

( S E R V E D )  
( MARCH 12, 1996 )  
( FEDERAL MARITIME COMMISSION )

**FEDERAL MARITIME COMMISSION**

**WASHINGTON, D.C.**

March 12, 1996

**DOCKET NO. 95-12**

**INTERNATIONAL FREIGHT FORWARDERS & CUSTOM  
BROKERS ASSOCIATION OF NEW ORLEANS, INC., ET AL.**

**v.**

**LATIN AMERICAN SHIPPERS SERVICE ASSOCIATION, ET AL.**

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**COMPLAINT DISMISSED WITHOUT PREJUDICE**

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Complainants have moved for a dismissal of their complaint without prejudice. They ask that the dismissal be without prejudice to allow them to file a new complaint or "seek other appropriate relief from the Commission in the event that disparate treatment of Gulf ports and shippers is reinstated by these parties or any successor entities that may form."

Respondents do not object to the motion but object to the statement quoted above suggesting that they did in fact subject any Gulf ports or shippers to disparate treatment,

which fact has not been proven. For the reasons stated below, I grant the motion without prejudice.

The case began with the filing of a complaint, served on August 16, 1995, filed by one port body (New Orleans) and three associations of ocean freight forwarders and customhouse brokers located in three Gulf ports (New Orleans, Houston, and Mobile).<sup>1</sup> As later amended, complainants alleged that respondents (an association of ocean carriers known as the Latin American Shippers Service Association (LASSA) and six member carriers) had violated eight different sections of the Shipping Act of 1984 expressly and one impliedly. The main thrust of the complaint seemed to be the allegation that respondent LASSA and its member lines had maintained higher rates at Gulf ports than at south Florida ports and that this practice had diverted cargo from Gulf ports to Miami, harming various port interests and businesses at Gulf ports, including the complainant associations of forwarders and brokers and the Port of New Orleans. It was also alleged that respondents had been boycotting or refusing to deal with Gulf ports, had been allocating shippers among themselves and depriving Gulf freight forwarders of reasonable compensation. Complainants asked for a cease and desist order and an order establishing reasonable practices and an award of reparations.

In lieu of filing an answer to the complaint, respondents moved for summary judgment or for dismissal of the complaint on a variety of grounds. Respondents contended that the Commission lacked the authority to grant the relief requested, that complainants lacked standing to allege violations of certain sections of the 1984 Act, that complainants

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<sup>1</sup>A detailed history of the proceeding is contained in my rulings denying respondents' motions for summary judgment or dismissal, served November 30, 1995, 27 SRR 392.

were wrong in their factual allegations, that respondents had acted reasonably and had not preferred south Florida ports, and other things. In rulings served November 30, 1995, cited above, I denied the respondents' motions largely because of the factual disputes and ruled that complainants were entitled to pursue their claims and try to develop the necessary facts supporting their allegations through the Commission's prehearing discovery processes. However, I ruled that complainants should correct certain deficiencies in their complaint concerning the standing of complainant associations and the claim for reparations. (See November 30, 1995 rulings, cited above, 27 SRR 392.)

Following issuance of the rulings cited, the parties conducted negotiations seeking amicable resolution of their disputes. These discussions proved fruitful so that instead of filing another amended complaint, complainants filed their motion seeking dismissal.

As explained in their motion, the conditions in the subject trade which gave rise to the complaint have changed significantly, and complainants have concluded that such changes have enabled them to compete fairly. Therefore they wish to avoid engaging in long, expensive proceedings to develop facts necessary to support their allegations. These changes are three: 1) effective November 18, 1995, the respondent association LASSA disbanded; 2) two respondent carriers, Sea-Land and Maersk, who serve both Gulf and south Florida ports, have eliminated disparities on many of the important commodities moving in the trade; and 3) Gulf region port and shipper interests are engaged in ongoing discussions with carrier representatives in an effort to continue to resolve issues raised in the complaint. Complainants are evidently happy with these changes and see no need to seek further changes at great expense in the present proceeding and consequently wish to

have their complaint dismissed without prejudice so that they can enjoy the fruits of their negotiations. There is no reason or basis in law to force unwilling complainants who have received satisfaction to continue litigating. Cf., e.g., *Carson v. American Brands, Inc.*, 450 U.S. 79, 86-89 (1981) (court should not deny parties' rights to enjoy fruits of settlement by, in effect, forcing them to proceed to litigate); *Smoot v. Fox*, 340 F.2d 301, 303 (6th Cir. 1964) (court should not force parties to litigate when complainant wishes to withdraw complaint with prejudice).

It is gratifying to see that the parties were able to reach an amicable resolution of their disputes within the mechanisms provided by the 1984 Act and the Commission's procedures and to do so in a relatively prompt fashion. Although not technically a settlement, the parties have achieved what, in effect, resembles a settlement and, of course, the Commission strongly favors settlements. See, e.g., *Old Ben Coal Co. v. Sea-Land Service, Inc.*, 21 F.M.C. 505 (1978); *American President Lines, Ltd. v. Cyprus Mines Corp.*, 27 SRR 126 (1995). As with settlements, furthermore, there is no admission by respondents of any wrongdoing and there is no finding that they have violated shipping law or even that there was any disparate treatment. The parties have merely attempted to rid themselves of the unnecessary expenditure of time and money that formal, continued litigation would entail and wish to achieve a prompt resolution of their disputes. See *Old Ben*, cited above, 21 F.M.C. at 511; *Merck Sharp & Dohme v. Atlantic Lines*, 17 F.M.C. 244, 247 (1973). Accordingly, the complaint is dismissed without prejudice.



Norman D. Kline  
Administrative Law Judge