

(S E R V E D)  
( DECEMBER 27, 1990 )  
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

SPECIAL DOCKET NO. 1878

APPLICATION OF TRANSPACIFIC WESTBOUND RATE AGREEMENT  
AND SEA-LAND SERVICE, INC., FOR THE BENEFIT OF  
TAYLOR WHARTON INTERNATIONAL

INITIAL DECISION<sup>1</sup> OF CHARLES E MORGAN, ADMINISTRATIVE LAW JUDGE

By application timely mailed Sept. 20, 1990, the Transpacific Westbound Rate Agreement (TWRA) and Sea-Land Service, Inc. (Sea-Land), for the benefit of the shipper, Taylor Wharton International, seek permission pursuant to Rule 92(a) of the Commission's Rules of Practice and Procedure, 46 CFR §502.92(a), and Section 8(e) of the Shipping Act of 1984 (the Act), to waive a total of \$12,050.00 of the applicable freight charges on one shipment in one 40-foot flat rack container, said to contain empty steel storage tanks, weighing 15,150 kilograms and measuring 50 cubic meters, from New Orleans, LA, via rail to Long Beach, CA, thence via water to Jakarta, also spelled Djakarta in the tariff, Indonesia, sailing date March 28, 1990.

The applicable basic rate on Iron and Steel Articles, Tanks, Drums and similar containers (empty), Iron or Steel, N.O.S., was \$349.00 per ton of 1,000 kilograms (W) or per cubic meter (M), whichever produces the greater revenue, MLB, from U.S. Ports and Points to Southeast Asia Base Ports in Indonesia, as per TWRA's Westbound Local and Intermodal Freight Tariff, FMC No. 9. The basic applicable charges on 50 tons (M) were \$17,450.00. Also applicable were CY Receiving Charges on 50 tons (M) at \$17.00 per revenue ton of \$850.00; and Fuel Adjustment Factor (FAF) charges on 50 tons (M) at \$3.00 per ton of \$150.00. Total applicable charges were \$18,450.00.

The sought basic rate on the tanks herein for Sea-Land only is \$6,340.00 per 40-foot flat rack container, including CY charges, MLB, from New Orleans to Jakarta only, cargo not to exceed inside

<sup>1</sup> If calendar year 1990 data are not available, please provide the latest 4 quarters available.

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).

dimensions of container. The basic sought charges are \$6,340.00. Also sought are FAF charges of \$60.00 per 40/45-foot container. Total sought charges are \$6,400.00.

The difference between the applicable charges and the sought charges is \$12,050.00, the amount sought to be waived. The charges as sought were paid by the shipper.

As a member of TWRA, Sea-Land participates in TWRA's Tariff FMC No. 9. On Feb. 13, 1990, Sea-Land submitted a Notice of Independent Action intended to establish a new rate for Sea-Land for Tanks, Drums and similar containers (empty), Iron or Steel, N.O.S., of \$6,340.00 per 40-foot flat rack container, including CY receiving charge, from New Orleans, to Jakarta, in MLB service. It was the intent of the tariff publisher to publish this new rate on page 1026-A of TWRA's tariff, effective Feb. 23, 1990. TWRA sent the notice of the intended Sea-Land rate to its tariff publisher, Pacific Coast Tariff Bureau (PCTB), on Feb. 14, 1990.

Under TWRA's tariff rules, MLB service applies to cargo that moves through a West Coast port, whereas MLB (AG) service applies to cargo that moves through an Atlantic port. It was Sea-Land's intention to offer the intended rate only in MLB service, and not in MLB (AG) service. Sea-Land's vessels serving the Far East only call at West Coast ports.

Since there was insufficient room on tariff page 1026-A, PCTB decided to transfer the MLB rates from New York and the MLB (AG) rates from Mobile to revised page 1026-B. PCTB could then have published Sea-Land's intended MLB rate from New Orleans on revised page 1026-A. Instead, PCTB erroneously published the intended MLB rate from New Orleans on revised page 1026-B under *MLB (AG) service*, rather than under MLB Service.

This filing error by PCTB was discovered by Sea-Land on April 2, 1990. Also, because there was a General Rate Increase (GRI) of 10 percent, effective on April 1, 1990, the intended rate of \$6,340.00 per 40-foot flat rack container, which was to have been effective on Feb. 23, 1990, was increased by the GRI to \$6,974.00, rounded to \$6975.00. Also effective April 1, 1990, was an increase in CY charges of \$20.00 per 40/45 ft. container, as per Exhibit No. 5 attached to the application. Hence, when PCTB filed the corrected rate for Sea-Land on April 2, 1990, its total was \$6,995.00 in lieu of the intended rate which would have become effective prior to April 1, 1990, of \$6,340.00.

The critical period herein is from March 24, 1990<sup>2</sup> through April 1, 1990.

The two applicants state that there were no other shipments of the same or similar commodity made by Sea-Land during the critical period.

The statutory requirements have been met. It is concluded and found that there was an error of an administrative or clerical nature made by TWRA through its tariff publisher in failing to have published timely the intended rate; that the intended rate was made effective after the shipment herein moved, and prior to the mailing of this application; that the application was mailed timely and that the authorization of a waiver will not result in discrimination among shippers, ports, or carriers.

Sea-Land Service, Inc., is authorized to waive a total of \$12,050.00 of the applicable freight charges on the shipment herein.

IT IS HEREBY ORDERED, That the Transpacific Westbound Rate Agreement file the following notice in its Westbound Local and Intermodal Freight Tariff FMC No. 9, to the effect that:

Notice is given, as required by the decision of the FMC, in Special Docket No. 1878, that effective March 24, 1990, and continuing through April 1, 1990, the rate for Sea-Land only on Iron and Steel Articles, Tanks, Drums and similar containers (empty), Iron or Steel N.O.S., MLB from New Orleans to Jakarta only, from March 24, 1990, through March 31, 1990, is \$6340.00, and on April 1, 1990, is \$6,995.00, per 40-foot flat rack container, including CV receiving charges, cargo not to exceed inside dimensions of container. This notice is effective for purposes of refund or waiver of freight charges on any shipments of the commodity described which may have been shipped during the specified period of time.



Charles E. Morgan  
Administrative Law Judge

Washington, D.C.  
December 26, 1990

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<sup>2</sup> Errors may be corrected back only 180 days from date of sailing.