

(S E R V E D)
(April 12, 1989)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

SPECIAL DOCKET NO. 1681

APPLICATION OF THE ASIA NORTH AMERICA
EASTBOUND RATE AGREEMENT, ON BEHALF OF
YAMASHITA-SHINNIHON STEAMSHIP CO., LTD.,
FOR THE BENEFIT OF DEA WON CAST STEEL CO., LTD.

ORDER OF ADOPTION

The Commission determined to review the Initial Decision ("I.D.") of Chief Administrative Law Judge Charles E. Morgan ("Presiding Officer") issued in the above-docketed proceeding. In his I.D., the Presiding Officer granted the "special docket" application filed pursuant to section 8(e) of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. § 1707(e),¹ by the Asia North America Eastbound Rate Agreement ("ANERA") on behalf of Yamashita-Shinnihon Steamship Co., Ltd. ("Y-S Line"), a member line of ANERA. The application sought permission to waive collection of \$3,290.00 in freight charges on a shipment of metal products.

The I.D. finds that Y-S Line advised ANERA, on May 20, 1988, of its intent to take independent action with regard to the filing of a \$2,140 per 20-foot container rate on cast ironware and parts from Korea to Detroit, Michigan, but

¹ The Presiding Officer noted at the outset that the application had been timely filed.

that, "due to clerical oversight by the staff of . . . [ANERA], the rate was not filed timely." While the I.D. concludes that all "statutory requirements had been met," it fails to explain the basis for that conclusion.

The mere reference to "clerical oversight," without an explanation of the nature and cause of the alleged error does not of itself lend a basis for a determination that the mistake was of the type contemplated in section 8(e)(1) of the 1984 Act.² The Commission could therefore remand the proceeding to the Presiding Officer to afford him the opportunity to supply the rationale for his decision. In this instance, however, a remand will not be ordered.

The record discloses that, due to ambiguous instructions to the tariff filer, the \$2,140 rate for cast ironware and parts filed by ANERA was erroneously made applicable from Korea to Atlanta, Georgia, instead of from Korea to Detroit, Michigan, as requested by Y-S Line (Appendix C to Exhibit A). This type of error clearly falls within the ambit of section 8(e). The record also otherwise supports the Presiding Officer's grant of the application.

² Section 8(e) authorizes the grant of refunds and waivers if, inter alia,

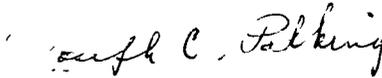
(1) there is an error in a tariff of a clerical or administrative nature or an error due to inadvertence in failing to file a new tariff . . . ;

46 U.S.C. app. § 1707(e)(1).

THEREFORE, IT IS ORDERED, That the Initial Decision of Chief Administrative Law Judge Charles E. Morgan issued in this proceeding is adopted by the Commission with the above clarifications.

IT IS FURTHER ORDERED, That the proceeding is discontinued.

By the Commission.


Joseph C. Polking
Secretary