

FEDERAL MARITIME COMMISSION
Office of the Administrative Law Judges

TERENO SDN BHD, *Claimant*

v.

C.H. ROBINSON INTERNATIONAL, INC., *Respondent*.

DOCKET NO. 1972(I)

Served: January 27, 2022

BEFORE: Theresa DIKE, *Small Claims Officer*.

INITIAL DECISION¹

I. INTRODUCTION

Claimant Tereno Sdn Bhd (“Tereno”) initiated this proceeding by filing a complaint against Respondent C. H. Robinson International, Inc. (“C.H. Robinson”), alleging that C.H. Robinson violated 46 U.S.C. § 41102(c) by charging Claimant for demurrage that Claimant alleges accrued due to C.H. Robinson’s failure to timely respond to a request from the Customs and Border Protection (“CBP”). Claimant further alleges that by charging the demurrage, Respondent acted contrary to the Commission’s guidance in the interpretive rule on demurrage and detention charges. C.H. Robinson denies the allegations and asserts that the demurrage charge was imposed by the ocean common carrier that transported Claimant’s cargo and that it simply passed through the charge to Claimant.

A. Background and Procedural History

Claimant Tereno hired Respondent C.H. Robinson, an FMC-licensed ocean transportation intermediary (“OTI”), to deliver Claimant’s cargo consisting of instant coffee and instant noodles from Malaysia to the United States and tendered the shipment to C.H. Robinson on March 12, 2021. Complaint Pg. 1 at ¶¶ 2, 4; Answer Pg. 4 at ¶¶ 7, 8. C.H. Robinson coloaded the shipment with Vanguard Logistics (“Vanguard”), an FMC-licensed ocean transportation intermediary. Answer Pg. 4 at ¶ 7; C.H. Robinson Supplemental Information Ex. 1, Pg. 1. Vanguard shipped the container through Orient Overseas Container Line (“OOCL”), an ocean common carrier. Answer Pg. 6 at ¶ 36. The free time for the cargo at port was to begin on April 26, 2021, and end on April 29, 2021. Complaint Pg. 1 at ¶ 4; Answer Pg. 4 at ¶ 7. On March 25, 2021, CBP put a hold on the shipment prior to its arrival to the United States at the request of the U.S. Department of Agriculture (“USDA”). Complaint Pg.2 at ¶ 12; Answer Pg. 5

¹ Pursuant to 46 C.F.R. § 502.304(g), this decision will become final unless the Commission elects to review it within 30 days of service.

at ¶ 29. CBP released the hold on the container on May 17, 2021, and OOCL released the container for pick up on May 18, 2021. Answer Pg. 6 at ¶ 36. Because the free time for the container expired on April 29, 2021, OOCL imposed demurrage charges totaling \$8,205.00, on the shipment from April 29, 2021, to May 18, 2021, which C.H. Robinson passed through to Tereno. Complaint Pg. 1 at ¶ 7; Answer Pg. 6 at ¶ 37. Tereno paid the demurrage charges under protest and initiated this proceeding against C.H. Robinson to recover the demurrage payment, asserting that the demurrage charges would not have accrued but for C.H. Robinson's failure to respond to CBP when the cargo was still in free time. Complaint Pg. 4 at ¶¶ 23-24.

On September 3, 2021, the Secretary of the Federal Maritime Commission ("FMC" or "Commission") issued a Notice of Filing of Small Claims Complaint and Assignment stating that Tereno had filed an informal complaint against C.H. Robinson and instructing C.H. Robinson to file a response to the complaint by September 28, 2021, and indicate whether it consented to the use of the Commission's informal procedures at Subpart S for adjudication of the complaint. On September 17, 2021, C.H. Robinson filed a response to the complaint and consented to the use of the informal procedures. On September 20, 2021, the Chief Administrative Law Judge assigned this proceeding to the undersigned for adjudication.

