

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF	)	
	)	
BEST REFRIGERATED EXPRESS, INC.,	)	CASE NO. BK89-80169
	)	
DEBTOR	)	A91-8149
	)	
THOMAS HOARTY, TRUSTEE,	)	
	)	CH. 11
Plaintiff	)	
vs.	)	
	)	
ROCKY MOUNTAIN EXPRESS CORP.,	)	
	)	
Defendant	)	

MEMORANDUM

Hearing was held on December 10, 1993, on a Motion for Summary Judgment filed by defendant, which replaced a prior Motion to Dismiss. Appearing on behalf of Trustee/plaintiff was John Siegler of Sims, Walker & Steinfeld, P.C., Washington, D.C. Appearing on behalf of defendant was Rick D. Lange of Rembolt, Ludtke, Parker, & Berger, Lincoln, NE. This memorandum contains findings of fact and conclusions of law required by Fed. Bankr. R. 7052 and Fed. R. Civ. P. 52. This is a core proceeding as defined by 28 U.S.C. § 157(b)(2)(E) and (O).

Background

Best Refrigerated Express, Inc. (Best), filed a petition under Chapter 11 of the Bankruptcy Code on February 7, 1989. Best, a trucking firm, operated in interstate commerce as a motor contract carrier and a motor common carrier. Rocky Mountain Express Corporation (Rocky Mountain) is a licensed broker of property. The adversary proceeding alleges that Rocky Mountain owes the Trustee for unpaid freight bills or "undercharge" claims for freight being transported in interstate commerce pursuant to 49 U.S.C. §§ 10741(a), 10761 and 10762 (1993).

An undercharge claim represents a claim for the difference between the shipping rate Best had on file with the Interstate Commerce Commission (ICC) under its motor common carrier permit and the negotiated rate Best actually charged Rocky Mountain, which was paid in full at the time of the billing. In this case, the difference between these amounts, which is the amount sought by the

Trustee, is \$8,387.64 plus pre-judgment and post-judgment interest and costs.

This proceeding involves thirty (30) shipments made by Best on behalf of Rocky Mountain. The shipments were made between July 1988 and January 1990. Rocky Mountain argues that these shipments moved subject to the Transportation Agreement entered into with Best on March 1, 1988, which was a renewal of a contract that was signed on August 13, 1987 (the Agreements). Best originally billed Rocky Mountain pursuant to negotiated rates located in the rate schedules established by the Agreements and under its motor contract permit. Negotiated rates entered into under the authority of a motor contract permit are not filed with the ICC because the ICC has exempted motor contract carriers from filing rates. Exemption of Motor Contract Carriers from Tariff Filing Requirements, 133 M.C.C. 150 (1983), aff'd sub nom Central & Southern Motor Freight Tariff Ass'n v. United States, 757 F.2d 301 (D.C. Cir. 1985), cert. denied, 474 U.S. 1019, 106 S. Ct. 568, 88 L. Ed. 2d 553 (1985). The Trustee argues that a valid motor contract did not exist and that Rocky Mountain owes the Trustee the difference between the contract rate and the higher rate on file with the ICC under its common carrier authority.

On December 3, 1991, this Court issued a Journal Entry which stayed the adversary proceeding and referred the undercharge issue to the ICC. Filing no. 13. Rocky Mountain petitioned the ICC to determine that it was not liable for the undercharge claims on the following grounds: (1) The parties negotiated rates pursuant to Best's motor contract carrier authority and under the Agreements; therefore, the common carrier rates do not apply to Rocky Mountain; (2) If the common carrier rates are applicable, the rates are unreasonable under the Interstate Commerce Act and ICC regulations, and therefore, are inapplicable.

The ICC ruled that Rocky Mountain and Best had entered into the Agreements under Best's contract motor carrier authority; therefore, the rates that were billed pursuant to the Agreements were the applicable rates, and the Trustee was not entitled to an undercharge claim. The ICC concluded that its finding that Best acted pursuant to motor contract authority was dispositive of the entire case and therefore, did not determine whether the filed rates were unreasonable. See Rocky Mountain Express Corp. -- Petition For Declaratory Order -- Certain Rates and Practices of Best Refrigerated Express, Inc., No. 40718 (I.C.C. Sept. 15, 1993) [hereinafter RME.]

