

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 84F1737

UNITED STATES OF AMERICA,

Plaintiff,

v.

Filed: August 28, 1984

ROCKY MOUNTAIN MOTOR TARIFF  
BUREAU, INC.,

Defendant.

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COMPLAINT

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The United States of America, plaintiff, by its attorneys acting under the direction of the Attorney General of the United States, brings this civil action against the above-named defendant and complains and alleges as follows:

I.

JURISDICTION AND VENUE

1. This Complaint is filed and this action is instituted against the defendant by the United States of America under Section 4 of the Act of Congress of July 2, 1890, as amended (15 U.S.C. §4), commonly known as the Sherman Act, in order to prevent and restrain violations, as hereinafter alleged, by the defendant and co-conspirators of Section 1 of the Sherman Act, as amended (15 U.S.C. §1).

2. The defendant is incorporated in and transacts business in the District of Colorado (15 U.S.C. §22; 28 U.S.C. §1391).

## II.

### DEFINITIONS

3. As used herein, the term:

- a) "Person" means any natural person, firm, partnership, association or corporation;
- b) "Motor carrier" means a person providing interstate motor vehicle transportation of freight for compensation;
- c) "Common carrier authority" means operating authority granted to a motor carrier by the Interstate Commerce Commission ("I.C.C.");
- d) "Rate bureau" means an organization established or continued under an agreement approved by the I.C.C. under 49 U.S.C. §5b, currently codified at 49 U.S.C. §10706(b)(2);
- e) "Tariff" means rates, fares and charges filed with a governmental agency by a motor carrier or rate bureau for the transportation and handling of freight;
- f) "Exempt commodity" means any of the freight specified in 49 U.S.C. §10526, as amended, the transportation of which is not subject to I.C.C. jurisdiction.

## III.

### DEFENDANT

4. Rocky Mountain Motor Tariff Bureau, Inc. ("RMB") is made a defendant herein. RMB is a non-profit, incorporated rate bureau organized and existing under the laws of the State of Colorado with offices in Denver, Colorado. RMB's permissible activities are described in a rate bureau agreement approved by the I.C.C. Various motor carriers are members of RMB and participate in formulating RMB tariffs.

## IV.

### CO-CONSPIRATORS

5. Various persons not made defendants participated as co-conspirators with the defendant in the violation alleged herein and performed acts and made statements in furtherance thereof.

TRADE AND COMMERCE

6. Motor carrier transportation is one of the primary means of transporting freight between points within the United States.

7. To engage in the transportation of freight in interstate commerce in the United States, a motor carrier must have common carrier authority (49 U.S.C. §10921).

8. During all or part of the time pertinent to this Complaint, member motor carriers of the defendant RMB held common carrier authority.

9. Rates set by rate bureaus are typically set out in written form as part of rate bureau tariffs.

10. The Reed-Bulwinkle Act, which was passed in 1948, authorizes two or more motor carriers to apply to the I.C.C. for approval of an agreement to establish a rate bureau to set certain rates collectively (49 U.S.C. §5b, currently codified at 49 U.S.C. §10706(b)(2)). Upon I.C.C. approval of a rate bureau agreement, a rate bureau may set rates for transportation of commodities subject to the jurisdiction of the I.C.C. Such rate setting activities are not subject to the operation of the antitrust laws, provided that the rate bureau's actions conform to the procedural requirements set forth in the approved agreement. Every rate bureau agreement must reserve to each of the rate bureau's members the right to take a rate action independent of the rates set collectively by the rate bureau (49 U.S.C. §5b(6), currently codified at 49 U.S.C. §10706(b)(2)(B)(ii)). Relief from the antitrust laws under the Reed-Bulwinkle Act is strictly limited to the terms of the approved agreement, and it does not extend to conduct that the I.C.C. is not empowered to authorize, or if empowered, has not authorized.

