Rollin' On . . .

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FILED RATES - SO WHAT?

As most people in the transportation community know, Congress passed legislation in 1993 and 1994 that has substantially alleviated the undercharge racket. There is still some exposure, such as in regard to some collective rates, but with the elimination of filing of individual rates with the ICC, shippers are breathing a sigh of relief.

But the issue does still arise. For example, much to the chagrin of maritime shippers, the ocean tariff situation has not yet changed. Shippers are still required to pay, and carriers are still required to collect, the tariff rate irrespective of what rate may have been earlier quoted by the carrier. Incidentallly, there are many more motor carrier undercharge cases than maritime undercharge cases, due to the fact that there are many more motor carriers than there are water carriers. Also, undercharge cases are usually filed by bankruptcy trustees and not by operating carriers, for obvious reasons. After all, a carrier cannot dispatch a process server to a shipper one day with lawsuit papers and then send out a sales rep the next day with coffee and donuts, as the shipper may suggest that the rep use the goodies in a manner for which they were not intended. (On a related point, carriers rarely use their sales staff to settle claims; otherwise they may as well just give the sales rep a blank check as that is how sales people settle claims.) Bankruptcy trustees have no interest whatsoever as to future business prospects, which explains why they will utilize all sorts of nefarious individuals to assist them in their undercharge collection efforts.

The original intent of a sacrosanct filed rate was, as some courts have put it, to avoid the "evil" of big shippers from getting secret discounts. Thus Congress required the railroads, and later the motor and maritime carriers, to charge only in accordance with their published tariffs. Congress further required that the rates may not be unreasonably discriminatory. The strict adherence to filed rates would also allow competing carriers to know what the competition, whether down the road or across the country, was charging.

So, as the theory goes, shippers were protected from being gouged or discriminated against. But that Christmas package from the government - "I'm from the government and I am here to help you" - had shark's teeth in it. One example is the legal doctrine that, among other things, decreed that shippers are presumed to know the law. And somehow shippers were (and are) also conclusively presumed to know what the filed rate was (is) with the great white father in Washington, D.C. Never mind that the shipper never travelled west of Burns, or had no one in D.C. to visit the ICC, or had no actual knowledge that the carrier changed its rate. And never mind that perhaps, just perhaps, the carrier's sales rep, working on a commission, actually quoted an erroneous rate, *in writing*, that the shipper reasonably relied upon. And finally, never mind that the carrier's employees issued a new tariff, failed to file it and then hired on with the trustee to collect the old rate. (In one case the carrier's owner actually removed filed tariffs from the ICC's records. He was convicted and the taxpayers will have the pleasure of feeding him for a while.)

SHIP AHOY

As gleaned from the discussion above, the filed rate doctrine is losing its punch. Some carriers, such as ocean carriers and motor carriers with collective rates, are still obligated to file their rates, which means that their shippers are still saddled with the responsiblity of knowing what those rates are.

This status could change, and is in fact expected to change, some time in the near future. As has been previously reported, a coalition of shippers, ocean carriers and congressional representatives are working on a proposal that would eliminate tariff filing, and with it the Federal Maritime Commission, and allow the marketplace to fill the void. Antitrust immunity for collective ratemaking may still be allowed.

That's all for now. To shippers, carriers, agents and other third parties, keep the cargo rollin'!!

If you can smile when
things go wrong, you have
someone in mind to blame.

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