

**( S E R V E D )**  
**( OCTOBER 17, 1995 )**  
**( FEDERAL MARITIME COMMISSION )**

**FEDERAL MARITIME COMMISSION**

**WASHINGTON, D.C.**

October 17, 1995

**DOCKET NO. 95-03**

**PUERTO RICO FREIGHT SYSTEMS, INC.**

**v.**

**R & S TRADING AND J.C. TRADING**

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**COMPLAINT DISMISSED**

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By complaint served February 14, 1995, complainant Puerto Rico Freight Systems, Inc. ("PRFS"), a Puerto Rican corporation engaged in the business of freight consolidation on the island of Puerto Rico with activity reaching to various islands in the Caribbean, alleges that respondents R & S Trading ("R & S") and J.C. Trading ("JCT"), business entities in Puerto Rico and throughout several islands in the Caribbean, violated sections 3, 14, 15, 16, 17 and 18 of the Shipping Act, 1916, 46 U.S.C. app. §§ 804, 812, 814, 815, 816 and 817, by engaging in the following forbidden practices, viz: issuing false manifests, shipping materials in containers which are not manifested or declared by respondents, operating

without a tariff, waiving fees for ocean freight, competing with other freight operators who adhere to a tariff to their disadvantage, and operating without bills of lading. PRFS seeks a cease and desist order, reparation in excess of \$25,000, interest, and attorneys' fees.

Respondent R & S entered into a stipulation with complainant. It agreed to abstain from operating as a non-vessel operating common carrier until it was approved as such by this Commission. Approval of such a stipulation and of the joint request of complainant and R & S to dismiss the complaint as to R & S was withheld until receipt of notification of such approval, which was received, and the complaint was dismissed as to R & S on August 21, 1995. This action became final on September 20, 1995.

The complaint as to JCT has been viewed primarily at this time as alleging that it also has been operating without a tariff. Under the Commission's rules of procedure, respondent JCT was supposed to answer the complaint within 20 days after the date of service of the complaint. It has not filed an answer. The failure on the part of JCT to file an answer to the complaint means that JCT is in default. It is customary for the Commission (and the courts) to find that a defaulting respondent has, in effect, admitted the well-pleaded allegations both as to the violations and as to the specific damages alleged. But there are limitations to the doctrine. Complainant may be required to prove the allegations if the record is inadequate. PRFS seeks reparation in excess of \$25,000. but the only support for the damages claimed is an affidavit by the President and Chief Executive Officer of PRFS whose accountant is said to have made an analysis of movements to St. Martin from Puerto Rico by both PRFS and JCT. The affidavit states as follows:

. . . The computations are derived from Crowley American, CGM Interline and PRFS movements to that island.

Our investigation shows there are 624 containers leaving Puerto Rico for St. Martin on a yearly basis. Of this number 156 are sent by PRFS or 25% of the total.

JC Trading ships 104 or 17% of the total. The average revenue per container is \$3,000. Based upon percentage of lost opportunity the average yearly loss to PRFS is \$78,000.

Our computations can be verified by the sources I set forth in this affidavit.

The complainant has the burden of proof with respect to each element in its case. PRFS's claim for reparation is based in part on its allegation that JCT's service was unlawful since it had no tariff and implicitly that, but for JCT's service, PRFS would have carried 40 percent of the 104 containers that JCT carried from Puerto Rico to St. Martin ( $104 \times \$3,000 = \$312,000 \div \$78,000 = 40\%$ ). (Other than the numbers of containers handled, none of the other transportation circumstances and conditions are shown.) However, untariffed carriage alone does not create injury. See *Genstar Chemical Ltd. v. ICC*, 665 F.2d 1304, 1308-1310 (D.C. Cir. 1981); *Southern Transportation Co. v. Norfolk & W. Ry. Co.*, 147 I.C.C. 29, 36-37 (1928); *Increase in Freight Rates and Charges - 1973*, 365 I.C.C. 426, 428 (1981); and *Lowe Paper Co. v. Kaydeross R. Corp.*, 167 I.C.C. 700, 701 (1930). There is no necessary causal relationship between a failure of respondent JCT to have a lawful tariff on file and the amount of cargo carried by PRFS. To be entitled to reparation PRFS must establish the existence of any such causal relationship. See *Prudential Lines v. Farrell Lines*, 22 SRR 1054, 1058, 1059 (1984). (Although respondent was found to have violated section 18 by carrying cargo without a lawful tariff on file, reparation was

denied because complainant failed to establish any causal connection between the violation and its failure to carry the same cargo. There was no showing that respondent's failure to have a lawful tariff on file prevented complainant from carrying the cargo, nor that complainant would have carried the cargo in any case.) The same is true as to the other alleged violations, i.e., issuing false manifests, waiving fees for ocean freight and operating without bills of lading. (Penalties for violations of the Act are a matter for this Commission not any private party.) The failure of JCT to respond does not eliminate complainant's burden of proof. Complainant was given 30 days to respond and furnish the necessary information. In addition, because there may be some valid reason why JCT has not answered the complaint, JCT, the defaulting party, was given an additional opportunity to forestall a decision against it by explaining why it has failed to answer. Accordingly, JCT was given 30 days to respond in this case.

On September 18, 1995, complainant was given an additional 45 days to furnish documentation supporting its claim for damages. Complainants' counsel stated that because of extensive damage to property at the island of St. Martin because of Hurricane Luis, he was prevented from obtaining affidavits from persons who were concerned with survival, as there was no electricity or potable water on St. Martin.

On October 9, 1995, counsel for complainant stated that complainant had informed him that records held by his clients in St. Martin, Netherlands Antilles, pertaining to cargo movements from San Juan, PR, to that island no longer exist; that Hurricane Luis had destroyed most of the records they had requested. Counsel also states that duplication will be a lengthy affair; that complainant is unable to comply with the request in the August 14,

1995, ruling for proof of damages; that complainant rests its case and leaves it for final determination as the Presiding Judge may see fit.

In view of all the circumstances and the history of this proceeding, there is no reasonable alternative but to dismiss the complaint as to the remaining respondent JCT for the failure of complainant to submit adequate proof of damages, viz.--proof of a causal relationship between the failure of respondent JCT to have a lawful tariff on file and the amount of cargo carried by PRFS as discussed above. *Prudential Lines v. Farrell Lines, supra*. The record will be available if in the future conditions warrant filing a similar complaint. It is also noted that filing the complaint has had a beneficial effect in that one non-vessel operating common carrier respondent has taken the necessary steps to comply with the Commission's regulations.

**IT IS ORDERED:**

**The complaint as to JCT is dismissed and the proceeding is discontinued.**

  
Frederick M. Dolan, Jr.  
Administrative Law Judge