



Airforwards Association Response to Docket No. 19-05

October 29, 2019

As the primary trade association for the US freight forwarder and logistics industry, the Airforwards Association (AfA) members range from small businesses employing fewer than 20 people to large companies with well over 1,000 employees.

The Airforwards Association submits these comments in response to the interpretive rule, Docket No. 19-05 *Interpretive Rule on Demurrage and Detention Under the Shipping Act* concerning when demurrage and detention charges may be found to be unreasonable in violation of Section 46 USC. 41102, (c).

The Airforwards Association fundamentally believes in the essential premise that detention and demurrage charges were intended to serve as financial incentives to encourage the productive use of containers and terminal space. However, in situations where cargo cannot be timely retrieved or if empty containers returned to the ports for reasons that are not the fault of the forwarder, cargo interest, or trucker, such fees must not be applicable. Further, such costs should also not be applicable where carrier detention and demurrage tariffs and policies do not provide for the suspension of charges when those charges either will not or cannot accomplish their purpose. If brought to the FMC's attention, the imposition of fees would likely be found to be unreasonable in violation of the *Interpretive Rule on Demurrage and Detention Under the Shipping Act*.

Further, AfA believes that Demurrage and Detention policies published by the carrier include pertinent information conveyed transparently and reasonably. Terminology about such transparency should be clear, concise, and consistent with standard meaning.

Carriers should be required to issue a formal Notice of Availability that would be sufficient to apprise the forwarder, cargo interest, and trucker that the container is available. Such Notice should be transmitted utilizing readily available electronic message transmission methods that include freely available time and date of transmission information. The use of "push notification" technology should be implemented by the carrier to convey to the forwarder, cargo interest, and trucker any change of status of the container.

Further, no demurrage or detention fees should be assessed by the carrier for container storage fees caused by late-arriving vessels or when a government agency imposes an inspection of the container. Such holds are not within the control of the forwarder, cargo interest or trucker, and any related fees assessed must allow for mitigation of those costs.

Carriers must establish, maintain, and implement dispute resolution policies that, at a minimum:

- Provide clear time frames for raising, responding to and resolving disputes
- Clearly explain the process for disputing these charges
- Have a dedicated dispute resolution staff
- Allow priority appointments when the free time has expired
- Have a mechanism to ensure that responses occur in response to requests for free time extensions or waiver of these charges
- Have a process for elevating disputes after the carrier's initial response
- Allow a forwarder, cargo interest or trucker to do business with a carrier during the pendency of a dispute
- Detail the type of evidence that would be necessary to satisfy their dispute resolution process. For example, what kind of information should truckers be required to have to demonstrate that their attempts to retrieve cargo; and should truckers be required to have log records tracking their efforts to make appointments.

Finally, today, there is a lack of consistency or understanding in the industry as to what fees apply. In many cases, there are duplicative charges from the carriers and Marine Terminal Operators for the same cost. Therefore, tariffs should contain precise terminology defining what is demurrage as compared to detention.

The Airforwarders Association remains committed to the smooth flow of commerce abiding by policies and rules implemented in a fair and transparent environment. We look forward to providing any further feedback to the Federal Maritime Commission as requested.

Sincerely,

A handwritten signature in black ink, appearing to read "Brandon L. Fried". The signature is fluid and cursive, with the first name "Brandon" and last name "Fried" clearly legible.

Brandon L. Fried
Executive Director