

MaerFEDERAL MARITIME COMMISSION
Office of the Administrative Law Judges

TANU IMPEX LLC, *Claimant*

v.

MAERSK A.S.; SEALAND MAERSK; AND TWILL,
Respondents.

DOCKET NO. 2004(I)

Served: May 9, 2024

BEFORE: Theresa DIKE, *Small Claims Officer.*

ORDER APPROVING SETTLEMENT AND DISMISSING PROCEEDING

On April 10, 2024, the Secretary of the Federal Maritime Commission (“FMC” or “Commission”) issued a Notice of Filing of Small Claims Complaint and Assignment, giving notice that Claimant Tanu Impex LLC (“Tanu”) had filed an informal complaint against Respondents Maersk A.S.; Sealand Maersk; and Twill. Claimant alleges that Respondents improperly imposed demurrage against Claimant’s containers, in violation of 46 U.S.C. § 41104’s provisions.

The Secretary instructed Respondents to file a response to the Claim by May 6, 2024, and to indicate whether they consent to the adjudication of the Claim under the informal procedures provided at Subpart S of the Commission’s Rules of Practice and Procedure (46 C.F.R. § 502.301-305). The Secretary also assigned the proceeding to the Chief Administrative Law Judge to designate a Small Claims Officer to adjudicate the proceeding.

On May 6, 2024, Claimant submitted a motion to dismiss and a signed settlement agreement by the parties, requesting voluntary dismissal of its Claim. Respondents have not yet filed a response to the Claim and did not object to the adjudication of this proceeding under the informal procedures. Accordingly, the Chief Administrative Law Judge assigned this proceeding to the undersigned for adjudication under the FMC’s informal procedures on May 9, 2024.

Claimant asks that its complaint against Respondents be dismissed based on a settlement agreement between the parties resolving the issues in dispute. Pursuant to the Commission’s Rule 72(a)(3):

[A]n action may be dismissed at the complainant’s request only by order of the presiding officer, on terms the presiding officer considers proper. If the motion is based on a settlement by the parties, the settlement agreement must be submitted

with the motion for determination as to whether the settlement appears to violate any law or policy and to ensure the settlement is free of fraud, duress, undue influence, mistake, or other defects which might make it unapprovable. Unless the order states otherwise, a dismissal under this paragraph is without prejudice.

46 C.F.R. § 502.72(a)(3). Although Rule 72, governing dismissal of Commission proceedings, is not applicable to Subpart S proceedings, the undersigned used the rule as guidance for ruling on Claimant's request to dismiss the Claim.

The Commission's regulations allow settlements by litigating parties; however, the Commission requires that settlement agreements be submitted "for determination as to whether the settlement appears to violate any law or policy and to ensure the settlement is free of fraud, duress, undue influence, mistake, or other defects which might make it unapprovable." *Maher Terminals v. The Port Authority of N.Y. & N.J.*, 34 S.R.R. 322, 325 (FMC 2016). In reviewing settlement agreements, the Commission is guided by its "strong and consistent policy of encouraging settlements and engaging in every presumption which favors a finding that they are fair, correct, and valid." *Maher Terminals*, 34 S.R.R. at 326 (quoting *APM Terminals North America, Inc. v. Port Authority of N.Y. & N.J.*, 31 S.R.R. 623, 626 (FMC 2009)).

"While following these general principles, the Commission does not merely rubber stamp any proffered settlement, no matter how anxious the parties may be to terminate their litigation." *Old Ben Coal Co. v. Sea-Land Serv., Inc.*, 18 S.R.R. 1085, 1092 (ALJ 1978). However, if a "proffered settlement does not appear to violate any law or policy and is free of fraud duress, undue influence, mistake or other defect which might make it unapprovable despite the strong policy of the law encouraging approval of settlements, the settlement will probably pass muster and receive approval." *Id.* at 1093. "[I]f it is the considered judgment of the parties that whatever benefits might result from the vindication of their positions would be outweighed by the costs of continued litigation and if the settlement otherwise complies with law the Commission authorizes the settlement." *Delhi Petroleum Pty. Ltd. v. U.S. Atlantic & Gulf/Australia – New Zealand Conf. and Columbus Line, Inc.*, 24 S.R.R. 1129, 1134 (ALJ 1988).

Pursuant to the settlement agreement between the parties, in consideration of a payment in the amount of \$13,287.00 to Tanu by Maersk, Tanu agrees to request dismissal with prejudice of its Claim against Respondents at the Federal Maritime Commission. Settlement Agreement at 1. The parties state that this "Agreement has been negotiated between the parties, both of whom are represented by counsel," and "Claimant acknowledges that it has had an opportunity to consult with legal counsel prior to the execution of this Agreement." Settlement Agreement at 1.

A review of the settlement agreement, which is signed by Claimant and Maersk Agency U.S.A, on behalf of Respondents, who are all Maersk entities, does not show any indicia of fraud, duress, undue influence, or mistake, and appears to reflect an arm's-length resolution between the parties. The terms appear to be fair, reasonable, and adequate. Accordingly, the parties' settlement agreement is approved, and this proceeding dismissed with prejudice.

Upon consideration of the proposed settlement and Claimant's motion to dismiss its Claim, and for the reasons stated above, it is hereby

ORDERED that the settlement agreement be **APPROVED**. It is

FURTHER ORDERED that this proceeding be **DISMISSED WITH PREJUDICE**.

Theresa Dike
Small Claims Officer