{S E R V E D}
{ December 17, 1991 }
{FEDERAL MARITIME COMMISSION}

FEDERAL MARITIME COMMISSION

INFORMAL DOCKET NO. 1707(I)

PRO-INDUSTRIES, INCORPORATED

v.

SEA-LAND SERVICES, INCORPORATED

Decision of Joseph T. Farrell, Settlement Officer[1]

Reparation Denied.

By its complaint filed with the Commission on September 4, 1991, Pro-Industries, Inc. ("P-I") seeks $311.98 from Sea-Land Service, Inc. ("Sea-Land"). The amount claimed represents an alleged overcharge[2] arising from a P-I shipment that Sea-Land moved from Jacksonville to San Juan under a bill of lading dated August 16, 1991. The documentation indicates that all assessed charges were billed to and/or paid by the consignee,

---

1 Both parties having consented to the informal procedure set forth in Subpart S of the Commission's Rules of Practice and Procedure (46 CFR 502.301-305), this decision will become final unless the Commission elects to review it within 30 days of the date of service.

2 P-I did not specifically cite Section 2 of the Intercoastal Shipping Act, 1933. No such specification is required with respect to overcharge claims.

P-I maintains that the original application of Item 204734 was in fact correct:

> ". . . we found the description in Item number 201560 'aluminum paper, plastic, polystyrene, or wood' to be confusing. did they mean only polystyrene? Then why the seemingly redundant '<u>plastic</u>'? Polystyrene is a plastic. If they meant all plastics, why have an Item number 204734? We judged that the difference would be based on the design limitation of Item #201560. We also ship plastic knives, forks and spoons. Into what item would they fall? Sea-Land contends that because the cups are polystyrene then Item 201560 applies. But, by their own description, to qualify, the articles listed must be 'designed for single service use.' This to us was ambiguous and seemingly contrary to the general perception of plastic articles. The manufacturer advises that the cups are made of Expanded Polystyrene Beads, or EPB, and on the bottom the #6 is found designating, within the industry, that this is indeed a Polystyrene article. Webster's New World Dictionary on page 1048 defines polystyrene as 'tough clean, colorless plastic material', and defines tough on page 1414, as being 'strong but pliant.' Item 204734 exhibit F, among other articles list, 'cups'. The item requires that they be plastic, but has no design qualifications. Since the cups were plastic and manufactured of a tough and pliant material, we applied #204734.
>
> We wonder how the line would react in the reverse, if a shipper was claiming that its product <u>was</u> designed for single use and made of one of the listed materials, and they disagreed. How could the line enforce such a limitation? How would they know if in the final use the product was only being used once?"

In support of its claim, P-I included a copy of the shipper's invoice describing the cargo as "foam cups" and "lids for foam cups."

second, Item 201560's usage restriction is "contrary to the general perception of plastic articles." In fact, complainant is not on firm ground with respect to either proposition. Obviously, both descriptions pertain to plastic cups, but Item 201560's inclusion of polystyrene cups and lids leaves no doubt of its more specific applicability to the cargo. As for the usage restriction, "the general perception of plastic articles" in no way conflicts with a design for single service use. Obviously, the foam coffee cups commonly found in cafeterias and convenience stores are generally intended for single service usage. On the other hand, many kitchen cabinets house hard plastic cups that have been designed for repeated use. Such hard cups would likely be rated in accordance with Item 204734.

Finally, P-I suggests that the single service use restriction is unenforceable, inasmuch as the carrier has no knowledge of the ultimate fate of the cups comprising the shipment. That is true, but irrelevant. The actual use to which a product is subjected can not function as the basis for rating. A rating scheme of that nature would constitute an obvious invitation to discrimination among shippers.[6] The relevant point is that polystyrene cups, while re-useable, are constructed and priced in a manner that contemplates single usage. It is unnecessary to demonstrate the ultimate fates of the individual cups.

---

[6] CSC International, Inc. v. Waterman Steamship Corp., 19 FMC 523, 528.