

Shipping - Tariff Rules - Tariff Rule Which Violates Section 22 of the Shipping Act Held Invalid: Kraft Foods, Inc. v. Federal Maritime Commission

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D. Transport

SHIPPING — TARIFF RULES — TARIFF RULE WHICH VIOLATES SECTION 22 OF THE SHIPPING ACT HELD INVALID.

Kraft Foods v. Federal Maritime Commission, 538 F.2d 445 (D.C. Cir. 1976)

This case involved a claim by Kraft Foods (Kraft) for reparation from Moore-McCormack Lines, Inc. (Moore-McCormack). Kraft shipped prepaid one hundred twelve cases of packaged foods from New York to Kenya via the carrier Moore-McCormack, Inc. The shipment arrived in Kenya on February 3, 1973 and was unloaded and accepted by Kraft's consignee, Supermarket Ltd. On February 12, 1973 Supermarket Ltd. informed Kraft that the freight had apparently been overcharged. Two weeks later Kraft notified the carrier of this error.

The dock receipt and bill of lading indicated that Moore-McCormack's transportation charges had been based on the shipment's measurement being 284 cubic feet; Kraft claimed the correct measurement was 145.01 cubic feet. Moore-McCormack insisted that its transportation charges were correct, and that in any case Kraft's claim was barred by Tariff Rule 16.¹ This rule requires claims based on errors in measurement to be presented to the carrier, in writing, before the shipment leaves the custody of the carrier.

The claim was initially brought before an administrative law judge who denied reparation to Kraft on the ground that it had failed to sustain its burden of proof on the merits. On review, the Federal Maritime Commission did not reach the merits, but denied reparation on the basis that the claim was indeed barred by Tariff Rule 16. Kraft, joined by the Department of Justice, petitioned for review of this decision challenging the validity of the tariff rule. The Court of Appeals held Tariff Rule 16 invalid; vacated the order of the Federal Maritime Commission, and remanded the case for further consideration on the merits.

1. Tariff Rule 16, South and East Africa Conference South Bound Freight Tariff No. 1, F.M.C. No. 2, Original p. 110: "Claims for adjustments of freight charges, if based on alleged errors in description, weight and/or measurement, will not be considered unless presented to the carrier in writing before the shipment involved leaves the custody of the carrier."

In reaching its decision, the court relied on Section 22 of the Shipping Act² which provides that any shipping claim may be filed within two years after a cause of action has accrued. The court pointed out that the Federal Maritime Commission itself has consistently relied on this section to hold unenforceable any tariff rule requiring either the notice or the filing of a claim in less than the two year period. Apparently in this case the Federal Maritime Commission attempted to distinguish Tariff Rule 16 on the basis that this rule does not specifically limit the two year period in which a shipper may bring an action. The court, however, concluded that Rule 16 as it *in effect* does limit the two year period for filing claims, establishes the time for filing as that period before the shipment leaves custody of the carrier. Thus Rule 16 infringes on the two year right granted by Section 22 of the Shipping Act.

This decision reaffirms that tariff rules which attempt to reduce the two year statute of limitations period for bringing shipping claims, as provided in Section 22 of the Shipping Act, will be held invalid.

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2. Section 22 of the Shipping Act, 46 U.S.C. §821 (1970), provides in pertinent part:

Any person may file with the Federal Maritime Commission a sworn complaint setting forth any violation of this chapter . . . and asking reparation for the injury, if any, caused thereby . . . the Commission, if the complaint is filed within two years after the cause of action accrued, may direct the payment, on or before a day named, of full reparation to the complainant for the injury caused by such violation.