After the ICC decided RME, the parties returned to this Court where Rocky Mountain moved to dismiss the adversary proceeding on September 30, 1993, but the motion was replaced with a Motion for Summary Judgment on November 15, 1993. Filing no. 23. The Trustee resisted on the ground that the ICC erred by holding that the agreement between Rocky Mountain and Best was a motor contract

agreement and not a common carrier agreement. Filing no. 20. Hearing was held on December 10, 1993. At the hearing, the Court ordered both parties to submit comments about the applicability of the new statute, the Negotiated Rates Act of 1993. The parties have submitted their materials and the matter is ready for decision on the summary judgment motion.

### Discussion and Decision

Motions for summary judgment are filed pursuant to Fed. Bankr. R. 7056, which incorporates Fed. R. Civ. P. 56. A summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. Bankr. R. 7056(c); Fed. R. Civ. P. 56(c); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). The summary judgment procedure is appropriate in an action to review the record of an administrative agency because the reviewing court is generally limited to determining matters of law, i.e. sufficiency of record, statutory authority of agency, etc., and if there is no material issue of fact and only a question of law, summary judgment is appropriate. 6-Pt. 2 **Moore's Federal Practice** ¶ 56.17[3], 56-362 - 56-364 (2d ed. 1993) (citing Milton v. Harris, 616 F.2d 968 (7th Cir. 1980) (holding that summary judgment is appropriate when no issue of material fact exists, and the court is reviewing administrative record for sufficiency of evidence)).

#### A. The Negotiated Rates Act of 1993

On December 3, 1993, the President signed the Negotiated Rates Act of 1993 into law. Negotiated Rates Act of 1993, Pub. L. No. 103-180, §§ 1-9, 107 Stat. 2044 (codified as amended at 49 U.S.C. § 10701) (1993) [hereinafter the Act]. The Act amended Title 49 of the U.S. Code by promulgating retroactive standards to determine whether or not a motor carrier or its representative is entitled to undercharge claims. The Trustee argues that the Act exempted carriers who were in bankruptcy and that the Act violated § 541(c) of the Bankruptcy Code. Rocky Mountain's position is that the Act is not relevant because the ICC's decision in RME was filed before the Act was passed, and therefore, is subject to the requirements in existence at the time of the ICC's decision, not the Act.

It is the opinion of this Court that the passage of the Act does not affect the ICC's decision in or this Court's review of RME. Because the ICC decision was filed on September 23, 1993, almost three months before the Act was passed, this Court will review RME pursuant to the legal standards applicable before the Act was passed. The ICC decision is based on an interpretation of regulations in effect when the shipments were made. Although these

regulations were repealed, the Act reinstates the law in effect at the time these undercharge claims arose and is not in conflict with the legal standards followed by the ICC in RME.

Motor contract carrier standards exist in Section 6 of the Act. § 6, codified as amended at 49 U.S.C. § 10702. The Act reinstates prior ICC regulations which were located at 49 C.F.R. § 1053.1 and were repealed in 1992. Since the ICC regulations that were repealed were in effect at the time the undercharge claims arose and followed by the ICC in RME, the Act's amendment does not affect this Court's review.

#### B. Standard of Review

When a court reviews an agency's action, the court must give the agency action a "presumption of regularity." Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 415, 91 S. Ct. 814, 823, 28 L. Ed. 2d 136 (1971). This Court may overturn the ICC's decision "only if it f[inds] that decision to be 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.'" First Nat'l Bank v. Smith, 508 F.2d 1371, 1373 (8th Cir. 1974) (quoting 5 U.S.C. § 706(2)(a) (1988)), cert. denied, 421 U.S. 930, 95 S. Ct. 1655, 44 L. Ed. 2d 86 (1975). Under the arbitrary and capricious standard, a court must defer to the ICC's decision if the decision has a rational basis. Missouri Dep't of Social Servs. v. United States Dep't of Educ., 953 F.2d 372, 375 (8th Cir. 1992).

