FEDERAL MARITIME COMMISSION

TOYOTA DE PUERTO RICO, CORP., *Complainant,* v. PUERTO RICO PORTS AUTHORITY, CROWLEY PUERTO RICO SERVICES, INC., AND OCEANIC GENERAL AGENCY, INC., *Respondents.*	Docket No. 19-02

Served: July 30, 2021

BY THE COMMISSION: Daniel B. MAFFEI, Chairman, Rebecca F. DYE, Michael A. KHOURI, Louis E. SOLA, Carl W. BENTZEL, Commissioners.

Order Affirming Initial Decision

This case is before the Commission on a narrow issue raised by Respondent Puerto Rico Ports Authority (PRPA) in exceptions to the Initial Decision (I.D.) dismissing the complaint with prejudice. Complainant Toyota de Puerto Rico, Corp. (Toyota) alleged that PRPA, which operates the Port of San Juan (Port), violated 46 U.S.C. §§ 41102(c), 41104 and 41106 by collecting an enhanced security fee from Toyota to fund PRPA's scanning

program for containerized cargo. Toyota's objection was that PRPA assessed the fee on non-containerized vehicles Toyota unloaded at the Port that were not subject to the scanning program. The Administrative Law Judge (ALJ) upheld PRPA's assertion that it operates the scanning program as an arm of the Commonwealth of Puerto Rico which entitles it to sovereign immunity and dismissed the complaint for lack of jurisdiction. Neither party challenges the basis for the ALJ's ruling or the dismissal.

PRPA filed exceptions solely to correct what it asserts is a misstatement in the Initial Decision that characterizes as dicta the First Circuit Court of Appeals' ruling on PRPA's sovereign immunity defense in *Dantzler, Inc. v. Empresas Berrios Inventory & Operations, Inc*., 958 F.3d 38 (1st. Cir. 2020). PRPA asks the Commission to amend the Initial Decision to clarify that *Dantzler* upheld PRPA's sovereign immunity defense and relied on it as alternative grounds for dismissal so that ruling's preclusive effect is not jeopardized. Puerto Rico Ports Authority's Brief Exception (PRPA Exceptions) (Apr. 21, 2021).

For the reasons set forth below, the ALJ did not err in referring to *Dantzler's* sovereign immunity discussion as dicta, and the Initial Decision acknowledges *Dantzler's* reliance on sovereign immunity as alternative grounds for dismissal, so no correction is necessary. The Commission affirms the Initial Decision.

I. BACKGROUND

A. Factual Background

In the wake of the terrorist attacks on September 11, 2001, Congress enacted legislation[1] to bolster port security. Puerto Rico followed suit by enacting Law 12-2008, 23 L.P.R.A. §§ 3221 *et seq*., which called for improved safety protocols at Puerto Rico ports.

[1]*See* Maritime Transportation Security Act, 46 U.S.C. §§ 70101 *et seq*.; Security and Accountability for Every Port Act, 6 U.S.C. §§ 901 *et seq.*

Compl. ¶¶ 14-15. PRPA is a public corporation responsible for managing port facilities at San Juan, including terminals that receive containerized cargo. *Id.* ¶ 8. Under authority granted by Law 12-2008, PRPA adopted Resolution 8067[2] which required all inbound cargo containers unloaded at the Port to undergo scanning and imaging. *Id.* ¶¶ 16-17. Scanning served two purposes--it detected unreported taxable goods and improved port security and safety. *Id.* ¶ 17. Scanning inspection lanes were only installed at terminal facilities serviced by three shipping lines, Crowley Puerto Rico Services, Inc. (Crowley), Horizon Lines, and Sea Star Lines. *Id.* ¶ 18.

PRPA funded the scanning program through an enhanced security fee based on cargo type and weight that was imposed on all inbound cargo unloaded at the Port. *Id.* ¶¶ 19-23. Although vehicles and other non-containerized (bulk) cargo were not scanned, they were still subject to the enhanced security fee used to fund the scanning program. *Id.* ¶¶ 24-25.[3] Toyota alleges that it paid Crowley and Oceanic General Agency Inc. (Oceanic) $1.16 million in enhanced security fees from 2012 to 2017 on unscanned vehicles arriving at the Port. *Id*. ¶¶ 28-29.

