minimums based upon the cubic capacity of the fleet of equipment committed under the performance guarantee, which cubic capacity exceeds 1,440 feet, the 1.8% increase mandated by Resolution TS-683 for TL rates is applicable to the contracts.

Amendment No. 2 increases all such TL rates in the contracts by 1.8% as required by Resolution TS-683.

Amendment No. 3 reduces the rates to their pre-increase levels under authority of the rate window provisions contained in Rule 7.3 of GO 147-A which, under the Resolution, may be applied to base rates.

Purpose of Application

Rule 6.10(c) of GO 147-A provides that a supplement or amendment to a contract shall contain the signatures of shipper and carrier. The amendments filed by Ryder do not contain shippers' signatures. Ryder seeks here to obtain a departure from the shipper signature requirement in connection with the above-referenced amendments. The reasons for the request are:

(1) By reason of Ryder's invocation of the rate window provisions of GO 147-A, there is no change in the contract rates and charges,

or any other provisions in the contracts; and (2) the shipper signature requirement poses an onerous and unnecessary administrative burden for Ryder and its shippers.

Rule 2 of GO 147-A provides that departures therefrom may be granted when reasonable and necessary. Ryder asserts that the sought departure is reasonable because the contract amendments do not change the contracts, i.e., there are no changed rights or obligations on the part of carrier or shipper in any contract. As further support for the reasonableness of its request, Ryder argues that it experiences extreme difficulty in timely notifying its shippers' shipping and distribution and legal departments regarding the amendments, thus subjecting the contracts to which the amendments relate to cancellation by the Commission. Ryder believes such a harsh consequence makes no sense, particularly in this case where the contracts are not affected by the amendments and shipper signatures are unnecessary to accomplish the Commission's regulatory objective, i.e., increasing rates on general freight. Ryder suggests that the amendments are not needed to promote this objective because Section 4 of Article XII of the California Constitution empowers the Commission to fix rates which are binding on the shipper and carrier as a matter of law. In other words, requiring shippers' signatures on contract amendments containing provisions which are already legally mandated, and over which the shipper has no control constitutes a useless exercise.

Ryder alleges that due to the extensive nature of its operations and the size and number of the shippers with whom it contracts, the shipper signature requirement of Rule 6.10(c) creates an administrative burden on Ryder and its shippers with no concomitant benefit to it, the shippers or the public.

Ryder's total gross carrier operating revenues (interstate and intrastate) in 1987 were \$212,000,000, derived from the operation of 5,000 vehicles in 48 states. Ryder's gross

California intrastate revenues during 1987 were about \$16.5 million. It employed 733 full time and part-time employees earning gross wages of about \$7.5 million in California, where it operated 117 tractors, 167 trailers, and 42 trucks.

Ryder's large scale operations are attributable to the shippers it contracts with, most of which are major, nationally recognized corporations. Some examples of its customers are Target Stores, Xerox Corporation, Ace Hardware Corporation, Ford Motor Company, General Motors, and Toyota Motor Sales, USA, Inc. Substantive contract negotiations go on continually between Ryder and its shippers, involving both new and renewal business. The negotiations are typically conducted on behalf of shippers by their General Counsels or Vice Presidents of Operations, who are the only personnel authorized to execute documents binding on their companies. Thus, Rule 6.10(c) forces these upper level personnel to become involved in a purely ministerial matter, because no one else in the company is authorized to handle such tasks. Ryder asserts that its shippers are burdened by a requirement which serves no purpose.

Compliance with Rule 6.10(c) is equally burdensome for Ryder. The carrier must first contact the various shippers' shipping and distribution departments with respect to amendments. The shipping and distribution departments must then refer the matter to the companies' legal departments or the appropriate corporate officers who must then be advised by Ryder regarding the legal consequences of the amendment. Explanation and clarification is often a tedious process, particularly in cases such as this in which the amendment involves regulatory questions about which the shipper has little knowledge or expertise. Further, if the process becomes bogged down, as is often the case, the contract becomes subject to cancellation by the Commission. Ryder and its shippers are already subject to this onerous process once a year at minimum by reason of the contract renewal amendment

provisions of Rule 6.3 of GO 147-A. The applicant professes that it and its shippers will be required to endure the process 16 times each year if the relief requested herein is not granted: once at contract renewal time, and again when the TFCI adjustments are required. Ryder insists that these conditions constitute sufficient reason why a departure in this case is necessary.

In lieu of obtaining shipper signatures, Ryder requests that it be allowed to give written notice to its shippers of the amendments. A certificate or declaration by Ryder or its representative stating that such notice has been given would be filed with the Commission's Truck Tariff Section. The carrier believes this procedure would satisfy the Commission's concern that shippers be informed about the amendment, while significantly reducing the administrative burden on Ryder and its shippers.

Ryder requests ex parte action on this application. Notice of filing of the application appeared in the Commission's Daily Transportation Calendar. No protest to granting of the application has been filed. The Commission's Transportation Division agrees with the carrier that the request is reasonable, and suggests that in the absence of legal restrictions the application should be granted. The carrier alleges that the relief requested herein does not involve actions which significantly affect energy efficiencies.