Pursuant to 46 C.F.R. § 502.301(a) and (e) of the Commission's Rules, which authorize the Small Claims Officer ("SCO") in a Subpart S proceeding to, if deemed necessary, request additional documents or information from the parties, on September 28, 2021, an order was issued directing the parties to submit any discovery requests that would aid them in establishing their claims and defenses by October 28, 2021. On September 29, 2021, Tereno responded that it did not require additional documents from C.H. Robinson. On October 20, 2021, C.H. Robinson responded that it did not require any additional documents from Tereno. On October 28, 2021, an order requesting additional information and documents was issued, directing the parties to provide the requested information by November 29, 2021, and for any party wishing to file a response to the opposing party's submission to do so by December 14, 2021. Order to Submit Supplemental Information, October 28, 2021. Tereno submitted its response ("Tereno Supplemental Information") on November 15, 2021. C.H. Robinson requested additional time to respond and was granted until December 29, 2021. On December 6, 2021, C.H. Robinson submitted its response ("C. H. Robinson Supplemental Information"), and on December 15, 2021, a reply to the Tereno Supplemental Information. Tereno did not file a reply.

As discussed in greater detail below, it is found that the evidence does not demonstrate that Respondent violated section 41102(c), and the complaint is dismissed with prejudice.

B. Argument of the Parties

Tereno alleges that C.H. Robinson failed to respond to CBP's request for documents for the shipment between April 26, 2021, and April 29, 2021, when the cargo was still in free time, causing the shipment to incur demurrage charges. Complaint at Pg. 4 ¶ 23. Tereno also asserts that C.H. Robinson was made aware of the customs hold on April 26, 2021, but failed to inform Tereno's customs broker, Clearit, of the hold until May 7, 2021, and failed to provide all information needed to clear the goods, resulting in inability to clear the cargo within the allotted free time and accrual of demurrage charges. Tereno Supplemental Information Pg. 1. at ¶ 1(a)-(e). Tereno claims that it timely submitted all documents for the cargo and should not be liable

for any demurrage charges caused by the failure to timely submit documents to clear the cargo. Complaint Pg. 3 at ¶19. Tereno states that Clearit and Respondent are passing the blame to each other and that it is caught “in the cross-fire.” Complaint Pg. 3 at ¶ 20.

Tereno states that the Commission’s Interpretive Rule on Demurrage and Detention under the Shipping Act “provides that importers, exporters, intermediaries, and truckers should not be penalized by demurrage and detention practices when circumstances are such that they cannot retrieve containers from, or return containers to, marine terminals because under those circumstances the charges cannot serve their incentive function” and thus C.H. Robinson erred by forcing Tereno to pay the demurrage charge. Tereno Supplemental Information Pg. 2 at ¶ 5.

C.H. Robinson denies that the demurrage charges accrued because it failed to timely respond to CBP’s request and avers that the demurrage charges were beyond its control to avert. Answer Pgs. 3-4, 5 at ¶¶ 6, 21. C.H. Robinson asserts moreover, that although it was not the customs broker for the shipment and was not responsible for clearing the shipment it nevertheless “made every timely effort to reach CBP, but CBP was not timely in responding causing additional demurrage charges.” C.H. Robinson Supplemental Information at Pg.1.

C.H. Robinson states that CBP notified Vanguard of the hold on April 26, 2021, but did not specify the reason for the hold. It explains that on April 27, 2021, Vanguard sent the container manifest to CBP and specifically asked CBP “if the hold was ‘*just a paper review*’ in which case the manifest was needed (and was attached) or was it a ‘*hold with exam required*’ in which case Vanguard would move the shipment ‘*to CES for the exam(s) . . . without paying extra demurrage on the pier*’” but CBP did not immediately respond and Vanguard then sent two other emails on May 3, 2021, and on May 7, 2021, before CBP finally responded. Answer Pgs. 5-6 at ¶¶ 29-31; C.H. Robinson Supplemental Information at Pg. 1. C.H. Robinson states that when CBP finally responded, requesting documents for the shipment, it timely forwarded CBP’s email to Tereno and Clearit, Tereno’s customs broker for response. Answer Pg. 6 at ¶ 32 and Answer at Attachments 1-3. C.H. Robinson states that it followed up with Clearit regarding the status of the hold on the container and when the container was released, picked it up at the earliest time it could. Answer Pg. 6 at ¶¶ 34-35. C.H. Robinson states that OOCL imposed demurrage charges on the cargo from April 29, 2021, through May 18, 2021, and that the \$8,205.00 it invoiced to Tereno for demurrage was a pass through of the demurrage charges imposed by OOCL, without any mark-up. Answer Pg. 6 at ¶ 37; C.H. Robinson Supplemental Information Ex.1. C.H. Robinson asserts that it rightfully collected the demurrage payment from Tereno.