It is well established that "[r]egulatory agencies do not establish rules of conduct to last forever; they are supposed, within the limits of the law and of fair and prudent administration, to adapt their rules and practices to the Nation's needs in a volatile changing economy." American Trucking Ass'n, Inc. v. Atchison, T. & S. F. R. Co., 387 U.S. 397, 416, 87 S. Ct. 1608, 1618, 18 L. Ed. 2d 847, reh'g denied, 389 U.S. 889, 88 S. Ct. 11, 19 L. Ed. 2d 197 (1967). It is expected that agencies such as the ICC require ample latitude to "adapt their rules and policies to the demands of changing circumstances." Motor Vehicle Mfrs. Ass'n of the United States, Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 42, 103 S. Ct. 2856, 2866, 77 L. Ed. 2d 443 (1983) (quoting Permian Basin Area Rate Cases, 390 U.S. 747, 784, 88 S. Ct. 1344, 1369, 20 L. Ed. 2d 312, reh'g denied, Bass v. Fed. Power Com., 392 U.S. 917, 88 S. Ct. 2050, 20 L. Ed. 2d 1379 (1968)). This latitude gives the ICC the authority to change how it defines and interprets its regulations in order to be responsive to the realities of the market place.

A court reviewing an agency's decision may not balance policy considerations, or choose among competing interests when evaluating the reasonableness of an agency's action. Arkansas AFL - CIO v. F.C.C., 11 F.3d 1430, 1441 n. 10 and accompanying text (8th Cir. 1993) (stating that the reviewing court should not examine whether

the agency's interpretation is the best interpretation of the statute, but should determine that the agency's interpretation does not conflict with the statute). Because of the degree of deference granted to a regulatory agency, a court should look narrowly at the decision of the ICC and not substitute its own judgment for that of the agency. Motor Vehicle Mfrs. Ass'n, 463 U.S. at 43, 103 S. Ct. at 2866.

### C. Statutory Authority & Discussion

The Interstate Commerce Act defines "motor contract carrier" as:

"a person providing motor vehicle transportation of property for compensation under continuing agreements with one or more persons -- designed to meet the distinct needs of each such person.

49 U.S.C. § 10102(15)(B)(ii)(1993).

The regulation that identified the elements of "continuous agreements" was 49 C.F.R. § 1053.1, which stated:

No contract carrier by motor vehicle, as defined in 49 U.S.C. § 10102(15), shall transport property for hire in interstate commerce except under special and individual contracts or agreements which shall be in writing, shall provide for transportation for a particular shipper or shippers, shall be bilateral and impose specific obligations upon both carrier and shipper or shippers, shall cover a series of shipments during a stated period of time in contrast to contracts of carriage governing individual shipments, and copies of which contracts or agreements shall be preserved by the carriers parties thereto so long as such contracts or agreements are in force and for at least one year thereafter.

49 C.F.R. § 1053.1 was in effect at the time the parties entered into the written agreements; however, since that time, the ICC has eliminated the regulation because it has "outlived [its] usefulness and [caused] more harm than good." Ex Parte No. MC-198, 1991 MCC LEXIS 16 (I.C.C. February 20, 1991). But, the ICC followed Regulation 1053.1 in RME since the shipments occurred while the regulation was in effect and because the repeal of a regulation may not be applied retroactively unless retroactive application is authorized by a statute. Bowen v. Georgetown Univ. Hosp., 488 U.S. 204, 208, 109 S. Ct. 468, 471, 102 L. Ed. 2d 493 (1988).

The term "distinct needs" as used in 49 U.S.C. § 10102(15)(B)(ii)(1993) is defined as a need for more specialized services than a common carrier can provide. Don Barclay, Inc. v. Stewart & Stevenson Servs., Inc., 761 F. Supp. 194, 200 (D. Mass. 1991) (citing Global Van Lines, Inc. v. I.C.C., 804 F.2d 1293, 1301 (D.C. Cir. 1986); Global Transp. Servs., Inc. v. United Shipping Co. (In re United Shipping Co.), 134 B.R. 359 (Bankr. Minn. 1991); Transrisk Corporation, Inc. v. Matsushita Electric Corp., 1994 U.S. App. LEXIS 1262, 1994 WL 18596 (4th Cir. Jan. 26, 1994) ("Distinct needs", as interpreted by the federal courts, "is a need for a different or a more select or a more specialized service than common carriage provides." Global Van Lines, Inc. v. Interstate Commerce Commission, 256 U.S. App. D.C. 264, 804 F.2d 1293, 1301 (D.C. Cir. 1986)"). In a situation such as Best's in which the carrier has both a contract and common carrier permit, the test whether the carrier meets a "distinctive need" is whether the carrier operates on a committed basis and over a continuing period of time. Barclay, 761 F. Supp. at 200 (quoting Interstate Van Lines, Inc., Extension -- Household Goods, 5 I.C.C.2d 168 (December 6, 1988); Global Transportation, 134 B.R. at 366).

