

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

**STB Ex Parte No. 656
MOTOR CARRIERS BUREAUS - PERIODIC REVIEW PROCEEDING
NORTH AMERICAN TRANSPORTATION COUNCIL, INC.**

COMMENTS

Signatories to the Agreement of
North American Transportation Council, Inc.

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STB Ex Parte No. 656

NORTH AMERICAN TRANSPORTATION COUNCIL, INC.

COMMENTS

The North American Transportation Council, Inc. (NATC) and the signatories to Section 5a 1/, submit these comments for the continuation and approval of its collective activities agreement by the Board.

Introduction

NATC is a corporation organized under the laws of New York State and its headquarters are in Buffalo, Erie County, NY. NATC was founded in 1939 and has continuously operated as a rate bureau since that time and is in full compliance with Section 5a of the Interstate Commerce Act.

NATC represents approximately 50 small and medium sized LTL motor carriers, headquartered in six different Canadian provinces and 12 different states and operating in all Canadian provinces and all the Continental United States.

For the past sixty years, NATC has specialized in the Canada/US transborder market and the formulation of rate structures between Canada and the United States. In doing so, it has acquired expertise in all aspects of motor carrier operations and costs in both countries as well as the customs clearance and border crossing transactions involved on all transborder shipments.

Need for Continued Antitrust Immunity

Since its founding, NATC has performed services for its member carriers relating to collective ratemaking in the formulation, publication, and distribution of baseline class rates. In addition to the collective ratemaking and related services, NATC also performs supporting services such as: data collection and analysis; development of performance factors; shipment costing studies; maintenance of motor carrier cost indices --labor, non-labor and fuel -- in both Canada and the United States; individual carrier tariff publication; traffic flow analyses; market analyses; benchmarking surveys; and software development. NATC disseminates to its members valuable information on the topics listed above.

While some of these functions may not require antitrust immunity, differentiating between the ones that do and the ones that do not is at best ambiguous. For this reason, any elimination, restriction, or change in the present immunity would place its members in a precarious situation and in all probability would result in carriers withdrawing from the Council because of the uncertainty as to potential antitrust exposure. This would cause these carriers

irreparable harm as it would hamper their ability to compete with the larger carriers who can serve most points direct.

The Carriers' Position

The carriers' need for antitrust immunity has not diminished nor changed. Small and medium sized carriers continue to require the services the regional rate bureaus provide which are only possible through the current limited antitrust immunity.

Truth-In-Rates Notice

The following notice appears on NATC's website (www.fca-natc.org) and in NATC's membership package.

RE: SURFACE TRANSPORTATION BOARD DECISION

The Surface Transportation Board (STB or Board) has affirmed its decision to approve the renewal of NATC's antitrust agreement provided that our members:

- Give "truth-in-rates" notice every time they list rates or otherwise give a rate quote (whether verbal, electronic or written) that references a collectively set rate. Quotes not referencing the collectively set class rates or referencing rates established under independent action or individual carrier tariffs are not subject to the "truth-in-rates" provision.

The STB wording for the "truth-in-rates" notice is as follows:

NOTICE: The class or benchmark rate that was used as a reference point in determining this rate [or rate quotation] was set collectively by motor carrier competitors acting under immunity from the antitrust laws. The class rate is not necessarily the prevailing market rate, and there is generally a wide range of discounts available. Motor carriers that are members of the North American Transportation Council Inc. typically offer discounts ranging from 5% to 85% (results of 2004 survey).

- Certify that they will not apply a loss-of-discount provision that would reinstate the collectively set rate as a penalty for late payment

The current NATC by-laws include the following provisions regarding truth-in-rates:

4.1 Member carriers utilizing the collectively set Council's rates must give "truth-in-rates" notice every time they list rates or otherwise give a rate quote that references a collectively set rate. The "truth-in-rates" notice should include the following information:

The class or benchmark rate that was used as a reference point in determining this rate (or rate quotation) was set collectively by motor carrier competitors acting under immunity from the antitrust laws. The class rate is not necessarily the prevailing market rate, and there are generally a wide range of discounts available. Motor carriers that are members of NATC typically offer discounts ranging from [xx% to xx%].

4.2 The Council will survey member carriers on an annual basis to ascertain the range of discounts applicable to collectively set rates. A notice of the range of discounts as determined by each survey will be sent to all member carriers and the STB.

Prohibition of use of a loss-of-discount penalty for late payment of rates

The current NATC by-laws include the following provision:

Member carriers must execute a certification that they will not apply a loss-of-discount provision that would reinstate the collection set rate as a penalty for late payment of freight charges.

In addition to the certification required by the Board, NATC's General Rate Committee also published the following rule in NATC Tariff 172:

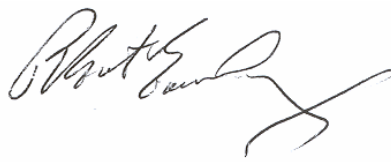
ITEM 436 - LOSS-OF-DISCOUNT RESTRICTION

Member carriers of NATC will not apply a loss-of-discount provision that would reinstate the collectively set NATC class rate(s) as a penalty for late payment of freight charges.

Conclusion

For the foregoing reasons, we urge the Board approve the 5a continuation of NATC's collective-activities agreement.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert G. Gawley", written over a horizontal line.

Robert G. Gawley
Attorney

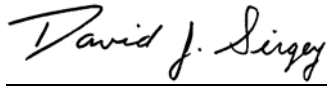
A handwritten signature in black ink, appearing to read "David J. Sirgey", written over a horizontal line.

David J. Sirgey
Attorney-in-fact

CERTIFICATE OF SERVICE

I hereby certify that I have, this day, served a copy of the foregoing comments for the Motor Carriers Bureaus – Periodic Review Proceeding, upon all parties of record to Ex Parte No. 656 noted herein, by first class mail.

Dated at Buffalo, New York this 25th day of February 2005.



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