

(S E R V E D)
(April 19, 1989)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

SPECIAL DOCKET NO. 1675

APPLICATION OF PACIFIC EUROPE EXPRESS
FOR THE BENEFIT OF ROBBINS COMPANY

ORDER OF REMAND

The Commission determined to review the Initial Decision ("I.D.") of Chief Administrative Law Judge Charles E. Morgan ("Presiding Officer") issued in this proceeding. The Presiding Officer granted the application for waiver of freight charges filed pursuant to section 8(e) of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. § 1707(e), by Pacific Europe Express ("PEX"). The application seeks permission to waive collection of \$100 in freight charges on two shipments of terminal boring equipment.

On September 29, 1988, PEX, a member of the Pacific Coast European Conference ("Conference") asked the Conference to file a project rate on terminal boring equipment of \$1,800 per 20-foot container and \$2,300 per 40-foot container and an Origin Terminal Charge ("OTC") of \$275 per 20-foot container and \$375 per 40-foot container or, \$375 per 20-foot container for over-dimension cargo and \$425 per 40-foot container for over-dimension cargo. The application explained:

As indicated by the enclosed copy of the telephone poll 9-96, the requested Origin Terminal Charge (OTC), which was agreed to by memberlines, was \$375.00 per 20' container and \$425.00 per 40' container for over-dimension cargo. Due to oversight OTC was filed as \$425.00 per container on October 7, 1988 and then corrected to show the intended figures on October 20, 1988. This application is filed to request waiver of collection of additional OTC for two over-dimension (indicated on B/L as OD) 20' containers shipped while the incorrect OTC was in effect.

While it is clear that the Conference had agreed to file the Origin Terminal Charge proposed by PEX, apart from a reference to an "oversight," the application (and consequently the I.D.) do not reveal how and why the tariff filing mistake occurred. The essential element in the grant of special relief is that a tariff error of the type described in section 8(e) be clearly established.¹ In this instance, in the absence of the necessary information, no conclusion can be reached on whether permission to waive a portion of the freight charges was properly granted. Therefore, the proceeding will be remanded for the purpose of obtaining additional evidence on the circumstance which led to the error.

THEREFORE, IT IS ORDERED, That the proceeding is remanded to the Presiding Officer for further action consistent with this Order;

¹ 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).

FINALLY, IT IS ORDERED, That the Presiding Officer shall issue a Supplemental Initial Decision.

By the Commission.


Joseph C. Polking
Secretary