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SERVICE DATE - DECEMBER 10, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. WCC-104

TRAILER BRIDGE, INC.

v.

SEA STAR LINES, LLC

Decided: December 7, 1999

By complaint filed on July 1, 1999, Trailer Bridge, Inc. (Trailer Bridge or complainant), a provider of motor-water intermodal transportation services between United States mainland points and Puerto Rico, alleges that Sea Star Lines, LLC (Sea Star or defendant) has: (1) violated the National Transportation Policy (NTP) set forth at 49 U.S.C. 13101(a)(1)(C) and (D) (Count I), and (2) engaged in certain unreasonable practices in violation of 49 U.S.C. 13701(a)(1)(B) (Count II). Specifically, Trailer Bridge asserts that Sea Star is holding itself out to provide transportation service between the U.S. mainland and Puerto Rico at rates that are noncompensatory, in violation of the Board's mandate to encourage "sound economic conditions in transportation" and "the establishment and maintenance of reasonable rates for transportation, without unreasonable discrimination or unfair or destructive competitive practices." Complainant also asserts that, by doing so, Sea Star is engaged in an unreasonable practice. Complainant alleges that defendant's continuing violation of these statutory provisions has caused, and is continuing to cause, economic injury to Trailer Bridge in an as yet undetermined amount.

Sea Star filed an answer to the complaint on July 26, 1999, in which it denied the allegations. Sea Star filed a motion to dismiss the complaint on August 9, 1999, and concurrently filed a motion to stay discovery pending the outcome of the motion to dismiss. On August 13, 1999, complainant submitted a proposed procedural schedule. On August 27, 1999, Trailer Bridge replied separately to the motion to dismiss the complaint and the motion for stay of discovery.

A. The Motion to Dismiss. The complaint provisions of 49 U.S.C. 14701(b) permit us to dismiss a complaint that "does not state reasonable grounds for investigation and action." Rules 1111.4(a) and 1111.5 of our General Rules of Practice implement these provisions by providing that we may issue a final decision upon the filing of an answer or on a motion to dismiss. The Interstate Commerce Commission (ICC), our predecessor, has, with judicial approval, exercised its authority to dismiss complaints without holding an evidentiary hearing where the issues involved were essentially legal. See ZoneSkip, Inc. v. UPS, Inc. and UPS of America, Inc., 8 I.C.C.2d 645 (1992), aff'd mem. 998 F.2d 1007 (3d Cir. 1993). Thus, a complaint will be dismissed if there are no material issues of fact to be resolved in the proceeding. Caribbean Shippers Assoc., Inc. v. NPR, Inc. et al., STB Docket No. WCC-100 (STB served Mar. 25, 1997), aff'd sub nom. Caribbean Shippers Assoc., Inc. v. NPR, Inc., et al., 145 F.3d 1362 (D.C. Cir. 1998). In considering a motion to dismiss, we must construe factual allegations in a light most favorable to

complainant. See, e.g., Sierra Pacific Power Co. & Idaho Power Co. v. Union Pacific Railroad Co., STB Docket No. 42012 (STB served Jan. 26, 1998).

Our General Rules of Practice state that a complaint “. . . should set forth briefly and in plain language the facts upon which it is based.” 49 CFR 1111.1(a). Although we are granting the motion to dismiss in part, as a general matter this complaint sufficiently sets forth the facts in enough detail to provide reasonable grounds for investigation by the Board.

1. **Count II.** Defendant argues that Count II of the complaint, alleging unreasonable practices, should be dismissed because section 13701 is designed to protect shippers and not carriers like Trailer Bridge. In support of this position, defendant notes that section 13701(d)(4) limits reparations to shippers injured by unreasonable rates or practices. Defendant therefore argues that a party bringing an unreasonable practice claim must show an injury either to a shipper or to competition. According to defendant, Trailer Bridge makes no such allegation here but, rather, alleges only unspecified economic injury to itself. Further, Sea Star argues, insofar as the complaint is directed at confidential contracts, a proceeding in this matter would violate policy by launching what it terms a “fishing expedition” into private contract rates that are not subject to the reasonableness standards of section 13701.

In reply, complainant concedes that reparations under section 13701(d)(4) are limited to shippers. It points out, however, that it is seeking damages under section 14704(a)(2) rather than reparations under section 13701(d)(4). Trailer Bridge also argues that the Board has not articulated a policy of confidentiality for water carrier contracts as it has for railroad contracts and that, in any event, complainant has not inquired into any confidential information.

The motion to dismiss Count II will be denied. Under section 13701, rates and practices in the noncontiguous domestic trade must be reasonable. Complainant in effect argues that defendant is engaged in unreasonable practices because its rates are unreasonable. We do not see why a complainant cannot bring that sort of case under the statute. Moreover, sections 14701(b) and 14704(a)(2) allow any person allegedly damaged by a violation of the statute to file a complaint and seek damages, which complainant has done. We do not see anything in the law specifically precluding complainant from seeking damages.

