

FEDERAL MARITIME COMMISSION

TCW, INC.,

Claimant,

v.

HAPAG-LLOYD AG AND
HAPAG-LLOYD (AMERICA) LLC,

Respondents.

Docket No. 1992(I)

Served: March 12, 2025

BY THE COMMISSION: Louis E. SOLA, *Chairman*; Rebecca F. DYE, Daniel B. MAFFEI, Max S. VEKICH, *Commissioners*. *Commissioner DYE* filed a concurring opinion, in which *Commissioner MAFFEI* joins. *Commissioner VEKICH* filed a concurring opinion, in which *Commissioner MAFFEI* joins.

Order Affirming Initial Decision

I. INTRODUCTION

On April 19, 2023, TCW, Inc. (TCW) filed an informal complaint against Hapag-Lloyd AG and Hapag-Lloyd (America) LLC (collectively Hapag) alleging that Hapag's \$30 "street turn"¹ fee for one of Hapag's containers is a violation of the Shipping Act. On December 5, 2023, the Small Claims Officer (SCO) issued an Initial Decision (I.D.) denying the complaint and dismissing it with

¹ "A street turn occurs when a motor carrier, instead of returning an empty import container, reutilizes the same container to transport cargo for export, converting the container's use to a double move instead of a single move." I.D. at 3 n.2 (citation of evidence omitted).

prejudice. On January 2, 2024, the Federal Maritime Commission (Commission) determined to review the I.D.

For the reasons discussed below, the Commission affirms the SCO's Initial Decision.

II. BACKGROUND

TCW is an employee-owned corporation with a principal place of business in Nashville, TN, and is an asset-based transportation provider. Complaint at 1.² Hapag is a common carrier and engages in billing “motor carriers street turn or ‘usage’ fees for reutilizing an empty import container for an export booking.” *Id.* Hapag bills motor carriers “\$30 for each approved ‘street turn’ for dual merchant haulage.” *Id.* TCW claims that Hapag’s street turn fee violates several sections of the Shipping Act, at 46 U.S.C. §§ 41112(c), 41104(a)(8), and the Commission’s regulations at 46 C.F.R. § 545.4(d). *Id.* at 2-3. TCW further alleges that the street turn fee “conflicts with 46 U.S.C. 40101(2) & (4).” *Id.* at 3. TCW stated that, “While [TCW] performs thousands of street turns annually which amount to a significant expense, for brevity, [TCW] wishes to limit this claim to one charge of \$30. While much larger damages could be demonstrated, [TCW] realizes that the Federal Maritime Commission's time is valuable and that a ruling to refund this \$30 charge and a cease-and-desist order preventing [Hapag] from continuing to bill such charges are justified and sufficient.” *Id.*

Hapag contends that “it is well-established that in administering the Shipping Act, the Commission’s primary objective is to protect the shipping industry’s customers from unfair or discriminatory practices,” and “Section 41102(c) is intended to protect shippers, rather than motor carriers” is a fact recently confirmed by the Commission. Hapag’s Response at 6 (citations omitted).³ Hapag further states that as “Section 41102(c) and comparable statutes apply only to regulations and practices imposed on the cargo interest, and that motor carriers are not cargo interests, TCW's Claim under Section 41102(c) should be denied.” *Id.* at 7. Hapag further claims that as “Section 41104(a)(8) applies only to service provided pursuant to a tariff, it is not applicable to the street turn fee of the Claim,” as equipment interchange issues between common carriers and inland carriers are not services provided

² Complaint does not show page numbers. “Complaint at 1” indicates the first page of the Complaint.

³ Hapag’s Response does not show page numbers. “Hapag’s Response at 6” indicates the sixth page of the Response.

pursuant to a tariff. *Id.* 7-8. Finally, Hapag states that “Section 40101(2) and (4) are not applicable to the Claim because they are merely statements of purpose that carry no substantive weight.” *Id.* at 8. Hapag further states that, “It is well-established law that the ‘purpose’ section of a statute may explain or shed light on the meaning of other statutory provisions, but does not itself confer power or determine rights, and cannot enlarge the scope or effect of a statute.” *Id.* (citation omitted).

