

FEDERAL MARITIME COMMISSION
Office of the Administrative Law Judges

TCW, INC., *Claimant*

v.

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

DOCKET NO. 1992(I)

Served: December 5, 2023

BEFORE: Theresa DIKE, *Small Claims Officer.*

INITIAL DECISION¹

I. INTRODUCTION AND SUMMARY OF DECISION

Claimant TCW, Inc. initiated this small claim proceeding by filing a complaint with the Federal Maritime Commission (“FMC” or “Commission”) alleging that Respondents Hapag-Lloyd, A.G. and Hapag-Lloyd (America) LLC (collectively “Hapag-Lloyd”) violated 46 U.S.C. §§ 41102(c), 41104(a)(8), and 40101(2) of the Shipping Act as well as 46 C.F.R. § 545.4(d) of the Commission’s Regulations due to their practice of billing motor carriers performing merchant haulage charges a “street turn” fee when they reutilize an empty container to load cargo for export shipments.

A. Background and Procedural History

Expeditors Customs Brokers (“Expeditors”), a customs broker, arranged with TCW, a motor carrier, to pick up five containers from a terminal at the South Carolina Ports and deliver them to PACCAR Engine Company (“PACCAR”), in Columbus, Mississippi. On March 8, 2023, TCW out gated the containers from the North Charleston Terminal in Charleston, South Carolina and delivered them the following day to PACCAR in Columbus, Mississippi. PACCAR then unloaded the container that is the subject of this litigation and reloaded it with export cargo and instructed TCW to deliver the container to Hapag-Lloyd, an ocean common carrier, for ocean shipping to the Netherlands. TCW Response to Request for Supplemental Information (“C. Supp. Info”) pg. 1 at nos. 1 and 2.

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.

Hapag-Lloyd, to whom the container belongs, requires motor carriers interchanging its equipment to be signatories to, and in good standing with, the Uniform Intermodal Interchange and Facilities Access Agreement (“UIIA”) and the Hapag-Lloyd Addendum to the UIIA (“HL Addendum”). C. Supp. Info pg. 1-2 at no. 2. Under the HL Addendum, when a motor carrier uses a Hapag-Lloyd container “in connection with a double move (defined as inland transportation whereby [the] Motor Carrier transfers the node from full import container to full export container in one single move)” the motor carrier must obtain permission for the double move from a Hapag-Lloyd designated agent and pay a fee of \$30. C. Brief Ex. A at no. 9.

TCW, which is a signatory to both the UIIA and the HL Addendum, obtained permission from Hapag-Lloyd to reload the import container for export to the Netherlands and pursuant to the HL Addendum, paid Hapag-Lloyd the \$30 fee it assessed for the double move. TCW then filed this Complaint with the Federal Maritime Commission (“FMC” or “Commission”), seeking reparations for the \$30 it paid and a cease-and-desist order against Hapag-Lloyd preventing it from continuing to bill street turn charges. TCW alleges that Hapag-Lloyd’s practice of billing motor carriers for double moves violates provisions of the Shipping Act.

On April 19, 2023, the Commission issued a Notice of Filing of Small Claims Complaint and Assignment (“Notice”), instructing Hapag-Lloyd to file a response to the Claim by May 15, 2023, and to indicate whether it consented to the use of the Commission’s informal procedures at Subpart S for adjudication of the complaint. The Commission also assigned this proceeding to the Chief Administrative Law Judge (“Chief ALJ”) to designate a small claims officer (“SCO”) to adjudicate the proceeding. Because Hapag-Lloyd indicated that the Claim was not received until June 20, 2023, the deadline provided in the Notice to respond to the Claim was extended to July 17, 2023. On July 14, 2023, Hapag-Lloyd requested, and was granted time until July 31, 2023, to file a response. On July 31, 2023, Hapag-Lloyd filed a response to the complaint and consented to the use of the informal procedures. On August 23, 2023, the Chief ALJ 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 SCO in a Subpart S proceeding to request, if deemed necessary, additional documents or information from the parties, on August 29, 2023, an Order to Submit Discovery Requests (“Order”) was issued directing the parties to submit any discovery requests that would aid them in establishing their claims and defenses, and upon review, the SCO would incorporate any of their requests deemed appropriate and relevant to the SCO’s forthcoming request for additional information. TCW submitted its requests; however, on September 12, 2023, Hapag-Lloyd submitted an objection to the Order, asserting that Subpart S of the Commission’s Rules of Practice and Procedure does not allow the Small Claims Officer (“SCO”) to “contravene the Commission’s regulations by compelling discovery through some informal means not covered by those regulations” and “the Small Claims Officer has effectively transformed what should be a simple, streamlined case with no discovery into a standard complaint proceeding without the benefits of the procedural protections afforded the parties in such a complaint proceeding.” Position of Respondents Hapag-Lloyd and Hapag-Lloyd (America) LLC on Discovery at 1-2. On September 14, 2023, a clarification was issued to the parties that they were not mandated to submit requests should they not wish to do so.

On October 4, 2023, a Request for Additional Documents and Information (“Request”) was issued, directing the parties to provide certain information and documents by October 18, 2023, and permitting any party wishing to file a response to the opposing party’s submission to do so by October 25, 2023. On October 9, 2023, TCW submitted a response to the Request for Supplemental Information (“C. Supp. Info”) and Hapag-Lloyd submitted a response on October 18, 2023. (“R. Supp. Info”). Hapag-Lloyd refused to answer some of the questions in the Request, asserting that the street turn fee is not subject to the Shipping Act or the Commission’s jurisdiction. TCW submitted a reply to Hapag-Lloyd’s responses on October 25, 2023 (“C. 2nd Supp. Info.”). No reply was received from Hapag-Lloyd. The record is now complete.