The Trustee argues that the ICC has recently broadened its definition of motor contract carrier beyond the bounds set by the ICC's original interpretation of Regulation 1053.1 and beyond the ICC's original interpretation of "distinct needs", and that the expansion of the definition is impermissible. The Trustee cites three older negotiated rate cases where the ICC defined the distinction between motor contract and motor common carriers by requiring motor contract carriers to strictly comply with ICC regulations before finding that the requirements for establishing motor contract agreement were met. See Conagra Poultry Company -- Petition For Declaratory Order, 1988 Fed. Carr. Cas. (CCH) ¶ 37,524 (1988); MCI Telecommunications Corp. v. E.L. Murphy Trucking Co., 1989 Fed. Carr. Cas. (CCH) ¶ 37,748 (1989); Diversey Wyandotte Corp. -- Petition For Declaratory Order, 1990 Fed. Carr. Cas. (CCH) ¶ 37,831 (ICC June 4, 1990).

The ICC has since changed its policy from requiring absolute compliance with its regulations to requiring substantial compliance with the requirements of Regulation 1053.1, and noted "it is not our policy to find a lack of contract carriage based on simply, technical oversights or omissions." General Mills, Inc. -- Petition for Declaratory Order -- Certain Rates and Practices of United Shipping Co., Inc., 8 I.C.C.2d 313 (1992) [hereinafter General Mills]. The ICC now examines the "totality of the circumstances" to determine whether the shipment was moved under a common carrier agreement or a contract agreement. Id. at 323; Contracts For Transportation of Property, 8 I.C.C.2d 520, 529 (1992) [hereinafter Contracts]; Ford Motor Co. v. Security Services f/k/a Riss Intl., 9 I.C.C.2d 892, 896-97 (1993) [hereinafter Ford v. Riss]. Under the totality of the

circumstances test, the ICC distinguishes contract carriers from common carriers by focusing on the following factors:

It is the ongoing relationship, service commitment, and commercial link between a carrier and its shippers that render contract carriage inherently different from common carriage service alternatives. For example, the Commission may look at the circumstances surrounding the particular transportation service to determine whether the shipments at issue moved under a continuing agreement, and whether the transportation involved the use of dedicated equipment or a service tailored to meet the distinct needs of the shipper. In any event, it is the totality of the circumstances surrounding any particular movement that determines the character of the carriage.

RME at 5 (citing General Mills, 8 I.C.C.2d at 323; Contracts, 8 I.C.C.2d at 529; Ford v. Riss, 9 I.C.C.2d at 896-97).

The ICC has the authority to issue new policy statements that establish new formulas to determine how the parties will be regulated under the Interstate Commerce Act. Ryder Truck Lines, Inc. v. U.S., 716 F.2d 1369 (11th Cir. 1983), cert. denied, 466 U.S. 927, 104 S. Ct. 1707, 1708, 80 L. Ed. 181 (1984) (holding that the ICC's new policy which adopted a new formula to distinguish "for hire" carriers from "private" carriers was rational under the Act). The rule in this Circuit is that an administrative agency has the discretion to alter its interpretation of a statute in light of changed circumstances. Arkansas AFL-CIO, 11 F.3d at 1441. However, in a situation such as this one where the ICC has altered its interpretation of its regulations to the point where the new interpretation is in conflict with its prior interpretation, the reviewing court should adhere to the following principle stated by the Eighth Circuit:

We note that an agency interpretation of a statutory provision which conflicts with the agency's earlier interpretation is entitled to considerably less deference than a consistently held agency view. Watt v. Alaska, 451 U.S. 259, 273 (1981). However, we keep in mind the caution that:

[r]egulatory agencies do not establish rules of conduct to last forever; they are supposed, within the limits of the law and of fair and prudent administration, to adapt their rules and practices to the Nation's needs in a volatile, changing economy.

American Trucking Ass'n, Inc. v. Atchison Topeka & Santa Fe Ry. Co., 387 U.S. 397, 416 (1967))[sic].  
Arkansas AFL-CIO, 11 F.3d at 1441 n. 11. Therefore, if the ICC's decision in RME is reasonable under the Interstate Commerce Act and is reasonable under the ICC's own regulations, this Court will defer to the "totality of the circumstances" test adhered to by the ICC.

