

**Transportation Intermediaries Association
ETHICS COMMITTEE**

TIA Ethics Case No. 09-2

**DECISION
July 1, 2009**

In March, CARRIER filed an ethics complaint against BROKER, a TIA member. Based on the information before it, the TIA Ethics Committee has determined to issue a decision.

Role of the Committee

The TIA Code of Ethics is designed to promote the highest standard of ethics within the brokerage and third party logistics industry. Since 1978, TIA has made adherence to the TIA Code of Ethics a mandatory requirement for membership.

The role of the TIA Ethics Committee is to review complaints against TIA members to determine if the member lived up to its promise to abide by the spirit of the TIA Code of Ethics. The TIA Ethics Committee is neither a court of law nor an arbitration system. It is a peer review committee.

Discussion of the Complaint

This case involves a non-payment dispute between the parties. CARRIER alleges that BROKER has not paid two invoices: a lumper fee of \$50 and a movement of \$6600.00. In its response, BROKER states that it hired CARRIER to move three separate shipments. BROKER states that it paid CARRIER for the first two shipments within 15 days of shipment, yet did not get paid by their shipper. BROKER further states that, even though there was a clear delivery receipt, the shipper is claiming damage on one of the shipments. BROKER states that its customer's customer has filed for bankruptcy.

In its defense, BROKER states that it decided to hold payment to CARRIER until the issues can be sorted out, or that it would forfeit its commission and let CARRIER seek payment directly from the shipper.

The Committee has long held that the TIA Code of Ethics requires TIA members to pay their carriers whether or not the member receives payment from the shipper. In this case, based on the information before the Committee, it appears that the shipper is not paying its bill to BROKER because it is not being paid. Without regard to the damage claim, the Committee would find that BROKER owed CARRIER for the transport. It is BROKER that extended credit to SHIPPER. CARRIER extended credit to BROKER. It is not acceptable for a TIA member to withhold payment to a carrier because the member was not paid by its shipper, unless the carrier agreed to such a provision in a written contract.

The damage claim could be a mitigating circumstance. It appears, however, since CARRIER has a clear delivery receipt that this is either a case of concealed damage or a case of fabricating a reason for non-payment. In either case, BROKER and its customer should file an insurance claim and allow the carrier and its insurance company the chance to investigate the claim. The Committee finds that it is not enough for a company to say there was a claim and then offset payment. The Committee also finds that

since the load was not refused, if BROKER had paid the freight charges within the agreed upon terms the carrier would have been paid and there would be no complaint. The Committee is concerned that the asserted cargo claim by BROKER's customer is now a convenient excuse to avoid payment.

Based on the documentation and information presented, the Committee finds that BROKER owes CARRIER for the freight.

Decision

The TIA Ethics Committee finds that BROKER owes CARRIER the freight charges in question. The Committee hereby instructs BROKER to make payment with notice to the TIA Ethics Committee by August 3, 2009. If payment is made, the Committee will dismiss the case against BROKER without a finding of violation of the TIA Code of Ethics allowing BROKER to remain a member in good standing.

Issued this 1st day of July 2009 by the TIA Ethics Committee.