III. DISCUSSION

A. TCW’s 46 U.S.C. § 41102(c) claim

TCW alleges that Hapag’s street turn fee is a violation of the Shipping Act at 46 U.S.C. § 41102(c) and the Commission regulation at 46 C.F.R. § 545.4⁴ interpreting section 41102(c) for unjust or unreasonable practices. Section 41102(c) provides that, “A common carrier . . . 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.”

TCW argues that the street turn fee is unreasonable because “Hapag-Lloyd benefit[s] from the use of street turns . . . [and] receive[s] savings from the reduced gate fees from street turns because they have two less gate transactions per street turn for which to pay, but also benefits from the increased use of their equipment as opposed to having empty import containers returned.” *I.D.* at 15-16. TCW alleges that Hapag also benefits because “exporters tend to book cargo with certain ocean common carriers based on the amount of their empty equipment motor carriers have in their possession in order to take advantage of discounted trucking rates [and thus] imposing a street turn fee is unreasonable and a violation of section 41102(c).” *Id.* at 16 (citing Complaint at 2).

⁴ The Commission regulation at 46 C.F.R. § 545.4 provides as follows:

- 46 U.S.C. 41102(c) is interpreted to require the following elements in order to establish a successful claim for reparations:
- (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.

The SCO stated that “TCW’s arguments regarding the benefits of street turns and the efficiencies they create are well taken.” *Id.* at 17. The SCO, however, stated that “even if for the purpose of argument, one were to find that not imposing street turn fees is a more efficient practice than imposing them, the fact that one practice is more efficient than the other, does not, without more, make the less efficient practice unreasonable,” and concluded that TCW has not demonstrated that Hapag’s practice of imposing street turn fees is unreasonable. *Id.* at 17.

1. Street turn fees are not demurrage or detention and cannot be analyzed under section 46 C.F.R. § 545.5

The Commission’s regulation at 46 C.F.R. § 545.5 aids in interpreting “unjust and unreasonable practices” under 46 U.S.C. § 41102(c) in the context of demurrage and detention. Although TCW did not allege that the street turn fees were demurrage and detention charges, we review first whether the street turn fees are demurrage and detention charges subject to the Commission’s Interpretive Rule at section 545.5.

The Interpretive Rule states that “[t]he purpose of this rule is to provide guidance about how the Commission will interpret 46 U.S.C. 41102(c) . . . in the context of demurrage and detention.” 46 C.F.R. § 545.5(a). It further states that “[t]his rule applies to practices and regulations relating to demurrage and detention for containerized cargo.” 46 C.F.R. § 545.5(b). The Interpretive Rule defines demurrage and detention as “any charges, including ‘per diem,’ assessed by ocean common carriers, marine terminal operators, or ocean transportation intermediaries (‘regulated entities’) related to the use of marine terminal space (*e.g.*, land) or shipping containers, not including freight charges.” *Id.* Although Hapag is an ocean common carrier, we do not believe that the street turn fees are demurrage and detention charges subject to section 545.5.

Demurrage and detention charges are generally assessed after the expiration of free time, which allows shippers and/or consignees to use terminal space or shipping containers free of charge for certain limited length of time. The amount of demurrage and detention charges, including “per diem,” generally depends on the length of the use of space or containers after the free time. The street turn fees, however, do not depend on any applicable free time. Nor does it appear that the amount of the street turn fees depends on any period of use of the container. Rather, the street turn fees are assessed equally to all truckers or cargo interests regardless of free time and

length of use of land or containers. Rather than specific use of land or containers, the street turn fee is assessed for each container to convert an inbound empty container into an outbound container. In addition, section 545.5 is applicable only to demurrage and detention for “containerized cargo.” 46 C.F.R. § 545.5(b). The street turn fees are, however, not for containerized cargo, but for the change of status of an empty container from inbound to outbound. This is consistent with TCW’s own allegation that “Respondent engages in billing motor carrier’s street turn or ‘usage’ fees for reutilizing an empty import container for an export booking.” Complaint at 1. The street turn fees are not demurrage and detention and thus not subject to the Interpretive Rule at 46 C.F.R. § 545.5.