11. As of July 1, 1980, the I.C.C. has had no jurisdiction over, and has not been empowered to authorize, collective rate action for the transportation of exempt commodities whether carried in loads comprised exclusively of exempt commodities or carried in mixed loads, i.e., loads comprised in part of exempt commodities and in part of regulated commodities (49 U.S.C. §§10526, 10528). Agreements between competing motor carriers on transportation rates for exempt commodities therefore constitute price fixing, a per se violation of Section 1 of the Sherman Act (15 U.S.C. §1).

12. During all or part of the time covered by this Complaint, RMB operated as a motor carrier rate bureau. RMB sets rates which affect the movement of commodities between points in forty-three states.

13. During all or part of the time covered by this Complaint, RMB's Rules of Procedure Governing Additions, Changes and Eliminations in Tariffs Published by Rocky Mountain Motor Tariff Bureau, Inc. ("Rules") governed the procedure for modification of RMB tariffs. The Rules require, with some exceptions, that all proposals for modification of rates in RMB tariffs be submitted to one of various RMB rate committees for consideration. The RMB By-Laws require that the membership of each rate committee be derived from RMB motor carriers participating in tariffs under the jurisdiction of each such committee. Committee members consider each rate proposal and vote to approve, disapprove, or defer action on the proposal.

14. The interstate traffic revenues of RMB member motor carriers with authority to transport freight in the United States were approximately \$2 billion in 1982.

15. The transportation of freight by RMB motor carriers substantially affects the interstate commerce of the United States.

## VI.

### VIOLATION ALLEGED

16. Beginning as early as July 1980 and continuing at least through 1983, the exact dates being unknown to the plaintiff, the defendant and co-conspirators engaged in a combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and commerce of the United States in violation of Section 1 of the Sherman Act (15 U.S.C. §1). The aforesaid unlawful combination and conspiracy may continue or be renewed unless the relief hereinafter prayed for is granted.

17. The aforesaid combination and conspiracy consisted of a continuing agreement, understanding and concert of action among the defendant and co-conspirators, the substantial terms of which were to fix, raise and maintain prices for the transportation of certain exempt commodities by motor carriers between points in the United States.

18. In furtherance of the aforesaid combination and conspiracy, the defendant and co-conspirators have done those things that they combined and conspired to do, including among others:

- a) Organized, funded and participated in rate committees consisting of representatives of competing motor carrier members of RMB, and, through these committees, engaged in the joint setting of rates for the transportation of certain exempt commodities between points in the United States; and

b) Filed tariffs with the I.C.C. in Washington, D.C. that were in furtherance of the conspiracy.

VII.

EFFECTS

19. The combination and conspiracy has had the following effects:

a) Rates for the transportation of certain exempt commodities by motor carrier between points in the United States have been fixed, raised or maintained at artificial and non-competitive levels;

b) Competition between and among the co-conspirators engaged in the transportation of certain exempt commodities by motor carrier in the United States has been restrained;

c) Consumers of motor carrier transportation services have been deprived of the benefits of free and open competition in the sale of those services with respect to exempt commodities.

VIII.

PRAYER

WHEREFORE, the plaintiff prays:

1. That the Court adjudge and decree that defendant and co-conspirators have engaged in a combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and commerce of the United States in violation of Section 1 of the Sherman Act (15 U.S.C. §1).

2. That the defendant, its successors, assignees and transferees, and its officers, directors, agents and employees, and all persons acting in concert therewith, be permanently enjoined and restrained from continuing, maintaining or renewing, directly or indirectly, the combination and conspiracy hereinbefore alleged, or from engaging in any other combination or conspiracy having a similar purpose or effect, or from adopting or following any practice, plan, program or device having a similar purpose or effect.


3. That RMB be ordered to establish and follow such rules and procedures as may be necessary to ensure that the conspiracy alleged herein is not continued, maintained or renewed, including rules and procedures to ensure that RMB does not continue to file tariffs containing rates for transportation of exempt commodities.

4. That the plaintiff have such other relief as the Court may deem just and proper.

5. That the plaintiff recover the cost of this action.

  
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