II. PERTINENT FACTS ESTABLISHED BY THE RECORD (“PF”)

1. Claimant Tereno is a corporation and a seller in online marketplaces such as Amazon and Ebay, with its principal place of business at Selangor, Malaysia. Complaint pg. 1 at ¶ 1.
2. Respondent C.H. Robinson is an FMC-licensed OTI (No. 003282NF), licensed both as an ocean freight forwarder and a non-vessel-operating common carrier, with its principal place of business at Eden Prairie, Minnesota. Answer Pg. 3 at ¶ 5; <https://www2.fmc.gov/oti/FF.aspx>.

3. C.H. Robinson's office located in Torrance, California handled the shipment at issue and communicated with Tereno. Complaint Pg. 1 at ¶ 2; Answer Pg. 3 at ¶ 5.
4. Tereno hired C.H. Robinson through Freightos, a freight booking marketplace, to deliver Tereno's cargo consisting of instant coffee and instant noodles from Port Klang, Malaysia, to the United States and tendered the cargo to C.H. Robinson on March 12, 2021. Complaint Pgs. 1, 2 at ¶¶ 4, 9; Answer Pg. 4 at ¶¶ 7, 9; Tereno Supplemental Information Attachment C (Freightos Proforma Invoice).
5. On March 23, 2021, C.H. Robinson issued bill of lading No. 348763836KUL for the shipment under its dba name CHRistal Lines. Complaint Ex. 1²; C.H. Robinson Supplemental Information at Ex. 2³.
6. C.H. Robinson coloaded the shipment with Vanguard, an FMC-licensed OTI (No. 019927), which issued house bill of lading PKGNYC1154427V for the shipment on March 23, 2021. Answer Pg. 4 at ¶ 7; C.H. Robinson Supplemental Information at Ex. 1.
7. Vanguard shipped the cargo through OOCL, which issued Bill of Lading No. OOLU2655427850 for the shipment. Answer Pg. 6 at ¶ 36; Answer at Attachment # 4.
8. On March 25, 2021, the container was put on hold by CBP. C.H. Robinson Supplemental Information at Ex. 4, Pg. 2 (Vanguard document titled "HOLD REMOVED/NEW ETA – Arrival Notice & Invoice" ("Vanguard Invoice")).
9. On April 24, 2021, the container arrived in New York. Complaint Pg. 2 at ¶ 14; Answer Pg. 4 at ¶ 16; Tereno Supplemental Information at Attachment B.
10. On April 26, 2021, CBP notified Vanguard that a hold had been placed on the container at the request of USDA and requested the manifest for the container. Answer Pg. 5 at ¶ 29; Answer at Attachment #1, Pg. 1.
11. On April 27, 2021, Vanguard responded to CBP, stating:

We are the NVOCC and CFS for the subject FAK container If the hold is just for paper review, please kindly find the container manifest as attached, and advise ASAP which cargo or AMS# if you needed more details, so we could check it with the cnee/broker/importer there soon. If the hold is actual exam required, kindly help to check and update the IX at AMS ASAP for the CES to move it to CES for exam(s) there soon without paying extra demurrage at the pier. If not, kindly remove the hold for us to

² Claimant did not number its exhibits. For ease of reference each exhibit has been numbered sequentially beginning with "Complaint Ex. 1," for the first exhibit.

³ C.H. Robinson did not number its supplemental exhibits. For ease of reference, each exhibit has been numbered sequentially beginning with "C.H. Robinson Supplemental Information Ex. 1," for the first exhibit.

move it under PTT back to our CFS (F587) here, and advise which AMS-HBL# is needed to held up at the CFS for your further exam here if any.

C.H. Robinson Supplemental Information Ex. 6, Email from Vanguard Import Coordinator to CBP, with manifest attached, dated April 27, 2021. See also C.H. Robinson Supplemental Information Ex. 11 (container manifest).

