

(FEDERAL MARITIME COMMISSION)
(SERVED MARCH 2, 1989)
(EXCEPTIONS DUE 3-24-89)
(REPLIES TO EXCEPTIONS DUE 4-17-89)

FEDERAL MARITIME COMMISSION

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

Application for permission to refund \$5,116.70 of the applicable freight charges granted.

INITIAL DECISION¹ OF CHARLES E. MORGAN,
ADMINISTRATIVE LAW JUDGE

By application timely filed on December 8, 1988, the applicant, Gulf European Freight Association (GEFA), and Hapag-Lloyd Aktiengesellschaft (Hapag-Lloyd), for the benefit of Head & Enquist/Kenner Branch, seek permission, pursuant to Rule 92(a) of the Commission's Rules of Practice and Procedure and section 8(e) of the Shipping Act of 1984 (the Act), to refund \$5,116.70 of the applicable freight charges on a shipment of one 40-foot container of tractor parts, weighing 56,304 pounds or 25,539 kilograms, and

¹ This decision will become the decision of the Commission in the absence of review thereof by the Commission (Rule 227, Rules of Practice and Procedure, 46 CFR 502.227).

measuring 1,257.94 cubic feet, or 35.621 cubic meters, made from New Orleans, Louisiana, to Hamburg, West Germany, bill of lading and sailing date November 3, 1988.

The applicable rate on Agricultural Implements, Agricultural Machinery & Parts (Not Road Building Machinery & Parts), 11th revised page 307 of GEFA Tariff No. 8 (FMC-24), was \$171(WM) per ton of 1,000 kilos, or one cubic meter, whichever produces the greater revenue. Applicable ocean freight charges on 35.621 tons (M) were \$6,091.19. The currency adjustment factor (CAF) was 18 percent. CAF charges were \$1,096.41. Also there was a terminal handling charge of \$500.00 per 35/40 foot container. Finally, also applicable was a wharfage charge at New Orleans of \$1.50 per net ton. This, on 28.152 tons, amounted to \$42.23. Total applicable charges were \$7,729.83.

The sought basic ocean freight rate is \$1,755.00 lump sum per 40-foot container. Also sought is the CAF factor of 18 percent, which amounts to \$315.90. Other sought charges are \$500.00 and \$42.33, the same as above. Total sought charges are \$2,613.13. The amount sought to be refunded is (\$7,729.83 minus \$2,613.13) \$5,116.70.

In July 1988, GEFA agreed to have a tariff clean-up of non-moving items, with such items scheduled to expire after October 31, 1988. GEFA members were expected to notify GEFA to reinstate, effective November 1, 1988, any items on which traffic was moving, as evidenced by bookings and bills of lading.

On October 24, 1988, Hapag-Lloyd received the booking for the tractor parts in issue herein. Because of a miscommunication

error, Hapag-Lloyd was unaware that the critical rate herein on tractor parts was due to expire after October 31, 1988.

Hapag-Lloyd in error failed to have the critical rate reinstated effective November 1, 1988. To compound the problem, the container in issue was released by Hapag-Lloyd to the shipper on October 24, 1988; the container was picked up on October 27, 1988, and because of a loading problem was not returned until November 2, 1988, before the ship sailed on November 3, 1988.

The tariff error was not corrected until the critical rate was reinstated in the GEFA tariff, effective November 16, 1988. The critical period herein is from November 1, 1988, through November 15, 1988.

Applicants state that there were no other shipments of the same or similar commodity made by Hapag-Lloyd during the critical period.

The statutory requirements have been met. It is concluded and found that there was an error of an administrative or clerical nature made by Hapag-Lloyd in failing timely to have GEFA reinstate the intended rate; that the intended rate was reinstated after the shipment herein moved and prior to the filing of this application; that the application was filed timely; and that the authorization of a refund will not result in discrimination among shippers, ports or carriers.

Hapag-Lloyd is authorized to refund a total of \$5,116.70 of the applicable freight charges on the shipment herein.

It hereby is ordered that GEFA file the following notice in its Freight Tariff No. 8 (FMC-24), to the effect that:

Notice is given, as required by the decision of the Federal Maritime Commission in Special Docket No. 1688, that effective November 1, 1988, and continuing through November 15, 1988, the rate on Tractor Parts, FROM: United States Gulf of Mexico Ports of Loading in the Brownsville, Texas/Tampa, Florida Range, Including Ports And/Or Points on Inland Waterways Tributary to all said Ocean Ports and Ranges, and From Continental United States Points Via Such Ports, TO: Ports and Points in Europe (As Per Rule 1) is \$1,755.00 lump sum per container in 40-foot containers. This notice is effective for purposes of refund or waiver of freight charges on any shipments of the commodity described which may have been shipped during the specified period of time.


Charles E. Morgan
Administrative Law Judge

Washington, D.C.
March 2, 1988