

(FEDERAL MARITIME COMMISSION)
(SERVED MARCH 20, 1989)
(EXCEPTIONS DUE 4-11-89)
(REPLIES TO EXCEPTIONS DUE 5-3-89)

FEDERAL MARITIME COMMISSION

SPECIAL DOCKET NO. 1703

APPLICATION OF WESTWOOD SHIPPING LINES
FOR THE BENEFIT OF WABASH ALLOYS

Application for permission to refund \$4,590.00 of the applicable freight charges denied for lack of jurisdiction.

INITIAL DECISION¹ OF CHARLES E. MORGAN,
ADMINISTRATIVE LAW JUDGE

By application timely mailed originally on January 20, 1989,² the applicant Westwood Shipping Lines (carrier), for the benefit of Wabash Alloys, seeks permission, pursuant to Rule 92(a) of the Commission's Rules of Practice and procedure, 49 CFR 502.92(a), and section 8(e) of the Shipping Act of 1984 (the Act), to refund a total of \$4,590.00 of the applicable

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).

² By letter dated February 7, 1989, from Executive Tariff Management, additional tariff data was submitted, namely 11th revised page 60D-2, Westwood Transpacific Service, Intermodal Freight Tariff 301, effective January 30, 1989.

freight charges on a shipment of seventeen 20-foot containers of aluminum bars, rods, and ingots, from Dickson, Tennessee, to Nagoya, Japan, bill of lading date July 26, 1988, and sailing date July 25, 1988.

The applicable basic rate on aluminum bars, rods, and ingots from Dickson, Tennessee, to Japan was \$1,550.00 per 20-foot container. The applicable basic charges on 17 containers were \$26,350.00. Also applicable was a currency adjustment factor (CAF) of 37 percent. Applicable CAF charges were \$9,749.50. These basic freight and CAF charges are not in issue herein.

In issue herein are the applicable terminal receiving charges at U.S. Interior Points and at Atlantic and Gulf Ports of \$270.00 per 20-foot container. On 17 containers, the TRC charges amounted to \$4,590.00. These TRC charges were prepaid, as also were the basic freight and CAF charges. Thus, this application seeks authorization for refund of the TRC charges of \$4,590.00.

On July 7, 1988, carrier's New York office sent a rate filing request with booking information to carrier's Tacoma office asking for a rate of \$1,550.00 per 20-foot container plus CAF, all inclusive of TRC charges. On July 11, 1988, carrier's New Jersey office sent the same rate filing request and a booking confirmation to the Tacoma office. The Tacoma office inadvertently filed the requested rate in error, as subject to a terminal receiving charge, whereas the requested rate should have been published as inclusive of the TRC.

The above is confirmed by letter dated August 2, 1988, from Dave Hart, New York office, to Bill Gibson, Tacoma office,

Exhibit B-1. Also, Exhibit B-4 dated July 7, 1988, shows the rate of \$1550 per 20-foot container plus 37 percent CAF, inclusive of TRC. Although the tariff error herein was noted as early as August 2, 1988, and Mr. Hart at that time suggested the filing of a special docket application, corrective steps unfortunately were delayed unduly in the circumstances herein.

A corrective tariff, Exhibit E, was filed effective January 17, 1989, but in further error the point of origin of the subject shipment, Dickson, Tennessee, was not included in the points of origin for these shipments of aluminum bars, rods, and ingots. Rather, Dickson was incorrectly listed as a point of origin for shipments of other commodities, i.e., aluminum sheets and coils. When this second error was discovered another corrective tariff, Exhibit J, was filed effective January 30, 1989, which noticed the originally intended agreed rate on Aluminum, bars, rods, and ingots from Dickson, Tennessee, as inclusive of the TRC charges in issue.

Unfortunately for the shipper, and not through the fault of the shipper, the second corrective tariff above was effective more than 180 days after the bill of lading and sailing dates of the shipment.

In summation, the first corrective tariff effective January 17, 1989, did not correctly set forth the rate on which the refund would be based. The second corrective tariff was effective after, and not before, as section 8(e) of the Act requires, the time the application herein was filed. Of course, the application herein may be deemed to have been refiled on

February 7, 1989, when the second corrective tariff page was transmitted to the Commission, but this refiling date also is outside of the jurisdictional requirements of section 8(e) of the Act.

The application accordingly must be denied. See SD 541, A.E. Stanley Mfg. Co. v. Mamenic Line, 20 F.M.C. 386 (1978), Recon. den. 20 F.M.C. 642. As much as the Commission might wish to grant relief in situations such as the present application, where the consequences of errors by the carrier and its tariff agents fall on the shipper, nevertheless the Commission's jurisdiction is strictly limited by statute, and it has no power to grant the relief requested.



Charles E. Morgan
Administrative Law Judge

Washington, D.C.
March 17, 1989