As discussed in greater detail below, TCW fails to demonstrate that Hapag-Lloyd violated the Shipping Act by assessing the street turn fees. TCW’s request for reparations and a cease-and-desist order against Hapag-Lloyd is therefore denied, and its Claim dismissed.

B. Argument of the Parties

1. TCW’s Arguments

TCW alleges that Hapag-Lloyd’s practice of billing motor carriers street turn² or usage fees when they are approved to reutilize an empty import container for an export booking (known as dual merchant haulage) violates sections 41102(c) and 41104(a)(8), conflicts with section 40102(2) and (4), and violates section 545.4(d) of the Commission’s regulations. Complaint at 1 - 4. Complainant further contends that “[w]hile this appears to be a minor financial inconvenience, the UIIA cannot prevent the Respondent from raising the rate in the future as they are commercial terms, potentially exacerbating the challenges [associated with the fees],” and that moreover, “while it is a fairly low expense from a transactional viewpoint, the impacts are significant for higher volume exports [which] directly impacts motor carrier pricing on exports” as the fees must be factored in motor carrier pricing on exports, especially on “lanes that are already operating on thin margins.” Complaint at 1.

TCW also alleges that the billing practice violates section 41102(c), which prohibits common carriers from engaging in unjust and unreasonable practices, asserting that the “charge is for the administrative management of the common carriers’ own equipment, for which they are receiving increased utilization,” and is, thus, unreasonable. TCW opines that when a motor carrier street turns a container, the common carrier owner gains a benefit in having two less gate transactions per street turn because “it is reasonable to establish that gate transactions are not free of charge, thus the Respondent receives savings from not only the reduced gate fees, but [also the] increased equipment utilization vs. the empty import container being returned to a terminal or depot,” as well as the fact that 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, which, again, benefits the common carrier because it then receives additional business. Complaint at 2.

² 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. Complaint Brief Exh. A at no. 9.

In addition, TCW alleges that the billing practice violates section 41104(a)(8), which prohibits a common carrier to give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage, because Hapag-Lloyd impose the fees on merchant haulage moves, but not on carrier haulage moves, and thus, according to TCW, the imposition of the fees “is a financial penalty for not utilizing Respondent’s carrier haulage service.” Complaint at 2.

TCW avers that while it “performs thousands of street turns annually which amount to a significant expense, for brevity, [it] wishes to limit this claim to one charge of \$30. While much larger damages could be demonstrated, Claimant realizes that the Federal Maritime Commission’s time is valuable and that a ruling to refund this and a cease-and-desist order preventing Respondent[s] from continuing to bill such charges are justified and sufficient.” Complaint at 3.

In a brief it submitted with its Claim, TCW posits that the costs associated with street turns “necessitates that motor carriers review the value of a street turn, prior to paying.” TCW explains:

Port congestion has been a point of focus for industry stakeholders as well as government entities in recent years. Should a motor carrier determine that it is more financially beneficial to return an empty container, only to out gate another container of the same common carrier to avoid the added expense of the street turn fee, inefficiencies are multiplied. Gate transactions literally double. Chassis utilization is greatly improved with street turns as well - serving yet another valuable benefit to the transportation community. Container utilization is increased. Driver productivity is increased and fuel burn is decreased. Port productivity is increased. In some cases during the pandemic, Claimant was only able to provide exporters with equipment on the street due to the severe congestion and chassis shortages across multiple markets that made sourcing empty equipment from ports/rails/CYs impossible.

C. Brief at 1 - 2 (citing to a Journal of Commerce article and statements by the World Shipping Counsel). Further, “Claimant agrees [with the World Shipping Counsel’s opinion] that truck emissions in port environments is a major concern and contends that street turns are an important measure in reducing incurred miles, reducing fuel burn and reducing emissions especially in high traffic areas.” C. Brief at 2. TCW notes that two of the stated purposes for the Ocean Shipping Reform Act of 2022 (“OSRA 2022”)’s revisions to the Shipping Act are: “(2) to ensure an efficient, competitive, and economical transportation system in the ocean commerce of the United States;” and (4) “to 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” (citing 46 U.S.C. § 40101(2) and (4)). C. Brief at 2. “Claimant argues that Respondent’s billing of the execution of ‘street turns’ reduces efficiency and is counterintuitive to promoting the growth of United States exports, in direct conflict with the aforementioned revisions in OSRA 2022.” C. Brief at 2.

TCW contends that the street turn charge was assessed in connection with the through transportation of cargo between the United States and a foreign destination by ocean, noting that “the container move for which the charge was assessed was in connection with cargo being transported from Columbus, Mississippi to North Charleston Terminal in Charleston, [South Carolina]. From there, it was loaded on a vessel for its final destination in the Netherlands.” C. Supp. Info. pg. 1 at no. 1.

TCW maintains that “a decision not to agree to the Respondents’ UIIA Addenda would have eliminated [its] opportunity to service its customer, PACCAR.” C. Supp. Info. pgs. 2-3 at no. 2. Addressing Hapag-Lloyd’s contention that its Claim amounts to an abuse of the small claims procedure, TCW states:

While it is true that informal proceedings are limited to claims less than \$50,000, the entire process is intended to adjudicate violations of the Shipping Act. . . . So, if Shipping Act violations are occurring, it is within the Small Claims Officer’s power to direct a Respondent to change their tariff to be in compliance with the law. Nothing states, or implies that the small claims proceeding should not be applicable if the Respondent’s total revenues from the specific Shipping Act violations exceed \$50,000.