12. On May 3, 2021, Vanguard resent the above email to CBP. C.H. Robinson Supplemental Information Ex. 7 (Email from Vanguard Import Coordinator to CBP, stating “Re-sending.”).

13. On May 7, 2021, Vanguard sent a third email to CBP stating:

3rd URGENT REQUEST.

Dear CBP Inspectors,

Please urgent help to check and advise the below request ASAP.

C.H. Robinson Supplemental Information Ex. 8 at Pg. 1 (Email from Vanguard Import Coordinator to CBP).

14. On May 7, 2021, CBP responded to Vanguard, stating: “We need the documents uploaded in DIS for HBL # CHSL-348763836KUL.” C.H. Robinson Supplemental Information at Ex. 9, Pg. 1 (Email from CBP Agriculture Specialist, Tactical Operations Division, Port of New York/Newark, to Vanguard).

15. On May 7, 2021, C.H. Robinson forwarded the email from CBP to Clearit and Freightos. Complaint at Pg. 15; Answer at Attachment #3, Pg. 1; Tereno Supplemental Information at Attachment D.

16. On May 8, 2021, C.H. Robinson advised Tereno, “Your shipment is on USDA Hold. Have forwarded Customs email to your Customs Broker Clearit. Exam related charges will get billed, once available.” Complaint at Pg. 15 (email from Kratu Pandya, C.H. Robinson Senior Global Forwarding Agent, to Lai Sai Thong (Tereno Representative)).

17. Lai Sai Thong from Tereno responded: “Thanks for the update, please let me know if you need anything else from us.” Complaint at Pg. 15 (email from Lai Sai Thong to Kratu Pandya, cc: Clearit and Vanguard representatives).

18. On May 13, 2021, Kratu Pandya from C.H. Robinson wrote:

Hello Jacky,

We have advised Customs Broker Clearit to contact US Customs since your initial email about the USDA Hold and I have also sent email to Customs and provided CI & PL.

Hello Clearit:

You will need to be more active, as you are the designated Customs Broker and will need to contact Customs NY-NWKPROBRES@cbp.dhs.gov on priority basis. Please note all the storage charges due will be Customer's responsibility.

Complaint at Pg. 15 (email from Kratu Pandya to Jacky, Vanguard representative, and other recipients including Clearit representatives) (emphasis in original).

19. On May 13, 2021, Lai Sai Thong from Tereno wrote:

Hi Mary,

This is Lai from Tereno. Are you the representative from Clearit OR anyone from Clearit can response immediately? What do you mean you need the "IT bond information and arrival notice"? We have all documents submitted before my shipment arrive and I believe Kratu [from C.H. Robinson] has provided you the required documents. Please help to contact Customs NY-NWKPROBRES@cbp.dhs.gov on priority basis and work with Jacky [from Vanguard] to have my items clear from custom ASAP.

Complaint at Pg. 15 (email from Lai Sai Thong from Tereno to Kratu Pandya from C.H. Robinson, Mary from Clearit, and other recipients including Clearit and Vanguard representatives).

20. On May 15, 2021, Tereno sent another email to Clearit, inquiring: "Any progress on my shipment? This is food item carried expiry, we need the goods deliver ASAP. Your immediate action is greatly appreciated. Thank you. Complaint at Pg. 16 (email from Lai Sai Thong to Clearit representatives and other recipients, including C.H. Robinson, Vanguard and Freightos representatives).
21. CBP released its hold on the container on Thursday, May 17, 2021. C.H. Robinson Supplemental Information at Ex. 4, Pg. 2 (Vanguard Invoice).
22. OOCL released its hold on the container on Monday, May 17, 2021. C.H. Robinson Supplemental Information at Ex. 4, Pg. 2 (Vanguard Invoice); C.H. Robinson Supplemental Information at Ex. 5 (Invoice for Demurrage charges from OOCL to Vanguard).
23. OOCL imposed demurrage charges of \$8,205, on the container from April 29, 2021, through May 18, 2021. Answer at Attachment #4 (Invoice for Demurrage charges from OOCL to Vanguard).
24. On May 18, Vanguard passed through the demurrage charges to C.H. Robinson. C.H. Robinson Supplemental Information at Ex. 4 (Vanguard document titled "HOLD REMOVED/NEW ETA – Arrival Notice & Invoice").
25. C.H. Robinson picked up the container on May 18, 2021, paid Vanguard for the demurrage charges on May 19, 2021, and passed through the charges to Tereno for

payment. Answer at ¶ 35; C. H. Robinson Supplemental Information at Ex. 3 (EFT from C.H. Robinson to Vanguard).

