

ALJ/GEW/avs *

Decision 99-03-013 March 4, 1999

Mailed 3/4/99
ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

J. Roy Wittwer and Frae Wittwer, dba Sequoia
Orchids,

Complainants,

vs.

Industrial Freight System, Inc.

Defendants.

Case 95-06-065
(Filed June 27, 1995)

And Related Cases.

See Attachment A

O P I N I O N

Summary

Because the underlying Bankruptcy Court proceedings in these matters have been dismissed, this decision dismisses 10 cases filed with this Commission by shippers protesting claims for alleged tariff undercharges brought by the bankruptcy trustee for Industrial Freight System, Inc.

Discussion

Industrial Freight System filed for Chapter 7 bankruptcy liquidation in 1994. Its appointed trustee, Duke Salisbury, subsequently filed adversarial claims in Bankruptcy Court against hundreds of shippers, claiming that services performed by Industrial Freight System had not been billed at the full tariff rates. A total of 525 of these shippers, while opposing the claims in Bankruptcy Court,

also filed complaints with this Commission under Public Utilities (Pub. Util.) Code § 737, alleging that the claimed charges were unlawful.

With the cooperation of counsel, the 525 complaints were consolidated into 132 docketed Commission cases. A prehearing conference was conducted in the Commission's Los Angeles courtroom on December 13, 1995. The Commission designated six lead cases, set dates for discovery and submission of written testimony, and scheduled a hearing for the week of March 25, 1996.

Bankruptcy Judge Ernest M. Robles by order dated February 15, 1996, stayed further proceedings in the Commission cases pending various motions and appeals in the Bankruptcy Court. Accordingly, the Commission stayed its March 25, 1996 hearing. Judge Robles, meanwhile, dismissed the trustee's intrastate claims (that is, claims for transportation wholly within California) on grounds that they were preempted by federal law.¹

The Bankruptcy Court dismissal was affirmed on November 1, 1996, by the U.S. District Court for the Central District of California, acting as the reviewing court. The District Court held that the trustee was precluded from enforcing California intrastate claims because of California Senate Bill 415 (the Repeal Act), which added § 737.3 to the Pub. Util. Code. That statute, which took effect on June 21, 1996, provides that no carrier may collect California intrastate freight charges in addition to those already billed and collected, except for mutual

¹ The Court on January 25, 1996, granted shipper motions for judgment on the pleadings on grounds that the trustee's intrastate claims, which were based on the so-called "filed rate doctrine" codified in the Pub. Util. Code, were preempted by Title VI of the Federal Aviation Administration Authorization Act of 1994, Pub. L. No. 103-305, 108 Stat. 1605 (1994).

mistake or fraud. On March 31, 1997, the trustee's motion for reconsideration of the District Court decision was denied.²

On July 7, 1997, Judge Robles granted a motion by the Industrial Freight trustee for authority to abandon most of the intrastate undercharge claims before the Bankruptcy Court. The Court agreed that adverse court rulings and statutes had rendered such claims of inconsequential value. On August 11, 1997, the trustee began filing dismissals of the intrastate claims.

Status of Commission Cases

By letter dated December 23, 1997, and a follow-up letter dated February 13, 1998, the assigned administrative law judge (ALJ) in the cases before the Commission wrote to the 70 attorneys and others representing complainants. Noting that the Bankruptcy Court had dismissed most of the intrastate claims, the ALJ advised complainants that they could withdraw their complaints before the Commission by sending a letter to this agency stating that intent. Most of the attorneys and other representatives responded, electing to withdraw their Commission complaints. Between January and May 1998, by Executive Director order, the Commission accepted the withdrawal of approximately 90 docketed cases (and approximately 400 additional complaints consolidated in the docketed cases) and closed those cases.

Of the remaining 37 docketed cases, 10 remained open temporarily at the request of counsel pending various administrative matters in the Bankruptcy Court. In the other 28 cases, there was no response from counsel to the ALJ's

² SA CV 96-333 AHS; Bank. Ct. Case No. LA 93-41245 ER; Adv. Proc. No. LA 95-3450 ER, U.S. District Court, Central District of California, Southern Division.

inquiries, or letters to counsel had been returned as undeliverable. The Commission confirmed that the intrastate claims in those 28 cases had been dismissed by the Bankruptcy Court. Since the underlying allegations in those cases appeared moot in view of the Bankruptcy Court dismissals, the Commission in Decision (D.) 98-05-049, issued on May 21, 1998, dismissed the 28 complaints as moot or, alternatively, for want of prosecution.

On or about December 7, 1998, the ALJ issued rulings in the Industrial Freight System cases that have not yet been closed. The rulings stated:

"These complaint cases have been pending since 1995. Virtually all similar cases against Industrial Freight System, Inc., have been closed following dismissal of the underlying actions in Bankruptcy Court, Central District of California (Case No. LA 93-41245-ER). I intend to recommend dismissal of these cases in 45 days unless, prior to that time, complainants show good cause for keeping the cases open. Responses should be filed, with a separate copy addressed to me.

'Dated December 7, 1998, at San Francisco, California.'

No responses have been filed. Because of that, we infer that these remaining complainants have no objection to the ALJ's recommendation that these cases be closed. We have confirmed that the intrastate claims in these cases have been dismissed by the Bankruptcy Court. Since the underlying allegations in these cases appear to be moot, we will dismiss these cases as moot or, alternatively, for want of prosecution.

This is an unconstested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Findings of Fact

1. Since 1995, a total of 525 complaints, consolidated into 132 docketed cases, were filed with the Commission against Industrial Freight System in connection with tariff undercharge claims in Bankruptcy Court.

2. The Bankruptcy Court has dismissed the underlying intrastate claims in most of these cases.

3. In response to inquiry by the ALJ assigned to this matter, approximately 90 docketed cases and approximately 400 complaints consolidated therein were withdrawn by complainants, and these cases have been dismissed.

4. In D.98-05-049, the Commission dismissed another 25 of these cases as moot or, alternatively, for want of prosecution.

5. On or about December 7, 1998, the ALJ issued rulings in the remaining Industrial Freight System cases stating his intention to recommend dismissal unless parties within 45 days showed good cause why the cases should remain open.

6. There have been no responses to the ALJ's rulings.

Conclusion of Law

Those cases in which no response has been made to Commission inquiries should be dismissed as moot because of the Bankruptcy Court dismissals or, alternatively, they should be dismissed for want of prosecution.

O R D E R

IT IS ORDERED that the following cases are dismissed as moot or, alternatively, are dismissed for want of prosecution:

C.95-06-065	C.95-08-025	C.95-08-059	C.95-08-067
C.95-08-068	C.95-10-045	C.95-11-002	C.95-12-017
C.95-12-062	C.96-05-032		

These cases are closed.

This order is effective today.

Dated March 4, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners

ATTACHMENT A

INDUSTRIAL FREIGHT CASES

Case	Number	Date Filed
Growers Resources, Inc.	C.95-08-025	8/7/95
CMB Industries	C.95-08-059	8/14/95
Kama Corporation	C.95-08-067	8/31/95
Wilchem, Inc.	C.95-08-068	8/24/95
Kristine Long and Keith Newcomer d/b/a Arcata Exchange	C.95-10-045	10/23/95
Nurserymen's Exchange, Inc.	C.95-11-002	11/6/95
Sony Electronics, Inc.	C.95-12-017	12/8/95
Conair Corporation	C.95-12-062	12/19/95
Hollywood Ribbon Industries, Inc.	C.96-05-032	5/16/96

(END OF ATTACHMENT A)