

S E R V E D
MAY 25, 1994
FEDERAL MARITIME COMMISSION

FEDERAL MARITIME COMMISSION

INFORMAL DOCKET NO. 1758(I)

UNIROYAL GOODRICH TIRE COMPANY

v.

NEDLLOYD LINES

ORDER ON REVIEW OF THE SETTLEMENT OFFICER'S DECISION

By informal complaint¹ filed with the Commission on October 12, 1993, Uniroyal Goodrich Tire Company ("Uniroyal") seeks a total of \$3,894.00 plus interest from Nedlloyd Lines ("Nedlloyd"). The amount claimed represents an alleged overcharge arising from one shipment of "pneumatic tires" that Nedlloyd transported from Charleston, South Carolina to Felixstowe, England.

The complaint alleges that Nedlloyd failed to rate the subject shipment under service contract No. A-1066 which Uniroyal had with USA-North Europe Rate Agreement. Uniroyal seeks a refund of the difference between the amount paid by Uniroyal pursuant to USA-North Europe Rate Agreement Tariff FMC 10 and the amount due under the service contract. Settlement Officer Joseph T. Farrell found that the overcharges had occurred and awarded Uniroyal \$3,894 in reparations plus interest. Because the case presents a question of

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

the Commission's jurisdiction to adjudicate service contract claims we determined to review the Settlement Officer's decision.

Uniroyal's allegation that Nedlloyd incorrectly charged the tariff rate rather than the service contract rate, if proven, would amount to a breach of the service contract. The remedy sought is also contractual in nature; Uniroyal seeks a refund of the difference between the amount it paid under the tariff and the amount due under the applicable service contract.

Section 8(c) of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. § 1707(c), provides in part that:

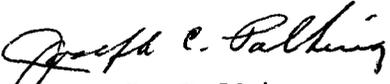
The exclusive remedy for a breach of contract entered into under this subsection shall be an action in an appropriate court, unless the parties otherwise agree.

The Commission recently found in Western Trade and Development Corporation v. Asia North America Eastbound Rate Agreement, ___ F.M.C. ___, 26 S.R.R. 1239 (1994), that section 8(c) deprives it of jurisdiction to hear complaints brought under the 1984 Act that seek remedies that would otherwise be available in a breach of contract action if the matter were brought before a court. Accordingly, the Commission will dismiss the proceeding for lack of jurisdiction.

If the parties agree, Nedlloyd may refund to Uniroyal the difference between the amount paid by Uniroyal and the amount due under the service contract without seeking approval from the Commission. In the event the parties do not agree, the dispute should be resolved in the appropriate court or by arbitration if the service contract so provides.

THEREFORE, IT IS ORDERED, That the Decision of the Settlement Officer is vacated and the proceeding dismissed.

By the Commission.


Joseph C. Polking
Secretary