

SERVICE DATE - SEPTEMBER 22, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 41996

ASSOCIATED TRAFFIC SERVICES, INC.--PETITION FOR DECLARATORY ORDER--
CERTAIN RATES AND PRACTICES OF SAIA MOTOR FREIGHT LINE, INC.

Decided: September 16, 1997

By petition filed April 11, 1997, Associated Traffic Services, Inc. (ATS or petitioner) seeks a declaratory order determining the reasonableness of certain rates and practices of Saia Motor Freight Line, Inc. (Saia or respondent). This proceeding is before the Board on referral from the United States District Court for the Northern District of Georgia, Atlanta Division, in Associated Traffic Services, Inc. v. Saia Motor Freight Line, Inc., No.1:96-CV-856-JTC (referral order dated January 31, 1997).

BACKGROUND

ATS is the assignee of Warner/Elektra/Atlantic Corporation (WEA), the shipper and payer of freight charges to Saia. ATS maintains that Saia overcharged WEA for several shipments that moved between April 26, 1994, and May 23, 1995.

ATS indicates that, effective May 10, 1993, WEA signed up to participate in Item 1444 of Saia's tariff ICC SAIA 669-F. Item 1444 provides a description of one of the many discount plans Saia offered to its customers. Most of the plans provided discounts from class rates published in various rate bureau class tariffs. Note A of Item 1444 indicates that the terms of the discount item apply only when the shipper is notified in writing by Saia that it is a participant in the item. The written notification would contain the percentage discount that was to be allocated to the shipper and also provide the classification (generally a class rating exception) to apply on the shipper's commodities.¹ Thus, shippers that received notification under the terms of Item 1444 were told what discount would apply on their traffic as well as the classification that would govern and the level of class rates that would apply. According to ATS, WEA was informed that, effective May 10, 1993, class 70 rates would apply on its traffic and that the rates would be discounted by 48%.

ATS also indicates that, effective April 26, 1994, WEA signed up to participate in another of Saia's discount tariffs, pursuant to Item 1414 of tariff ICC SAIA 669-F. Note B of the item indicates that the discount would apply when a shipper was notified in writing that it was a participant in the discount plan. The notification would contain the minimum weight and the origin points subject to the discount. ATS indicates that WEA received notification that, effective April 26, 1994, the 53% discount of Item 1414 would apply on all of its class rated shipments from Atlanta, GA, to points in the Southeastern United States. ATS contends that Saia's representations and the intentions of the parties were to continue the use of class 70 rates on WEA's traffic as the base rates to which the 53% (as opposed to the previously applied 48%) discount would be applied. However, after the 53% discount became effective, Saia discontinued the application of the class 70 rates on WEA's shipments and applied class 85 or class 100 rates. During the period April 26,

¹ Classifications are broad groupings of commodities with similar transportation characteristics. Generally, the ratings in the Saia discount plan were obtained from the National Motor Freight Classification published by the National Motor Freight Traffic Association, Inc., Agent. Classifications are not rates themselves, but carriers, in their rate publications, may establish different rates for the different classifications. A lower classification rating generally means that lower rates will apply. An exception rating is usually lower than the otherwise applicable ratings assigned to a shipper's commodities.

1994, to May 23, 1995, Saia invoiced and WEA paid freight charges determined by the application of a 53% discount on higher class 85 and class 100 rates. Effective May 23, 1995, Saia resumed the use of class 70 rates on WEA's shipments, to which it applied the 53% discount.

ATS submitted an overcharge claim of \$36,534.36 to Saia asserting that WEA was entitled to class 70 rates on the shipments it made via Saia from April 26, 1994, to May 23, 1995. Saia declined payment of the overcharge claim. On or about April 12, 1996, ATS filed suit in the United States District Court to recover the amount claimed. Subsequently, ATS filed a motion to stay the proceeding and refer the matter to the Board, which the court granted.

DISCUSSION AND CONCLUSIONS

Items 1414 and 1444 do not indicate that a shipper may only participate in one discount plan, nor do they provide that participation in a new plan would completely eliminate the application of other previously applicable discount provisions. In an earlier submission, ATS asked us for an informal opinion regarding the tariff applications at issue here. After we learned that the same applications were the subject of pending litigation, the request for an informal opinion was declined. However, we note that, with its informal opinion submission, ATS provided copies of notification letters that ATS avers WEA received from Saia. One letter indicates that, as of May 10, 1993, WEA was allowed a 48% discount and a class 70 rating to apply on its shipments from Atlanta. The second, bearing an effective date of April 22, 1994, indicates that, as of that date, WEA was allowed a 53% discount on its shipments via Saia. However, that notification letter does not include advice that the use of class 70 rates on WEA's shipments would be discontinued, and, indeed, does not provide any information at all as to what class rates would be applied. Absent a specific cancellation of the terms of the original Item 1444 notification in the tariff or in the later Item 1414 notification, the terms of both items and notifications must be considered in determining the applicable rates for WEA's shipments.

The record before us provides an insufficient basis on which to resolve this case. While we have copies of the Saia letters granting discounts to WEA, which were submitted with ATS' request for an informal opinion and which are referenced in the declaratory order request, the letters have not been provided to Saia, and thus, we have no way of knowing how Saia determined the class rates to which it applied the 53% discount. To develop as complete a record as possible, we will require ATS to furnish copies of the letters to Saia. Saia will then be given an opportunity to respond with any material it may have to rebut the ATS claim. ATS will then have time to reply.

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

It is ordered:

1. ATS shall furnish copies of the letters granting discounts to WEA within 10 days from the date of service of this decision and certify to us that it has done so.
2. Saia shall have 30 days from the date of service of this decision to provide any material it may have to rebut the ATS claim.
3. ATS shall have 50 days from the date of service of this decision to reply.
4. This decision is effective on its service date.

5. A copy of this decision will be mailed to:

The Honorable Jack T. Camp
United States District Court for the Northern
District of Georgia, Atlanta Division
Room 2142
75 Spring St. SW
Atlanta, GA 30303-3361

Re: No. 1:96-CV-856-JTC

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary