FEDERAL MARITIME COMMISSION

Office of the Administrative Law Judges

AGRIBUSINESS HOLDINGS LIMITED PARTNERSHIP D/B/A BRIDGEWELL AGRIBUSINESS, LLC, *Claimant*

v.

ZIM INTEGRATED SHIPPING SERVICES, LTD., *Respondent*.

DOCKET NO. 2021(I)

Served: July 14, 2025

BEFORE: Theresa DIKE, *Small Claims Officer*.

INITIAL DECISION[1]

I. INTRODUCTION AND SUMMARY OF DECISION

Claimant Agribusiness Holdings Limited Partnership d/b/a Bridgewell Agribusiness, LLC ("Bridgewell") initiated this proceeding by filing an informal complaint at the Federal Maritime Commission ("FMC" or "Commission") against ZIM Integrated Shipping Services, Ltd. ("ZIM") on December 17, 2024, alleging that it violated 46 U.S.C. §§ 41102(c), and (d)(2), and 41104(a) and (d)(2) of the Shipping Act for failing to issue invoices for sixteen demurrage charges it imposed against Bridgewell's cargo.[2] In addition, Bridgewell alleges that Respondent's invoices did not satisfy the requirements of the "Incentive Principle" at 46 C.F.R. § 545.5 of the Commission's Rules and Regulations.

A. Background and Procedural History

Between August 30, 2022, and November 1, 2022, ZIM transported shipments belonging to Bridgewell from the United States to Vietnam pursuant to a service contract between ZIM and Hecny Transportation Inc. ("Hecny"), a non-vessel-operating common carrier ("NVOCC"), that Bridgewell engaged to deliver the shipments at issue. Some of those shipments incurred demurrage charges, which Bridgewell paid in 2022 through PayCargo, a freight payment

[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.

[2] On pg. 2 at no. 12, the Claim alleges that "Claimant is entitled to a full refund for those payments it made . . . totaling $49,400.00 . . . in violation of OSRA 2022 at 46 U.S.C. 41107(a)(15) and (d) . . . ." This appears to be an error as there is no section 41107(a)(15) or 41107(d) of OSRA 2022. Claimant most likely meant section 41104(a)(15) and 41104(d), which it alleges multiple times that ZIM violated. Similarly, although Claimant alleges on pg. 2 at no. 7 that a violation of 46 U.S.C. §§ 41104(a)-(d) occurred, it specifies and discusses sections 41104(a)(15) and 41104(d) as the provisions under section 41104 violated.

platform. In 2024, Bridgewell wrote to ZIM, asserting that ZIM failed to remit demurrage invoices to Bridgewell between August 30, 2022, and December 7, 2022, for those demurrage charges and/or issued invoices for the demurrage charges that did not comply with Shipping Act requirements. Bridgewell demanded a refund from ZIM for its payments for the demurrage charges in the amount of $75,455.[3] When ZIM failed to comply, Bridgewell filed a small claims complaint seeking reparations in the amount of $49,400.00 from ZIM for the payments.

On December 19, 2024, the Secretary of the Commission mailed a Notice of Assignment ("Notice") together with a copy of Bridgewell's Claim to ZIM and instructed ZIM to file a response to the Claim by January 13, 2025, and indicate whether it consented to the use of the Commission's informal procedures at Subpart S for adjudication of the Claim. The Secretary also assigned this proceeding to the Chief Administrative Law Judge ("Chief ALJ") to designate a small claims officer ("SCO") to adjudicate the proceeding. When no response was received from ZIM by the due date, an email was sent to ZIM inquiring why it had failed to file a response. ZIM then requested additional time to file a response, explaining that it had not received the Notice. It was granted additional time until February 10, 2025, to file a response. On February 10, 2025, ZIM submitted a response to the Claim and consented to the use of the Informal Procedures.

On February 24, 2025, the Chief ALJ assigned this proceeding to the undersigned for adjudication. Pursuant to 46 C.F.R. § 502.304(a) and (e) of the Commission's Rules of Practice and Procedure which authorize the SCO in a Subpart S proceeding to request, if deemed necessary, additional documents or information from the parties, on February 27, 2025, the undersigned issued a Request for Additional Documents and Information ("RSI") directing the parties to provide certain information and documents by March 31, 2025, and permitting any party wishing to file a response to the opposing party's submission to do so by April 14, 2025.

On March 27, 2025, Bridgewell submitted a response to the RSI ("C. Supp. Info"). Also, on March 31, 2025, ZIM requested and was granted additional time until April 7, 2025, to submit its response to the RSI. On April 7, 2025, ZIM submitted its response ("R. Supp. Info"). Additionally, on April 14, 2025, ZIM submitted a reply to Bridgewell's response ("R Reply"). Bridgewell did not submit a reply to ZIM's response. Accordingly, the record is now ripe for a decision.

As discussed in greater detail below, Claimant failed to prove its allegations against ZIM. Therefore, its claim is dismissed, and reparations denied.

B. ZIM's Request for Confidential Treatment

In response to the RSI, ZIM submitted a service contract with Hecny, for which ZIM has requested confidential treatment. The service contract contains rates and other commercial terms agreed upon by both carriers. R. Supp. Info, Exhibit A.

[3] Claimant does not explain why it merely seeks a refund of $49,400 rather than the $75,455 it demanded from ZIM.

Commission Rule 5 authorizes confidential treatment for confidential commercial information. 46 C.F.R. § 502.5. The service contract in question appears to contain confidential information thus, ZIM's request is reasonable. Accordingly, ZIM's request for confidentiality is granted.

C. Argument of the Parties

1. Claimant Bridgewell's Arguments

Claimant alleges that from August 30, 2022, through November 1, 2022, ZIM's invoicing practices for demurrage and detention (D&D) failed to comply with the strict requirements under OSRA 2022 and did not serve the Incentive Principle at section 545.5. Claim, pg. 1, at no. 7.[4] Specifically, Bridgewell alleges that Respondent unlawfully collected sixteen payments from it for demurrage charges totaling $49,400.00 without remitting invoices for the charges, in violation of sections 41104(a)(15) and (d). Claim, pgs. 1-2, at no. 8. It further alleges that ZIM engaged in conduct that was "normal, customary, and continuous" from August 30, 2022, through November 1, 2022, by collecting sixteen payments for detention and demurrage charges despite failing to issue the required invoices for the charges. C. Supp. Info, pg. 1 at no. 3.

Further, Claimant alleges that the demurrage charges from ZIM during the relevant period "arose due to the unfair practices implemented by ZIM in its response to supply chain and congestion issues in violation of the Shipping Act and the FMC's 'Incentive Principle,'" and that Respondent "took advantage of the fact that there were widespread congestion issues across international and domestic supply chains and implemented unfair practices by demanding payment for D&D Charges despite failing to satisfy its legal and compliance obligations related to the D&D Charges to issue invoices under OSRA 2022 and to promote freight fluidity." C. Supp. Info, pgs. 2-3 at no. 6. It avers that it "simply could not have disputed the D&D Charges (or ZIM's failure to issue invoices) in real time under the circumstances, as charges would have continued to increase." C. Supp. Info, pg. 3 at no. 6.

Claimant asserts that Respondent's "practice of failing to issue invoices for D&D charges but still demanding that Claimant make payments for uninvoiced and unsubstantiated D&D charges as a condition precedent to release Claimant's containers violates OSRA 2022, *and* it fails to satisfy the FMC's 'Incentive Principle' under the 'Interpretive Rule on Demurrage and Detention Under the Shipping Act' at 46 C.F.R. § 545.5, which requires such charges to serve 'their intended primary purposes as financial incentives to promote freight fluidity.'" Claim, pg. 2 at no. 11 (emphasis in original).

Claimant maintains that although it never received the invoices it nevertheless paid the demurrage charges totaling $49,400.00 to ZIM through credit card payments "in accordance with notices that Claimant received through online portal systems to ensure the release of its cargo." Claim, pg. 2 at no. 9. In addition, it alleges that "ZIM's practices compelled Bridgewell to pay

[4] The parties did not always include page numbers in their submissions; in instances where a submission is unnumbered, the decision uses, as an example, "page 1" to refer to the first page of the submission, "page 2" for the second page of the submission, etc. For unnumbered PDF documents, the decision uses the number assigned in the PDF screen for that document.

the D&D Charges without the transparency or visibility needed to evaluate the proper application of free time, charge accumulation, or options to dispute or mitigate fees," and that ZIM's failure to communicate with Bridgewell and to provide "the data elements required under OSRA 2022 . . . imposed an undue burden on Bridgewell where it could not manage its supply chain during an already challenging period." C. Supp. Info, pg. 3 at no. 9. It states that ZIM "only ever provided invoices as Exhibits to its Answer ("Exhibit Invoices")" and even then, the Exhibit Invoices fail to provide the email, telephone number, or other appropriate contact information for questions or requests for mitigation of fees, as required under section 41104(d)(2)(K). C. Supp. Info, pg. 2, at no. 5.

Claimant posits that because ZIM never provided the invoices at the time it demanded payment from Bridgewell, ZIM failed to comply with section 41104(d)(2)'s requirement that demurrage and detention invoices contain certain mandatory information because ZIM failed to remit invoices containing: i) the container availability date; ii) the allowed free time; iii) the start date for free time; iv) the end date of free time; v) the applicable detention or demurrage rule on which the daily rate is based; vi) the applicable rate or rates per applicable rule, vii) the email, telephone number, or other appropriate contact information for questions or requests for mitigation of fees; and viii) a statement that the common carrier's performance did not cause or contribute to the underlying invoiced charges. C. Supp. Info, pg. 2 at no. 5

Claimant contends that ZIM violated 46 U.S.C. §§ 41102(c) and (d)(2) by taking "advantage of widespread congestion issues across international and domestic supply chains during the Relevant Period of Time in connection with the D&D charges and . . . implement[ing] unreasonable and unfair practices in relation to receiving, storing, or delivering property[.]" Claim, pg. 2 at no. 10.

In support of its allegations, Claimant submitted a spreadsheet listing sixteen paid charges totaling $49,400.00, with the dates of payment for each charge, their reference numbers[5] and the amounts paid. Claim at pg. 5. Claimant contends that ZIM's failure to issue any invoices for the demurrage charges relieves it of any obligation to pay the charges pursuant to 46 U.S.C. § 41104(f). Claim, pg. 5. It asserts that as such, it is entitled to a refund of the $49,400.00 it paid for the demurrage charges. Claim, pg. 2 at no. 12, and pg. 5.

2. Respondent ZIM's Arguments

Respondent notes that Bridgewell engaged Hecny to deliver the shipments at issue, which then directly engaged ZIM to provide vessel-operating common carrier ("VOCC") services for the shipments. Answer, pg. 2 at section III; R. Supp. Info, pg. 1 at nos. 1 and 2. Respondent asserts:

> Hecny acted as "shipper" in relation to Respondent, was listed as shipper and consignee on the bills of lading issued by Respondent, entered into agreements with Respondent in its own name and capacity, and is the party with contractual privity with Respondent. Respondent did not have

[5] In a footnote under the spreadsheet Bridgewell states: "This 'Reference Nos.' column are those numbers identified in the notices that Bridgewell received through online portal systems, which include bills of lading, lines, references, descriptions, and the like."

> contractual privity with Claimant during the Relevant Period of Time with respect to the subject shipments (*i.e.*, did not offer and enter into a valid and applicable Service Contract with Claimant). Accordingly, the relationship between Respondent and Claimant is indirect and through the ocean transportation intermediary involved in these transactions.

Answer, pg. 2 at section III.

Further, Respondent notes that the invoices referenced by Claimant were issued to Hecny, the shipper, rather than to Claimant. Answer, pg. 2 at section III. ZIM asserts that it submitted invoices for fifteen of the shipments at issue, which invoices it states it remitted to Hecny, and that the invoice numbers on the ZIM invoices are identical to the invoice numbers in Claimant's spreadsheet. Answer, pg. 2 at section III; Answer, Ex. B(1)-(15). Respondent opines that one of the sixteen payments listed by Claimant - Reference No. ZCSU6740067 for a paid charge in the amount of $9,175.00 - should not have been included "because it is outside the scope of the Relevant Period of Time identified by Claimant" as it "covers a shipment from 2021 and is not within the Relevant Period of Time identified by Claimant," and "pre-dates the enactment of the Ocean Shipping Reform Act of 2022 and as such should be excluded from the claim." ZIM states that for this reason, it did not address the payment in question in its responses. Answer, pg. 2 at section III, and pgs. 4-5 at section IV(E).

Respondent avers that its invoices were timely and contained the relevant information under section 41104(d)(2), including the relevant free time allotted, the relevant rule for demurrage, the rates assessed when free time expired, the calculation of demurrage charges, and the total demurrage charges owed for the container. Answer, pg. 4 at section IV(D). It further opines that it had no obligation to remit the demurrage invoices to Claimant, a third party, arguing that the shipper is the more appropriate party to receive demurrage and detention invoices, as recognized by the Commission. Answer, pgs. 3-4, at section IV. Respondent asserts:

> ZIM provided payment information to its customer, Hecny, and does not, as a practice, bill demurrage charges to third parties. This practice aligns with the Commission's commentary in the "Interpretive Rule on Demurrage and Detention Under the Shipping Act," which states that "ocean carriers should bill their customers rather than imposing charges contractually-owed by third cargo interests on third parties." This practice is also consistent with regulations later implemented by the Commission in 2024 regarding demurrage and detention billing practices, which state that the appropriate billed party is the shipper or, in some cases, the consignee. Notably, none of these rules or regulations prohibit third parties from voluntarily paying demurrage or detention charges. In 2024, the Commission clarified in its "Final Rule on Demurrage and Detention Billing Requirements" that the new regulations were "purposefully silent on third parties voluntarily paying an invoice – thus allowing the practice by declining to prohibit it."

> Accordingly, with respect to the payments by Claimant, any party can access and make payments on the PayCargo portal provided they know the bill of lading number, container number and invoice number. As stated, ZIM provided the demurrage invoices and payment information to Hecny. Given that ZIM has no contractual privity with Claimant, Claimant would not have received any "notices for the payment of the D&D Charges through PayCargo." The PayCargo payment confirmations provided by Claimant simply show that it paid for the demurrage charges which it was permitted to do voluntarily. If Claimant objected to making the payments, it should have raised the objection with Hecny, the sole party with which it had contractual privity.

R. Reply, pgs. 4-5 at no. 7.

Respondent avers that it conducted its ocean transportation activities in compliance with the Act, including by issuing demurrage invoices to its shipper, Hecny, and that it assessed each charge pursuant to the applicable demurrage rules and rates identified in each invoice and the relevant service contracts with Hecny, and that it did not cause or contribute to the accrual of the demurrage charges. Answer, pg. 3 at sections IV (A-B); R. Supp. Info, pg. 4 at Section II. Respondent further avers that its practice of issuing invoices to its shipper, Hecny, was in accordance with applicable laws and regulations, and consistent with industry standards and the terms and conditions of its service contract with Hecny. Answer, pg. 3 at sections IV (A-B).

Respondent argues that Claimant did not specify how it failed to comply with sections 41104(a)-(d), how its VOCC services do not comport with the provisions of 46 C.F.R. § 545.5, how it failed to incentivize the movement of cargo or to meet the purpose promoting freight fluidity, or how it failed to establish, observe and enforce just and reasonable regulations and practices related to or connected with receiving, handling, storing or delivery property with regard to the assessed demurrage charges. Answer, pg. 3 at section IV; R. Supp. Info, pg.4 at section II; Reply pg. 4 at no. 6.

In addition, Respondent "identifie[s] a discrepancy of approximately $9,165" in the total demurrage charges claimed by Claimant, specifically, the charges listed for Reference Nos. DSAV173034546 and ZCSU6740067, noting that while Claimant's list indicates that it paid $325 for Reference No. DSAV1730343546, the invoice for the demurrage charge was $335, a $10 difference and in the case of ZCSU6740067, that the shipment was transported in 2021, which pre-dates OSRA 2022, and thus that it should be excluded from the claim. Answer, pgs. 4-5 at section IV(E). ZIM asks that Bridgewell's claim be denied and the case dismissed. Answer, pg. 5 at section V.

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

The Parties:

1. Claimant Bridgewell is a partnership located in Clackamas, Oregon. Claim, pg. 1 at no. 1.

2. Bridgewell was the shipper and beneficial cargo owner of the shipments for which the sixteen payments at issue were made. Claim, pg. 1 at no. 6.

3. Respondent ZIM is an Israel-based VOCC located in Haifa, Israel. Answer, pgs. 1-2 at section I.

4. ZIM provided VOCC services for fifteen of the sixteen shipments at issue (excluding ZCSU6740067) pursuant to a service contract with Hecny Shipping Limited, a foreign NVOCC located in Kowloon, Hong Kong (FMC Org. No. 014769) and its authorized affiliates, including Hecny Transportation Inc. a U.S.-based ocean transportation intermediary ("OTI") licensed with the Commission (FMC Org. No. 004753; OTI License No. 001599) (collectively "Hecny"). Answer, pg. 2 at section III; R. Supp. Info, pg. 1 at no. 2; R. Supp. Info, Ex. A.

5. ZIM's master bills of lading for the shipments (excluding ZCSU6740067), identify Hecny Transportation (Vietnam) Ltd as Agent of Hecny Shipping Ltd. as the shipper/exporter and forwarding agent for the shipments, and Hecny Transportation, Inc. as the consignee, and notify party for the shipments. R. Supp. Info, Ex. B.

6. The port of loading for all the shipments was in Vietnam and the port of destination was in Savanna, Georgia. R. Supp. Info, Ex. B.

7. In the "Remarks/Export or Other Instructions" section of ZIM's bills of lading for the fifteen shipments one or the other of the following notations is made:

> SHIPPER HEREBY IRREVOCABLY SURRENDERS ITS CONCTRACTUAL RIGHTS AS SHIPPER PURSUANT TO THIS BILL OF LADING TO HECNY TRANSPORTATION VN LTD
> FREIGHT COLLECT
>
> or:
> SHIPPER HEREBY IRREVOCABLY SURRENDERS ITS CONTRACTUAL RIGHTS AS SHIPPER HECNY TRANSPORTATION VN LTD
> FREIGHT COLLECT
>
> or:
> SHIPPER HEREBY IRREVOCABLY SURRENDERS ITS CONTRACTUAL RIGHTS AS SHIPPER PURSUANT TO THIS BILL OF LADING TO HECNY TRANSPORTATION (VIETNAM) LTD-SGN

R. Supp. Info, Ex. B (capitalization in original).

8. Bridgewell's name does not appear in any of the ZIM bills of lading for the fifteen shipments at issue. *See* R. Supp. Info, Ex. B.

9. Because Hecny was the listed shipper and consignee on ZIM's master bill of lading for the shipments, ZIM had no contractual privity with Bridgewell. Answer, pg. 2 at Section III; C. Supp. Info, pg. 1 at nos. 1-2; C. Supp. Info Ex. B; R. Reply, pg. 5 at no. 7.

10. "[C]ertain bills of lading [submitted by ZIM as Exhibit B] have incorrect bill of lading issue dates due to clerical errors at origin." *See, e.g.*, Bill of Lading No. ZIMUHCM80286928, dated 20/07/2016, Bill of Lading No. ZIMUHCM80286930, dated 20/07/2016, Bill of Lading No. ZIMUHCM80286931, dated 20/07/2016, Bill of Lading No. ZIMUHCM80286933, dated 20/07/2016, Bill of Lading No. ZIMUHCM80291525, dated 20/07/2029, and Bill of Lading No. ZIMUHCM80291529, dated 20/07/2029. R. Supp. Info, pg. 2 at no. 3.

11. ZIM's R. Supp. Info Exhibit C contains "a chart with the correct bill of lading issue dates listed [for] each relevant shipment associated with a detention/demurrage invoice." R. Supp. Info, pg. 2 at no. 3.

12. Bridgewell made the payments at issue through PayCargo. Claim, pg. 2, at no. 9.; C. Supp. Info, pg. 3 at no. 8; C. Supp. Info Exs. at pgs. 1-16.

13. Any party can access and make payments on the PayCargo portal if they know the bill of lading number, container number and invoice number for the shipment so the fact that Bridgewell paid the invoice charges for the shipments does not prove that ZIM issued the invoices to Bridgewell. R. Reply, pg. 6 at no. 7.

The Sixteen Paid Charges at Issue

14. The sixteen demurrage payments listed by Bridgewell total to $49,400.00. Claim,[6] at pg. 5.

15. ZIM only addressed fifteen of the paid charges, opining that the sixteenth charge (*see* Reference No. ZCSU6740067 in the amount of $9,175) was for a shipment from 2021, did not occur during the relevant time period identified by Claimant, and pre-dates the enactment of OSRA 2022, whose provisions Claimant alleges ZIM violated. Answer, pg. 5 at section III (E).

16. ZIM's invoices identify the charges at issue as demurrage. Answer, Exhibit B (1) – (15).

First Payment Dated 8/30/2022, in the Amount of $625.00

17. As proof of the first payment for $625.00, Bridgewell submitted a document titled "PayCargo Approval Confirmation for Demurrage DSAV1730337052," showing a credit card payment totaling $662.40, comprising a charge of $625.00, shipper fee of $15.00, and a processing fee of $24.78. The document identifies the Demurrage Invoice number as DSAV1730337052; the Vendor/Biller as ZIM Integrated Shipping Services (US), the

[6] Citations to exhibits refer to pages 5 through 21 containing pdf documents included in the Claim.

Payer as kazure@bridgewellab.comdup, and the Payment Date as 08/30/2022. Claim, at pg. 8.

18. ZIM submitted evidence showing that ZIM Bill of Lading No. ZIMUHCM80275782, Place of Receipt: Ho Chi Minh City, Vietnam, Port of Destination: Savannah, Georgia, was issued for the shipment connected to Invoice Number DSAV1730337052 on 7/14/2022, and that the shipper/exporter listed on the bill of lading was Hecny. *See* R. Supp. Info, Ex. B at pg. 3 (containing a bill of lading corresponding to the reference number listed in Claim, Ex pg. 5 for the first alleged paid charge); R. Supp. Info, Ex. C (chart listing the bills of lading numbers corresponding to the reference numbers and the dates of issue for the bills of lading); and Answer Ex. A (spreadsheet listing Hecny as the shipper as well as bill of lading numbers, reference numbers, container numbers, and the demurrage charges corresponding to the reference numbers listed in the Claim at pg. 5, & n.1 at page 5).

19. ZIM also submitted Invoice No. DSAV1730337052 dated August 30, 2022, showing a demurrage charge from ZIM to Hecny in the amount of $625.00 for Bill of Lading Number ZIMUHCM80275782, Container Number TGHU5239844. ZIM states that it remitted this invoice to Hecny and no evidence contradicts this testimony.

The invoice shows the following information: Container Type: DV40; Free Time Start Date: Aug 17, 2022; End Free Time: Aug 29, 2022; Start Calculation Date: Aug 30, 2022; End Calculation Date: Aug 31, 2022;Total Days: 15; Free Days: 4; Excluded Days: 2; Previous Invoices Amount: 1850; Due Days: 2; Calculated Amount: 625; Discount Amount: 0.00; Container Available: 08/17/2022; Chargeable period calendar: Calendar Days; Free days period calendar: Business Days; Demurrage Rule: ZIMU-136/Rule 4-: Level 1: 1-4 Days: Free Time, Level 2: 5-8 Days: 245.00, Level 3: 9-12 Days: 290.00, , Level 4: 13+ Days: 335.00; Calculated Amount 625.00; Final Amount: 625.00

Second Payment Dated 8/31/2022, in the Amount of $2,810.00

20. As proof of the second payment for $2,810.00, Bridgewell submitted a document titled "PayCargo Approval Confirmation for Demurrage DSAV1730337158," showing a credit card payment totaling $2,923.88, comprising a charge of $2,810.00, shipper fee of $15.00, and a processing fee of $98.88. The document identifies the Demurrage Invoice number as DSAV1730337158; the Vendor/Biller as ZIM Integrated Shipping Services (US), the Payer as Bridgewell Agribusiness, and the Payment Date as 08/31/2022. Claim, at pg. 19.

21. ZIM submitted evidence showing that ZIM Bill of Lading No. ZIMUHCM80275778, Place of Receipt: Ho Chi Minh City, Vietnam, Port of Destination: Savannah, Georgia, was issued for the shipment connected to Invoice Number DSAV1730337158 on 7/14/2022, and that the shipper/exporter listed on the bill of lading was Hecny. *See* R. Supp. Info, Ex. B at pg. 2, R. Supp. Info, Ex. C, and Answer Ex. A.

22. ZIM also submitted Invoice DSAV1730337158 dated August 31, 2022, showing a demurrage charge from ZIM to Hecny in the amount of $2,810.00, for Bill of Lading

Number ZIMUHCM80275778, Container Number ZCSU2770037. ZIM states that it remitted this invoice to Hecny and no evidence contradicts this testimony.

The invoice shows the following information: Container Type: DV40; Free Time Start Date: Aug 17, 2022; End Free Time: Aug 22, 2022; Start Calculation Date: Aug 23, 2022; End Calculation Date: Sep 1, 2022; Total Days: 16; Free Days: 4; Excluded Days: 2; Previous Invoices Amount: ; Due Days: 10; Calculated Amount: 2,810; Discount Amount: 0.00; Container Available: 08/17/2022; Chargeable period calendar: Calendar Days; Free days period calendar: Business Days; Demurrage Rule: ZIMU-136/Rule 4-: Level 1: 1-4 Days: Free Time, Level 2: 5-8 Days: 245.00, Level 3: 9-12 Days: 290.00, , Level 4: 13+ Days: 335.00; Calculated Amount 2,810.00; Final Amount: 2,810.00.

Third Payment Dated 9/6/2022, in the Amount of $1,560.00

23. As proof of the third payment for $1,560.00, Bridgewell submitted a document titled "PayCargo Approval Confirmation for Demurrage DSAV1730338050," showing a credit card payment totaling $1,630.13, comprising a charge of $1,560.00, shipper fee of $15.00, and a processing fee of $55.13. The document identifies the Demurrage Invoice number as DSAV1730338050; the Vendor/Biller as ZIM Integrated Shipping Services (US), the Payer as Bridgewell Agribusiness LLC, and the Payment Date as 09/06/2022. Claim, at pg. 17.

24. ZIM submitted evidence showing that ZIM Bill of Lading No. ZIMUHCM80275789, Place of Receipt: Ho Chi Minh City, Vietnam, Port of Destination: Savannah, Georgia, was issued for the shipment connected to Invoice Number DSAV1730338050 on 7/11/2022, and that the shipper/exporter listed on the bill of lading was Hecny. *See* R. Supp. Info, Ex. B at pg. 5, R. Supp. Info, Ex. C, and Answer Ex. A.

25. ZIM also submitted Invoice Number DSAV1730338050 dated September 6, 2022, showing a demurrage charge from ZIM to Hecny in the amount of $1,560.00, for Bill of Lading Number ZIMUHCM80275789, Container Number JXLU2795272. ZIM states that it remitted this invoice to Hecny and no evidence contradicts this testimony.

The invoice contains the following information: Container Type: DV40; Free Time Start Date: Aug 30, 2022; End Free Time: Sep 2, 2022; Start Calculation Date: Sep 3, 2022; End Calculation Date: Sep 3, 2022; Total Days: 10; Free Days: 4; Excluded Days: ; Previous Invoices Amount: ; Due Days: 6; Calculated Amount: 1,560; Discount Amount: 0.00; Container Available: 08/30/2022; Chargeable period calendar: Calendar Days; Free days period calendar: Business Days; Demurrage Rule: ZIMU-136/Rule 4-: Level 1: 1-4 Days: Free Time, Level 2: 5-8 Days: 245.00, Level 3: 9-12 Days: 290.00, , Level 4: 13+ Days: 335.00; Calculated Amount 1,560.00; Final Amount: 1,560.00.

Fourth Payment Dated 9/8/2022, in the Amount of $1,850.00

26. As proof of the fourth payment for $1,850.00, Bridgewell submitted a document titled "PayCargo Approval Confirmation for Demurrage DSAV1730342118," showing a credit

card payment totaling $1,930.28, comprising a charge of $1,850.00, shipper fee of $15.00, and a processing fee of $62.58. The document identifies the Demurrage Invoice number as DSAV1730342118; the Vendor/Biller as ZIM Integrated Shipping Services (US), the Payer as Bridgewell Agribusiness, and the Payment Date as 09/08/2022. Claim at pg. 18.

27. ZIM submitted evidence showing that ZIM Bill of Lading No. ZIMUHCM80275788, Place of Receipt: Ho Chi Minh City, Vietnam, Port of Destination: Savannah, Georgia, was issued for the shipment connected to Invoice Number DSAV1730342118 on 7/14/2022, and that the shipper/exporter listed on the bill of lading was Hecny. *See* R. Supp. Info, Ex. B at pg. 2, R. Supp. Info, Ex. C, and Answer Ex. A.

28. ZIM also submitted Invoice Number Number DSAV1730342118 dated September 8, 2022, showing a demurrage charge from ZIM to Hecny in the amount of $1,850.00, for Bill of Lading Number ZIMUHCM80275788, Container Number CLHU4673470. ZIM states that it remitted this invoice to Hecny and no evidence contradicts this testimony.

    The invoice contains the following information: Container Type: DV40; Free Time Start Date: Aug 30, 2022; End Free Time: Sep 2, 2022; Start Calculation Date: Sep 3, 2022; End Calculation Date: Sep 3, 2022; Total Days: 11; Free Days: 4; Excluded Days: ; Previous Invoices Amount: ; Due Days: 7; Calculated Amount: 1,850; Discount Amount: 0.00; Container Available: 08/30/2022; Chargeable period calendar: Calendar Days; Free days period calendar: Business Days; Demurrage Rule: ZIMU-136/Rule 4-: Level 1: 1-4 Days: Free Time, Level 2: 5-8 Days: 245.00, Level 3: 9-12 Days: 290.00, , Level 4: 13+ Days: 335.00; Calculated Amount 1,850; Final Amount: 1,850.

Fifth Payment Dated 9/12/2022, in the Amount of $1,250.00

29. As proof of the fifth payment for $1,250.00 Bridgewell submitted a document titled "PayCargo Approval Confirmation for Demurrage DSAV1730342590," showing a credit card payment totaling $1,309.28, comprising a charge of $1,250.00, shipper fee of $15.00, and a processing fee of $44.28. The document identifies the Demurrage Invoice number as DSAV1730342590; the Vendor/Biller as ZIM Integrated Shipping Services (US), the Payer as Bridgewell Agribusiness, LLC and the Payment Date as 09/12/2022. Claim, at pg. 10.

30. ZIM submitted evidence showing that ZIM Bill of Lading No. ZIMUHCM80275789, Place of Receipt: Ho Chi Minh City, Vietnam, Port of Destination: Savannah, Georgia, was issued for the shipment connected to Invoice Number DSAV1730342590 on 7/11/2022, and that the shipper/exporter listed on the bill of lading was Hecny. *See* R. Supp. Info, Ex. B at pg. 5, R. Supp. Info, Ex. C, and Answer Ex. A.

31. ZIM also submitted Invoice Number DSAV1730342590 dated September 12, 2022, showing a demurrage charge from ZIM to Hecny in the amount of $1,250.00 for Bill of Lading Number ZIMUHCM80275789, Container Number JXLU2795272. ZIM states that it remitted this invoice to Hecny and no evidence contradicts this testimony.

The invoice contains the following information: Container Type: DV40; Free Time Start Date: Aug 30, 2022; End Free Time: Sep 8, 2022; Start Calculation Date: Sep 9, 2022; End Calculation Date: Sep 12, 2022; Total Days: 14; Free Days: 4; Excluded Days: ; Previous Invoices Amount: 1560; Due Days: 4; Calculated Amount: 1,250; Discount Amount: 0.00; Container Available: 08/30/2022; Chargeable period calendar: Calendar Days; Free days period calendar: Business Days; Demurrage Rule: ZIMU-136/Rule 4-: Level 1: 1-4 Days: Free Time, Level 2: 5-8 Days: 245.00, Level 3: 9-12 Days: 290.00, , Level 4: 13+ Days: 335.00; Calculated Amount 1,250.00; Final Amount: 1,250.00.

Sixth Payment Dated 9/13/2022, in the Amount of $2,475.00

32. As proof of the sixth payment for $2,475.00 Bridgewell submitted a document titled "PayCargo Approval Confirmation for Demurrage DSAV1730343154," showing a credit card payment totaling $2,577.15, comprising a charge of $2,475.00, shipper fee of $15.00, and a processing fee of $87.15. The document identifies the Demurrage Invoice number as DSAV1730343154; the Vendor/Biller as ZIM Integrated Shipping Services (US), the Payer as Bridgewell Agribusiness LLC and the Payment Date as 09/13/2022. Claim, at pg. 20.

33. ZIM submitted evidence showing that ZIM Bill of Lading No. ZIMUHCM80286928, Place of Receipt: Ho Chi Minh City, Vietnam, Port of Destination: Savannah, Georgia, was issued for the shipment connected to Invoice Number DSAV1730343154 on 7/25/2022, and that the shipper/exporter listed on the bill of lading was Hecny. *See* R. Supp. Info, Ex. B at pg. 6, R. Supp. Info, Ex. C, and Answer Ex. A.

34. ZIM also submitted Invoice Number DSAV1730343154, dated September 13, 2022, showing a demurrage charge from ZIM to Hecny in the amount of $2,475.00 for Bill of Lading Number ZIMUHCM80286928, Container Number ZCSU2796730. ZIM states that it remitted this invoice to Hecny and no evidence contradicts this testimony.

The invoice contains the following information: Container Type: DV40; Free Time Start Date: Aug 31, 2022; End Free Time: Sep 6, 2022; Start Calculation Date: Sep 7, 2022; End Calculation Date: Sep 15, 2022; Total Days: 16; Free Days: 4; Excluded Days: 3; Previous Invoices Amount:; Due Days: 9; Calculated Amount: 2,475; Discount Amount: 0.00; Container Available: 08/31/2022; Chargeable period calendar: Calendar Days; Free days period calendar: Business Days; Demurrage Rule: ZIMU-136/Rule 4-: Level 1: 1-4 Days: Free Time, Level 2: 5-8 Days: 245.00, Level 3: 9-12 Days: 290.00, , Level 4: 13+ Days: 335.00; Calculated Amount 2,475.00; Final Amount: 2,475.00.

Seventh Payment Dated 9/13/2022, in the Amount of $2,475.00

35. As proof of the seventh payment for $2,475.00 Bridgewell submitted a document titled "PayCargo Approval Confirmation for Demurrage DSAV1730343153," showing a credit card payment totaling $2,577.15, comprising a charge of $2,475.00, shipper fee of $15.00, and a processing fee of $87.15. The document identifies the Demurrage Invoice number as DSAV17303431534; the Vendor/Biller as ZIM Integrated Shipping Services (US), the Payer as Bridgewell Agribusiness LLC and the Payment Date as 09/13/2022.

Claim, at pg. 16.

36. ZIM submitted evidence showing that ZIM Bill of Lading No. ZIMUHCM80286931, Place of Receipt: Ho Chi Minh City, Vietnam, Port of Destination: Savannah, Georgia, was issued for the shipment connected to Invoice Number DSAV1730343153 on 7/29/2022, and that the shipper/exporter listed on the bill of lading was Hecny. *See* R. Supp. Info, Ex. B at pg. 6, R. Supp. Info, Ex. C, and Answer Ex. A.

37. ZIM also submitted Invoice Number DSAV1730343153, dated September 13, 2022, showing a demurrage charge from ZIM to Hecny in the amount of $2,475.00 for Bill of Lading Number ZIMUHCM80286931, Container Number TGHU5112470. ZIM states that it remitted this invoice to Hecny and no evidence contradicts this testimony.

The invoice also contains the following information: Container Type: DV40; Free Time Start Date: Aug 31, 2022; End Free Time: Sep 6, 2022; Start Calculation Date: Sep 7, 2022; End Calculation Date: Sep 15, 2022; Total Days: 16; Free Days: 4; Excluded Days: 3; Previous Invoices Amount:; Due Days: 9; Calculated Amount: 2,475; Discount Amount: 0.00; Container Available: 08/31/2022; Chargeable period calendar: Calendar Days; Free days period calendar: Business Days; Demurrage Rule: ZIMU-136/Rule 4-: Level 1: 1-4 Days: Free Time, Level 2: 5-8 Days: 245.00, Level 3: 9-12 Days: 290.00, , Level 4: 13+ Days: 335.00; Calculated Amount 2,475.00; Final Amount: 2,475.00.

Eighth Payment Dated 9/13/2022, in the Amount of $3,815.00

38. As proof of the eighth payment for $3,815.00 Bridgewell submitted a document titled "PayCargo Approval Confirmation for Demurrage DSAV1730343152," showing a credit card payment totaling $3,964.05, comprising a charge of $3,815.00, shipper fee of $15.00, and a processing fee of $134.05. The document identifies the Demurrage Invoice number as DSAV1730343152; the Vendor/Biller as ZIM Integrated Shipping Services (US), the Payer as Bridgewell Agribusiness LLC and the Payment Date as 09/13/2022. Claim, at pg. 15.

39. ZIM submitted evidence showing that ZIM Bill of Lading No. ZIMUHCM80286930, Place of Receipt: Ho Chi Minh City, Vietnam, Port of Destination: Savannah, Georgia, was issued for the shipment connected to Invoice Number DSAV1730343152 on 7/25/2022, and that the shipper/exporter listed on the bill of lading was Hecny. *See* R. Supp. Info, Ex. B at pg. 7, R. Supp. Info, Ex. C, and Answer Ex. A.

40. ZIM also submitted Invoice Number DSAV1730343152, dated September 13, 2022, showing a demurrage charge from ZIM to Hecny in the amount of $3,815.00 for Bill of Lading Number ZIMUHCM80286930, Container Number ZCSU2671970. ZIM states that it remitted this invoice to Hecny and no evidence contradicts this testimony.

The invoice contains the following information: Container Type: DV40; Free Time Start Date: Aug 30, 2022; End Free Time: Sep 2, 2022; Start Calculation Date: Sep 3, 2022; End Calculation Date: Sep 15, 2022; Total Days: 17; Free Days: 4; Excluded Days: ; Previous Invoices Amount:; Due Days: 13; Calculated Amount: 3,815; Discount

Amount: 0.00; Container Available: 08/30/2022; Chargeable period calendar: Calendar Days; Free days period calendar: Business Days; Demurrage Rule: ZIMU-136/Rule 4-: Level 1: 1-4 Days: Free Time, Level 2: 5-8 Days: 245.00, Level 3: 9-12 Days: 290.00, , Level 4: 13+ Days: 335.00; Calculated Amount 3,815.00; Final Amount: 3,815.00.

Ninth Payment Dated 9/15/2022, in the Amount of $325.00

41. As proof of the ninth payment for $325.00 Bridgewell submitted a document titled "PayCargo Approval Confirmation for Demurrage DSAV1730343546," showing a credit card payment totaling $351.90, comprising a charge of $325.00, shipper fee of $15.00, and a processing fee of $11.90. The document identifies the Demurrage Invoice number as DSAV1730343546; the Vendor/Biller as ZIM Integrated Shipping Services (US), the Payer as Bridgewell Agribusiness LLC and the Payment Date as 09/15/2022." Claim, at pg. 9.

42. ZIM submitted evidence showing that ZIM Bill of Lading No. ZIMUHCM80286930, Place of Receipt: Ho Chi Minh City, Vietnam, Port of Destination: Savannah, Georgia, was issued for the shipment connected to Invoice Number DSAV1730343546 on 7/25/2022, and that the shipper/exporter listed on the bill of lading was Hecny. *See* R. Supp. Info, Ex. B at pg. 7, R. Supp. Info, Ex. C, and Answer Ex. A.

43. ZIM also submitted Invoice Number DSAV1730343546, dated September 15, 2022, showing a demurrage charge from ZIM to Hecny in the amount of $335.00[7] for Bill of Lading Number ZIMUHCM80286930, Container Number ZCSU2671970. ZIM states that it remitted this invoice to Hecny and no evidence contradicts this testimony.

The invoice contains the following information: Container Type: DV40; Free Time Start Date: Aug 30, 2022; End Free Time: Sep 15, 2022; Start Calculation Date: Sep 16, 2022; End Calculation Date: Sep 16, 2022; Total Days: 18; Free Days: 4; Excluded Days: ; Previous Invoices Amount: 3,815; Due Days: 1; Calculated Amount: 335; Discount Amount: 0.00; Container Available: 08/30/2022; Chargeable period calendar: Calendar Days; Free days period calendar: Business Days; Demurrage Rule: ZIMU-136/Rule 4-: Level 1: 1-4 Days: Free Time, Level 2: 5-8 Days: 245.00, Level 3: 9-12 Days: 290.00, , Level 4: 13+ Days: 335.00; Calculated Amount 335.00; Final Amount: 335.00.

Tenth Payment Dated 9/15/2022, in the Amount of $335.00

44. As proof of the tenth payment for $335.00 Bridgewell submitted a document titled "PayCargo Approval Confirmation for Demurrage DSAV1730343547," showing a credit card payment totaling $362.25, comprising a charge of $335.00, shipper fee of $15.00, and a processing fee of $12.25. The document identifies the Demurrage Invoice number as DSAV1730343547; the Vendor/Biller as ZIM Integrated Shipping Services (US), the

[7] ZIM clarifies that the actual amount owed for demurrage under Invoice DSAV1730343546 was $335, rather than the $325 paid by Bridgewell. Answer, pgs. 4-5 at Section IV(E). ZIM does not seek a refund of the balance.

Payer as Bridgewell Agribusiness LLC and the Payment Date as 09/15/2022. Claim, at pg. 9.

45. ZIM submitted evidence showing that ZIM Bill of Lading No. ZIMUHCM80286931, Place of Receipt: Ho Chi Minh City, Vietnam, Port of Destination: Savannah, Georgia, was issued for the shipment connected to Invoice Number DSAV1730343547 on 7/29/2022, and that the shipper/exporter listed on the bill of lading was Hecny. *See* R. Supp. Info, Ex. B at pg. 8, R. Supp. Info, Ex. C, and Answer Ex. A.

46. ZIM also submitted Invoice Number DSAV1730343547, dated September 15, 2022, showing a demurrage charge from ZIM to Hecny in the amount of $335.00 for Bill of Lading Number ZIMUHCM80286931, Container Number TGHU5112470. ZIM states that it remitted this invoice to Hecny and no evidence contradicts this testimony.

The invoice contains the following information: Container Type: DV40; Free Time Start Date: Aug 30, 2022; End Free Time: Sep 15, 2022; Start Calculation Date: Sep 16, 2022; End Calculation Date: Sep 16, 2022; Total Days: 18; Free Days: 4; Excluded Days: ; Previous Invoices Amount: 3,815; Due Days: 1; Calculated Amount: 335; Discount Amount: 0.00; Container Available: 08/30/2022; Chargeable period calendar: Calendar Days; Free days period calendar: Business Days; Demurrage Rule: ZIMU-136/Rule 4-: Level 1: 1-4 Days: Free Time, Level 2: 5-8 Days: 245.00, Level 3: 9-12 Days: 290.00, , Level 4: 13+ Days: 335.00; Calculated Amount 335.00; Final Amount: 335.00.

Eleventh Payment Dated 9/19/2022, in the Amount of $1,005.00

47. As proof of the eleventh payment for $1,005.00 Bridgewell submitted a document titled "PayCargo Approval Confirmation for Demurrage DSAV1730344219," showing a credit card payment totaling $1,055.70, comprising a charge of $1,005.00, shipper fee of $15.00, and a processing fee of $35.70. The document identifies the Demurrage Invoice number as DSAV1730344219; the Vendor/Biller as ZIM Integrated Shipping Services (US), the Payer as Bridgewell Agribusiness LLC and the Payment Date as 09/19/2022. Claim, at pg. 11.

48. ZIM submitted evidence showing that ZIM Bill of Lading No. ZIMUHCM80286928, Place of Receipt: Ho Chi Minh City, Vietnam, Port of Destination: Savannah, Georgia, was issued for the shipment connected to Invoice Number DSAV1730344219 on 7/25/2022, and that the shipper/exporter listed on the bill of lading was Hecny. *See* R. Supp. Info, Ex. B at pg. 6, R. Supp. Info, Ex. C, and Answer Ex. A.

49. ZIM also submitted Invoice Number DSAV1730344219, dated September 19, 2022, showing a demurrage charge from ZIM to Hecny in the amount of $1,005.00 for Bill of Lading Number ZIMUHCM80286928, Container Number ZCSU2796730. ZIM states that it remitted this invoice to Hecny and no evidence contradicts this testimony.

The invoice contains the following information: Container Type: DV40; Free Time Start Date: Aug 31, 2022; End Free Time: Sep 16, 2022; Start Calculation Date: Sep 17, 2022; End Calculation Date: Sep 18, 2022; Total Days: 20; Free Days: 4; Excluded Days: 3;

Previous Invoices Amount: 2,810; Due Days: 3; Calculated Amount: 1,005; Discount Amount: 0.00; Container Available: 08/30/2022; Chargeable period calendar: Calendar Days; Free days period calendar: Business Days; Demurrage Rule: ZIMU-136/Rule 4-: Level 1: 1-4 Days: Free Time, Level 2: 5-8 Days: 245.00, Level 3: 9-12 Days: 290.00, , Level 4: 13+ Days: 335.00; Calculated Amount 1,005.00; Final Amount: 1,005.00.

Twelfth Payment Dated 9/28/2022, in the Amount of $670.00

50. As proof of the twelfth payment for $670.00 Bridgewell submitted a document titled "PayCargo Approval Confirmation for Demurrage DSAV1730345548," showing a credit card payment totaling $708.98, comprising a charge of $670.00, shipper fee of $15.00, and a processing fee of $23.98. The document identifies the Demurrage Invoice number as DSAV1730345548; the Vendor/Biller as ZIM Integrated Shipping Services (US), the Payer as Bridgewell Agribusiness LLC and the Payment Date as 09/28/2022. Claim, at pg. 7.

51. ZIM submitted evidence showing that ZIM Bill of Lading No. ZIMUHCM80286933, Place of Receipt: Ho Chi Minh City, Vietnam, Port of Destination: Savannah, Georgia, was issued for the shipment connected to Invoice Number DSAV1730345548 on 7/29/2022, and that the shipper/exporter listed on the bill of lading was Hecny. *See* R. Supp. Info, Ex. B at pg. 9, R. Supp. Info, Ex. C, and Answer Ex. A.

52. ZIM also submitted Invoice Number DSAV1730345548, dated September 28, 2022, showing a demurrage charge from ZIM to Hecny in the amount of $670.00 for Bill of Lading Number ZIMUHCM80286933, Container Number TTNU5185796. ZIM states that it remitted this invoice to Hecny and no evidence contradicts this testimony.

The invoice contains the following information: Container Type: DV40; Free Time Start Date: Aug 30, 2022; End Free Time: Sep 28, 2022; Start Calculation Date: Sep 29, 2022; End Calculation Date: Sep 30, 2022; Total Days: 32; Free Days: 4; Excluded Days: ; Previous Invoices Amount: 8,170; Due Days: 2; Calculated Amount: 670; Discount Amount: 0.00; Container Available: 08/30/2022; Chargeable period calendar: Calendar Days; Free days period calendar: Business Days; Demurrage Rule: ZIMU-136/Rule 4-: Level 1: 1-4 Days: Free Time, Level 2: 5-8 Days: 245.00, Level 3: 9-12 Days: 290.00, , Level 4: 13+ Days: 335.00; Calculated Amount 670.00; Final Amount: 670.00.

Thirteenth Payment Dated 10/24/2022, in the Amount of $6,830.00

53. As proof of the thirteenth payment for $6,830.00 Bridgewell submitted a document titled "PayCargo Approval Confirmation for Demurrage DSAV1730352803," showing a credit card payment totaling $7,084.58, comprising a charge of $6,830.00, shipper fee of $15.00, and a processing fee of $239.58. The document identifies the Demurrage Invoice number as D DSAV1730352803; the Vendor/Biller as ZIM Integrated Shipping Services (US), the Payer as Bridgewell Agribusiness and the Payment Date as 10/24/2022. Claim, at pg. 21.

54. ZIM submitted evidence showing that ZIM Bill of Lading No. ZIMUHCM80291525, Place of Receipt: Ho Chi Minh City, Vietnam, Port of Destination: Savannah, Georgia, was issued for the shipment connected to Invoice Number DSAV1730345548 on 8/3/2022, and that the shipper/exporter listed on the bill of lading was Hecny. *See* R. Supp. Info, Ex. B at pg. 10, R. Supp. Info, Ex. C, and Answer Ex. A.

55. ZIM also submitted Invoice Number DSAV1730352803, dated October 24, 2022, showing a demurrage charge from ZIM to Hecny in the amount of $6,830.00 for Bill of Lading Number ZIMUHCM80291525, Container Number TGHU5212036. ZIM states that it remitted this invoice to Hecny and no evidence contradicts this testimony.

The invoice contains the following information: Container Type: DV40; Free Time Start Date: Sep 28, 2022; End Free Time: Oct 3, 2022; Start Calculation Date: Oct 4, 2022; End Calculation Date: Oct 25, 2022; Total Days: 28; Free Days: 4; Excluded Days: 2; Previous Invoices Amount: ; Due Days: 22; Calculated Amount: 6,830; Discount Amount: 0.00; Container Available: 9/28/2022; Chargeable period calendar: Calendar Days; Free days period calendar: Business Days; Demurrage Rule: ZIMU-136/Rule 4-: Level 1: 1-4 Days: Free Time, Level 2: 5-8 Days: 245.00, Level 3: 9-12 Days: 290.00, , Level 4: 13+ Days: 335.00; Calculated Amount 6,830.00; Final Amount: 6,830.00.

Fourteenth Payment Dated 10/25/2022, in the Amount of $335.00

56. As proof of the fourteenth payment for $335.00 Bridgewell submitted a document titled "PayCargo Approval Confirmation for Demurrage DSAV1730353052," showing a credit card payment totaling $362.25, comprising a charge of $335.00, shipper fee of $15.00, and a processing fee of $12.25. The document identifies the Demurrage Invoice number as DSAV1730353052; the Vendor/Biller as ZIM Integrated Shipping Services (US), the Payer as Bridgewell Agribusiness and the Payment Date as 10/25/2022. Claim, at pg. 12.

57. ZIM submitted evidence showing that ZIM Bill of Lading No. ZIMUHCM80291529, Place of Receipt: Ho Chi Minh City, Vietnam, Port of Destination: Savannah, Georgia, was issued for the shipment connected to Invoice Number DSAV1730353052 on 8/3/2022, and that the shipper/exporter listed on the bill of lading was Hecny. *See* R. Supp. Info, Ex. B at pg. 12, R. Supp. Info, Ex. C, and Answer Ex. A.

58. ZIM also submitted Invoice Number DSAV1730353052, dated October 25, 2022, showing a demurrage charge from ZIM to Hecny in the amount of $335.00 for Bill of Lading Number ZIMUHCM80291529, Container Number DFSU4058160. ZIM states that it remitted this invoice to Hecny and no evidence contradicts this testimony.

The invoice contains the following information: Container Type: DV40; Free Time Start Date: Sep 16, 2022; End Free Time: Oct 25, 2022; Start Calculation Date: Oct 26, 2022; End Calculation Date: Oct 26, 2022; Total Days: 41; Free Days: 4; Excluded Days: 2; Previous Invoices Amount: 10,850; Due Days: 1; Calculated Amount: 335; Discount Amount: 0.00; Container Available: 08/30/2022; Chargeable period calendar: Calendar Days; Free days period calendar: Business Days; Demurrage Rule: ZIMU-136/Rule 4-: Level 1: 1-4 Days: Free Time, Level 2: 5-8 Days: 245.00, Level 3: 9-12 Days: 290.00, ,

Level 4: 13+ Days: 335.00; Calculated Amount 335.00; Final Amount: 335.00.

Fifteenth Payment Dated 10/25/2022, in the Amount of $9,175.00

59. Bridgewell alleges that it paid for a demurrage charge in the amount of $9,175 on October 25, 2022, for Container number ZCSU6740067. It submitted as proof an untitled document dated Tuesday, October 25, 2022, with some words partially cut off, containing a notation: "[T]hank you for authorizing your payment. [H]ere is your tracking ID-892268. Please keep this for reference."

[P]ayment Details
Container # ZCSU6740067, Carrier ZIM, Free Days 4, First Free Date 09/22/2022, Pay Through Date 10/26/2022, Tariff Description Demurrage paid through 10/26/2022, Tariff Rate/Rule
Days 1-4: 245 ZIMU-136, Import Demurrage rule 4.0, Expedited Services sub-rule 4A,
Days 5-8: 290 ZIMU-136, Import Demurrage rule 4.0, Expedited Services sub-rule 4A,
Days 9+: $335 - ZIMU-136, Import Demurrage rule 4.0, Expedited Services sub-rule 4A.

C. Supp. Info Ex. at pg. 14.

60. The arrangement for the transportation of Container number ZCSU6740067, for which the fifteenth demurrage payment in the amount of $9, 175 was made, occurred in 2021, which pre-dates OSRA 2022. Answer, pgs. 4-5 at section IV(E).

61. Although provided the opportunity to respond, Bridgewell did not deny or comment on ZIM's testimony that the transportation of Container number ZCSU6740067 occurred in 2021 and pre-dates OSRA 2022, and nothing in the record contradicts this testimony.

Sixteenth Payment Dated 11/1/2022, in the Amount of $13,865.00

62. As proof of the sixteenth payment for $13,865.00 Bridgewell submitted a document titled "PayCargo Approval Confirmation for Demurrage DSAV1730354380," showing a credit card payment totaling $14,365.80, comprising a charge of $13,865.00, shipper fee of $15.00, and a processing fee of $485.80. The document identifies the Demurrage Invoice number as DSAV1730354380; the Vendor/Biller as ZIM Integrated Shipping Services (US), the Payer as Bridgewell Agribusiness and the Payment Date as 11/01/2022. Claim, at pg. 14.