### C. Review of the ICC Decision

Upon review of the ICC's decision in RME, this Court finds that the decision is not arbitrary or capricious and has a rational basis in law. The Trustee argues that the shift in the ICC's definition of contract carriers is a "complete evisceration" of the statute governing contract carriage at the ICC. Filing no. 20, at 24. The Trustee believes that the shift from strict compliance to a focus on the intent of the parties is somehow invalid; however, the Trustee submits no evidence or case law that states that it is impermissible for an administrative agency to alter its interpretation of its various rules and regulations. As discussed above, Congress granted the ICC the authority to revise its interpretation of regulations to respond to a volatile marketplace. Arkansas AFL-CIO, 11 F.3d at 1441.

The ICC's decision in RME found that the agreement entered into between Best and Rocky Mountain was an agreement under Best's motor contract authority and that all shipping traffic moved under this agreement and Best's motor contract authority. Id. at 7. The ICC began its analysis by examining the pre-contract conduct of the parties. The President of Rocky Mountain testified that Rocky Mountain has always only entered into contract carrier arrangements. Id. at 1. He further testified that Rocky Mountain entered into a written contract with Best on August 13, 1987, which was followed by a renewal agreement on March 1, 1988. Id. at 2. At the time of entering into the August agreement, Best provided Rocky Mountain with a copy of its contract carrier permit, No. MC-11592, Sub-No. 38, which was issued to Best on February 5, 1985, to transport general commodities (with exceptions) between designated points in the United States under continuing contracts with brokers. Id. n. 2.

Rocky Mountain did not have any knowledge that Best possessed a common carrier permit, nor did Best ever hold itself out to Rocky Mountain as a motor common carrier. RME at 2. The parties agreed to prices at the time the shipments were made, Best sent Rocky Mountain an invoice after the shipment, and Rocky Mountain paid Best the amount specified on the freight bill prepared by Best, which Best accepted as full payment. Id. n. 3. The President of Rocky Mountain testified that it did not discover that Best had contract authority until it received the undercharge claims from the Trustee after Best filed bankruptcy. Id. He further stated that Rocky Mountain would not have used Best had the filed rates

been applicable, and he submitted evidence of other contract carriers that Rocky Mountain entered into contract carrier relationships with who could have shipped for Rocky Mountain at contract rates similar to the original rates Best charged and who would have been selected to make Best's shipments if Rocky Mountain knew at that time that it would be subject to Best's filed common carrier rates. Id.

The ICC found that it issued the Sub-No. 38 permit to Best to provide motor contract service for brokers. RME at 5. In both the August and the March Agreements, which are on identical forms, the parties cited this permit as the permit applicable to shipments that were moved under the Agreements, and the Agreements specifically state that the permit authorizes the carrier, Best, to operate as a motor contract carrier. See Exhibit A, Exhibit C, Petitioner's Opening Statement and Argument, I.C.C. No. 40718. The ICC concluded that:

The record establishes that Best contracted to serve RME as a contract carrier under its permit in August 1987. It also shows that the parties entered into the agreements with the understanding that RME's traffic would be moved under those agreements and Best's contract carrier authority. While respondent now characterizes these agreements as only general agreements to agree to do business, the important point to note is that they were agreements to do business under Best's contract carrier authority.

Id. at 5.

The Trustee did not rebut any of the evidence submitted by Rocky Mountain to the ICC, or submit any of its own evidence. ICC held that the un rebutted evidence established that the parties intended that all shipments tendered by Rocky Mountain to Best were intended to move under the contract permit and the Agreements. RME at 5. In addition, Best billed and conducted itself as though it were acting as a motor contract carrier and held itself out to Rocky Mountain at all times as a motor contract carrier. Id. at 5-6.

This Court finds that the ICC acted reasonably when it examined the totality of the circumstances to determine that the parties intended to enter into motor contract carriage, and the ICC's decision regarding the intent of the parties is entitled to deference from this Court. In examining the totality of the circumstances in this case, the ICC not only addressed the intent of the parties, but also addressed technical compliance with the statute and regulations relating to motor contract carriage.

Under 49 C.F.R. § 1053.1, which was in effect during the time the shipments were made, the Agreements must meet the following to satisfy the "continuing agreements" requirement: the agreement must be in writing; it shall be a bilateral agreement and impose specific obligations on each party; it shall provide shipping for a particular shipper; it shall cover a series of shipments during a stated period of time; and the agreement shall be preserved by the parties for at least one year thereafter.