C. Supp. Info. pgs. 3 - 4 at no. 6. Addressing Hapag-Lloyd’s refusal to respond to certain Requests based on their contention that the street charge is not subject to the Shipping Act or the Commission’s jurisdiction, and that street turn fees are not levied in connection with the transportation of cargo between the United States and a foreign destination, TCW notes certain highlighted provisions in the UIIA Addenda as follows:

- a) **Street Turns:** Where the Equipment consists of a container which the Motor Carrier has taken possession of and if container is used in connection with a double move (defined as inland transportation whereby Motor Carrier transfers the node from **full import container to full export container** in one single move) the Motor Carrier must obtain approval from Provider’s designated agent for this activity at <https://www.avantida.com> to confirm that Motor Carrier may use the container for **export**. Hapag-Lloyd may, at its sole discretion, grant or refuse the authorization for reuse of Hapag-Lloyd equipment and impose certain conditions for the reuse, or to limit the reuse to a specific type/size of containers.
- b) Approval of such reassignment (“street turn”) **shall serve as the termination of Import Per Diem calculation.** Upon approval, the start date for export use will begin and Motor carrier will be allowed 7 additional calendar days free time for the **export booking**. The Motor Carrier shall incur a usage charge depending on if the double move is used in connection with **a Carrier Haulage (CH) or Merchant Haulage (MH)** move for each leg of the double move (import/export combination) as follows

C. 2nd Supp. Info. pg. 1 (emphasis in original). TCW further states:

TCW agrees that the charge is in connection with the interchange of equipment, but interchange of Respondent's equipment is not necessary unless it is related to the transportation of cargo between the U.S. and a foreign destination. Clearly, the Respondent had this in mind when creating the charge, defining a double move as “*inland transportation whereby Motor Carrier transfers the node from full import container to full export container in one single move.*”

C. 2nd Supp. Info. pg. 1 (emphasis in original).

2. Hapag-Lloyd's Arguments

Respondents Hapag-Lloyd contend that TCW's Claim should be denied, stating that the small claims procedures are designed for claims in the amount of \$50,000 or less, while TCW's Claim is not a small claim for \$30 but rather, involves an amount greater than \$50,000. Answer at 1. They maintain that because “an order finding that Hapag-Lloyd's street turn fee is in violation of the Shipping Act would have an impact of greater than \$50,000, consideration of the Claim under the Informal Procedures of Subpart S is improper.” Answer at 2. They urge that TCW “not be permitted to abuse a small claims procedure designed for the resolution of larger legal issues that are inappropriate for resolution through an informal claims procedure.” Answer at 2.

In addition, Hapag-Lloyd opine that the “informal procedures for the adjudication of small claims are not intended to deal with cases involving requests for cease and desist orders, and the small claims officers lack the authority to issue such orders” thus, TCW's request for a cease and desist order should be denied. Answer at 2. They assert that issuance of a cease-and-desist order would be inappropriate “because the informal procedures for adjudication of small claims were established for purposes of resolving small, monetary claims, as “reinforced by current 46 C.F.R. § 502.302, which establishes a three-year statute of limitations for recovery of reparations under the Shipping Act of 1984, as amended 46 U.S.C. § 41301(a),” and “by the Commission's own website, which indicates that a small claim may be filed to seek reparations (damages) from a respondent.” Answer at 2-3. They argue that small claims officers lack the authority to issue cease-and-desist orders, opining that in *Geo Machinery FZE v. Watercraft Mix, Inc.*, Docket No. 1935(I) (SCO May 21, 2013) (“*Geo Machinery*”), which the SCO in *TCW, Inc. v. Evergreen Shipping Agency (America) Corp.*, FMC Docket No. 1966(I) (“*Evergreen*”) relied upon as basis for authority for the issuance of a cease-and-desist order against the respondents in *Evergreen*, the SCO noted that a “presiding officer may issue a default judgment, a cease and desist order, or other just ruling against a party . . .” Hapag-Lloyd state:

the problem for TCW, and for small claims officers, is that the term ‘presiding officer’ is defined by FMC regulations to mean one or more members of the Commission or an administrative law judge. 46 C.F.R. & 502.25(a). The universe of ‘presiding officers’ with the authority to issue cease and desist orders expressly excludes small claims officers,” thus the SCO in *Evergreen* improperly relied on *Geo Machinery*.

Answer at 4.

Further, Hapag-Lloyd contend that the street turn fee is not subject to section 41102(c), arguing that section 41102(c)'s prohibition of unjust and unreasonable regulations and practices related to or connected with receiving, handling, storing, or delivering property is "consistently interpreted by the Commission as applying to services performed at the terminal and to terminal and forwarding operations." Answer at 5-6 (citing *Los Angeles By-Products Co. v. Barber S.S. Lines*, 2 U.S.M.C. 106, 113 – 14 (1939) and *In Time Limit on the Filing of Over Charge Claims*, 10 F.M.C. 7 (1966)). Hapag-Lloyd further opine that section 41102(c) is intended to protect shippers rather than motor carriers. Answer at 6.

Additionally, Hapag-Lloyd argue that section 41104(a)(8) is not applicable to TCW's Claim because, according to them, section 41104(a)(8) only applies to service provided pursuant to a tariff, whereas the street turn fee TCW paid does not involve service pursuant to a tariff and the Claim does not allege "that the street turn fee is published in the tariff, or that Hapag-Lloyd is providing any service to TCW pursuant to the tariff." Hapag-Lloyd note "[m]oreover, the FMC's regulations expressly exempt equipment interchange agreements between common carriers and inland carriers from the Commission's tariff publication requirements." Answer at 7 - 8 (citing 46 C.F.R. § 520.13(b)(1)). Hapag-Lloyd state 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 bill of lading. R. Supp. Info pg. 1 at nos. 1-2.

Also, Hapag-Lloyd argue that sections 40101(2) and (4), are similarly inapplicable to the Claim "because they are merely statements of purpose that carry no substantive weight. Hapag-Lloyd maintain that TCW has not met its burden of proof to establish that the street turn fee is unreasonable." Answer at 9 - 10. They state that "[r]easonableness is a factual issue that cannot be decided based on generalities and in the absence of specific information." Answer at 10.

