

**Transportation Intermediaries Association
ETHICS COMMITTEE**

TIA Ethics Case No. 09-4

**DECISION
July 20, 2009**

On June 5, 2009, CARRIER, Inc. filed an ethics complaint against TIA member BROKER. Based on the information before it, the TIA Ethics committee has decided to issue a decision in this proceeding.

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

At its basis, this case involves a carrier picking up a load of candy and transporting it 345 miles for delivery to a receiver with a strictly enforced delivery time. The delivery appointment was missed, and the next appointment was five days later. The carrier was instructed to bring the freight back to the shipper for unloading to await the new delivery time rather than hire a warehouse or have the truck idled for five days. The carrier sought compensation for the return and the broker agreed.

The carrier claims that they were clear to the broker that their truck was already under a load and that they could arrive at the shipper, but that the time was fluid. The broker claims they were clear on the pick-up and that the carrier said they could make the delivery time. The broker states that it agreed to pay for the return to the shipper under duress, because the carrier was holding the load hostage at the shipper's dock. Communication between the parties became heated. The broker filed a complaint against the carrier on TIA Watchdog® for holding the load hostage, and has not paid the carrier. The carrier responded to the TIA Watchdog® complaint and filed the instant ethics complaint.

This case appears to be one in which both parties tried to force something to happen, and when it blew up, both sides blamed the other for the situation. The Committee will address the five issues that it sees

present in this case as it tries to unravel the situation and come to a decision about whether BROKER violated the TIA Code of Ethics.

1. Time

The root of the case is the loading time. The rate confirmation sheet indicates that the carrier was to pick-up the load at 11:30 pm on May 14, 2009 and deliver 345 miles away at 4:00 am on May 15, 2009. BROKER claims that it was told the truck was empty and ready for dispatch. CARRIER, however, states in its ethics complaint, in its TIA Watchdog® response, and on the rate confirmation sheet that it explained to BROKER'S dispatcher that their truck was currently under a load that was scheduled to be unloaded between 10:30 pm and 5:30 am on May 14/15. BROKER states that they were clear about the strict 4:00 am delivery time and CARRIER states that it was clear that their driver could not make that time. CARRIER claims that BROKER hired them anyway and told them that the receiver would accept the load when the truck got there. BROKER claims that CARRIER said it could make up the time difference because there was a time zone change en route.

Both parties agree that the carrier arrived at the shipper at 3:21 am on May 15 and was loaded and under way at 5:51 am. The carrier claims that the broker told them to continue to the receiver and that they would, "go over receiving's head" to get the truck unloaded. The broker claims that the carrier took it upon itself to load the truck late and continue on to the receiver even though the carrier could not make the delivery appointment.

The broker states that it offered to compensate the carrier for holding the freight when the receiver refused to unload the truck and set a new appointment five days in the future. The carrier refused to hold the freight for five days. It was decided that the carrier should return the freight to the shipper and unload. The carrier insisted, and the broker seemingly agreed to an additional \$500 in compensation to return the freight to the shipper.

Adjudicating this issue is difficult as the Committee must sort through the "he said, she said" flak since these two versions of the same story have very few points in common. To make a decision based on the record before it, the Committee would have to choose which party it believed more. Looking at the plain facts, however, leads the Committee to determine that the delivery schedule was unreasonable from the start. Even if the carrier arrived at 11:30 pm on May 14 as the confirmation sheet stipulates, the load was to deliver at 4:00 am on May 15 a period of 5½ hours with the time change. Even without compensating for loading time, the confirmation sheet stipulated that the carrier was to travel 345 miles in 5½ hours, which would mean that the broker was requiring the carrier to maintain an average speed of 63 miles per hour to make the delivery time. Since the parties agreed that it took 2½ hours to load the truck (carrier arrived at 3:21 and was loaded and departed at 5:51 am), the delivery schedule in the confirmation sheet allowed the carrier only 3 hours to travel 345 miles, which would require the carrier to maintain a speed of 115 miles per hour. The industry norm has been to assume a rate of speed of 50 miles per hour. The Committee must assume that BROKER did not intend the carrier to speed, and instead, either accepted an unreasonable pick-up and delivery schedule intending to force the receiver to accept the load late or did not fully comprehend the situation.

2. Control

As discussed, it is clear that the communication between the parties was at best poor, but so was the control of the situation. Putting aside the issue of whether the truck was empty and ready or was under a load at the time of dispatch, and putting aside the validity of the delivery schedule, when the truck did not show up for the 11:30 pick-up time, BROKER should have immediately contacted the receiver to determine if the load would be accepted late. If the answer was no, then BROKER should have contacted the carrier and canceled the load. When the carrier showed up at 3:21 am, nearly four hours late according to the confirmation sheet, BROKER should not have allowed the carrier to be loaded.

In its defense, BROKER claims that, "the carrier took it upon himself to load the load four hours late without contacting his office [broker]." BROKER should have had better control of this situation. This is a good example of why good brokers should always insist on dispatching the trucks themselves and position themselves on the front line to make sure their customer's requirements are always met. BROKER should have ended this situation long before the truck showed up at 3:21 am.

Since it did not end the situation, it again appears to the Committee that either BROKER promised their customer more than they could deliver and thought they could force the situation, and when they could not force the situation, it appears that BROKER blamed the carrier; or that BROKER stipulated times and then stepped out of the transaction until a problem arose.

