

ORIGINAL

(S E R V E D )  
( April 9, 2002 )  
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

WASHINGTON, D. C.

April 9, 2002

DOCKET NO. 02-01

HELLMANN WORLDWIDE LOGISTICS, INC.  
AND PELORUS OCEAN LINE, LTD.

v.

COSCO CONTAINER LINES COMPANY LIMITED

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COMPLAINT DISMISSED WITHOUT PREJUDICE

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Counsel for respondent Cosco Container Lines Company Limited ("Cosco"), in a letter dated April 2, 2002, requests reconsideration of my Notice of Intention to Defer Ruling Pending Further Advice, served March 25, 2002, and renews the request of the parties that this proceeding be dismissed without prejudice. Essentially, I deferred a ruling until I received further information as to whether the parties resolved the proceeding by entering into an agreement which was subject to filing with the Commission.

The basis for counsel's application is that the Shipping Act of 1984 ("the Act"), as amended by the Ocean Shipping Reform Act of 1998 ("OSRA"), does not require the filing of any agreements between ocean common carriers and non-vessel operating common carriers ("NVOCC"). Furthermore, counsel also represents that there is an existing service contract between Cosco, an ocean common carrier, and complainant Pelorus Ocean Line, Ltd. ("Pelorus"), an NVOCC, and that the parties are aware of the requirement to file any new or additional service contract with the Commission.

The complaint alleges that Cosco is a common carrier, Pelorus is a non-vessel operating common carrier and Hellmann Worldwide Logistics, Inc. ("Hellmann") is an ocean freight forwarder. Complainants alleged that Cosco violated several provisions of the Act by charging them in excess of the applicable freight rates set forth in filed service contracts 3904 and 4836. They further allege that Cosco based its higher freight charges upon the unjust and unreasonable practice of filing unilateral amendments to the service contracts with the Commission.

Pursuant to Sections 4 (a)(7) and 5 of the Act, copies of any agreements between ocean carriers relating to service contracts must be filed with the Commission. These provisions do not apply to agreements or service contracts with NVOCC's. On the other hand, Section 8 of the Act does require the filing of certain service contracts between ocean common carriers and shippers. Shippers are defined at Section 3 (21)(E) to include NVOCC and freight forwarders. However, counsel notes that there already exists a filed service contract between the parties and acknowledges that any new or additional service contract would have to be filed with the Commission.

I have some concern with counsel's assurance that the parties can be expected to comply with the filing requirements of the Act, given the allegations that Cosco disregarded the terms of service contracts and filed *unilateral amendments* without the consent of complainants. The Act and

Commission regulations require that any amendments to service contracts - not just new or additional service contracts - be filed with the Commission. However, the Commission strongly encourages settlements and, absent any showing that they contravene any law or public policy, presumes they are just and reasonable. *Old Ben Coal Co. v. Sea-Land Service, Inc.*, 21 F.M.C. 505, 512-515 (1978) (18 S.R.R. 1085, 1091-1095); *Great White Fleet v. Southeastern Paper Products, Inc.*, 26 S.R.R. 1487, 1488-1490 (1994); *Jorge Vlena, et al.*, 24 S.R.R. 1098, 1101-1102 (1988).

As explained in my prior ruling, there is no Commission rule which specifically deals with the situation of a voluntary dismissal. However, F.R.C.P. 41(a) permits a plaintiff to file a notice of dismissal of an action at any time before service of a responsive pleading. The Federal Rules of Civil Procedure may be invoked to the extent that they are consistent with sound administrative practice. 46 C.F.R. 502.12. As previously noted, the Commission strongly favors settlements and the parties have been reminded of their filing responsibilities under the Act.

IT IS ORDERED, that the complaint in Docket No. 02-01, *Hellmann Worldwide Logistics, Inc. and Pelorus Ocean Line, Ltd. v. Cosco Container Lines Company Limited*, is dismissed without prejudice, subject to the condition that the parties file any new, additional or *amended* service contract with the Commission, as well as to the review of this ruling by the Commission pursuant to 46 C.F.R. 502.227(c).



Michael A. Rosas  
Administrative Law Judge