Declining to respond to the Request that they explain the purpose/justification for street turn charges, and whether they impose street turn charges for merchant carrier haulages but not carrier haulages, as alleged by TCW, and if so, why, Hapag-Lloyd assert:

Because the charge is not levied in connection with the transportation of cargo in the foreign commerce of the United States, the charge is not subject to the Shipping Act of 1984, as amended, generally or specifically to those provisions of the Shipping Act that the complaint in this proceeding alleges to have been violated (as explained by Respondents in previous submissions). In light of the foregoing, the FMC lacks jurisdiction over the charge and justification of the charge is not required or relevant.

R. Supp. Info pg. 2 at nos. 4-5.

II. PERTINENT FACTS ESTABLISHED BY THE RECORD ("PF")

1. Claimant TCW, Inc., a corporation based in Nashville, Tennessee, is one of the largest asset-based transportation providers in the Southeast. Complaint Pg. 1 at I.
2. Among other things, TCW provides motor carrier services. Complaint Pg. 1 at III.

3. Respondent Hapag-Lloyd A.G. is a vessel-operating common carrier headquartered in Hamburg, Germany. Complaint Pg. 1 at II.
4. Hapag-Lloyd A.G. maintains offices in the United States at Hapag-Lloyd (America) LLC, Peachtree Corners, Georgia. Complaint Pg. 1 at II.
5. PACCAR Engine Company. (“PACCAR”), which is not a party in this litigation, is the shipper for the container on which the street turn fee at issue was assessed. Resp. Exh. 10 (Evergreen Line Sea Waybill).
6. On March 8, 2023, TCW picked up five containers, including Container No. TLLU5364260, the container at issue, from a terminal at the South Carolina Ports for delivery to PACCAR in Columbus, Mississippi, pursuant to a delivery order from Expeditors Customs Brokers (“Expeditors”), a customs broker, which is also not a party in this litigation. C. Supp. Info. pg. 1 at nos. 1 and 2; C. Supp. Exh. B (Expeditors Delivery Order).
7. On March 9, 2023, TCW delivered the containers to PACCAR. C. Supp. Info. pg. 1 at no. 2.
8. PACCAR unloaded Container No. TLLU5364260, reloaded it with cargo for export, and instructed TCW to deliver the container to Hapag-Lloyd for ocean shipping to the Netherlands. C. Supp. Info. pg. 1 at no. 2; C. Brief Exhs. B and C; C Supp. Exh. A.
9. Container No. TLLU5364260 is Hapag-Lloyd owned. C. Supp. Info pg. 1 - 2 at nos. 1 - 2; C. Brief Exhs. A - C.
10. Hapag-Lloyd requires motor carriers interchanging its equipment to be signatories to, and in good standing with, the Uniform Intermodal Interchange and Facilities Access Agreement (“UIIA”) and the Hapag-Lloyd Addendum to the UIIA (“HL Addendum”). C. Supp. Info pg. 1-2 at no. 2; C. Supp. Exh. C; C. Brief Exh. A.
11. TCW is a signatory to both the UIIA and the HL Addendum. C. Supp. Info pg. 1-2 at nos. 1-2; C. Supp. Exh. C.
12. Under the HL Addendum provision for street turns, where the Equipment used by a Motor Carrier consists of a container which the Motor Carrier has taken possession of, and the container is used in connection with a double move, the motor carrier must obtain permission for the double move from a Hapag-Lloyd designated agent and pay a fee of \$30. C. Brief Ex. A at no. 9(a).
13. The HL Addendum defines a “double move” as “inland transportation whereby [a] Motor Carrier transfers the node from full import container to full export container in one single move.” C. Brief Ex. A at no. 9(a).
14. According to the HL Addendum, “[a]pproval of such reassignment (“street turn”) shall serve as the termination of import Per Diem calculation. Upon Provider’s approval, the

start date for export use will begin and Motor Carrier will be allowed 7 additional calendar days free time for the export booking”. C. Brief Ex. A at no. 9(b).

15. The Motor Carrier incurs “a usage charge depending on if the double move is used in connection with a Carrier Haulage (CH) or Merchant Haulage (MH) move for each leg of the double move (import/export combination).” C. Brief Ex. A at no. 9(b).
16. When the import and export legs are MH, the motor carrier must pay a \$30 fee; when the import and export legs are CH, no fee is levied for the move. C. Brief Ex. A at no. 9(b).
17. TCW obtained permission from Hapag-Lloyd to reload the import container for export to the Netherlands and paid Hapag-Lloyd the \$30 fee per the HL Addendum. Complaint pg. 3 at VI; C. Brief Exhs. B and C; C. Supp. Exh. D.
18. The receipt issued to TCW for the street turn fee shows that approval was granted for the reassignment of Container TLLU5364260 for export on March 29, 2023, by the carrier, Hapag-Lloyd, “Export Reference: 67551250.” C. Supp. Exh. D; C. Brief Exh. C (showing “Export booking ref: 67551250” for Container TLLU5364260).
19. TCW passed on the \$30 street turn fee to PACCAR, the beneficial cargo owner (“BCO”) of the cargo and shipper of Container No. TLLU5364260, the container at issue. C. Supp. Info pg. 3 at no. 4; C. Supp. Exh. E.
20. PACCAR reimbursed TCW for the \$30 street turn fee Hapag-Lloyd assessed for the container. C. Supp. Info pg. 3 at no. 5; C. Supp. Exh. F.
21. On March 30, 2023, TCW delivered Container No. TLLU5364260 on behalf of PACCAR to the Port of South Carolina for ocean shipping by Hapag-Lloyd to the Netherlands. C. Supp. Info pg. 1 at no. 1; C. Supp. Exhs. A, D and E; C. Brief Exh. C.
22. The street turn charge at issue is not reflected in Hapag-Lloyd’s tariff, service contract terms, or any bills of lading issued by Hapag-Lloyd. R. Supp. Info pg. 1 at no. 2.
23. No formal or informal complaints have been filed against Hapag-Lloyd at the Commission or in state or federal court in connection with the assessment of the street turn fee. R. Supp. Info pg. 2 at no. 7.