2. Street turn fees can be reviewed under section 46 C.F.R. § 545.4

We now review whether Hapag’s street turn fee is a violation of 46 U.S.C. § 41102(c) of the Shipping Act and 46 C.F.R. § 545.4. Section 41102(c) prohibits common carriers from failing to establish, observe, and enforce “just and reasonable regulations and practices” relating to or connected with receiving, handling, storing, or delivering property. The Commission’s Interpretive Rule at 46 C.F.R. § 545.4 specifies five elements for a successful 46 U.S.C. § 41102(c) claim. First, the respondent must be a common carrier. Hapag is an ocean common carrier. Second, the claimed acts or omissions of the common carrier must occur on a normal, customary, and continuous basis. Hapag’s street turn fees are charged for all street turn practice and services provided by Hapag, and thus the fees are occurring on a normal, customary, and continuous basis. Third, the practice or regulation must relate to or is connected with receiving, handling, storing, or delivering property. The street turn fees are for Hapag’s services of allowing an empty container after unloading of import shipment to be used for loading of export shipment. The street turn fees relate to or are connected with receiving, handling, storing, or delivering property. Fourth, the practice or regulation must be the proximate cause of the claimed loss. Hapag’s street turn fees are charged for its street turn practice and services for its customers. And TCW is claiming that it was injured because of the practice. Finally, it must be demonstrated that the practice or regulation is unjust or unreasonable, which will be discussed below.

Turning to the reasonableness requirement at section 545.4(d), TCW alleged that the street turn fees are unreasonable because “Hapag-Lloyd benefit[s] from the use of street turns” and “receive[s] savings from the reduced gate fees from street turns because they have two less gate transactions per street turn for which

to pay, but also benefit[s] from the increased use of their equipment as opposed to having empty import containers returned.” I.D. at 15-16. TCW further alleged that Hapag also benefits because “exporters tend to book cargo with certain ocean common carriers based on the amount of . . . empty equipment motor carriers have in their possession in order to take advantage of discounted trucking rates [and thus] imposing a street turn fee is unreasonable and a violation of section 41102(c).” *Id.* at 16 (citing Complaint at 2).

TCW is claiming that the street turn fees are unreasonable because Hapag both charges a fee for the practice and at the same time benefits from the practice. Based on TCW’s allegations, it can be questioned whether it is reasonable for Hapag to impose fees for a practice from which it is benefiting by reduced gate fees, reduced gate transactions, and securing customers faster through the practice. In its response, Hapag stated:

However, TCW’s Claim states no factual basis for its allegations that Hapag-Lloyd violated the Shipping Act. TCW alleges that the fee is unreasonable because it relates to the administration of Hapag-Lloyd’s own equipment. However, TCW provides no evidence of the costs to Hapag-Lloyd of permitting and administering street turns. TCW provides no evidence of the cost savings it alleges Hapag-Lloyd realizes from permitting street turns (e.g., on gate fees), making the required factual analysis of the costs and savings related to the fee impossible. TCW provides no information on the volume of street turns, making an assessment of its allegations of increased equipment utilization impossible. It provides no information to support its questionable allegation that exporters book cargo with ocean carriers based on the equipment in the possession of motor carriers (as compared to rates, vessel space, transit time, service patterns, or other factors).

Hapag’s Response at 9.

It appears likely that it costs money, personnel, and other resources for Hapag to establish and maintain the management and operation system to provide the street turn services to customers. The record in this proceeding does not establish how much of the \$30 street turn fee is compensatory to Hapag, and how much of it is revenue-generating. Without this information, it is not possible to assess whether the fee is reasonably tailored to meet its purposes. *Cf.*,

In re Free Time and Demurrage Practices on Inbound Cargo at N. Y. Harbor, 9 S.R.R. 860 (FMC 1967); *Bos. Shipping Ass'n v. Port of Bos. Marine Terminal Ass'n*, 10 F.M.C. 409 (FMC 1967). Indeed, even if a part of Hapag's street turn fees is revenue-generating, Hapag may not be acting unreasonably in charging a fee for a service it is providing to its customers, from which truckers and customers are also benefiting by promptly securing an empty container and loading export shipment while avoiding additional trips and delays in securing an empty container. TCW failed to demonstrate or provide evidence that the fee is unreasonable.

The Shipping Act does not prohibit all practices of imposing charges. The Shipping Act only prohibits common carriers' unjust and unreasonable practices. The SCO concluded that "TCW does not provide a basis to find that the street turn fees are unreasonable." I.D. at 17. The SCO was correct in dismissing TCW's section 41102(c) claim.

