Transportation Intermediaries Association
ETHICS COMMITTEE

TIA Ethics Case No. 09-3

DECISION
July 1, 2009

CARRIER, a TIA member, 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 owes it $2,943.68 from a $4,840 load. In its defense, BROKER argues that the amount in question was offset by late delivery penalties and fees for damages at delivery. BROKER hired CARRIER to move a two pick load of mixed produce from California to Texas in July 2008. The second pick location was not ready and caused the carrier to layover until the next day; the delivery was rescheduled. The carrier arrived six hours late for the rescheduled delivery and, BROKER argues, CARRIER was unreachable so the entire 12-person crew at the receiver's location had to be held until the truck arrived. BROKER argues that had CARRIER been available, the crew could have been rescheduled and the charge back charges would have been mitigated.

The Committee notes, but takes no position on the fact, that CARRIER first took its case to Blue Book Services, which found for CARRIER in the dispute. The Committee also notes that BROKER offered to "split the difference" and CARRIER refused this offer. The Committee will address the issues raised in this case and render a decision based on the TIA Code of Ethics.

The first issue in this case was that the second loading location was not ready, which caused the carrier to have to layover until the next day to be loaded. The loading times were set by BROKER, and it was, therefore, their responsibility to ensure that the locations were ready and that the truck was loaded on time. It is fortunate for BROKER that CARRIER was able to accommodate the delayed schedule. It is also fortunate for BROKER that CARRIER did not assess a layover charge. Scheduled loading and unloading times apply to all parties in the transaction, not just the carrier.

While fortunate that CARRIER could accommodate the changed delivery schedule, their carrier was nonetheless six hours late in making its delivery. Because CARRIER did not have 24x7 dispatch capabilities and BROKER was unable to properly communicate with the driver, the delayed delivery caused a crew to be maintained. Had BROKER been able to reach CARRIER, the crew could have been dismissed and a new unloading schedule could have been arranged. The Committee finds that the Communication problems are those of CARRIER.

The Committee now moves to the fees assessed by BROKER. While pick-up and delivery times are always important, it is clear to the Committee that this was a time sensitive load with severe consequences for missing the delivery window. Yet, BROKER did not let CARRIER know of these requirements or consequences in writing before the shipment through a written contract detailing the requirements and consequences. A written carrier confirmation sheet was used, but it contains vague language that does not provide the carrier with enough information with which to make an informed decision on a just-in-time load with consequential damages

> Failure to comply with call-in policies may result in a $100 or greater fine from settlement. OS&D expenses, when applicable, may be held out at settlement. If cargo is lost, damaged, or delivered late, carrier agrees that it will be liable to broker and/or its customer for full actual retail value of cargo.

The fees assessed by BROKER, however, were quite specific. BROKER assessed CARRIER a fee of $479.78 per hour the carrier was late; they also assessed a $65 fee for damages at delivery. The result was that BROKER assessed penalties equal to the balance due on the load. The Committee finds the specificity of the fine incongruent with the vagueness of the pre-shipment documentation and inconsistent with the BROKER and professionalism expected from a TIA member. The Committee further notes that had BROKER used the TIA Model Contract, which is available free to members, it would have provided the means for addressing this just-in-time shipment with specific consequences. Had a proper written contract been executed outlining the requirements and consequences for failure to comply, this case would have a different outcome.

The Committee finds that BROKER was well within its rights per the carrier confirmation to assess a $100 fee on CARRIER for failure to comply with the call-in policy. The Committee notes that the cargo was accepted and that there was a $65 charge for damages at destination charge; the Committee finds that this charge was within the parameters of the confirmation sheet. The Committee finds, however, that the charges for late delivery and consequential damages appear to be excessive and unreasonable as well as not detailed and agreed upon in advance in a written contract, and are, therefore, not acceptable.

Based on the foregoing discussion, based on the documentation and information before it, the Committee finds that BROKER owes CARRIER for the freight less $165.

Decision

The TIA Ethics Committee finds that BROKER owes CARRIER the freight charges in question less $165.00 or $2,778.68. 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.