

**TNT TARIFF AGENTS, INC. and National
Carloading Corporation, Petitioners,**

v.

**The INTERSTATE COMMERCE
COMMISSION and United States of
America, Respondents,**

and

**Eastern Central Motor Carriers
Association, Inc. and Rocky Mountain
Motor**

Tariff Bureau, Inc., Intervenors.

No. 203, Docket 75-4052.

United States Court of Appeals,
Second Circuit.

Argued Oct. 6, 1975.

Decided Nov. 18, 1975.

Freight forwarders sought to set aside orders of Interstate Commerce Commission which found certain tariffs to be unjust and unreasonable. The Court of Appeals, Waterman, Circuit Judge, held that burden of showing unreasonableness was properly placed on motor carriers which objected to the tariffs; that the tariffs, by which the published full service rates of the forwarders were reduced by one dollar per hundredweight when customers' shipments were delivered directly to the forwarders' terminals were properly characterized as allowances rather than as dock rates; that evidence sustained finding that the rates were unreasonable; and that the Commission's order was not overly broad.

Petition denied.

**[1] ADMINISTRATIVE LAW AND
PROCEDURE ⇨ 749**

15Ak749

Presumption of validity is accorded to administrative bodies acting within their sphere of expertise.

[2] COMMERCE ⇨ 85.15

83k85.15

Substantial discretion is accorded the Interstate Commerce Commission in weighing

the factors in determining just and reasonable rates.

[3] COMMERCE ⇨ 106.1

83k106.1

Formerly 83k106

Evidence that administrative law judges made their decisions with respect to reasonableness of certain tariffs only after finding that those opposing the tariffs had made out a prima facie case that they were unjust and unreasonable demonstrated that the Interstate Commerce Commission, which approved the decisions, properly placed burden of showing that the tariffs were unjust and unreasonable on the opponents.

[4] COMMERCE ⇨ 105

83k105

When the lawfulness of a published rate is challenged after the tariff has become effective, burden rests upon the complaining party or the Interstate Commerce Commission to show that the tariff is unreasonable.

[5] COMMERCE ⇨ 85.35

83k85.35

Tariffs which had the effect of reducing freight forwarders' published, full service rates by one dollar per hundredweight when customers' shipments were not picked up by the forwarders but were delivered directly to the forwarders' terminals were properly characterized by Interstate Commerce Commission, which was hearing challenge to the tariffs on the grounds that they were unjust and unreasonable, as allowances rather than as dock rates. Interstate Commerce Act, §§ 404(a), 415, 49 U.S.C.A. §§ 1004(a), 1015.

[6] CARRIERS ⇨ 26

70k26

Test to be employed in determining reasonableness of either a reduced dock rate or an allowance is identical; each must be shown to be compensatory for the service to be performed thereunder. Interstate Commerce Act, §§ 404(a), 415, 49 U.S.C.A. §§ 1004(a), 1015.

[7] COMMERCE ⇨ 110

83k110

In view of overlapping functions of motor carriers and freight forwarders within terminal areas or commercial zones, Interstate Commerce Commission, in determining reasonableness of tariffs of freight forwarders which provided for a one dollar deduction per hundredweight when freight was delivered to the forwarders' terminals, properly relied on cost data relative to motor carriers.

[8] CARRIERS ⇌ 26
70k26

Amount of allowance given by freight forwarder on normal published rates should not be more than is just and reasonable for the service or for the instrumentality furnished and should not exceed the reasonable cost to the owner of the goods of performing the service or furnishing the instrumentality used.

[9] COMMERCE ⇌ 110
83k110

Evidence that cost of pick-up for motor carriers in their territories was less than one dollar per hundredweight on all shipments of 500 pounds or more and that the average cost of pick-up for a typical 5,000-pound shipment moving between New York and Los Angeles was 33.3 cents per hundredweight sustained finding of Interstate Commerce Commission that allowance of one dollar per hundredweight given by freight forwarders when shipments were not picked up by the forwarders but rather were delivered directly to the forwarders' terminals was unjust and unreasonable.

[10] COMMERCE ⇌ 100
83k100

Even though it was two motor carriers who originally complained of tariffs initiated by freight forwarders, where the Interstate Commerce Commission itself instituted proceedings by order, the Commission was not restricted to reviewing validity of the tariffs only in the areas within which the two protesting motor carriers operated but was also entitled to consider the disruptive and unfair impact which the rates would have on competitive practices nationally and to void all tariffs found to be unreasonable and unjust.

[11] COMMERCE ⇌ 115.1
83k115.1

Formerly 83k115

Even though portions of tariffs published by freight forwarders might be reasonable and sustainable, Interstate Commerce Commission, through its administrative law judges, was entitled to find the entire tariffs to be unreasonable as the issue before the judges was not whether, by coincidence, portions of the tariffs could be defended but rather whether each tariff as a whole met the applicable standards. Interstate Commerce Act, § 415, 49 U.S.C.A. § 1015.

***1090** Elliott C. Winograd, New York City, for petitioners.

Thomas E. Kauper, Asst. Atty. Gen., Dept. of Justice (John H. D. Wigger, Atty., Dept. of Justice, Washington, D.C.), for respondent United States.

Lloyd John Osborn, I.C.C. (Fritz R. Kahn, Gen. Counsel, I.C.C., Washington, D.C.), for respondent Interstate Commerce Commission.

John R. Mahoney, New York City (Casey, Lane & Mittendorf, New York City), for Intervenor Eastern Central Motor Carriers Association, Inc.

John R. Mahoney, New York City (Casey, Lane & Mittendorf, New York City) and William E. Kenworthy, Denver, Colo., for Intervenor Rocky Mountain Motor Tariff Bureau, Inc.

Before WATERMAN, OAKES and MESKILL, Circuit Judges.

WATERMAN, Circuit Judge:

Petitioners TNT Tariff Agents, Inc. (hereinafter "TNT") and National Carloading Corporation (hereinafter "National") seek to set aside orders of the Interstate Commerce Commission entered in two separate, but closely related, administrative proceedings. In I.C.C. Docket No. 35921,[FN1] the Commission found TNT's 'Tariff East' to be unjust and unreasonable. In I.C.C. Docket No. 35921 (Sub-No. 1),[FN2] the Commission made