The ICC found that all of these requirements were met. See generally RME at 6. The Agreements submitted to the ICC were in writing. The agreement was bilateral because obligations were imposed on both parties. Specifically, the ICC noted that the Agreements state that Rocky Mountain promised to tender at least a minimum quantity for shipment of 400,000 pounds per year that the Agreement was in effect. The Trustee argued in its brief that the agreement was not bilateral because no obligations were imposed on Rocky Mountain under the Agreement, but the law is clear that the promise to tender a minimum shipment satisfies the bilateral agreement requirement under Regulation 1053.1. Transrisk Corp., 1994 U.S. App. Lexis 1262, at \*8; Barclay, 761 F. Supp. at 203.

The ICC found that the agreements definitely identified a specific carrier, Best, and a specific broker/shipper, Rocky Mountain. The Agreements are continuing agreements over time because the language states that the Agreements are in force for one year and every year thereafter, subject to the right of termination. The actual conduct of the parties under the Agreements supports the ICC's conclusion that the parties operated under a continuing agreement over time. The volume of the shipments, thirty, and the time period that the Agreement was in effect, two years, are dispositive factors that the Agreements covered more than individual shipments, which is indicative of common carriage, and represented an extended and continuing series of shipments. Transrisk Corp., 1994 U.S. App. LEXIS 1262, at \*8; see also Barclay, 761 F. Supp. at 202 ("continuing refers to regularly reoccurring needs and repeated transactions, not isolated transactions."). The ICC also found that the commitments made by Best to Rocky Mountain regarding the shipments were the types of commitments made under a continuing agreement, not under a common carrier type relationship. Finally, it is irrebuttable that the Agreements were preserved beyond one year.

This Court will defer to the finding of the ICC that the Agreements were continuing agreements. The Trustee argues that the ICC has repeatedly foregone requiring compliance with its own regulations and statutes in favor of its totality of the circumstances test. This Court finds that the Trustee's argument is misplaced because the Agreements and the shipments carried out under it appear to technically as well as subjectively satisfy Regulation 1053.1. The Trustee's main complaint is that the standards under which these requirements are evaluated have been

altered. However, this Court finds it acceptable for the ICC to alter its own interpretations of its regulations and the statutes that Congress has designated the ICC to administer. The manner in which the ICC has chosen to interpret Regulation 1053.1 is consistent with the language of the regulation, and this Court defers to the ICC's reasonable and sufficient conclusion.

The ICC concluded that the Agreement satisfied the requirement that the contract carriage arrangement meet a distinct need. The ICC based its conclusion on several factors. The Agreements required Best to carry higher levels of public insurance and cargo liability than is required in the regulations for common carriers. RME at 1, 6. Best was required to assume all liability for loss or damage or delay of shipments and was required to indemnify Rocky Mountain of all claims. Id. at 1. Scheduled pickups and deliveries were closely coordinated by Best, and Best arranged for stops in transit for partial loading and unloading. Id. at 6. Best was also committed to transporting a large minimum volume during a contract year and to negotiating rates on short notice. Id. Finally, the ICC noted that Rocky Mountain's need for price flexibility was a primary reason for Rocky Mountain contracting with Best for motor carriage. Id.

This Court will defer to the ICC's conclusion that the contract carrier relationship satisfied a distinct need. It is clear from RME that Rocky Mountain had distinct needs that it believed could be satisfied only by entering into a contract carrier agreement, not a common carrier relationship. The Trustee did not submit any argument or evidence to the ICC that Best did not satisfy the needs enumerated by Rocky Mountain, or that the needs cited by the ICC were non-existent. The ICC's interpretation of "distinct needs" is reasonable under 49 U.S.C. § 10102(15)(B)(ii).

When carrying out its decision-making authority, it is not only recognized that the ICC will resolve disputes, but also, the ICC is entrusted to protect public policy. Chesapeake and Ohio Ry. Co. v. United States, 704 F.2d 373, 375-76 (7th Cir. 1983) (noting that preserving a competitive interest is implicit in Interstate Commerce Act); see generally 49 U.S.C. § 10101 (1993) (listing the transportation policies that the ICC must protect). The ICC's integration of traditional contract law by looking at the conduct and intentions of the parties with its previous rules under 49 U.S.C. § 10102(15)(B) to define motor contract carriers is rationally related to the promotion of the transportation policies enumerated in Section 10101, such as "encouraging sound economic conditions among carriers," 49 U.S.C. § 10101(1)(C); "promoting competitive and efficient transportation services in order to allow a variety of quality and price options to meet changing market demands and the diverse requirements of the shipping and traveling public." 49 U.S.C. § 10101(a)(2)(B).