III. DISCUSSION

Among their other responses and affirmative defenses, Hapag-Lloyd assert that street turn charges are not subject to the Shipping Act of 1984 and the Commission lacks jurisdiction over the street turn charge, arguing that the charge was not imposed in connection with the transportation of cargo in the foreign commerce of the United States. Hapag-Lloyd also assert that TCW’s Claim is not appropriate for adjudication through the informal claims procedure. The submissions by the parties and SCOs orders herein discussed constitute the evidence of record for this decision.

A. Controlling Authority

Hapag-Lloyd is a vessel-operating-common carrier. A vessel-operating-common carrier is defined under the Shipping Act as “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 “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
.....

46 U.S.C. § 40102(7).

TCW alleges that Hapag-Lloyd’s imposition of the street turn fee conflicts with the provisions of section 40102(2) and (4) of the Shipping Act. The purposes of the Shipping Act are set forth at section 40102. In pertinent part, its purposes are to:

- (1) establish a nondiscriminatory regulatory process for the common carriage of goods by water in the foreign commerce of the United States with a minimum of government intervention and regulatory costs;
- (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 market place.

46 U.S.C. § 40101 (amended by the Ocean Shipping Reform Act of 2022 (“OSRA 2022”)).

TCW alleges that Hapag-Lloyd violated the Shipping Act. A person may file a complaint with the Commission alleging a violation of the Shipping Act and seek reparations if it incurred an injury as a result of the violation if the complaint is filed within three years after the claim accrues. 46 U.S.C. § 41301(a). If the amount sought for damages does not exceed \$50,000, a complainant has the choice to file a formal or informal complaint. A respondent sued under the Commission’s informal procedures has the option not to consent to adjudication of the dispute

under the informal procedures. Here, TCW filed its complaint under Subpart S and Hapag-Lloyd consented to the use of the informal procedures. The Subpart S Rules are thus controlling.

Section 502.301 at Subpart S provides:

(a) Section 11(a) of the Shipping Act of 1984 (46 U.S.C. 41301(a)) permits any person to file a complaint with the Commission claiming a violation occurring in connection with the foreign commerce of the United States and to seek reparation for any injury caused by that violation.

(b) With the consent of both parties, claims filed under this subpart in the amount of \$50,000 or less will be decided by a Small Claims Officer appointed by the Federal Maritime Commission's Chief Administrative Law Judge, without the necessity of formal proceedings under the rules of this part. Authority to issue decisions under this subpart is delegated to the appointed Small Claims Officer.

(c) Determination of claims under this subpart shall be administratively final and conclusive.

46 C.F.R. § 502.301. "Where appropriate, the Small Claims Officer may require that the respondent publish notice in its tariff of the substance of the decision." 46 C.F.R. § 502.304(g).

Hapag-Lloyd state that the street turn charge is not reflected in a tariff, service contract terms, or any bills of lading issued by Hapag-Lloyd. R. Supp. Info pg. 1 at no. 2. The Shipping Act requires common carriers not exempted from the Act's tariff publication requirements to "keep open to public inspection in an automated tariff system, tariffs showing all its rates, charges, classifications, rules, and practices between all points or ports on its own route and on any through transportation route that has been established" (46 U.S.C. § 40501(a)(1)). Further, the Shipping Act prohibits a "common carrier, either alone or in conjunction with any other person, directly or indirectly" to provide service in the liner trade, that is "not in accordance with the rates, charges, classifications, rules and practices contained in a tariff published or a service contract" (46 U.S.C. § 41104(a)(2)(A)).

Hapag-Lloyd assert that they did not provide any service to TCW pursuant to their tariff and that section 520.13(b)(1) of the FMC's regulations expressly exempts equipment interchange agreements between common carriers and inland carriers from the Commission's tariff publication requirements. Section 520.13(b)(1) provides: "Equipment-interchange agreements between common carriers subject [to the tariff publication requirements] 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)).

TCW alleges that Hapag-Lloyd's imposition of the street turn charge violates section 41102(c) of the Shipping Act. That section provides: "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.

TCW also alleges that Hapag-Lloyd violated section 41104(a)(8), which provides that:

A common carrier, either alone or in conjunction with any other person, directly or indirectly, 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.

46 U.S.C. § 41104(a)(8).

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) adopted in relevant part, 26 S.R.R. 1424, 1994 WL 279898 (FMC June 13, 1994). If the evidence produced by both parties is evenly balanced the party with the burden of persuasion will not prevail. *Greenwich Collieries*, 512 U.S. at 281.

C. The Street Turn Fee is Subject to the Shipping Act and the Commission has Jurisdiction to Adjudicate TCW's Claim

Hapag asserts:

Because the charge is not levied in connection with the transportation of cargo in the foreign commerce of the United States, the charge is not subject to the Shipping Act of 1984, as amended, generally or specifically to those provisions of the Shipping Act that the complaint in this proceeding alleges to have been violated (as explained by Respondents in previous submissions). In light of the foregoing, the FMC lacks jurisdiction over the charge and justification of the charge is not required or relevant.