26. Tereno paid the demurrage charges to C.H. Robinson on June 16, 2021. Complaint at 24.

III. DISCUSSION

A. Controlling Authority

Respondent C.H. Robinson is an ocean transportation intermediary, licensed both as an ocean freight forwarder and a non-vessel-operating common carrier. “The term ‘ocean freight forwarder’ means a person that (A) in the United States, dispatches shipments from the United States via a common carrier and books or otherwise arranges space for those shipments on behalf of shippers; and (B) processes the documentation or performs related activities incident to those shipments. 46 U.S.C. § 40102(19). A non-vessel-operating-common carrier is “a common carrier that does not operate the vessels by which the ocean transportation is provided and is a shipper in its relationship with ocean common carrier.” 46 U.S.C. § 40102(17). An ocean common carrier is a vessel operating common carrier. 46 U.S.C. § 40102(18).

A “common carrier” is a person that –

- (i) holds itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation;
 - (ii) assumes responsibility for the transportation from the port or point of receipt to the port or point of destination; and
 - (iii) uses, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country
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46 U.S.C. § 40102(7).

Claimant alleges that Respondents violated section 41102(c) of the Shipping Act. Section 41102(c) provides that: “A common carrier, marine terminal operator, or ocean transportation intermediary may not fail to establish, observe and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.” 46 U.S.C. § 41102(c).

To establish a successful claim for reparations under section 41102(c), the claimant must demonstrate that:

- (a) The respondent is an ocean common carrier, marine terminal operator, or ocean transportation intermediary;
- (b) The claimed acts or omissions of the regulated entity are occurring on a normal, customary, and continuous basis;

- (c) The practice or regulation relates to or is connected with receiving, handling, storing, or delivering property;
- (d) The practice or regulation is unjust or unreasonable; and
- (e) The practice or regulation is the proximate cause of the claimed loss.

46 C.F.R. § 545.4.

B. Evidence and Burden of Proof.

“In all cases governed by the requirements of the Administrative Procedure Act, 5 U.S.C. 556(d), the burden of proof is on the proponent of the motion or the order.” 46 C.F.R. § 502.203. Thus, a claimant alleging a violation of the Shipping Act bears the burden of proving its allegations against the respondent. The term, “burden of proof” is understood to mean “the burden of persuasion.” *Director v. Greenwich Collieries*, 512 U.S. 267, 276 (1994). The party bearing the burden of persuasion must prove its case by a preponderance of the evidence. *See Steadman v. SEC*, 450 U.S. 91, 102 (1981). When the party with the burden of persuasion produces sufficient evidence (characterized as a prima facie case), the burden of production shifts to the other party to produce evidence rebutting that case. *In re South Carolina State Ports Auth. for Declaratory Order*, 27 S.R.R. 1137, 1161 (FMC 1997). *See also Steadman*, 450 U.S. at 101 (“Where a party having the burden of proceeding has come forward with a prima facie or substantial case, he will prevail unless his evidence is discredited or rebutted.”). When direct evidence is unavailable inferences may be drawn from certain facts and circumstantial evidence may be sufficient so long as the fact finder does not rely on mere speculation. *Waterman S.S. Corp v. General Foundries, Inc.*, 26 S.R.R. 1173, 1180 (ALJ 1993). If the evidence produced by both parties is evenly balanced the party with the burden of persuasion will not prevail. *See Greenwich Collieries*, 512 U.S. at 281.

C. Claimant Fails to Demonstrate the Elements Required to Find a Violation of Section 41102(c).

1. Criteria Required to Prevail in a Section 41102(c) Claim for Reparations

Claimant alleges that Respondent violated section 41102(c), which states that common carriers, marine terminal operators, and ocean transportation intermediaries may not fail to establish, observe and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.

