



The Bottom Line

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CARRIER TO PAY CIVIL PENALTIES RESULTING FROM FMC INVESTIGATION

Summary

German carrier Hapag-Lloyd has been ordered to pay \$822,220 in civil penalties for 14 violations – \$58,730 for each offense – of the U.S. Shipping Act.

Background

Initially adopted to incentivize cargo owners in the efficient collection and return of containers, demurrage and detention fees have been the target of significant displeasure in recent years. As a result, the FMC began investigating port demurrage and detention practices in December 2016, responding to a petition following significant port disruption in 2015.

The FMC received more than 110 comments on the petition and held public hearings. On March 5, 2018, the FMC voted to commence a fact-finding regarding demurrage and detention practices, selecting Commissioner Rebecca Dye to lead the study.

On May 18, 2020, the Commission published an interpretive rule guiding what it may consider in assessing whether a detention practice is unjust or unreasonable. Fact-Finding #29 issued rules that adopt the point that when determining the reasonableness of demurrage and detention practices, the Commission will look to whether they meet their intended purpose as financial incentives to facilitate freight's rapid and efficient movement. For purposes of this rule, the terms demurrage and detention encompass any charges, including "per diem," assessed by ocean common carriers, marine terminal operators, or ocean transportation intermediaries related to maritime terminal space or shipping containers, not including freight charges.

In a typical container shipping transaction, the throughput of cargo and equipment is dependent on a motor carrier returning the empty container to a designated marine terminal or depot. To return an empty at most terminals in the ports of Los Angeles and Long Beach, a motor carrier must make an appointment with the terminal operating system and check the website to determine if that terminal accepts empties for that particular steamship line of the size and type of container in question. A motor carrier may be barred from returning an empty if there is a lack of appointments at the designated terminal. If a motor carrier is barred from returning an empty for more than the allotted free time, the VOCC will send an invoice to the motor carrier for each day beyond the free days to which the empty container was entitled. The motor carrier may either pass along the detention charge to its customer or dispute the charge. This dispute process and the resolution of such disputes are at issue here.

Current Status

On November 10, 2021, the Federal Maritime Commission's Bureau of Enforcement (BOE) issued an Order of Investigation and Hearing to determine whether Hapag-Lloyd, AG and Hapag-Lloyd (America) LLC violated Section 41102(c) of the Shipping Act by failing to establish, observe, and enforce just and reasonable regulations and practices

relating to its assessment of charges on containers when return locations with corresponding appointments were unavailable. Trucking company Golden State Logistics held that protested invoices from Hapag-Lloyd were routinely and summarily rejected despite supporting evidence that appointments to return empty containers were not available.

To find a violation of § 41102(c), the Commission consistently requires that the unreasonable practice was the standard, customary, and continuous manner in which the regulated common carrier was conducting business. Since the Order of Investigation & Hearing filing, two additional motor carriers have reported receiving similar rejections of detention disputes from Hapag-Lloyd, demonstrating that Hapag-Lloyd's practices are customarily applied to multiple entities. While motor carriers struggle to return empties and marine terminals struggle to maintain cargo fluidity, Hapag-Lloyd has contributed to the pain by imposing additional, purposeless fees. Their disregard for the published Interpretive Rule makes this violation known and willful, to which a higher penalty is applied.

Impact

The broader shipping public has expressed its frustration with demurrage and detention billing through a 2016 Petition and two Fact-Finding Investigations. The Commission addressed the fact pattern at issue here: "If an ocean carrier directs a trucker to return a container to a particular terminal, and that terminal refuses to accept the container, no amount of detention can incentivize its return." As a result of this case, the BOE found that Hapag-Lloyd knowingly and willfully violated the Shipping Act at 46 USC § 41102(c). Accordingly, it was recommended that Hapag-Lloyd be assessed a civil penalty of not less than \$16,500,000. In addition, they were ordered to cease and desist from violating Section 41102(c) by refusing to waive detention charges on motor carriers when presented with evidence that containers could not be returned due to exigent circumstances. Eventually, the BOE accepted that the facts presented did not provide the burden of proof for specific days that detention fees were levied and thus reduced the overall penalty to \$822,220.

An increasing number of shippers are filing complaints alleging unreasonable detention and demurrage charges, and the FMC has clarified its policies to encourage them, including by reassuring shippers that carriers can't retaliate against them.

RESOURCES

[FMC Gets Serious on Carrier Competition, Bringing in Dept. of Justice](#) (The Maritime Executive)

[Fact Finding Investigation No.29 Interim Recommendations](#) (Federal Maritime Commission)

[Hapag-Lloyd A.G. and Hapag-Lloyd \(America\) LLC - Possible Violations of 46 USC 41102\(c\)](#) (Federal Maritime Commission)

[First Case Under Shipping Fee Rule Yields Fine Against Carrier](#) (Sandler, Travis & Rosenberg, P.A.)

[Hapag-Lloyd Fined After Levying 'Willful' and 'Erroneous' D&D Charges](#) (The LoadStar)