R. Supp. Info pg. 2 at nos. 4-5. In response, TCW states:

Claimant agrees that the charge is in connection with the interchange of equipment, but interchange of Respondents['] equipment is not necessary unless it is related to the transportation of cargo between the U.S. and a foreign destination. Clearly, the Respondent had this in mind when creating the charge, defining a double move as "*inland transportation whereby Motor Carrier transfers the node from full import container to full export container in one single move.*"

C. 2nd Supp. Info. pg. 1 (emphasis in original).

"It is elementary law that a tribunal should determine its jurisdiction before proceeding to the merits of a controversy" *NPR, Inc. v. Board of Commissioners of the Port of New Orleans*, 28 S.R.R. 1178 (ALJ 1999); *see also River Parishes Co. Inc. v. Ormet Primary Aluminum Corp.*, 28 S.R.R. 751, 762 (FMC 1999) ("As the ALJ correctly held, an agency must reach the jurisdictional issues before addressing the merits of the case") (internal citations omitted).

The evidence shows that Container TLLU53640 was first used to deliver imported cargo to PACCAR and then reused by PACCAR to export cargo to the Netherlands. The street turn fee was assessed on the container only when PACCAR reused the same container for the export leg of the transaction. Further, Hapag-Lloyd's addenda to the UIIA defines a street turn as a transaction in which a motor carrier takes possession of a container and uses the container "in connection with a double move," which Hapag-Lloyd define as "inland transportation whereby [the] Motor Carrier transfers the node **from full import container to full export container.**" (C. Brief Exh. A (emphasis added). Moreover, the shipping records for the container, for example, Hapag-Lloyd's receipt for the street turn payment, describes the transaction as a reassignment of Container TLLU53640 for re-use for export and uses the description "Export Reference:67551250" in reference to the shipment. Thus, abundant evidence establishes that the street turn payment was made in connection with the transportation of cargo by ocean from the United States to a foreign destination. Because the street turn fee at issue was assessed on a container being utilized for the transportation of cargo by ocean between a port in the United States to a foreign destination, it is a charge that was assessed in connection with the transportation of cargo in the foreign commerce of the United States and thus subject to the Shipping Act and the Commission's jurisdiction.

TCW alleges that street turn fees “directly impacts motor carrier pricing on exports” as the fees must be factored in motor carrier pricing on exports, especially on “lanes that are already operating on thin margins” (Complaint at 1), therefore, street turn fees have an impact on international ocean shipping. Adjudication by the Commission of a claim that “bears directly on a practice or rule relating to the handling of cargo [in the foreign ocean commerce of the United States] is clearly within [the FMC’s] statutory authority. *American Export-Isbrandtsen Lines, Inc. v. Federal Maritime Comm’n*, 389 F.2d 962, 968 (D.C. Cir. 1968). As is noted in the OSRA 2022 amended Section 40102(2), one purpose of the Shipping Act is to “ensure an efficient, competitive, and economical transportation system in the ocean commerce of the United States.” 46 U.S.C. § 40101(2).

D. TCW’s Requested Relief May be Granted in a Small Claims Proceeding

Hapag-Lloyd argue that: the small claims procedures are designed for claims in the amount of \$50,000 or less, while TCW’s Claim is not a small claim for \$30 but rather, involves an amount greater than \$50,000, because “an order finding that Hapag-Lloyd’s street turn fee is in violation of the Shipping Act would have an impact of greater than \$50,000; that the “informal procedures for the adjudication of small claims are not intended to deal with cases involving requests for cease and desist orders because the informal procedures for adjudication of small claims were established for purposes of resolving small, monetary claims, as “reinforced by current 46 C.F.R. § 502.302, which establishes a three-year statute of limitations for recovery of reparations under the Shipping Act of 1984, as amended 46 U.S.C. § 41301(a)” and “by the Commission’s own website, which indicates that a small claim may be filed to seek reparations (damages) from a respondent.” Answer at 1-3.

Hapag-Lloyd also argue that small claims officers lack the authority to issue cease-and-desist orders and that the SCO in *Evergreen* improperly relied on the SCO in *Geo Machinery*’s decision as the basis for authority to issue a cease-and-desist order against the respondents in *Evergreen*, because, according to Hapag-Lloyd, the SCO in *Geo Machinery* noted that a “presiding officer may issue a default judgment, a cease and desist order, or other just ruling against a party” Hapag-Lloyd opine that “the problem for TCW, and for small claims officers, is that the term ‘presiding officer’ is defined by FMC regulations to mean one or more members of the Commission or an administrative law judge. 46 C.F.R. & 502.25(a) [and] [t]he universe of ‘presiding officers’ with the authority to issue cease and desist orders expressly excludes small claims officers.” Answer at 4.

Hapag-Lloyd’s arguments were previously addressed in the August 29, 2023, Order, and can quickly be dispensed with. That Order stated:

In another small claims proceeding, *TCW, Inc. v. Evergreen Shipping Agency (America) Corporation*, FMC Docket No. 1966(I), 2021 WL 1748425 at * 17 (FMC Feb. 19, 2021), discussed in Hapag-Lloyd’s answer, similar arguments were raised by the respondents and rejected by the small claims officer (“SCO”), finding that the claimant in that proceeding’s request for a cease-and-desist order was “well within the purview of a small claims proceeding.” The SCO’s decision was affirmed and adopted by the Commission **in its entirety**. See *TCW, Inc. v. Evergreen Shipping Agency (AM.) Corp.*, FMC Docket No. 1966(I), 2022 WL

18068977 at *1 (FMC Dec. 29, 2022). *See also Martin David Thibeaux v. Chris Smith* FMC Docket No. 1988(I) (May 12, 2023) (where the SCO issued a cease-and-desist order barring the respondent from operating as an ocean transportation intermediary without a Federal Maritime Commission license), Notice not to Review [the SCO's decision] issued by the Commission on June 15, 2023. Accordingly, it is found that TCW's request for a cease-and-desist order is well within the purview of a small claims proceeding.