Discussion

Rule 6.3 of GO 147-A provides that contracts may not be made effective for more than one year. Rule 6.10(c) requires that an amendment to a contract shall contain the signatures of carrier and shipper. Since Ryder has eight outstanding contracts which must be amended at the end of their yearly terms, and also must be adjusted in accordance with directives by the Commission whenever a rate change is indicated under the (TFCI), the provisions of GO 147-A require that Ryder file 16 amendments, with appropriate signatures, yearly.

The first and most obvious question rising from the sought relief must be: If a carrier increases his contract rate by amendment to a contract, and neither he nor the involved shipper signs the contract, how can there be a binding contract for the transportation of that shipper's freight at the new, increased rate? Rule 3.7 of GO 147-A defines "contract" as "a bilateral agreement in writing which binds both contract carrier and the consignor, consignee or other party to good faith performance for not more than one year in duration." Rule 6.6 of GO 147-A specifies that every contract must contain the signatures of both shipper and carrier; and, as mentioned, Rule 6.10(c) requires both signatures on an amendment to a contract.

We can assume that the levels of rates to be assessed and paid by carriers and shippers are matters of concern to the parties. However, insofar as contract carrier rates are concerned, the Commission is concerned primarily that the rate levels be no lower than those required under its current program of economic regulation. Presently, that program requires that contract carriers assess rates no lower than base rates, or generally applicable common carrier rates. (Decision 86-12-102.) Each contract must contain a provision stating that the contract is subject to Commission-ordered increases in the TFCI. Thus, even if an amendment is not filed as a result of a mandated change based on the TFCI calculations, the contract rates, including increases directed by the Commission and which ought to have been charged, are the lawfully applicable rates and are enforceable by the Commission. Furthermore, each base contract must contain a statement that the contract is subject to Commission ordered increases pursuant to the TFCI (Rule 6.6(i)).

In the case of rate reductions, such as those which may be applied under the "rate window" opportunity provided in Rule 7.3 of GO 147-A, the need for signatures on amendments to contracts

appears no more urgent than when year-end renewals and TFCI-mandated rate increase amendments are filed.

Ryder's request appears to be a reasonable one and necessary to the efficient conduct of its business. By this order we will authorize the filing of amendments without signatures, based primarily upon the fact that the signatures are not critical to our enforcement of applicable base rates or generally applicable common carrier rates. These latter rates are, as a matter of law, the rates which must be assessed under Commission orders derived from powers authorized pursuant to Section 4 of Article XII of the California Constitution. We will require Ryder to furnish each shipper with a copy of each amendment, so that shippers will be informed of rate changes; and we will also direct the carrier to file a copy of each amendment with our Truck Tariff Section, with a certification in each amendment that the shipper has been furnished with a copy thereof. There is no reason why the authority we are granting here should not apply in connection with agreements which may be entered into in the future, as well as those presently in effect.

Findings of Fact

1. Ryder holds authority to operate as a highway contract carrier, and regularly conducts operations in accordance with the provisions and rates contained in eight separate contracts filed with the Commission's Truck Tariff Section.

2. GO 147-A requires, inter alia:

- a. Contracts must be bilateral agreements, in writing, which may not be in effect for more than one year. (Rule 3.7.)
- b. Contracts may be renewed by amendment to the contract. (Rule 6.3.)
- c. Amendments require the signature of both carrier and shipper. (Rule 6.10(c).)

- d. Each contract must contain a statement that the contract is subject to Commission ordered increases pursuant to the TFCI. (Rule 6.6(i).)

3. Highway contract carriers are required to assess rates at levels no lower than those directed by the Commission, regardless of rates which might be otherwise stated in a particular contract.

4. The provisions of GO 147-A requiring that signatures be obtained in connection with each of Ryder's contract amendments are unnecessary to the proper enforcement of Commission ordered rates.

5. Ryder requests that in lieu of securing signatures on amendments to contracts pursuant to Rule 6.10(c), it be permitted to give written notice to its shippers regarding amendments, and file a certificate or declaration of such notice with the Commission's Truck Tariff Section.

6. Rule 2 of GO 147-A provides that departures from the provisions of the GO may be granted after a Commission finding that the sought departure is reasonable and necessary.

Conclusions of Law

1. Departure from the provisions of GO 147-A, as requested by Ryder, is reasonable and necessary.

2. The application should be granted.

3. Ryder should be directed to furnish each shipper with a copy of each amendment, and to file a copy of each amendment with the Commission's Truck Tariff Section containing a certification that each shipper has been so furnished.

ORDER

IT IS ORDERED that Ryder Distribution Resources, Inc. (Ryder) is relieved from the provision contained in Rule 6.10(c) of General Order 147-A, requiring that each contract amendment contain the signature of the shipper. In lieu thereof, Ryder shall furnish

each shipper with a copy of each contract amendment, and shall file with the Commission's Truck Tariff Section a copy of each amendment containing a certification that each shipper has been so furnished.

This order becomes effective 30 days from today.

Dated JUL 6 1989, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Victor Weiss, Executive Director

for