



American Arbitration Association
Dispute Resolution Services Worldwide

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January 23, 2004

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Re: 11 199 00084 02
Assured Transportation Services, Inc.
and
Airborne Freight Corporation
and
ABX Air, Inc.

Via Regular Mail

Dear Parties:

Enclosed please find the hard copy of the Award for this matter, previously transmitted to you via fax on January 16, 2004.

Sincerely,

Tracey Pease
Case Manager
401 431 4701
Peaset@adr.org

Debra A. Seymour
Supervisor
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Seymourd@adr.org

Encl.

AMERICAN ARBITRATION ASSOCIATION
Construction Arbitration Tribunal

In the Matter of the Arbitration between

Re: 11 199 00084 02
Assured Transportation Services, Inc. ("Assured")
and
Airborne Freight Corporation ("Airborne")
and
ABX Air, Inc. ("ABX")

AWARD OF ARBITRATOR

WE, THE UNDERSIGNED ARBITRATORS, having been designated in accordance with the arbitration agreement entered into between the above-named parties, and having been duly sworn, and having duly heard the proofs and allegations of the Parties, do hereby, FIND, as follows:

Assured filed this arbitration on December 31, 2001. It filed Claimant's Amended Statement of Claim on August 21, 2002.

Airborne and ABX filed an Amended Answering Statement and Counterclaims on September 4, 2002.

This dispute was arbitrated pursuant to the arbitration clauses in the relevant agreements between the parties.

The Panel held an evidentiary hearing in Schaumburg, Illinois from August 25, 2003 through September 6, 2003.

Pursuant to the Order dated September 6, 2003, which was signed by counsel for the parties, the parties have agreed to waive the deadline for the issuance of a reasoned opinion.

As of the date of the hearing, Assured pleaded breach of contract, fraud and negligent misrepresentation causes of action, as well as a claim for attorneys' fees and costs. The Panel required Assured to specify its damage claims, and, as identified in its Third Supplemental Interrogatory Responses, Assured sought monetary damages against Airborne based on nine separate damage theories: (1) Shipment Differential (sometimes called the "Black Hole"); (2) Comat; (3) Equipment Losses; (4) Letter to Jim Pope; (5) State Farm Pickup Shipments Paid to Sigler; (6) Rockford Deduction; (7) Bid Fraud; (8) Loss of Business (sometimes called "Goodwill"); and (9) Attorneys' Fees and Arbitration Costs. During the hearing, Assured abandoned its claim for Equipment Losses, and modified the amounts it was seeking under its Shipment Differential, Bid Fraud and Loss of Business theories.

At the hearing, Assured did not identify any money damage claims against ABX and did not present any evidence in support of any claim against ABX.

By the date of the hearing, Airborne and/or ABX asserted breach of contract, money had and received, and unjust enrichment causes of action, as well as a claim for attorneys' fees and costs. Airborne and/or ABX sought money damages against Assured on six separate theories: (1) Overpayments regarding Pick-up Consolidations; (2) Overpayments regarding Postals; (3) Overpayments regarding POP's; (4) Overpayments regarding Service Failures; (5) Fork Lift Damages to Plane; and (6) Overpayments for Waiting Time. At the hearing, Airborne abandoned its Service Failure claim, and did not present evidence on its Waiting Time claim.

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Airborne is a national and international air express transportation and freight forwarding company. Airborne is the low cost carrier in a very competitive business (its major competitors are Federal Express and UPS). Airborne uses independent contractors such as Assured (often referred to as "IC's") in many locations to pick up and deliver packages and handle other operations at Airborne locations.

Assured picked up and delivered packages for Airborne from six Airborne locations in Illinois. Assured is owned by Ed Roeder. Although it was not contractually required to do so, Assured worked only for Airborne.

Assured started its work as an IC for Airborne in 1991 in the Champaign, Illinois contract area, which also included the Kankakee, Illinois area. Assured expanded its relationship with Airborne when it bid for and took over the Springfield, Illinois station in 1993, which included the Decatur, Illinois area. In 1999, Assured bid for and was awarded the Rockford, Illinois stations. In 2000, Assured bid on and was awarded the Bloomington, Illinois stations, which was a new station.

At the typical Airborne station where Assured worked, freight arrived early in the morning via airplane or large trucks. The freight was "sorted" onto trucks. These trucks, driven by Assured's employees, usually did most of their work in the morning hours, making deliveries. Some of the same trucks were also used for afternoon deliveries and pickups. Pickups were brought to the station and sorted into containers for movement by airplane or large trucks out through the Airborne system, for ultimate delivery at other Airborne stations.