63. ZIM submitted evidence showing that ZIM Bill of Lading No. ZIMUHCM80291528, Place of Receipt: Ho Chi Minh City, Vietnam, Port of Destination: Savannah, Georgia, was issued for the shipment connected to Invoice Number DSAV1730354380 on 8/3/2022, and that the shipper/exporter listed on the bill of lading was Hecny. *See* R. Supp. Info, Ex. B at pg. 11, R. Supp. Info, Ex. C, and Answer Ex. A.

64. ZIM also submitted Invoice Number DSAV1730354380, dated November 1, 2022, showing a demurrage charge from ZIM to Hecny in the amount of $13,865.00 for Bill of Lading Number ZIMUHCM80291528, Container Number ZCSU2644609. ZIM states that it remitted this invoice to Hecny and no evidence contradicts this testimony.

The invoice contains the following information: Container Type: DV40; Free Time Start Date: Sep 16, 2022; End Free Time: Sep 21, 2022; Start Calculation Date: Sep 22, 2022; End Calculation Date: Nov 3, 2022; Total Days: 49; Free Days: 4; Excluded Days: 2; Previous Invoices Amount: ; Due Days: 43; Calculated Amount: 13,865; Discount Amount: 0.00; Container Available: 09/16/2022; Chargeable period calendar: Calendar Days; Free days period calendar: Business Days; Demurrage Rule: ZIMU-136/Rule 4-: Level 1: 1-4 Days: Free Time, Level 2: 5-8 Days: 245.00, Level 3: 9-12 Days: 290.00, , Level 4: 13+ Days: 335.00; Calculated Amount 13,865.00; Final Amount: 13,865.

65. All fifteen invoices contain a notation at the bottom, stating: "The charges set forth above are consistent with relevant Federal Maritime Commission Rules with respect to Demurrage and/or Detention. Carrier's performance did not cause or contribute to the total of the charges set forth in this invoice," and thee statement: "Customer Shall Provide notice of any dispute by 30 days from the date of invoice per the Federal Maritime Commission at https://www.zim.com/tools/detention-demurrage-and-freight-disputes," with a date provided to dispute the charges. Answer, Ex. B at pgs. The link in the invoice opens up a ZIM website page titled "Detention, Demurrage, and Freight Dispute Resolution Guidance," and tabs containing various other resources, including a tab providing various ways to contact ZIM offices (a telephone number, a chat button, and email addresses of various desks within ZIM).

66. The evidence indicates that ZIM remitted the fifteen invoices to Hecny, the listed shipper on the bill of lading, and that the invoices contained the required information under section 41104(d)(2).

History of Dispute Regarding the Demurrage Charges

67. Bridgewell did not dispute the demurrage charges at issue with Hecny, the NVOCC it directly hired to transport the shipments. C. Supp. Info, pg. 4 at no. 13.

68. Bridgewell did not initiate a dispute of the charges within the time period specified on the ZIM invoices for the shipments. C. Supp. Info, pg. 4 at no. 13; R. Supp. Info, pgs. 2-3 at no. 7.

69. Bridgewell paid the charges for the fifteen shipments between August 30, 2022, and November 1, 2022, but did not dispute the charges with ZIM until March 2024. Claim, pg. 1 at nos. 7-9; Claim, at pg. 5; C. Supp. Info, pg. 4 at no. 13; R. Supp. Info, pgs. 2-3 at no. 7.

70. On March 4, 2024, Bridgewell sent a letter by email to ZIM, stating:

> Bridgewell previously sought to address the concerns it has about certain detention and demurrage charges that it paid to ZIM Integrated Shipping Services, Ltd. ("ZIM")[8].
>
> Despite our efforts and desire to engage ZIM directly under its dispute resolution process or have a business-to-business conversation to explore resolution of this matter, ZIM has had little or no communication with Bridgewell and this matter appears to have stalled with ZIM.
>
> Bridgewell would prefer to resolve this matter directly with ZIM, but if ZIM fails to contact Bridgewell regarding this matter by **Monday, March 11, 2024, at 5:00 p.m. EST**, we will escalate this matter with our attorneys, which may also include seeking assistance from the Federal Maritime Commission's (the "FMC") Office of Consumer Affairs and Dispute Resolution Services.
>
> We look forward to your prompt response and invite a business-to-business discussion to explore whether this matter can be resolved prior to getting attorneys or the FMC involved.

Bridgewell Supp. Info at pg. 17 (letter from Patrick R. McCauley of Bridgewell to ZIM dated March 5, 2024) (emphasis in original).

71. On June 4, 2024, Bridgewell's attorney wrote a letter to ZIM's Legal Department, stating:

> Our firm represents Bridgewell Agribusiness, LLC ("Bridgewell") in ocean shipping matters. We never received a response from ZIM Integrated Shipping Services, Ltd. ("ZIM") to our prior letter detailing Bridgewell's request to initiate Wan Hai's [sic] dispute resolution process or have a business-to-business conversation to explore the resolution of this matter.
>
> To date, ZIM has ignored and failed to acknowledge or engage Bridgewell in any meaningful conversation to resolve this matter concerning the twenty-nine (29) payments that Bridgewell [made] to ZIM totaling an aggregate amount of $75,455.00 for detention, demurrage, and extended dwell time charges (D&D Charges") from August 30, 2022, through December 7, 2022.
>
> As stated in our prior letter, ZIM's invoicing practices for the D&D Charges either failed to comply with the strict requirements under the OSRA 2022 or constitute unfair practices under the Shipping Act that do not serve the Federal

[8] Other than the statement in this letter, the record contains no evidence of attempts by Bridgewell to address any concerns regarding the demurrage charges at issue prior to March 2, 2024. When asked in the request for supplemental information whether it had disputed the charges with ZIM, Bridgewell stated: "Bridgewell attempted to dispute and resolve the D&D Charges directly with ZIM's Resolution Department in March 2024 and undersigned counsel attempted to engage ZIM's Legal Department in June 2024 and August 2024 without receiving any response." C. Supp. Info, pg. 4 at no. 13.

Maritime Commission's "Incentive Principle" under the "Interpretive Rule on Demurrage and Detention Under the Shipping Act" at 46 C.F.R. Part 545 (the "Interpretive Rule").

We once again invite ZIM to have a meaningful conversation with us to seek a resolution concerning the D&D Charges, but if we receive no response before the end of day on **June 10, 2024**, we will escalate this matter as necessary.

Please direct all future correspondence and communication in this matter to our office.

C. Supp. Info at pg. 18 (letter from Bridgewell counsel to ZIM legal department. (Emphasis in original.)).

72. On August 23, 2024, Bridgewell's attorney sent another letter to ZIM, stating:

Our firm represents Bridgewell Agribusiness, LLC ("Bridgewell") in ocean shipping matters. We never received a response from ZIM to our prior letters detailing Bridgewell's request to initiate the dispute resolution process under ZIM's Dispute Procedure Guidelines or have a business-to-business conversation to explore a resolution of this matter.

To date, ZIM has been unresponsive by ignoring and failing to acknowledge or engage Bridgewell in any meaningful conversation to resolve this matter concerning the twenty-nine (29) payments that Bridgewell [made] to ZIM totaling an aggregate amount of $75,455.00 for detention, demurrage, and extended dwell time charges (D&D Charges") from August 30, 2022, through December 7, 2022. ZIM's silence coupled with the absence of available information and data only supports Bridgewell's claims, as it demonstrates ZIM did not issue any invoices or issued materially non-compliant invoices. ZIM cannot continue to unreasonably delay the resolution of this matter by remaining silent.

As such, Bridgewell demands that ZIM issue a refund to Bridgewell in the amount of $75,455.00 to settle this matter, which will expire on **Saturday, August 31, 2024, at 5:00 p.m. EDT**.

As stated in our prior letters, ZIM's invoicing practices for the D&D Charges either failed to comply with the strict requirements under the OSRA 2022 or constitute unfair practices under the Shipping Act that do not serve the Federal Maritime Commission's "Incentive Principle" under the "Interpretive Rule on Demurrage and Detention Under the Shipping Act" at 46 C.F.R. Part 545 (the "Interpretive Rule").

If ZIM fails to timely respond, then Bridgewell will have no choice but to escalate this matter as necessary. Bridgewell hereby reserves any and all rights, remedies, and claims it may have at law, or in equity, and waives none. Please direct all future correspondence and communication in this matter to our office.

C. Supp. Info Ex. at pg. 20 (letter from Bridgewell counsel to ZIM legal department. (emphasis in original.)).

73. ZIM states that it only received the August 23, 2024, letter from Bridgewell, not the March 4 and June 4 letters. R. Supp. Info, pg. 2 at no. 7.

74. On August 28, 2024, ZIM's legal counsel emailed Bridgewell stating: "Thanks for the attached letter which we confirm receipt of. Can you kindly provide me any and all information you submitted at the time of your dispute?" R. Supp. Info Ex. E at pg. 1 (letter from ZIM General Counsel and VP to Bridgewell's counsel).