Defendant argues that there is no possible remedy under the statute for water carrier rates that are too low, but this argument is incorrect. Section 13701(a)(1)(B) requires that a rate or practice “for a movement by or with a water carrier in noncontiguous domestic trade . . . must be reasonable.” The statute does not expressly limit the Board to findings of maximum reasonableness, and indeed the fact that the zone of reasonableness (ZOR) of section 13701 applies to both rate increases and rate reductions¹ indicates the existence of a remedy for unreasonably low rates.

¹ Under the ZOR, a rate change is protected from challenge on reasonableness grounds if the aggregate of increases and decreases is not more than a certain percentage above or below the rate in

The record as presently constituted is not entirely clear as to the theory of Count II of the complaint, particularly whether Trailer Bridge is complaining about contract rates, about specific tariff rates, or about Sea Star's entire rate structure. Nevertheless, construing all facts in the light most favorable to complainant, we cannot find that Trailer Bridge has presented no facts under Count II which, if proven, would result in a violation of law, or that its request for damages is impermissible under the law. We find that Count II of the complaint does state reasonable grounds for investigation and action. The motion to dismiss Count II will be denied.²

2. **Count I.** Defendant argues that Count I must be dismissed on the ground that the policy guidelines contained in the NTP do not constitute a separate right of action under the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803. Citing Global Van Lines v. ICC, 714 F.2d 1290 (5th Cir. 1983), and Central Forwarding, Inc. v. ICC, 698 F.2d 1266 (5th Cir. 1983), Sea Star argues that the NTP is merely a general policy statement that is designed to guide the Board in its deliberations, but that it does not create an independent, separate right of action. Defendant also argues that the portion of the NTP cited by complainant, 49 U.S.C. 13101(a)(1)(C) and (D), does not apply directly to the complaint, while the only section of the NTP that deals directly with water carriers in the noncontiguous domestic trade, section 13101(a)(4) (which instructs the Board to encourage and promote service and price competition), is not even cited by Trailer Bridge.

In its reply, Trailer Bridge cites Investigation into the Need for Defining Reasonable Dispatch, 351 I.C.C. 812 (1976), and Winnebago Farmers Elevator Co. v. Chicago & N.W., 354 I.C.C. 859 (1978), for the proposition that the NTP is substantive law, and it extrapolates from these cases that the NTP can create a separate cause of action. Trailer Bridge notes that the general provisions of the NTP found at section 13101(a) apply to all modes of transportation governed by that part of the statute, including water carriers in the noncontiguous domestic trade. Trailer Bridge also asserts that the complaint as pled is specific enough to put defendant on notice of the nature and basis of the claims and, thus, is sufficient to survive a motion to dismiss.

As a general matter, we agree with Sea Star that the NTP provisions, do not present complainant with a separate right of action. If there were no other provision that engaged our jurisdiction in this matter, then a claim under the NTP alone would not afford a basis for relief. Therefore, we will dismiss Count I of the complaint as a formal basis on which the complaint can proceed.

effect 1 year earlier.

² Defendant expresses concern over the disclosure of confidential information. Either party here is free to seek a protective order at any time to ensure that confidential matter will remain protected against public disclosure.

The policies embodied in the NTP, however, serve as guidance to the Board in every action that it takes. Therefore, while we are dismissing Count I, we will consider the allegations in it, and the general directives of the NTP, throughout this proceeding as we evaluate the unreasonable practice claim in Count II.

B. The Motion to Stay Discovery and Other Procedural Matters. Defendant has also filed a motion to stay discovery pending resolution of its motion to dismiss. In light of our finding here, the stay motion will be denied as moot. Discovery shall proceed pursuant to 49 CFR 1114. We expect the parties to cooperate on discovery matters. They are reminded that discovery may be obtained “regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding. . .” and that the information sought cannot be objected to if it “appears reasonably calculated to lead to the discovery of admissible evidence.” 49 CFR 1114.21.

As noted, complainant filed a proposed procedural schedule in this matter on August 13, 1999. Because the submission is unilateral, it is contrary to our Rules and the schedule will not be adopted. Instead, the parties are directed to meet pursuant to our General Rules of Practice in order to discuss discovery and procedural matters by December 22, 1999. See 49 CFR 1111.10(a). The parties shall file a proposed joint procedural schedule by December 29, 1999. Id.

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

It is ordered:

1. The motion to dismiss the complaint is denied in part and granted in part.
2. The motion to stay discovery is denied as moot.
3. The parties shall meet in order to discuss discovery and procedural matters by December 22, 1999.
4. The parties shall file a proposed joint procedural schedule by December 29, 1999.
5. This decision is effective on the date served.

By the Board, Chairman Morgan, Vice Chairman Clyburn and Commissioner Burkes.

Vernon A. Williams
Secretary