In addition, Hapag-Lloyd posits that notwithstanding TCW's claim for reparations in the amount of \$30, the "Claim is not a small claim for \$30," because, according to Respondents, "although TCW claims that it is seeking a refund of a single \$30 charge, it is in fact seeking establishment of legal precedent and a cease and desist order that, based on the allegations of the Claim alone, will have a value far in excess of the maximum amount which can be claimed under the informal procedures of Subpart S." Answer at 2-3. Be that as it may, the fact remains that TCW limits its Claim to a request for reparations in the amount of \$30. Assuming TCW prevails in its Claim and is able to demonstrate that it is entitled to an award of reparations, it would only be entitled to recover \$30 as reparations. Therefore, it is similarly found that TCW's claim for reparations falls within the purview of a small claims proceeding.

Order at 1 - 2.

Moreover, Hapag-Lloyd's citation to 46 C.F.R. § 502.25(a) to support its contention that "[t]he problem for TCW, and for small claims officers, is that the term 'presiding officer' is defined by FMC regulations to **mean** one or more members of the Commission or an administrative law judge" (Answer at 4. emphasis added), is misleading and inaccurate.

Section 502.25(a) states that a presiding officer "**includes, where applicable**, one or more members of the Commission or an administrative law judge." 46 C.F.R. § 502.25(a) (emphasis added). The language clearly and unambiguously suggests that the definition of a presiding officer is intended to include, where appropriate, members of the Commission and administrative law judges, and is meant to be inclusionary rather than excluding other types of adjudicators.

Thus, section 502.25(a) does not support Hapag-Lloyd's assertion that the "universe of 'presiding officers' with the authority to issue cease and desist orders expressly excludes small claims officers." Answer at 4. Hapag-Lloyd's arguments that TCW's Claim is inappropriate for adjudication under the Informal Procedures are, therefore, without merit.

E. TCW Fails to Demonstrate that Hapag-Lloyd's Imposition of the Street Turn Fee Violates Section 41102(c)

Summarized, TCW argues that Hapag-Lloyd benefit from the use of street turns, asserting that Hapag-Lloyd not only receive 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 from the increased use of their equipment as opposed to having empty import containers

returned, as well as the fact that 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. TCW asserts that thus, imposing a street turn fee is unreasonable and a violation of section 41102(c). Complaint at 2.

Hapag-Lloyd argue that section 41102(c) is not applicable to the street turn fee because, according to them, the Commission has consistently interpreted section 41102(c)'s prohibition of unjust and unreasonable "regulations and practices related to or connected with receiving, handling, storing, or delivering property" as applying to services performed at the terminal and to terminal and forwarding operations. Answer at 5-6 (citing *Los Angeles By-Products Co. v. Barber S.S. Lines*, 2 U.S.M.C. 106, 113 – 14 (1939) and *In Time Limit on the Filing of Over Charge Claims*, 10 F.M.C. 7 (1966)). Hapag-Lloyd further posit that section 41102(c) is intended to protect shippers rather than motor carriers. Answer at 6.

Hapag-Lloyd's argument is contradicted by the *Interpretive Rule on Demurrage and Detention Under the Shipping Act* ("Final Rule"), 85 Fed. Reg. 29638 (May 18, 2020), where the Commission makes clear that the reasonableness of demurrage and detention practices by ocean carriers and marine terminal operators are to be assessed under the section 41102(c) prohibitions (85 Fed. Reg. 29640; *see also* 46 C.F.R. 545.5), and that truckers are part of the entities the *Final Rule* seeks to protect (85 Fed. Reg. 29638).

In addition, abundant Commission case law contradicts Hapag-Lloyd's arguments that section 41102(c) only applies to services performed at the terminal and to terminal forwarding operations and does not apply to motor carriers. *See, e.g., TCW, Inc. v. Evergreen Shipping Agency (America) Corporation*, FMC Docket No. 1966(I), 2021 WL 1748425 at * 17 (FMC Feb. 19, 2021) (adopting the SCO's determination that the ocean carrier's demurrage and detention practices violated section 41102(c)); *Mitsui O.S.K Lines v. Global Link*, Docket. No. 09-01, 2011 WL 7144008 at *6-7 (FMC Aug. 1, 2011) (establishing that the Shipping Act of 1984 allows the Commission to hear claims involving the inland portions of international ocean transportation arrangements, including the Complainant's claim that an arrangement involving the split-routing of cargo by the respondents violated section 41102(c)); *Distribution Servs., Ltd. v. Trans-Pacific Freight Conference of Japan and its Member Lines*, Docket No. 86-12, 1988 WL 340659 at *6-7 (FMC Jan. 16, 1988) (affirming the ALJ's finding that the Respondents' rule denying the payment of transloading allowances when consignees load shipment at their facility was an unjust and unreasonable regulation or practice related to or connected with the receiving, handling, storing or delivering of property, in violation of section 10(d)(1) (predecessor to section 41102(c)) of the Shipping Act of 1984)); *American Export-Isbrandtsen Lines, Inc. v. Federal Maritime Comm'n*, 389 F.2d 962, 968 (D.C. Cir. 1968) (affirming the Commission's determination that the respondent Conference's imposition of certain charges on **truckers** and lightermen constituted unjust and unreasonable practices under Section 17 of the Shipping Act, 1916, (predecessor to section 41102(c) (emphasis added))); *Eastern Mediterranean Shipping Corp. D/B/A Atlantic Ocean Line and Anil K. Sharma Possible Violations of Section 10(a)(1), 10(b)(1), and 10(d)(1) of the Shipping Act of 1984*, Docket No. 98-16, 1999 WL 125987 (ALJ Feb. 3, 1999) (Respondents found to have violated section 10(d)(1) by failing to remit payments to vessel-operating common carriers on behalf of customers, providing false and misleading information to shippers, failing to provide bills of lading to shippers, and causing delays in

delivery because of their “actions or inactions.”). These are but a drop in the ocean of Commission cases contradicting Hapag-Lloyd’s arguments.