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[2]Regulation No. 8067 had a sunset clause which provided that authorization for the scanning program would expire on June 30, 2014, unless the original term was extended, modified, or amended before that date. *Dantzler,* 958 F.3d at 44. Although authorization for the program was not extended, PRPA continued operating it beyond the expiration date and was subsequently ordered to cease and desist by the Puerto Rico Court of Appeals. *Id.* (citing *Camara de Mercadeo, Industria y Distribucion de Alimentos v. Autoridad de los Puertos, Civ. No. 2015-002,* 2016 PR App. LEXIS 4771 (P.R. Ct. App. Oct. 28, 2016)).

[3]In October 2013, the U.S. District Court for the District of Puerto Rico enjoined PRPA from collecting "enhanced security fees from shipping operators that are not being scanned pursuant to Regulation No. 8067." *De Mercadeo v.Vazquez*, Civ. No. 11-1978, 2013 U.S. Dist. LEXIS 150275, *44 (D.P.R. Oct. 16, 2013). The First Circuit affirmed that decision and also upheld the constitutionality of PRPA's scanning program as applied to shipping operators who can access the scanning equipment. *Industria Y Distribuction de Alimentos v. Suarez & Co*., 797 F.3d 141, 143-45 (1st Cir. 2015).

B. Procedural History

Toyota filed this action in February 2019 seeking $1.16 million in reparations for Respondents' alleged Shipping Act violations in collecting enhanced security fees on unscanned vehicles. Early in the proceedings, the claims against Crowley and Oceanic were dismissed by stipulation. The ALJ denied PRPA's motion to dismiss the complaint based on standing, sovereign immunity, and other defenses. In addressing PRPA's sovereign immunity defense, the ALJ stated that a ruling would be premature since that issue was then before the First Circuit in *Dantzler* and the circuits were split on the issue.[4] I.D. at 9. After discovery, the ALJ stayed the case pending a ruling in *Dantzler*, and lifted the stay when the First Circuit issued its decision in May 2020.

Following supplemental briefing, the ALJ issued an Initial Decision on March 30, 2021, and determined that PRPA functions as an arm of the Commonwealth of Puerto Rico in managing and funding the scanning program and dismissed the claims as barred by sovereign immunity. Toyota filed a notice declaring it did not intend to file exceptions. PRPA timely filed exceptions asking the Commission to clarify that *Dantzler's* sovereign immunity discussion is not dicta, and Toyota has not opposed that request.

II. DISCUSSION

A. Legal Standards

When the Commission reviews exceptions to an ALJ's Initial Decision, it has "all the powers which it would have in making the initial decision." 46 C.F.R. § 502.227(a)(6). The Commission therefore reviews the ALJ's findings de novo. *Id.; see*

[4] *Compare Puerto Rico Ports Auth. v. Fed. Mar. Comm'n* (*Ports Auth.*), 531 F.3d 868 (D.C. Cir. 2008) (PRPA qualified for sovereign immunity in leasing marine terminal facilities), *with Grajales v. Puerto Rico Ports Auth*., 831 F.3d 11, 30 (1st Cir. 2016) (PRPA not entitled to sovereign immunity in employment discrimination suit).

also Maher Terminals, LLC v. Port Auth. of N.Y. & N.J., FMC Docket No. 12-02, 2015 FMC LEXIS 43, at *110-*11 (FMC Dec. 18, 2015). Respondents claim that they are entitled to sovereign immunity and therefore bear the burden of proving that they qualify as an arm of the state. *Ceres Marine Terminals, Inc. v. Maryland Port Admin.*, Docket No. 94-01, 2004 FMC LEXIS 1, *31 (FMC Aug. 16, 2004).

