

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 84-F-1737

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROCKY MOUNTAIN MOTOR TARIFF
BUREAU, INC.,

Defendant.

Filed: May 10, 1985

Entered: September 20, 1985

FINAL JUDGMENT

Plaintiff, the United States of America, having filed its Complaint herein on August 28, 1984, and plaintiff and defendant, by their respective attorneys, having each consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting evidence against, an admission by, or an estoppel against either party with respect to any such issue;

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

ORDERED, ADJUDGED, AND DECREED as follows:

I

This Court has jurisdiction of the subject matter of this action and of both of the parties hereto. The Complaint states a claim upon which relief may be granted against the defendant under Section 1 of the Sherman Act (15 U.S.C. §1).

II

As used in this Final Judgment:

(A) "Carrier" means any person authorized pursuant to 49 U.S.C. §10922(b)(1) to provide transportation subject to the jurisdiction of the I.C.C. as a motor carrier of property;

(B) "Commodity group" means specific commodities listed together under a single heading in a tariff;

(C) "Docket bulletin" means a RMB publication which includes public notice of proposed tariff changes to be considered by one or more RMB rate committees or subcommittees;

(D) "Exempt commodity" means any commodity specified in 49 U.S.C. §10526, as amended, as more specifically identified in Appendix A hereto, the transportation of which is not subject to I.C.C. jurisdiction;

(E) "I.C.C." means the Interstate Commerce Commission;

(F) "Person" means any individual, firm, partnership, association, corporation, or any other business or legal entity;

(G) "Proposal" means any request submitted to the RMB to establish a rate, or to change, modify, or revise provisions in an existing rate;

(H) "Rate or rates" means specific rates or rate levels; allowances or charges; rules which solely affect or apply to rates for the transportation of exempt commodities; and the formulation, development, establishment, implementation, application, or maintenance of specific rates, rate levels, allowances, or charges, and procedures or policies pertaining thereto;

(I) "RMB" means the defendant, Rocky Mountain Motor Tariff Bureau, Inc. and any successor thereof;

(J) "RMB rate committee or subcommittee" means any group of persons that includes at least two or more motor carriers that considers rates under procedures authorized by 49 U.S.C. §10706, Agreement No. 60;

(K) "Tariff" means rates, fares, and charges filed with the I.C.C. for the transportation and handling of commodities; and

(L) "To serve a copy upon the plaintiff" means to mail one copy to Chief, Legal Procedure Unit, Antitrust Division, U.S. Department of Justice, Room 7416, Main Justice Building, Washington D.C. 20530 and to mail a second copy to Chief, San Francisco Field Office, Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, Box 36046, San Francisco, California 94102.

III

This Final Judgment applies to the defendant, its successors and assigns, and to its subsidiaries, officers, directors, agents, employees, and members, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

Defendant is enjoined and restrained from:

(A) Allowing any of its rate committees or subcommittees to vote on or consider any proposal for the establishment or changes of rates for the transportation of exempt commodities;

(B) Processing any proposal, for consideration by a rate committee or subcommittee, that includes rates for the transportation of exempt commodities;

(C) Publishing in its docket bulletin any proposal for the establishment or changes of rates for the transportation of exempt commodities;

(D) Publishing rates for the transportation of exempt commodities in any of its tariffs, except rates submitted by a single carrier or joint-line rates submitted by carriers who can participate in the joint route, and that have requested that such rates be published for informational purposes only pursuant to 49 CFR 1312.1(e);

(E) Setting, fixing, maintaining or establishing rates for the transportation of exempt commodities in any of its tariffs;

(F) Taking any other action which has the purpose or effect of setting, fixing, maintaining, or establishing rates for the transportation of exempt commodities between or among competing carriers; and

(G) Recommending to any carrier a rate for the transportation of exempt commodities.

Provided, however, that nothing in paragraphs IV (A), (B), or (C) shall prohibit defendant from complying with paragraph V (A).

Provided further that nothing in this Final Judgment shall prohibit RMB from engaging in action on intrastate rates which is immune from the operations of the antitrust laws under the state action doctrine as set forth in the holding of the United States Supreme Court in Southern Motor Carriers Rate Conference, Inc. v. United States (March 27, 1985).