Rocky Mountain has the right to rely on Best to conduct itself lawfully under the motor contract permit requirements since Best was issued its contract permit for the purpose to serve brokers, such as Rocky Mountain, as a contract carrier. If there was confusion at Best regarding whether or not Best was operating under a contract or common carrier authority, Best should have applied to the ICC for a determination of its status under 49 U.S.C. § 10925(e) at the time the contract was entered into or executed. RME at 5.

The Trustee has focused at length on the shipper's/broker's failure to comply with the law of contract carriers and the Supreme Court's finding in Maislin Indus., U.S., Inc. v. Primary Steel, Inc. that when a carrier fails to file the rates it negotiated in a common carrier case, it is no excuse for a shipper to plead ignorance of this fact in an undercharge proceeding. 497 U.S. 116, 110 S. Ct. 2759, 111 L. Ed. 2d 94 (1990) (holding that a defense to an undercharge claim in a negotiated rates case that is based upon the finding that the undercharge claim is an unreasonable practice is not valid). This Court cannot accept the Trustee's position because a dispute over carrier status is distinguishable from Maislin, a negotiated rates case. Based upon the ICC's overwhelming conclusion that both Best and Rocky Mountain intended and conducted themselves as having entered into a motor contract agreement, the Maislin proposition that the shipper should have been aware of the filed rate doctrine is irrelevant because motor contract carriers do not file rates, so the doctrine would not have been contemplated at the time the Agreements were effective.

Finally, the Trustee alleges that it was Rocky Mountain who did not meet the definition of having entered into a motor contract carrier relationship, and therefore, the relationship could only be one of common carriage. However, the Court agrees with the ICC that there exists no statutory authority for the ICC to retroactively void this contract and treat the agreement as a motor common carriage relationship based upon any actual or asserted deficiencies or breaches of the contract or performance thereunder. See RME at 7 (quoting Ford v. Riss, 9 I.C.C.2d at 895).

The Agreements satisfy the requirements for "motor contract carriage" that are located in 49 U.S.C. § 10102(15)(B)(ii). The ICC's decision in RME was a reasonable interpretation of the Interstate Commerce Act, and the ICC's exercise of authority in this case was within the bounds that Congress set in the Interstate Commerce Act.

The defendant's Motion for Summary Judgment is granted based upon review of the pleadings, the RME decision, and the accompanying briefs. This Court finds that the ICC was not acting arbitrarily or capriciously, but was acting reasonably and within its authority and therefore, the decision is entitled to deference by this Court.

Separate journal entry shall be entered.

DATED: April 6, 1994.

BY THE COURT:

/s/ Timothy J. Mahoney  
Timothy J. Mahoney  
Chief Judge

CC: Movant, Debtor(s) Atty. and all parties appearing at hearing  
[ ] Chapter 13 Trustee [ ] Chapter 12 Trustee [ ] U.S.Trustee

Movant is responsible for giving notice of this journal entry to any parties in interest not listed above.

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF	)	
	)	
BEST REFRIGERATED EXPRESS, INC.,	)	CASE NO. BK89-80169
	)	A91-8149
<u>DEBTOR(S)</u>	)	
	)	CH. 11
THOMAS HOARTY, TRUSTEE, Plaintiff(s)	)	Filing No.
vs.	)	<u>JOURNAL ENTRY</u>
	)	
ROCKY MOUNTAIN EXPRESS CORP.,	)	DATE: April 6, 1994
	)	HEARING DATE: December
<u>Defendant(s)</u>	)	8, 1993

Before a United States Bankruptcy Judge for the District of Nebraska regarding Motion for Summary Judgment filed by defendant.

APPEARANCES

John Siegler, Attorney for trustee/plaintiff  
Peter A. Greene, Attorney for defendant  
Gerald Friedrichsen, Attorney for defendant

IT IS ORDERED:

Motion for summary judgment granted. See memorandum this date.

BY THE COURT:

/s/ Timothy J. Mahoney  
Timothy J. Mahoney  
Chief Judge

CC: Movant, Objector/Resistor (if any), Debtor(s) Atty. and all parties appearing at hearing  
[ ] Chapter 13 Trustee [ ] Chapter 12 Trustee [ ] U.S.Trustee

Movant is responsible for giving notice of this journal entry to all other parties if required by rule or statute.