To succeed in its claim for reparations, Claimant must demonstrate that five elements are present - 1) Respondent is an ocean common carrier, marine terminal operator, or ocean transportation intermediary; 2) the alleged illegal conduct is “occurring on a normal, customary, and continuous basis;” 3) the practice or regulation in question relates to or is connected with receiving, handling, storing or delivering property; 4) the practice or regulation in question is unjust or unreasonable; and, 5) the practice or regulation in question is the proximate cause of the loss Claimant alleges to have suffered. *See* 46 U.S.C. § 41102(c) and 46 C.F.R. § 545.4(d). As discussed below, Claimant fails to demonstrate that the alleged conduct is occurring on a

normal, customary, and continuous basis. Claimant also fails to prove that the practice in dispute is unjust and unreasonable.

a. Respondent is an Ocean Transportation Intermediary

Respondent C.H. Robinson is an FMC-licensed ocean transportation intermediary (No. 003282NF), licensed both as an ocean freight forwarder and a non-vessel-operating common carrier. PF 2. Accordingly, the first element required to find a violation of section 41102(c) is present.

b. Claimant Fails to Prove that the Practice in Dispute is Unjust and Unreasonable

Claimant alleges that Respondent failed to timely respond to CBP's request for documents for Claimant's shipment, and failed to timely inform Claimant's customs broker, Clearit, of the customs hold on the shipment and provide all information needed to clear the shipment, resulting in the inability to clear the cargo within its allotted free time and the accrual of demurrage charges on the shipment. Complaint at Pg. 4, ¶ 23; Tereno Supplemental Information Pg. 1. at ¶ 1(a)-(e). The evidence shows that following CBP's notification of the hold on May 26, 2021, to Vanguard (the NVOCC with which Respondent co-loaded the container), Vanguard contacted CBP on May 27, 2021, seeking information regarding the hold, and sent two additional emails to CBP before finally receiving a response from CBP one May 7, 2021, nine days after its initial email. Respondent forwarded CBP's email to Claimant's customs broker, Clearit, the same day and updated Claimant the next day. PFs 10 – 16; C.H. Robinson Supplemental Information Exs. 6 – 9; Complaint at Pg. 15. Nothing in the evidence indicates that Respondent was made aware of the customs hold prior to May 26, 2021.

As Claimant's customs broker, Clearit, not Respondent, was responsible for submitting the necessary documentation to clear the shipment. The evidence suggests that Clearit was not diligent in responding to CBP's request, leading Claimant and Respondent to caution Clearit to be more diligent. Evidence submitted by Claimant shows that on May 13, 2021, a week after forwarding the CBP request for documents to the customs broker, Respondent wrote another email to the customs broker admonishing it "to be more active, as you are the designated Customs broker and will need to contact Customs NY-NWKPROBRES@cbp.dhs.gov on priority basis. Please note all the storage charges due will be Customer's responsibility." PF 18; Complaint at Pg. 15. Again, on May 13, 2021, Claimant emailed the customs broker, asking: "What do you mean you need the 'IT bond information and arrival notice'? We have all documents submitted before my shipment arrive and I believe [C.H. Robinson] has provided you the required documents. Please help to contact Customs . . . on priority basis and work with [Vanguard] to have my items clear from custom ASAP." PF 19; Complaint at Pg. 15. By May 15, 2021, Claimant still had not heard from its customs broker, causing Claimant to send another email inquiring about the status of its shipment and directing the customs broker to take "immediate action." PF 20; Complaint at Pg. 16.

Therefore, the evidence refutes Claimant's allegation that Respondent did not timely contact CBP and did not timely notify Claimant's customs broker of the customs hold. Further, while CBP's delay in responding was a major reason for the failure to clear the shipment when it

was in free time, the customs broker's lack of diligence also appears to have contributed to the delay in clearing the shipment. While Clearit denied any blame for the demurrage charges, claiming in an email to Claimant that "the lack of information from your forwarder may have exacerbated the situation leading to storage fees" (Complaint at Pg. 18), no evidence supports this claim.