Assured and Airborne negotiated contracts and pricing on several occasions over the years. In each instance, the result of the negotiation process was an agreement by the parties to a targeted total payment per week to service an individual contract area. Once the target amount per week was agreed upon, pricing for each shipment was calculated based on anticipated shipment volumes, with the goal being to hit the targeted weekly amount. The contract did not specify a set weekly price. Rather, the parties tried to achieve the target weekly price by estimating anticipated shipment levels in the area.

Assured received a weekly check and other documentation from Airborne.

Assured and Airborne entered into written Cartage Agreements and Schedule A's for the various stations. Generally speaking, the Cartage Agreements set out the basic terms of the relationship, and the Schedule A's contained the specific payment-related information. Assured and Airborne entered into four separate Cartage Agreements.

The Champaign Cartage Agreement covered the Champaign "control" stations and the Kankakee "agent" station. The difference between "control" and "agent" locations is the, typically, Airborne personnel (such as a station manager and service agents) are located at control stations, while Airborne personnel will not be located at agent locations. Thus, for example, Assured personnel operated the Kankakee "agent" location without Airborne employees present. Champaign and Kankakee had separate Schedule A's under the Champaign Cartage Agreement, and these Schedule A's were periodically replaced as increases were granted. Champaign was abbreviated "CMI" on the various papers, and Kankakee was abbreviated as "IKK" or "KKJ".

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The Springfield Cartage Agreement covered Springfield (a control station) and Decatur (an agent station). New Schedule A's were put into place when there were price increases. For most of the time Assured serviced Springfield and Decatur, one Schedule A covered both stations. In February 2001, Springfield and Decatur were broken out into separate Schedule A's after Assured received an increase for both stations. Springfield was abbreviated as "SPI" and Decatur was abbreviated as "DEC".

The Rockford Cartage Agreement covered the Rockford control station and there was a Schedule A that governed payment terms. Rockford was abbreviated "RFD".

The Bloomington station was an agent station associated with the Peoria control station. Another contractor handled the Peoria station. Bloomington was under its own Cartage Agreement and Schedule A. Bloomington was abbreviated "BMI", and Peoria was abbreviated "PIA".

Several Provisions in the Cartage Agreements are important to the parties' dispute. The Cartage Agreements at issue are essentially identical and each contained the following provisions:

- a. First, each Cartage Agreement contained a 60-day termination without cause provision:

"Termination Without Cause: Notice Period. Either party may terminate this Agreement upon not less than 60 days written notice to the other. The notice need not specify any reason for the termination. A notice which does identify a reason or reasons shall not imply that the termination is for cause, or that the termination can be avoided under the cure provisions of subparagraph (b) above. Notwithstanding the forgoing, notice of termination pursuant to this subparagraph (c) shall not be given during the six month period commencing with the effective date of this agreement."

- b. Each Cartage Agreement also had a 12-month limitations provision:

"Any arbitration or suit shall be commenced within 12 months following the occurrence or claim which gives rise to the initiation of such proceeding."

- c. Each Cartage Agreement also had a Washington choice-of-law provision:

"This agreement shall be governed by and interpreted and construed in accordance with the internal laws of the State of Washington."

- d. Finally, each Cartage Agreement also had an attorneys' fees provision:

"In the event of arbitration or suit, the prevailing party shall be entitled to costs and reasonable attorneys' fees."

The Schedule A's were identical in many respects, although each was tailored to the particular services and payment arrangement for the station it covered.

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Each Schedule A at issue here defined the term "shipment", as used in connection with the typical paid shipment, as follows:

"A shipment is defined as any piece or pieces, having the same ship date, moving from any single Airborne shipper destined for any single Airborne consignee address."

"For purposes of this portion of the Schedule A only, a shipment is defined as any piece or pieces under a single airbill or, in the absence of an airbill, a unique tracking number."

As discussed next, there are other pertinent payment terms in the parties' Schedule A's.

Accounting for most IC payments is computerized. The primary source of the data that enters this automatic payment system is created via the electronic scanning of airbills by the IC's, usually when freight is picked up or delivered. Assured used this scanning process and submitted its payment data through the electronic downloading of scanned data. Airborne provided and maintained its accounting computer system without charge to its IC's, including Assured.

Airborne pays IC's weekly. In accordance with the terms of each Assured Schedule A, all shipments handled by Assured in any particular week, up to a defined number, were paid at the specified "base rate". Shipments in excess of that defined number were paid at a lower defined "threshold rate". If Assured delivered the anticipated number of base shipments, it would make the amount of money it bid on the contract.