B. TCW's 46 U.S.C. § 41104(a)(8) claim

TCW also alleges that Hapag's street turn fee is a violation of the Shipping Act at 46 U.S.C. § 41104(a)(8). Section 41104(a)(8) provides that, "A common carrier . . . shall not . . . for service pursuant to a tariff, give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage."

TCW alleges that the street turn fee violates section 41104(a)(8) "because Hapag-Lloyd impose[s] the fees on merchant haulage moves but not on carrier haulage moves," and thus the fee "is a financial penalty for not utilizing Respondent's carrier haulage service." I.D. at 17 (citation omitted). Hapag stated that "the street turn fee is not reflected in [its] tariff, service contract terms, or bills of lading." *Id.* at 18. Hapag alleges that the fee cannot violate section 41104(a)(8) because that section is applicable only to services under tariffs and "the FMC's regulations expressly exempt equipment interchange agreements between common carriers and inland carriers from the Commission's tariff publication requirements." *Id.* at 7. Hapag states that "the street turn charge was imposed in connection with the interchange of equipment and is not reflected in Hapag-Lloyd's tariff, service contract terms, or reflected in any Hapag-Lloyd issued bills of lading." *Id.* (citing R. Supp. Info pg. 1 at nos. 1-2).

The SCO stated that "for section 41104(a)(8) to apply, the service at issue must have been provided under a tariff." I.D. at 18.

The SCO further stated that “Hapag-Lloyd state[s] that the street turn fee is not reflected in their tariff, service contract terms, or bills of lading and no evidence in the record contradicts their statement.” *Id.*

The SCO is correct that section 41104(a)(8) is applicable only for services pursuant to a tariff. Although the transportation for shippers and consignees may be pursuant to the tariff, it does not appear that the equipment interchange between Hapag and TCW was pursuant to a tariff. The Commission’s regulation specifies that, “Equipment-interchange agreements between common carriers . . . and inland carriers, where such agreements are not referred to in the carriers’ tariffs and do not affect the tariff rates, charges or practices of the carriers” are exempt from the tariff publication requirements. 46 C.F.R. § 520.13(b)(1).

Even if we assume that the equipment interchange between Hapag and TCW was or should have been provided pursuant to tariffs, which we believe was not the case in this proceeding, TCW still failed to demonstrate that Hapag’s conduct was a violation of section 41104(a)(8). TCW claimed that the street turn fee is a violation of the section because Hapag imposes the fees on merchant haulage moves but not on carrier haulage moves. For merchant haulage moves, merchants or cargo interests are responsible for the inland transportation, with truckers hired by cargo interests. For carrier haulage moves, common carriers are responsible for the inland transportation, with truckers hired by common carriers. Other than providing general allegations, TCW failed to demonstrate why Hapag must charge the same fees for two different types of inland transportation.

The Commission concludes that the SCO was correct in dismissing TCW’s section 41104(a)(8) claim.

C. TCW’s 46 U.S.C. §§ 40102(2) and 40102(4) claims

TCW also claims that Hapag’s street turn fee “conflicts with 46 U.S.C. 40102(2) & (4).” Complaint at 3. Sections 40102(2) and (4) state that the purposes of the Shipping Act are to:

(2) ensure an efficient, competitive, and economical transportation system in the ocean commerce of the United States;

...

(4) promote the growth and development of United States exports through a competitive and efficient system for the carriage of goods by water in the

foreign commerce of the United States, and by placing a greater reliance on the marketplace.

Hapag stated that “Sections 40101(2) and (4) are not applicable to the Claim because they are merely statements of purpose that carry no substantive weight.” Hapag’s Response at 8. Hapag claimed that:

It is well-established law that the “purpose” section of a statute may explain or shed light on the meaning of other statutory provisions, but does not itself confer power or determine rights, and cannot enlarge the scope or effect of a statute. 1A Shambie Singer & Norman J. Singer, *Sutherland Statutes and Statutory Construction*, § 20:3 (7th ed. 2022). Thus, whatever relationship the street turn fee may or may not have with the statement of purpose contained in the Shipping Act is irrelevant to the issue of whether the street turn fee violates the substantive provisions of the statute (which, as explained above, it does not).

Id.