3. Consequences

The original load was to pay \$600 (\$1.74 per mile). When the load was refused at the receiver, and the carrier told to bring the load back to the shipper, the carrier insisted, and the broker seemingly agreed to an additional \$500 to bring the load back making the total an \$1100 load (\$1.59 per mile). CARRIER insisted that BROKER sign an amended rate confirmation sheet before it would allow its truck to be unloaded at the shipper's facility.

The rate confirmation sheet has handwritten notes on it as follows in CARRIER's handwriting: "BROKER PRESIDENT agree [sic] to pay CARRIER of Carolina \$1100." CARRIER also wrote: "Spoke to BROKER DISPATCHER & let her know load would not be picked up @ 11:30 pm and she said it was okay but to let my driver get in there as soon as possible." On the margin, BROKER PRESIDENT wrote, "5/15 left facility 5:21 AM driver at gate 3:21 AM do to carrier not del frt on time in order to unload frt at origin carrier refused to give frt back." On the bottom of the amended rate confirmation sheet, BROKER PRESIDENT signed his name and wrote, "BROKER PRESIDENT \$1100 agree to pay CARRIER"

Subsequently to signing the amended rate confirmation sheet, BROKER filed a TIA Watchdog® complaint against CARRIER claiming that CARRIER held the load hostage and made an in-transit agreement modification. BROKER offered a settlement of \$621 (90 cents per mile) for the total shipment. At this point, no money has been paid to CARRIER.

BROKER claims that they are within their right to change the terms of the agreement since the rate confirmation sheet states, "if services are not fulfilled, rates are negotiable." The Committee notes with

approval that a contract was also used in this transaction. The contract, however, is silent as to consequences and the triggers for those consequences. The Committee has long held that there needs to be a written contract between the broker and the carrier, and that said contract needs to clearly address the requirements and consequences for missing those requirements. As the Committee has stated before, the carrier must be given a choice to understand the requirements and the consequences. In the instant case, BROKER'S consequences are not clear and are too open ended to be acceptable.

4. TIA Watchdog®

BROKER claims that CARRIER held the load hostage and/or made an in-transit agreement modification when it required BROKER to pay \$500 to return the freight to the shipper. CARRIER disputed this allegation in its response to the TIA Watchdog® complaint.

TIA Watchdog® is a service of the Transportation Intermediaries Association for members to use to report incidents of service deficiencies or fraud by carriers or other third party logistics companies. It is a member-to-member service, and only the member making the complaint or the TIA Ethics Committee may amend or remove a complaint once filed. TIA Watchdog® has been a very successful service, and many TIA members use it as part of the process to screen service providers. TIA Watchdog® is a powerful tool to be used by members to alert other members of serious problems.

As part of this proceeding, CARRIER has asked the Committee to review the TIA Watchdog® filing and remove it. The Committee will address this issue as part of its decision.

5. Offer

BROKER offered to settle the dispute with CARRIER for \$621 (90 cents per mile) or \$21 more than the original load was to pay. The Committee looked at this issue in the context of the other issues discussed. Of course, the Committee wishes the parties had worked out their differences and settled the matter, but since they did not, the Committee will address this issue as part of its decision.

Decision

It is unfortunate that both parties have gotten to the point where they are so frustrated with each other that they cannot arrive at a solution. Instead, the Committee must get involved and determine if the TIA member violated the TIA Code of Ethics, and if so, stipulate the steps necessary to remedy the situation.

1. The Committee finds that the original schedule agreed to by BROKER could never have been met. The Committee finds, therefore, that BROKER is at fault for agreeing to the schedule in the first place.
2. Regardless of whether the schedule could be met or not, is the issue of which party should have been in control. The Committee finds that BROKER should have contacted the receiver

when the carrier missed the 11:30 pick-up time to re-schedule the delivery, and if told that the delivery could not have been reasonably re-scheduled, should have contacted the carrier and cancelled the load. It is important that a successful broker maintain open and honest communication with both of its customers: the shipper and the carrier.

3. The Committee finds that all members need to clearly delineate requirements and the consequences for missing those requirements so that carriers have a clear, written choice when they take a load. In the instant proceeding, the Committee finds that BROKER'S warning against double brokering was clear: "If double brokered, agreement is void!" The Committee finds, however, that BROKER'S statement of consequence, "If services are not fulfilled, rates are negotiable" is too broad and does not clearly delineate what could cause the carrier to be penalized up to the full amount of the load.
4. Based on its findings that the schedule was not achievable, and that BROKER did not adequately control the situation, the Committee is ordering the removal of the TIA Watchdog® complaint against CARRIER. The instant case was neither a load held hostage nor an in-transit agreement modification. A load is held hostage when a carrier takes a load and parks it for a previous payment or a higher rate. An in-transit agreement modification is when a carrier takes a load for the offered price and then parks it and demands a higher price. In this case, the carrier took the load to the receiver for the agreed upon rate of \$600; then insisted that it be compensated for having to return the freight to the shipper at the BROKER'S direction. Since BROKER allowed the carrier to load four hours late – either explicitly or implicitly – with no possibility of meeting the appointment time, it is fair that the carrier be compensated for the return trip.
5. It appears that the parties negotiated the \$500 fee for the return. As a result, it appears to the Committee to be a fair compensation. The Committee finds, therefore, that BROKER owes CARRIER \$1100 for the roundtrip movement.

The TIA Ethics Committee finds that BROKER owes CARRIER of Carolina \$1100 for the roundtrip movement. The Committee hereby instructs BROKER to make payment with notice to the TIA Ethics Committee by August 20, 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 of the Transportation Intermediaries Association in good standing.

Issued this 20th day of July 2009 by the TIA Ethics Committee.