

(FEDERAL MARITIME COMMISSION)
(SERVED JULY 25, 1991)
(EXCEPTIONS DUE 8-16-91)
(REPLIES TO EXCEPTIONS DUE 9-9-91)

FEDERAL MARITIME COMMISSION

SPECIAL DOCKET NO. 1958

APPLICATION OF TRANSPACIFIC WESTBOUND RATE AGREEMENT
AND AMERICAN PRESIDENT LINES, LTD.
FOR THE BENEFIT OF EASTMAN KODAK COMPANY

Application for permission to refund \$40.00 of the applicable freight charges, denied.

INITIAL DECISION¹ OF CHARLES E. MORGAN,
ADMINISTRATIVE LAW JUDGE

By application timely mailed May 6, 1991, Transpacific Westbound Rate Agreement (TWRA) and American President Lines, Ltd. (APL), for the benefit of Eastman Kodak Company, 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 refund a total of \$40.00 of the applicable freight charges on two shipments in two 40-foot refrigerated containers, said to contain photographic apparatus, equipment, materials, supplies, and products, from Windsor, Colorado, via rail to Oakland, California, thence via

¹This 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).

water to Kobe, Japan, bill of lading dates November 6 and 20, 1990 and sailing dates November 15 and 29, 1990.

The applicable basic rate on Mixed Commodities, Photographic Equipment, IPI (WC) via APL from Windsor, Colorado to Japanese Base Ports, per 8th Revised Page 5127-B1, Effective November 2, 1990, of the Transpacific Westbound Rate Agreement (TWRA), Westbound Local And Intermodal Freight Tariff, FMC No. 8, was \$2,510.00 per 40-foot container, including currency adjustment charge (CAF) and container yard receiving charge (CY). Store door pick up was permitted, and the rate applied in mixed or straight shipments.² The rate was subject to a Fuel Adjustment Factor (FAF) of \$160.00 per 40-foot container. Total applicable charges on the two containers were \$5,340.00, (\$2,510.00 plus \$160.00 equals \$2,670.00 times 2).

The sought basic rate is \$2,490.00 per 40-foot container, including the CAF and CY charges, but subject to the FAF charges. Total sought charges are \$5,300.00, (\$2490.00 plus \$160.00 equals \$2,650 times 2).

The difference between the total applicable charges and the total sought charges is \$40.00, the amount sought to be refunded herein.

APL is a member of TWRA, Agreement No. 202-010689. APL participates in TWRA's pertinent tariff. On October 22, 1990, APL submitted a Notice of Independent Action to TWRA, which forwarded it to its Tariff Publisher, Pacific Coast Tariff Bureau (PCTB) on October 23, 1990. This Independent Action was intended to establish the rate

²Exhibit No. 4, 8th revised tariff page 5127-B1.

of \$2,490.00 as sought herein, from Windsor, Colorado, to base ports in Japan, effective November 1, 1990.³

On November 2, 1990, PCTB attempted to comply with its instructions, but due to a clerical error, instead filed the sought rate of \$2,490.00 as a group rate, instead of an APL Independent Action Rate.⁴ Thus, the higher existing Rate for APL of \$2,510 per 40-foot container remained in effect.

Effective December 1, 1990, APL's rate was reduced to \$2,470.00 per 40-foot container in accordance with another Notice of Independent Action.⁵ What the applicant, APL, failed to do was to see that the rate of \$2,490.00 was published as was intended originally by APL.

The statutory requirements have not been met. It is concluded and found that there was an administrative or clerical error made by PCTB in not having published timely the intended basic rate. In fact the intended basic rate was not made effective at any time, contrary to the provisions of the law, namely section 8(e) of the Shipping Act.

Accordingly this application is denied.


Charles E. Morgan
Administrative Law Judge

Washington, D. C.
July 25, 1991

³Exhibit No. 2, Notice of Independent Action, please see arrow.

⁴Exhibit No. 3, tariff 21st revised page 5128.

⁵Exhibit No. 5, tariff 9th revised page 5127.B1.