

ORIGINAL

(S E R V E D)
(January 12, 1999)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

WASHINGTON, D. C.

January 12, 1999

DOCKET NO. 98-22

TREK BICYCLE CORPORATION

v.

CLASSIC CARGO INTERNATIONAL, INC.

COMPLAINANT'S REQUEST TO DISMISS COMPLAINT GRANTED

The complainant has advised that it does not wish to continue litigating its complaint and wishes to have the proceeding terminated. (See letter dated January 11, 1999, from Ms. Joyce Keehn, representing complainant, to the undersigned judge.) Respondent has orally advised that it agrees with the request to terminate. As explained below, the request is granted.

This case involves a complaint by a manufacturer and exporter of bicycles, namely, Trek Bicycle Corporation, located in Wisconsin. Trek Bicycle alleged that respondent, an NVOCC (non-vessel operating common carrier) named Classic Cargo International, Inc., had mishandled a

shipment of bicycles to South Africa, which Trek Bicycle had booked with Classic Cargo some time in August of 1997. Trek Bicycle alleged that Classic Cargo had misrepresented delivery time and had misused information given to Classic Cargo about Trek Bicycle, allegedly in violation of sections 10(a)(1), 10(b)(16)(A), and 10(d)(1) of the Shipping Act of 1984, which laws require carriers to observe reasonable practices relating to the handling and delivery of property and prohibit other conduct relating to rating cargo and using confidential information about shippers. Trek Bicycle alleged that because of the delay in the subject shipment, it had to expend over \$19,000 to send a substitute shipment by air carrier.

Respondent Classic Cargo denied any wrongdoing and asserted that it had acted reasonably and had tried to help Trek Bicycle in an effort to locate the shipment which had been delayed in transit, allegedly because of the wrongful conduct of another NVOCC to which Classic Cargo had entrusted the shipment.

Because of the fact that both parties were located in Wisconsin and the amount of money claimed by Trek Bicycle as reparations was relatively small, the parties followed the less expensive shortened procedure set forth in the Commission's rules at Subpart K, 46 C.F.R. 502.181 through 501.187. Under the shortened procedure, the parties submitted their evidence by means of sworn statements with supporting documents so as to avoid the burden and expense of attending a trial-type hearing. However, before Trek Bicycle filed its final evidence and arguments, it advised that although it was grateful for the consideration shown to the parties in hearing their dispute informally, Trek Bicycle no longer wished to litigate.

Discussion and Conclusions

The Commission as well as the federal courts respect the rights of complainants to withdraw or seek dismissal of their complaints as Trek Bicycle requests in the instant case. The relevant federal rule is Rule 41(a) (Voluntary Dismissal), which permits complainants to seek dismissal of their complaints by mere notice or by stipulation if no answer to the complaint has been filed but by order of the court if an answer has been filed. The Commission follows the federal rules absent a specific Commission rule. See 46 C.F.R. 502.12. It has also been recognized that complainants should not be compelled to litigate cases if they choose not to do so. See *Roberts Steamship Agency, Inc. v. The Board of Commissioners of the Port of New Orleans, etc.*, 21 F.M.C. 492 (1978) (order of dismissal); *Prudential Lines, Inc. v. Waterman Steamship Corp.*, 23 S.R.R. 1323 (1986); *Smoot v. Fox*, 340 F.2d 301 (6th Cir. 1964); *Tyco Laboratories, Inc. v. Koppers Co.*, 627 F.2d 54 (7th Cir. 1980).

The instant proceeding involved a delayed shipment, a strong denial of wrongdoing by respondent NVOCC, and allegations which, to some extent, might not fall within all the laws invoked by complainant, as well as a reasonable possibility that complainant sued the wrong carrier. There is no need or legal requirement that a private person like Trek Bicycle must bear the burden and expense of litigation against its will, even under the less costly shortened procedure that the Commission's rules offer. Accordingly, as complainant requests, the complaint is dismissed and this proceeding is discontinued.



Norman D. Kline
Administrative Law Judge