On a weekly basis for each station, Airborne provided Assured with a check, a check voucher that listed the invoices (including any manual billings) being paid, and a Paid Report (titled the FCI Trucker Summary) that listed the paid manifests (typically each driver's route would be paid on a manifest).

On a weekly basis for each station, Airborne also provided Assured an Exception Report (also called the Unpaid Report).

Assured and Airborne worked together under various contracts for approximately 10 years. Their personnel interacted on a daily basis.

During the entirety of its tenure, Assured had access to Airborne's computers at its Airborne locations (control and agent). Assured had access to Airborne's manuals as well.

Between November 2000 and October 2001, all of the Assured-Airborne Cartage Agreements were terminated. Neither party ever protested that the other did not have the right to exercise this contract provision.

Assured gave the first effective termination notice in mid-November 2000, by sending Airborne a 60-day notice of termination for the Rockford station. The termination became effective 60 days later, and Assured's last day in Rockford was January 19, 2001.

The contract is governed by the laws of the State of Washington.

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The Claimant asserted it was damaged with respect to a number of various types of shipments. Under the broad category of "Shipment Differential", these included such claims as "Flight Readies", "Unpaid Postals", "Auto Zone", "Hold at Airborne (Pickup & Delivery)", "Shipment Consolidations", "Code 94's", and unpaid shipments.

There was also a claim for damages incurred in the misuse of complementary Comat shipments.

After a review of the evidence, the Panel finds that the Claimant's assertions of damage were proven only in part.

For the aforementioned shipment issues, the Panel awards the Claimant the sum \$462,241.87.

Other claims for damages and the awards are as follows:

Pope Letter Items	\$14,328.62
State Farm shipments	\$5,606.62
The Bloomington Bid transaction	\$36,010.47
The Rockford Bid transaction	<u>\$156,812.40</u>
Total	\$212,758.11

Accordingly, we hereby AWARD as follows:

Respondent shall pay to Claimant the sum of Six Hundred Seventy Four Thousand Nine Hundred Ninety Nine Dollars and Ninety Eight Cents (\$674,999.98). Interest shall accrue at Eight Percent per Annum (8%) beginning thirty (30) days after receipt of this AWARD.

The Claimant failed to prove substantial portions of the claims for damages. For this reason, the Panel finds that it has not prevailed and therefore there shall be no award for Claimant's legal expenses or related costs.

The Respondent asserted various counterclaims, all of which are denied.

There shall be no award for Respondent's legal expenses and related costs.

There shall be no award against ABX Air, Inc.

The administrative fees of the American Arbitration Association totaling \$22,000.00 and the compensation and expenses of the Arbitrators totaling \$78,874.75 shall be borne equally by the parties and have been paid.

This Award is in full settlement of all claims and counterclaims submitted to this Arbitration. All claims not expressly granted herein are hereby, denied.

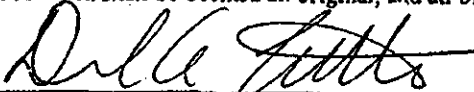
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This Award may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute together one and the same instrument.

1-15-04
Date


David Ludtke

Date

Stephen D Strauss

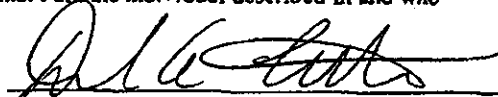
Date

Thomas R. Skulina

State of Nebraska }
County of Lancaster } SS:

I, David Ludtke, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

1-15-04
Date


David Ludtke

State of }
County of } SS:

I, Stephen D Strauss, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

Date

Stephen D Strauss

State of }
County of } SS:

I, Thomas R. Skulina, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

Date

Thomas R. Skulina

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This Award may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute together one and the same instrument.

Date
Jan 15, 2004
Date

David Ludtke
Stephen D. Strauss
Stephen D Strauss

Date

Thomas R. Skulina

State of }
County of } SS:

I, David Ludtke, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

Date

David Ludtke

State of Ohio }
County of Hamilton } SS:

I, Stephen D Strauss, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

Date
Jan 15, 2004
Date

Stephen D. Strauss
Stephen D Strauss

State of }
County of } SS:

I, Thomas R. Skulina, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

Date

Thomas R. Skulina

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Date

David Ludtke

Date

Stephen D Strauss

1-15-04

Thomas R. Skulina

Date

Thomas R. Skulina

State of

}

SS:

County of

I, David Ludtke, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

Date

David Ludtke

State of

}

SS:

County of

I, Stephen D Strauss, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

Date

Stephen D Strauss

State of OHIO

}

SS:

County of CUYAHOGA

I, Thomas R. Skulina, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

1-15-04

Thomas R. Skulina

Date

Thomas R. Skulina