B. Initial Decision's Characterization of *Dantzler*

PRPA filed exceptions solely because it objected to the ALJ describing the *Dantzler* discussion of sovereign immunity in a footnote as "dicta." *See* I.D. at 8 ("Although this is dicta in a footnote ruling on a motion to dismiss, it is nonetheless relevant and persuasive authority."). PRPA argues that the *Dantzler* footnote is not dicta but an "alternative ruling by the First Circuit Court of Appeals and a second grounds for dismissal." PRPA Exceptions at 1. According to PRPA, an alternative ruling has "preclusive effect" on the *Dantzler* parties and the ALJ characterizing it as dicta could have unintended consequences for the parties in *Dantzler*.

The ALJ did not commit reversible error by characterizing the *Dantzler* sovereign immunity discussion at one point as dicta – that is, reading the Initial Decision as a whole, the ALJ accurately described *Dantzler's* treatment of the issue. Statements that are not necessary to the disposition of the case are dicta. *Lupien v. City of Marlborough*, 387 F.3d 83, 89 (1st Cir. 2004); *Urban Health Care Coal. v. Sebelius*, 853 F. Supp. 2d 101, 112 n. 10 (D.D.C. 2012). *Dantzler* did not address sovereign immunity until *after* the court had determined that the claims challenging PRPA's enhanced security fees had to be dismissed for lack of jurisdiction. *Dantzler*, 958 F.3d at 50. Plaintiffs in *Dantzler* were shippers who were indirectly affected when carriers and agents passed the enhanced security fees along to them. *Id*. at 47-48. PRPA argued that plaintiffs

failed to establish Article III standing and the court agreed.[5] *Id.* at 47-49. The court then stated the following in a footnote:

> While our conclusion makes it unnecessary to reach PRPA's argument that it is entitled to sovereign immunity, we note that given the analytical framework set forth in *Grajales* . . . combined with the fact that the cargo scanning program was implemented to further the governmental purposes of improving national security and ensuring proper tax collection, we find it difficult to see how PRPA cannot be cloaked with sovereign immunity here in its performance of an inspection function that is governmental in nature . . . We view this, thus, as an alternative ground supporting our ultimate conclusion vacating and remanding the district court's order and partial judgment.

Id. at 50 n. 6 (citations omitted). By acknowledging that it could dispose of the case without deciding sovereign immunity, the court signaled that its statements on that subject were dicta. So, the ALJ has accurately described *Dantzler's* treatment of the issue.

PRPA's stated concern that the reference to dicta could have unintended consequences for the parties in *Dantzler* is not well-founded. *See* PRPA Exceptions at 2. *Dantzler's* statements on sovereign immunity are plainly worded. Another tribunal assessing the preclusive or persuasive effect of the *Dantzler* sovereign immunity discussion is likely to look at what the First Circuit said rather than how the ALJ or Commission characterized what the

[5]Article III is derived from the constitutional restriction limiting federal courts to "actual cases or controversies" and requires plaintiffs to establish three elements: (1) "an injury in fact which is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical'"; (2) "'fairly traceable to the challenged action,'"; and (3) likely to be "'redressed by a favorable decision.'" *Dantzler*, 958 F.3d at 46-47 (citing *Massachusetts v. U.S. Dep't of Health & Human Serv*s., 923 F.3d 209, 221-22 (1st Cir. 2019).

court said. Further, the clarification that PRPA seeks is already in the Initial Decision which quotes *Dantzler* verbatim including the reference to sovereign immunity as alternative grounds for dismissal. I.D. at 5, 8; *see also id*. at 11 (stating that "[a]lthough the First Circuit found PRPA to be cloaked with sovereign immunity in *Dantzler*, because this was an alternative ground, there is limited analysis of the relevant factors"). Also, while noting that *Dantzler's* treatment of the issue is "dicta in a footnote ruling on a motion to dismiss," the ALJ nonetheless relied on it as "relevant and persuasive authority." *Id.* at 8.

Because the Initial Decision accurately addressed *Dantzler's* treatment of PRPA's sovereign immunity defense, PRPA's exceptions are denied.

III. CONCLUSION

The Commission affirms the Initial Decision, dismisses the complaint and discontinues the proceeding.

By the Commission.

Rachel E. Dickon
Secretary