However, I find that TCW fails to demonstrate that Hapag-Lloyd violated section 41102(c) for different reasons. To succeed in a claim for reparations under section 41102(c), the claimant must show that:

- 1) the 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 alleged practice or regulation relates to or is connected with receiving, handling, storing or delivering property;
- 4) the alleged practice or regulation is unjust or unreasonable; and,
- 5) the alleged practice or regulation in question is the proximate cause of the loss the claimant alleges it suffered.

46 U.S.C. § 41102(c) and 46 C.F.R. § 545.4(d). All five elements must be proven in order to recover reparations.

While the evidence shows that Hapag-Lloyd is an ocean common carrier (PFs 3 and 4), and that the alleged conduct is related to or is connected with receiving, handling, storing or delivering property (PFs 6 - 21), TCW does not provide a basis to find that the street turn fees are unreasonable. TCW’s arguments regarding the benefits of street turns and the efficiencies they create are well taken. However, 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.

Whether 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. Therefore, based on the Claim’s context and record at hand, the undersigned has no basis to find that they are.

Because Claimant has not demonstrated that Hapag’s practice of imposing street turn fees is unreasonable, it is not necessary to determine whether the other elements that must be present to find a violation of section 41102(c) have been demonstrated. Accordingly, TCW’s 41102(c) claim is dismissed.

F. The Prohibitions Under Section 41104(a)(8) Do Not Apply to the Street Turn Fee at Issue

TCW alleges that the street turn fee violates section 41104(a)(8) because Hapag-Lloyd impose the fees on merchant haulage moves but not on carrier haulage moves. It argues that thus the fee “is a financial penalty for not utilizing Respondent’s carrier haulage service.” Complaint at 2.

Hapag-Lloyd asserts that section 41104(a)(8) is not applicable because it applies only to service under a tariff, whereas the street turn fee is not reflected in Hapag-Lloyd's tariff, service contract terms, or any bills of lading issued by Hapag-Lloyd. Answer at 7-8; R. Supp. Info pg. 1 at no. 2. Hapag-Lloyd note that "[m]oreover, the FMC's regulations expressly exempt equipment interchange agreements between common carriers and inland carriers from the Commission's tariff publication requirements." Answer at 7 - 8 (citing 46 C.F.R. § 520.13(b)(1)). Section 520.13(b)(1) provides that equipment-interchange agreements between common carriers subject to the Shipping Act's tariff publication requirements 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)).

Section 41104(a)(8) prohibits, for service pursuant to a tariff, a common carrier to give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage. 46 U.S.C. § 41104(a)(8). As Hapag-Lloyd correctly note, for section 41104(a)(8) to apply, the service at issue must have been provided under a tariff. Hapag-Lloyd state 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. Answer at 7-8; R. Supp. Info pg. 1 at no. 2.

Moreover, the record does not demonstrate that there is no difference between merchant haulage and carrier haulage services, such that their unequal treatment is not justified by differences in transportation circumstances. Hapag-Lloyd's refused to explain or justify why it charges a street fee for merchant haulage but not for carrier haulage (R. Supp. Info pg. 2 at nos. 4 and 5); nevertheless, as the Claimant in this proceeding, TCW, not Hapag-Lloyd, bears the burden to establish its allegations by a preponderance of the evidence, which it failed to do. *See* 46 C.F.R. § 502.203. ("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."). Accordingly, TCW's section 41104(a)(8) claim is also dismissed.

TCW's argument regarding why street turns are beneficial and should not be disincentivized is a strong argument, and bears repeating:

Port congestion has been a point of focus for industry stakeholders as well as government entities in recent years. Should a motor carrier determine that it is more financially beneficial to return an empty container, only to out gate another container of the same common carrier to avoid the added expense of the street turn fee, inefficiencies are multiplied. Gate transactions literally double. Chassis utilization is greatly improved with street turns as well - serving yet another valuable benefit to the transportation community. Container utilization is increased. Driver productivity is increased and fuel burn is decreased. Port productivity is increased. In some cases during the pandemic, Claimant was only able to provide exporters with equipment on the street due to the severe congestion and chassis shortages across multiple markets that made sourcing empty equipment from ports/rails/CYs impossible.

C. Brief at 1 - 2 (citing to a Journal of Commerce article and statements by the World Shipping Counsel). TCW posits that the costs associated with street turns necessitates that motor carriers

reevaluate the value of a street turn. C. Brief at 1. TCW also argues that “truck emissions in port environments is a major concern and that street turns are an important measure in reducing incurred miles, reducing fuel burn and reducing emissions especially in high traffic areas.” C. Brief at 1 – 2. In light of the statement at section 40102(2) that a purpose of OSRA 2022 is “to ensure an efficient, competitive, and economical transportation system in the ocean commerce of the United States,” this is useful information for the Commission as it strives to achieve its mission. A longstanding theme reflected in the Commission’s undertakings is its desire to improve port efficiency. As previously noted, the changes Claimant seeks to impose through this litigation are policy-related issues best suited for the Commission.

Accordingly, because TCW failed to prove its allegations against Hapag-Lloyd, its Claim is dismissed and its request for reparations and a cease-and-desist order against Hapag Lloyd are denied.

IV. CONCLUSION

TCW fails to demonstrate that Hapag-Lloyd violated the Shipping Act by charging it a street turn fee. Accordingly, it is hereby **ORDERED** that TCW’s request for reparations and a cease-and-desist order be **DENIED** and its complaint be **DISMISSED WITH PREJUDICE**.

Theresa Dike
Small Claims Officer