As noted by Claimant, the Commission stated in the interpretive rule on demurrage and detention that importers, exporters, intermediaries, and truckers should not be penalized by demurrage and detention practices when circumstances beyond their control prevent them from timely retrieving or returning containers (Tereno Supplemental Information Pg. 2 at ¶ 5). However, in this case the ocean common carrier that imposed the demurrage charges at issue is not a party in this proceeding and Respondent merely passed through the charges from the ocean common carrier. Forcing Respondent to absorb the demurrage charges from the ocean common carrier when Respondent acted promptly and reasonably to move the cargo, would not serve to promote freight fluidity. Accordingly, Claimant fails to demonstrate that Respondent's conduct was unjust and unreasonable, another element required to find a section 41102(c) violation.

c. The Practice in Dispute Relates to or is Connected with Receiving, Handling, Storing, or Delivering Property

Claimant's complaint concerns Respondent's conduct in connection with the delivery of Claimant's cargo from Malaysia to the United States. The element requiring that the practice in dispute be related to or connected with receiving, handling, storing, or delivering property is thus demonstrated.

d. The Evidence does not Demonstrate that the Alleged Conduct is Occurring on a Normal, Customary, and Continuous Basis

Even if Claimant were able to prove its allegations against Respondent, the most that could be said is that on one occasion Respondent failed to timely respond to a request from the CBP and to timely notify Claimant's customs broker of the customs hold on Claimant's container and provide the correct information needed to clear the container, causing the shipment to exceed its free time at the port and to accrue demurrage charges which Respondent then required Claimant to pay. The conduct at issue is the failure to timely respond and communicate, not Respondent's demurrage and detention practices. These claims involve one instance of alleged unreasonable conduct and Claimant has not provided any evidence indicating similar conduct by Respondent on other occasions or that this was Respondent's practice.

The Commission has stated that "finding a section [41102(c)] violation based on a single act or omission, is inconsistent with the original intent of Congress, the rules of statutory construction, and Commission precedent. Properly interpreted, § 41102(c) applies to acts omissions that occur on a normal, customary, and continuous basis." *Ngobros and Co. Nigeria v. Ocean Cargo Link, LLC*, FMC Docket No. 14-15, 2019 FMC LEXIS 85, at *4 (FMC 2019) (internal citations omitted). In *Hangzhou*, the Commission affirmed the administrative law judge's finding that the respondent's release of three shipments on three different occasions over the course of two months to the same consignees without obtaining the original bill of lading as required, or authorization from the claimant, was not sufficient to demonstrate that the conduct

was occurring on a normal, customary, and continuous basis. *Hangzhou Qianwang Dress Co., Ltd v. RDD Freight Int'l, Inc.*, FMC Docket No. 17-02, 2020 FMC LEXIS 192, at *7 (FMC 2020). Similarly, in *Crocus*, the Commission stated:

Commission precedent has made clear that a single shipment or isolated act or omission does not show a pattern or practice. An “occasional transaction” or isolated act is not a “practice.” Two or three incidents over a short time period are not enough to show that the conduct in question is an entity’s normal and customary practice. Even six instances of “unreasonable conduct” carried out over a period of several months involving the same entities have been ruled insufficient to prove that conduct was “uniform or continuous.”

Crocus Investments, LLC v. Marine Transp. Logistics, Inc., FMC Docket No. 15-04, 2021 FMC LEXIS 125, at *14 – 15 (FMC 2021) (internal citations omitted). Accordingly, Claimant fails to demonstrate this element required to find a section 41102(c) violation.

e. The Practice is the Proximate Cause of the Loss Suffered by Claimant

Claimant alleges that it was forced to pay the \$8,205 charge for demurrage caused by Respondent’s improper response to the CBP request for documents to clear the shipment in question. Claimant thus demonstrates that the demurrage it was forced to pay was the proximate cause of the loss it suffered, the fifth element required to prevail on a claim for reparations under section 41102(c). However, as discussed, the evidence does not establish Claimant’s allegations that Respondent’s conduct caused the demurrage to accrue.

IV. CONCLUSION

Claimant, Tereno Sdn Bhd. fails to demonstrate that Respondent C.H. Robinson International, Inc. violated section 41102(c) of the Shipping Act of 1984, 46 U.S.C. § 41102(c). Accordingly, it is hereby **ORDERED** that Claimant’s request for reparations be **DENIED** and its complaint be **DISMISSED WITH PREJUDICE**.



Theresa Dike
Small Claims Officer