The SCO stated that “[w]hether the ‘efficient, competitive, and economical transportation system in the ocean commerce of the United States’ (46 U.S.C. 40101(2)) . . . would benefit from the elimination of street turn fees for dual merchant haulage is a policy question more appropriately within the Commission’s purview.” I.D. at 17.

The Commission agrees with Hapag that the two sections are the general purposes of the Shipping Act and do not specifically require or prohibit certain common carrier conduct.

(continued on next page)

IV. CONCLUSION

Therefore, it is hereby **ORDERED** that:

(1) The Initial Decision is **AFFIRMED**; and

(2) TCW's Complaint is **DISMISSED** with prejudice, and this proceeding is **DISCONTINUED**.

By the Commission.

David Eng
Secretary

Commissioner DYE, concurring, in which *Commissioner MAFFEI* joins:

Under the Federal Maritime Commission's Rules of Practice and Procedure (Part 502) governing informal complaints (Subpart S—Informal Procedure for Adjudication of Small Claims), certain types of cases may be decided by a Small Claims Officer “without the necessity of formal proceedings.” This procedure for small claims was put in place by the Commission to provide a streamlined and low-cost procedure for complainants with relatively small claims to expeditiously and efficiently resolve Shipping Act disputes of a relatively modest monetary value without the time and expense of a formal procedure before an Administrative Law Judge. This small claim process has worked very well for complainants in certain types of cases – those where the facts are relatively straightforward, and the legal issues are largely settled. There are other cases such as this one, however, where the small claims process poorly serves the interests of complainants and the Commission. In cases such as the one before the Commission today involving substantially unsettled legal issues of Commission interpretation and policy, the small claims procedure is simply inadequate to develop a record which fully explores the issues such as the ones that are involved with “street turn” fees. Not only does the small claims process leave the Commission with a limited record on which to make a decision—and I am constrained by the limited record in this case to concur in the result of the majority and dismiss the complaint—but the sparse record of the informal process also leaves the Commission in a poor position to justify and defend its decisions before the D.C. Circuit Court of Appeals. This could have a detrimental effect on the Commission's ability to develop policy through the adjudication process, an important, if not the primary way, for the Commission to develop policy.

Furthermore, I am also concerned about the lack of full consideration in this case of the operation of the Uniform Intermodal Interchange and Facilities Access Agreement (UIIA) between ocean carriers and motor carriers, especially involving mandatory UIIA terms and conditions for motor carriers.

I encourage the Commission to publish a complete discussion of the distinctions between formal and informal complaints, to allow complainants to choose the best approach to develop the issues in a particular case. I also encourage the Commission to analyze the relationship between the UIIA and the Shipping Act of 1984, as amended, especially concerning mandatory fees for motor carriers.

Commissioner VEKICH, concurring, in which *Commissioner* MAFFEI joins:

I concur with the Majority's holding. However, regarding the 46 U.S.C. § 41102(c) claim, I note that any charge levied must be reasonably related to the service rendered. *See Volkswagenswerk Aktiengesellschaft v. Fed. Mar. Comm'n*, 390 U.S. 261, 282 (1968).

While the record in this case may not substantiate that a \$30 fee for a street turn is unreasonable under section 41102(c), such fees warrant scrutiny to determine if the level of the fee paid by TCW is reasonably related to the service provided by Hapag. The record does not provide sufficient evidence regarding the proportion of the 'administrative' cost to Hapag for accounting for the street turn versus the extent to which a portion of the fee amounts to profit. Although fees are an appropriate means to recoup costs, they cannot exceed a *reasonable relationship* to the service being provided, including the costs of providing that service. The further afield a fee is from recouping costs, the more likely it is to violate section 41102(c).

Excessive fees have become endemic as ocean carriers and marine terminal operators seek to maximize profits. The Shipping Act requires such fees to be just and reasonable and, under longstanding FMC jurisprudence, reasonably related to the service being provided, including the demonstrated costs incurred in providing such service. While the FMC does not regulate freight rates (as competitive forces drive rates through supply and demand), the Shipping Act prohibits unjust and unreasonable fees.

Evaluation of fees warrants a fact-intensive review of the costs associated with the service provided to justify the fee. In this instance, and in part potentially due to the nature of this proceeding as a small claims matter with a limited record, I believe the Complainant has failed to meet its evidentiary burden to substantiate its section 41102(c) claim and therefore I concur with the decision of the Majority to dismiss the proceeding.