

L/nas

MAIL DATE
6/16/97

Decision 97-06-072 June 11, 1997

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

General Pipe and Supply Co., Inc)	
)	
Complainant,)	Case 93-10-030
vs.)	(Filed October 18, 1993;
)	Amended January 3, 1994;
)	Amended February 7, 1994;
Pacific Coast Motor Carriers, Inc.)	and Amended June 19, 1995)
)	
Defendant)	
)	

ORDER DENYING REHEARING OF DECISION 96-12-070

In Decision No. 96-12-070, we ordered that Pacific Coast Motor Carriers, Inc. (Pacific) refund to Complainant General Pipe and Supply Co., Inc. (Gen Pipe) the sum of \$111,026.27 for the net of overcharges collected by Pacific from Gen Pipe in excess of Pacific's lawful tariff rates and charges for the period from January 1, 1989 through June 28, 1991.

Applicant first argues that the reparation award is preempted by the Federal Aviation Administration Act of 1994, 49 USC § 11501 (h)(1) and by the Interstate Commerce Termination Act of 1995, 49 USC § 14501(c). Applicant is correct in his argument that the federal legislation almost completely preempts economic regulation of transportation charges by this Commission after the effective date of the legislation. However, this case was filed on October 18, 1993 and dealt with transportation charges from the period January 1, 1989 through June 28, 1991. The federal legislation did not become effective until January 1, 1996.

Applicant cites no authority for the proposition that the federal legislation was intended to apply retroactively. In fact, the economic confusion that would result if this

Commission and others should be required to reopen all previous under and over charge transportation cases is unimaginable.

Further, it has been long-established that federal legislation is not to be given retroactive effect absent a clear congressional mandate. In Landgraf v. ASI Film Products (1994) 511 U.S. 244, 114 S.Ct. 1483, 128 L.Ed 2d 229 in addressing the retroactivity of a federal statute after an action has commenced, as here, the Court stated, at page 255:

“Since the early days of this Court, we have declined to give retroactive effect to statutes burdening private rights unless Congress has made clear its intent . . . the presumption against statutory retroactivity has been consistently explained by the unfairness of imposing new burdens on persons after the fact.”

The Ninth Circuit, in Chenaault v. United States (1994) 37 F 3rd 535, applying the same principles as Landgraf, supra, held at page 539:

“regardless of whether a statute is ‘substantive’ or ‘procedural’, it may not apply to cases pending at the time of enactment if the new statute would prejudice the rights of one of the parties.”

The principal case relied on by Applicant is In Re Johnsbury Trucking Co. (1996) 199 Bankr. 84, 1996 U.S. Dist. Lexis 10275. However, although that case did find federal preemption, it specifically found that the federal legislation does not apply retroactively. The argument is without merit.

Applicant further alleges that his right to a jury trial in a civil case under the Seventh Amendment of the United States Constitution was violated. Applicant does not allege and the record does not show that he ever requested a jury trial, as required in civil cases by Code Civ. Proc. § 631 (4). Further, Pub. Util. Code §310, et seq. specifically provides that matters heard by this Commission shall be heard by a Commissioner or Administrative Law Judge.

Finally, the California Supreme Court has held since at least 1913 that a jury trial is not necessary in proceeding before this Commission. Pacific Tel & Tel v. Eshleman (1913) 166 C 640. The United States Supreme Court has held that the Seventh Amendment providing the right of trial by jury in civil cases is not binding on the states. Pearson v. Yewdall (1877) 95 U.S. 294, 5 OTTO 294, 24 Led 436.

Applicant has demonstrated no legal or factual error in our prior Decision No. 96-12-010 and the Application for Rehearing should be denied.

IT IS ORDERED:

The Application for rehearing is denied.

This order is effective today.

Dated June 11, 1997, San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners