

(S E R V E D)  
( January 16, 1990 )  
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

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SPECIAL DOCKET NO. 1708 - APPLICATION OF FRITZ  
TRANSPORTATION INTERNATIONAL FOR THE BENEFIT  
OF COSTCO WHOLESALE CORP.

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ORDER OF ADOPTION OF INITIAL DECISION

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The Commission determined to review the Initial Decision ("I.D.") of Administrative Law Judge Charles E. Morgan ("ALJ") issued in this proceeding.

The ALJ granted permission, pursuant to section 8(e) of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. § 1707(e), to Fritz Transportation International ("Fritz"), a non-vessel common carrier, to waive collection from Costco Wholesale Corp. ("Costco") of \$58,850.00 in freight charges. The charges were payable under the applicable tariff on 37 shipments of electrical goods and parts which moved from Taiwan, Korea, Hong Kong and Japan to Seattle and Tacoma, Washington and Oakland, California.

The I.D. states that in June, 1988 Fritz and Costco agreed on certain rates for electrical goods and parts, further explaining that:

Because of a 'miscommunication' between Fritz's Seattle and Carson, California offices the rates were not published in the Fritz tariff. On October 13, 1988, Mr. Chris Sinn, the General Manager of Fritz, realized that the agreed rates had not been published in Fritz's tariff. Instead, the dollar amounts of the intended agreed rates were published under Kitchenware rather than under Electrical

Goods & Parts. The intended agreed rates on Electrical goods . . . later were published effective December 17, 1988.

The ALJ concluded on these facts that all the requirements of section 8(e) of the 1984 Act were met and, after some adjustment in the amounts to be waived, granted the application.

#### DISCUSSION

The Commission has in the past repeatedly emphasized the need for a detailed explanation in the I.D. of how the alleged tariff error occurred and of all the facts upon which the ALJ bases his conclusion that the application meets all the requirements of section 8(e).<sup>1</sup> The I.D. here fails to make any reference to the evidence contained in the record which supports Fritz's allegations as set forth in the application. No mention is made of the affidavit of Mr. Jim Bailey, Fritz's account executive in Seattle, who attested that on June 17, 1988, he had notified Costco of Fritz's consent to publish immediately in its tariff the rates agreed upon.<sup>2</sup>

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<sup>1</sup> Special Docket No. 1688 - Application of Gulf European Freight Association, Agreement No. 202-010270, Hapag-Lloyd Aktiengesellschaft for the Benefit of Head & Enquist/Kenner Branch; Special Docket No. 1681 - Application of the Asia North America Eastbound Rate Agreement, in Behalf of Yamashita-Shinnihon Steamship Co., Ltd., for the Benefit of Dea Won Cast Steel Co., Ltd; Special Docket No. 1675 - Application of Pacific Europe Express for the Benefit of Robbins Company.

<sup>2</sup> J. Bailey's affidavit executed February 7, 1989 and rate request from J. Bailey to C. Sinn dated June 17, 1988.

According to the application, Chris Sinn, Fritz's General Manager, had authorized on June 17, 1988 the quotations of certain rates on electrical goods and parts for Costco. The authorization was transmitted through Jim Bailey to Ted Rogers of Fritz's Seattle Office and to Glen Rodine of Costco. (Exhibit No. 11.)

On October 13, 1988, Mr. Bailey sent a memorandum to Fritz's Carson office reminding that Costco had agreed to the rates in June. (Exhibit No. 12.) Upon receiving the reminder, Mr. Sinn realized that "because of miscommunication" between Fritz's Seattle and Carson offices the rates agreed upon in June had not been filed in Fritz's tariff. Mr. Sinn then set in motion the procedure for the filing of the rates which were published in Fritz's tariff on November 10, 1988. Due, however, to a further mistake the rates were published in "Item No. 1330 - Kitchenware" rather than in "Item No. 0800-01 -Electrical Goods and Parts." (Exhibits 13-A, 13-B, 13-C and 13-D.) After learning of the second mistake, Fritz became aware that 37 shipments had moved under unpublished rates.

To further complicate matters, Mr. Sinn had authorized and Costco had agreed to new quotations for the period November 30, 1988 to February 28, 1989. Tariffs showing the proper rates, effective one day only, were ultimately published by Special Permission (No. F-7301) on December 17, 1988. (Exhibits 8-A, 8-B, 8-C and 8-D.)

In support of the foregoing Mr. Sinn relies on the above-mentioned affidavit of Jim Bailey. Mr. Bailey admits that he failed in June to ask Mr. Sinn or his staff to file the intended rates as agreed upon with Costco.

CONCLUSION

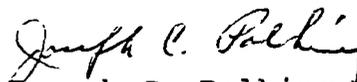
This evidence of record, not referred to in the I.D., supports the ALJ's grant of relief. Consequently, because the application otherwise satisfies the requirements of section 8(e) of the 1984 Act, the Commission will adopt the I.D.

THEREFORE, IT IS ORDERED That the Initial Decision issued in this proceeding is adopted by the Commission with the above clarifications.

IT IS FURTHER ORDERED, That Fritz Transportation International shall, within thirty days, waive collection of \$58,850.00 in freight charges and shall publish and file with the Commission a tariff notice in the manner required in the Initial Decision and, within five days thereafter, furnish the Commission Secretary with evidence of waiver along with a copy of the prescribed tariff notice;

FINALLY, IT IS ORDERED That this proceeding is discontinued.

By the Commission.

  
Joseph C. Polking  
Secretary