

FEDERAL MARITIME COMMISSION

SPECIAL DOCKET NO. 1703

APPLICATION OF WESTWOOD SHIPPING LINES
FOR THE BENEFIT OF WABASH ALLOYS

ORDER DENYING PETITION FOR RECONSIDERATION

By Petition for Reconsideration filed by Effective
Tariff Management ("ETM") on behalf of Westwood Shipping
Lines ("WSL"),¹ ETM requests that the Commission reconsider
the Initial Decision ("I.D.") of Chief Administrative Law
Judge Charles E. Morgan ("Presiding Officer") served
March 20, 1989. The Presiding Officer denied for lack of
jurisdiction the application WSL filed pursuant to section
8(e) of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C.
app. § 1707(e). In its application WSL asks permission to
refund a portion of the freight charges collected on a
shipment of aluminum ingots WSL carried from Dickson,
Tennessee to Nagoya, Japan.

The Presiding Officer held that WSL had failed to
timely publish the tariff required by section 8(e)(2) of the
1984 Act. ETM now argues that the tariff it filed on
January 17, 1989, set forth the correct rate, origin and
destination of the cargo, "but a slightly different

¹ Although styled Petition for Reconsideration, the ETM
pleading is more in the nature of Exceptions to the Initial
Decision.

commodity classification." The difference, Petitioner maintains, was "clarified" in the tariff filed February 7, 1989.

DISCUSSION

The Commission may allow a carrier to refund or waive a portion of the freight charges applicable under the tariff, provided before applying for refund or waiver the carrier files with the Commission a tariff showing the rate on which such refund or waiver would be based and provided also that the application is filed within 180 days from the date of shipment. Sections 8(e)(2) and (4).²

Here, WSL's tariff contains two different specific commodity descriptions: Item No. 618.0302 for "Aluminum bars, rods, and ingots" and Item No. 618.2890 for "Aluminum sheets and coils." Therefore, the Presiding Officer properly found that the tariff filed on January 17, 1989, where the intended rate appeared under Item No. 618.2890 - aluminum sheets and coils - was not applicable to the shipment of aluminum ingots for which the tariff provided a different commodity classification under a different item number. This finding is supported by ETM's February 7, 1989

² The date of shipment is the date of sailing of the vessel from the port at which the cargo was loaded. 46 C.F.R. § 502.92(a)(3)(iii) (1988). Here, the application shows the date of shipment to be July 25, 1988, whereas the bill of lading is dated July 26, 1988. Hence, the February 7 tariff was filed either 197 or 196 days after the date of shipment, well beyond the 180-day limitation period.

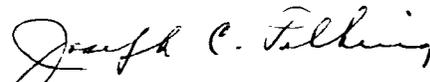
filing which appears to be a tacit admission that the January 17, 1989 tariff was inadequate for refund purposes. As noted above, however, the February 7 tariff filing was not made within the 180 days allowed by statute. It therefore cannot constitute the tariff required in section 8(e)(2) upon which the refund would be based.

THEREFORE, IT IS ORDERED, That the Petition for Reconsideration of the Initial Decision served in this proceeding is denied;

IT IS FURTHER ORDERED, That the Initial Decision is adopted by the Commission; and

FINALLY, IT IS ORDERED, That this proceeding is discontinued.

By the Commission.


Joseph C. Polking
Secretary