V

Defendant is ordered and directed:

(A) To purge from each of its tariffs within ninety (90) days after the entry of this Final Judgment all rates for the transportation of exempt commodities, including but not limited to rates for the transportation of (1) specific exempt commodities, and (2) exempt commodities included within commodity groups; but excluding any rates submitted by a single carrier or joint-line rates submitted by carriers who can participate in the joint route, published in defendant's tariffs pursuant to 49 CFR 1312.1(e) and which are clearly marked as rates which are being published only for informational purposes;

(B) To mail or otherwise furnish, within sixty (60) days after the entry of this Final Judgment, a copy of this Final Judgment to each of (1) its officers and directors; (2) its agents and employees with supervisory or management responsibility, or with responsibility for dockets, docket bulletins, or rates; and (3) its member carriers that participate in one or more of defendant's tariffs; and

(C) To file with the Clerk of the Court and to serve a copy upon the plaintiff, within ninety (90) days after the date of entry of this Final Judgment, an affidavit setting forth the fact and manner of compliance with paragraphs V (A) and (B).

VI

Defendant is further ordered and directed:

(A) To establish a reasonable program for dissemination of, education as to, and compliance with this Final Judgment, involving each employee, officer, director, agent, and every rate committee or subcommittee member having responsibility in connection

with or authority over dockets, docket bulletins, or rates, and advising them of their obligations under this Final Judgment. This program shall include, but is not limited to, the inclusion, in an appropriate RMB manual or internal document, of a copy of this Final Judgment, in whole or in part or an explanation thereof, and a statement of RMB compliance policy thereunder;

(B) To designate by name, title, and address an individual whom the plaintiff may contact regarding any aspect of compliance by the defendant with any of the obligations imposed by this Final Judgment or regarding any rights of visitation granted by Section VIII of this Final Judgment;

(C) To file with the Clerk of the Court and to serve a copy upon the plaintiff within one-hundred and twenty (120) days after the entry of this Final Judgment, an affidavit setting forth the fact and manner of compliance with paragraphs VI (A) and (B); and

(D) On or about the first year anniversary of the entry of this Final Judgment and annually thereafter for a period of five (5) consecutive years from the date of entry of this Final Judgment, to file with the Clerk of the Court and to serve a copy upon the plaintiff an affidavit setting forth the following information:

(1) The fact and manner of compliance with paragraph VI (A) during the preceding year, and

(2) Any changes in defendant's name, ownership, location, attorney of record or individual designated pursuant to paragraph VI (B) during the preceding year.

VII

Defendant shall require, as a condition of the sale or other disposition of all, or substantially all, of the total assets of its business, that the acquiring party agree to be bound by the provisions of this Final Judgment. The acquiring party shall file with the Court and serve on the plaintiff its consent to be bound by this Final Judgment.

VIII

(A) For the purpose of determining or securing compliance with this Final Judgment, upon receipt of a written request from the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, defendant shall,

within sixty (60) days after receiving the request, subject to any legally recognized privilege:

(1) Permit any duly authorized representative of the Department of Justice access, during the office hours of defendant, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, records, and documents in the possession or in the control of the defendant relating to any of the matters covered by this Final Judgment,

(2) Provide to the Department of Justice copies of any books, ledgers, accounts, correspondence, memoranda, and other documents or records in the possession or under the control of the defendant relating to any of the matters covered by this Final Judgment,

(3) Submit written reports, under oath if requested, with respect to its compliance with this Final Judgment as may, from time to time, be requested, and

(4) Permit any duly authorized representative of the Department of Justice, subject to the reasonable convenience of the defendant and without restraint or interference from it, to interview officers, employees and agents of defendant, who may have counsel present, regarding any subject covered by this Final Judgment.

(B) No information or document obtained by the means provided in this Section VIII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law, provided however, that any representative of the Department of Justice may divulge to the Office of Compliance and Consumer Assistance of the I.C.C. the existence of any practice which is discovered by the means described in this Section VIII and which is believed to violate any of the provisions of the Interstate Commerce Act.

(C) If at the time information or documents are furnished by defendant to plaintiff, defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendant is not a party.

IX

Jurisdiction is retained by this Court for the purpose of enabling the parties to this Final Judgment to apply to this Court at any time for such further orders and direction as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

X

This Final Judgment shall expire ten (10) years from the date of entry or, with respect to any particular provision, on any earlier date specified.

XI

This Court finds that the entry of this Final Judgment is in the public interest.

So Ordered

this 20th day of September, 1985.

/s/ Chief Judge Finesilver
United States District Judge