(S E R V E D)
(SEPTEMBER 26, 1996)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

WASHINGTON, D. C.

September 26, 1996

DOCKET NO. 96-02

WORLD CLASS FREIGHT INC.

v.

WORLDLINK LOGISTICS, INC.
AND WORLDLINK INTERNATIONAL

MOTION TO WITHDRAW COMPLAINT GRANTED

The parties have settled their dispute and have agreed that complainant should withdraw its complaint with prejudice on certain conditions. I find that their request and implementing motion should be granted and they should be allowed to effectuate their accommodation so as to bring their long dispute to an amicable close and save the resources of the parties and the Commission in keeping with the longstanding strong policy favoring settlements followed by the Commission and the courts.

The dispute which gave rise to the filing of the complaint arose out of a shipment of mixed commodities (photo albums, handicrafts, garments, and writing instruments), which respondents Worldlink Logistics, Inc. and Worldlink International, operating as an NVOCC (non-vessel operating common carrier), carried from Singapore to Los Angeles, California under a Worldlink bill of lading dated February 20, 1995. According to complainant World Class Freight, Inc., another NVOCC, World Class's agent in Singapore paid the freight quoted to it for the shipment ($2680) but when the cargo arrived in Los Angeles, Worldlink re-rated the shipment under a high cargo N.O.S. rate and demanded an additional payment of over $40,000 freight before Worldlink would release the cargo, plus additional warehouse charges, later withdrawn. World Class further alleged that the cargo was only released to its owners upon their payment of a share of the additional freight demands. Complainant obtained opinions from the Commission's tariff staff concerning the lawfulness of Worldlink's actions under the Worldlink tariff filed with the Commission, but unable to obtain satisfaction from Worldlink, filed a formal complaint which was served on Worldlink on January 26, 1996.

In its complaint, World Class alleged that Worldlink had not filed rates in its tariff to cover the subject shipment, either as specific commodity rates or as a Cargo N.O.S. rate, and that respondent had not treated its other shipper customers in the same way. Accordingly, World Class alleged that Worldlink had violated various sections of the Shipping Act of 1984 relating to the requirements that shippers file proper tariffs specifying their rates, that they adhere to those rates, that their rates not be unjustly discriminatory, that they not unduly prefer or disadvantage any of their shipper customers, and that they

follow reasonable practices relating to their handling and delivery of property. See sections 8(a)(1), 10(b)(1), 10(b)(10), 10(b)(11), 10(b)(12), and 10(d)(1) of the 1984 Act, respectively. Complainant World Class alleged that it had suffered injury of at least $8900, consisting of legal fees, loss of its customers' good will and their business, and because of respondent's alleged threats to take legal action to enforce respondent's claims against World Class.

Respondent Worldlink answered the complaint, denying any violations of law, contending, among other things, that its Cargo N.O.S. rate had been properly filed in its tariff or transmitted to the Commission for filing, that the major portion of complainant's alleged damages consisted of attorney's fees, which were not compensable under law, and that complainant had incorrectly described the contents of the shipment in Singapore.

Because of the relatively small amount of the claimed damages and various legal uncertainties as to their compensability under applicable law, I conducted several meetings with counsel for both parties in an effort to provide guidance that could lead to settlement discussions, as encouraged by various Commission rules of procedure and by the Administrative Dispute Resolution Act of 1990, which the Commission has incorporated into its rules. See *Alternative Dispute Resolution*, 26 SRR 1032 (1993); *Alternative Dispute Resolution*, Policy Statement, 58 Fed. Reg. 38651 (July 19, 1993); Administrative Dispute Resolution Act of 1990, 5 U.S.C. sec. 571 *et seq.* Over a period of months I met and corresponded with counsel, providing them with informal confidential evaluations of their claims and defenses based upon Commission case law in an attempt to bring the parties together and avoid continued litigation. These efforts have proved to be successful thanks

to the cooperation of counsel and their clients with the result that the parties have reached a settlement and wish to discontinue litigation. The text of the settlement agreement has been filed with the Commission with a request for confidentiality because of sensitive commercial information, the public disclosure of which, it is feared, will have detrimental effects on the parties' business interests. Such confidential treatment, if necessary to facilitate settlement in a particular case, is authorized by the Commission's rules and has been utilized a number of times in previous cases. See 46 CFR 502.119; 502.167; *Amsov Co., Inc. v. Dan-Transport Corp.*, 27 SRR 496, 498 (1995), and cases cited therein; *International Association of NVOCCs v. Atlantic Container Line et al.*, 25 SRR 1607, 1609 (ALJ, F.M.C. notice of finality, September 6, 1991). I have examined the text of the settlement agreement and find nothing objectionable in it. It essentially provides for an end to the litigation and for compensation to World Class which World Class believes to be acceptable. Such matters are traditionally left to the negotiations of the parties without Commission interference. See, e.g., *Great White Fleet, Ltd. v. Southeastern Paper Products Export, Inc.*, 26 SRR 1487, 1489-90 (1994); *CDM International v. Vencaribe, C.A.*, 26 SRR 78 (ALJ, F.M.C. notice of finality, Nov. 6, 1991). Finally, as discussed in previous cases, the parties' settlement agreement appears to reflect their considered judgment that it would be far more economical to terminate litigation and agree upon a compensation for World Class than to seek to achieve total vindication after lengthy and more expensive litigation. Such thinking traditionally leads to settlements. See discussion in *Amsov Co., Inc.*, cited above, 27 SRR at 498. Their decision to settle appears to appreciate fully the risks of continued

litigation based upon confidential evaluations of their claims and defenses which were thoroughly discussed with counsel at conferences and through correspondence.[1]

Accordingly, I see no reason not to honor the parties' request that the complaint be withdrawn with prejudice under the terms of their settlement agreement. The complaint is therefore dismissed with prejudice on condition that the parties carry out their settlement agreement. See *Amsov, Inc.,* cited above, 27 SRR at 499.

Norman D. Kline
Administrative Law Judge

[1]The Administrative Dispute Resolution Act requires that discussions and materials furnished in settlement proceedings generally be kept confidential. See 5 U.S.C. sec. 574 (1955). However, neither this law nor the Commission's rules prevent the Commission from making whatever use of the materials might be necessary to rendering sound decisions.