

(S E R V E D)
(NOVEMBER 26, 1991)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

WASHINGTON, D.C.

November 26, 1991

DOCKET NO. 91-38

ITALIAN LINE

v.

SEAWIND LINE, INC.

COMPLAINT DISMISSED; SETTLEMENT APPROVED

Complainant Italian Line and respondent Seawind Line, Inc. have submitted a settlement agreement and have jointly asked that it be approved and that the complaint be dismissed with prejudice. I find that the settlement comports with the strong policy in the law which favors settlements, does not itself violate law, and that the complaint should be dismissed with prejudice as requested.

The proceeding began with the filing of a complaint which was served on October 2, 1991. Complainant alleged that it had carried five 40-foot containers which, according to the bill of lading, were laden with glass tubes, from Savannah, Georgia to Fos, France. However, it was alleged the cargo arrived at Fos on October 31, 1990, but was never

collected by respondent Seawind. Instead, it was taken to a terminal for storage, and Italian Line was required to pay terminal and demurrage charges. Italian Line alleged that it had never been paid for the ocean freight or for the terminal and demurrage charges and that such failure to pay constituted a violation of section 10(a)(1) of the Shipping Act of 1984. Complainant therefore asked for reparations amounting to \$34,823.13, consisting of \$15,547.50 in ocean freight and \$19,275.63 (converted from French francs) for demurrage, stevedoring costs, and customs clearance charges. Complainant also asked for interest and attorney's fees. No answer to the complaint was filed. Instead, the parties entered into discussions leading to the settlement.

Under the terms of the settlement, Seawind agrees to pay Italian Line the full amount of ocean freight claimed over a period of time and in accordance with Italian Line's tariff. Payment is to be made initially on December 1, 1991, and by monthly installments thereafter until the full freight is paid. Seawind furthermore agrees to pay the full amount of the remaining charges claimed in the complaint, namely, \$19,275.63, over an 18-month period by monthly installments beginning December 1, 1991. Italian Line agrees to accept payment of this amount for these incidental charges, which, it is stated, represent Italian Line's out-of-pocket expenses for the charges. Italian Line also agrees to forego its claims for interest and attorney's fees in the interest of compromise.

Seawind has filed no answer to the complaint, as mentioned above. However, Italian Line is advised that had this case proceeded to litigation, Seawind would have argued that it had acted merely as the agent for the shipper and was not responsible for the freight charges and that some of them were not included in the relevant tariff. However, Italian Line states that it was able to negotiate a 50-percent reduction in demurrage charges

payable in Fos and was therefore only seeking reimbursement for its actual demurrage costs.

The settlement seems to be the typical type in which both sides compromise in an effort to avoid the risks and costs of litigation. In effect, it appears that Italian Line's complaint has been satisfied and that it will recover the alleged ocean freight due plus the additional costs it incurred after the cargo had allegedly been abandoned in France. Countless cases proclaim the desirability of settlements both in the courts and before the Commission, and there is no reason to deny the parties the freedom from the further costs of litigation that their settlement achieves. (See discussion in *Old Ben Coal Co. v. Sea-Land Service, Inc.*, 21 F.M.C. 506, 512 (ALJ 1978), F.M.C. notice of finality, 21 F.M.C. 505 (1978); *Tropical Shipping & Construction Co., Ltd. v. Network 807*, 25 SRR 1590, 1591 (ALJ, F.M.C. notice of finality, August 7, 1991.)

For the reasons stated, the settlement is approved and the complaint is dismissed with prejudice as requested.


Norman D. Kline
Administrative Law Judge