75. Claimant's counsel responded August 28, 2024, stating: "We received a similar request today from Camille in your office. We will follow up." R. Supp. Info Ex. E at pg. 1.

76. ZIM states that Bridgewell did not follow up after its above response and it heard nothing further from Bridgewell until Bridgewell's initiation of this proceeding on December 17, 2024, and nothing in the record contradicts its statement. R. Supp. Info, pg. 2 at no. 7.

III. DISCUSSION

A. Controlling Authority

ZIM is an ocean common carrier. "The term 'ocean common carrier' means 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 . . ..

46 U.S.C. § 40102(7)(A).

Bridgewell arranged with Hecny, an NVOCC, to deliver the shipments at issue. Hecny then directly engaged ZIM to transport the shipments on its behalf. Hecny was listed as the shipper on ZIM's bill of lading. An NVOCC is "a common carrier that: (A) does not operate the vessels by which the ocean transportation is provided; and (B) is a shipper in its relationship with an ocean common carrier." 46 U.S.C. § 40102(17). The term "shipper" means –

(A) a cargo owner;
(B) the person for whose account the ocean transportation of cargo is provided;

(C) the person to whom delivery is to be made;
(D) a shippers' association; or
(E) a non-vessel-operating common carrier that accepts responsibility for payment of all charges applicable under the tariff or service contract.

46 U.S.C. § 40102(23).

Bridgewell alleges that ZIM violated section 41102(c), which 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).

Pursuant to section 545.4 of the Commission's Regulations, in order 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.

Bridgewell further alleges that ZIM's invoicing practices "did not serve the FMC's 'Incentive Principle' under the 'Interpretive Rule on Demurrage and Detention Under the Shipping Act' at 46 C.F.R. § 545.5." Section 545.5 provides:

(a) *Purpose.* The purpose of this rule is to provide guidance about how the Commission will interpret 46 U.S.C. 41102(c) and § 545.4(d) in the context of demurrage and detention.

(b) *Applicability and scope.* This rule applies to practices and regulations relating to demurrage and detention for containerized cargo. For purposes of this rule, the terms demurrage and detention encompass 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.

(c) *Incentive principle—*

(1) *General.* In assessing the reasonableness of demurrage and detention practices and regulations, the Commission will consider the extent to which demurrage and detention are serving their intended primary purposes as financial incentives to promote freight fluidity.

(2) *Particular applications of incentive principle*—(i) *Cargo availability*. The Commission may consider in the reasonableness analysis the extent to which demurrage practices and regulations relate demurrage or free time to cargo availability for retrieval.

(ii) *Empty container return*. Absent extenuating circumstances, practices and regulations that provide for imposition of detention when it does not serve its incentivizing purposes, such as when empty containers cannot be returned, are likely to be found unreasonable. . . .

46 C.F.R. § 545.5.

Also, Bridgewell alleges that ZIM violated section 41102(d)(2), which provides:

Retaliation and Other Discriminatory Actions.-A common carrier, marine terminal operator, or ocean transportation intermediary, acting alone or in conjunction with any other person, directly or indirectly, may not:

* * *

(2) resort to any other unfair or unjustly discriminatory action for-

(A) the reason that a shipper, an agent of a shipper, an ocean transportation intermediary, or motor carrier has-(i) patronized another carrier; or (ii) filed a complaint against the common carrier, marine terminal operator, or ocean transportation intermediary; or

(B) any other reason.

46 U.S.C. § 41102(d)(2).

In addition, Bridgewell alleges that ZIM violated section 41104(a)(15) and (d). Section 41104(a)(15) states:

(a) IN GENERAL – A common carrier, either alone or in conjunction with any other person, directly or indirectly, shall not

* * *

(15) invoice any party for demurrage or detention charges unless the invoice includes information as described in subsection (d) showing that such charges comply with-

(A) all provisions of part 545 of title 46, Code of Federal Regulation (or successor regulations); and
(B) applicable provisions and regulations, including the principles of the final rule published on May 18, 2020, entitled "Interpretive Rule on Demurrage and Detention under the Shipping Act" (or successor rule);

46 U.S.C. § 41104(a)(15).

Section 41104(d) provides:

(d) DETENTION AND DEMMURAGE INVOICE INFORMATION . -
(1) INACCURATE INVOICE. -If the Commission determines, after an investigation in response to a submission under section 41301, that an invoice under subsection (a)(15) was inaccurate or false, penalties or refunds under section 41107 shall be applied.

(2) CONTENTS OF INVOICE.-An invoice under subsection (a)(15), unless otherwise determined by subsequent Commission rulemaking, shall include accurate information on each of the following, as well as minimum information as determined by the Commission:

(A) Date that container is made available.
(B) The port of discharge.
(C) The container number or numbers.
(D) For exported shipments, the earliest return date.
(E) The allowed free time in days.
(F) The start date of free time.
(G) The end date of free time.
(H) The applicable detention or demurrage rule on which the daily rate is based.
(I) The applicable rate or rates per the applicable rule.
(J) The total amount due.
(K) The email, telephone number, or other appropriate contact information for questions or requests for mitigation of fees.
(L) A statement that the charges are consistent with any of Federal Maritime Commission rules with respect to detention and demurrage.
(M) A statement that the common carrier's performance did not cause or contribute to the underlying invoiced charges.

46 U.S.C. § 41104(d).

Pursuant to section 41104(f), "[f]ailure to include the information required under subsection (d) on an invoice with any demurrage or detention charge shall eliminate any obligation of the charged party to pay the applicable charge." 46 U.S.C. § 41104((f).

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. A person alleging a Shipping Act violation, therefore, bears the burden of proof to demonstrate its allegations by a preponderance of the evidence. 46 C.F.R. § 502.203; 5 U.S.C. 556(d); *Maher Terminals, LLC v. Port Auth. of N.Y. & N.J.*, Docket No. 08-03, 2014 WL 9966245, at *14 (FMC Dec. 17, 2014). The term, "burden of proof" is understood to mean "the burden of persuasion." *Director v. Greenwich Collieries*, 512 U.S. 267, 276 (1994). 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*, Docket No. 94-24, 27 S.R.R. 1137, 1161 (FMC Aug. 12, 1997). *Steadman v. SEC*, 450 U.S. 91, 101 (1981) ("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.*, Docket No. 93-15, 26 S.R.R. 1173, 1180 (ALJ Dec. 9, 1993) adopted in relevant part, 1994 WL 279898, 26 S.R.R. 1424 (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. Bridgewell Fails to Show that ZIM Violated the Shipping Act

Bridgewell alleges that ZIM failed to remit invoices for the sixteen demurrage charges it paid and that by so doing, ZIM violated sections 41102(c), 41102(d), 41104(a)(15), and 41104(d)(2), and that ZIM failed to comply with the incentive principle at 46 C.F.R. § 545.5. The evidence does not support these allegations.

1. Bridgewell Fails to Demonstrate that a Violation of Section 41104(a)(15) or 41104(d) Occurred

Bridgewell asserts that ZIM failed to provide invoices for its demurrage charges and only ever provided invoices as exhibits in its Answer and that the failure to provide the invoices "compelled Bridgewell to pay the [demurrage] Charges without the transparency or visibility needed to evaluate the proper application of free time, charge accumulation, or options to dispute or mitigate fees," which resulted in such an undue burden on Bridgewell that it could not manage its supply chain during an already challenging period. C. Supp. Info, pg. 2-3, at nos. 6 and 9. I find that Bridgewell's allegations are not supported by the record.

a <u>ZIM Remitted the Invoices at Issue to Hecny and Had no Obligation to Remit the Invoices to Bridgewell</u>

Although Bridgewell was the owner of the shipments, its contract for their transportation was with Hecny, not ZIM. Hecny then entered into a separate contract with ZIM for the transportation of the shipments and was the listed shipper for the goods on ZIM's bills of lading. PF 4; Answer, pg. 2 at section III; R. Supp. Info, pg. 1 at no. 2; R. Supp. Info, Ex. A. Because Hecny is a Commission-licensed NVOCC, this arrangement was appropriate. *See* 46 U.S.C. §

40102(17)(B) (describing an NVOCC as "a shipper in its relationship with an ocean common carrier."). Further, Hecny was listed as the shipper/exporter, forwarding agent, and consignee on the bills of lading for the shipments, while Bridgewell's name did not appear anywhere on them (*see* PFs 5-9 and R. Supp. Info, Ex. B). Thus, as ZIM correctly notes, ZIM had no contractual privity with Bridgewell and had no obligation to remit the invoices to Bridgewell. Further, Zim remitted the invoices for the fifteen shipments to Hecny, Claimant's carrier. Answer, Ex. B.

As for the payment for $9,175.00 that ZIM did not address, the evidence indicates that ZIM imposed the demurrage charge for the payment in 2021, prior to the enactment of OSRA 2022, and that the charge was not imposed between August 30, 2022, through November 1, 2022, the relevant period of time alleged by Claimant. Answer, pg. 5 at section V. Although given the opportunity to contradict ZIM's testimony that the payment did not occur during the alleged relevant period, Claimant failed to dispute this statement or comment on it. PF 76. Thus, nothing in the record contradicts ZIM's argument that this particular demurrage payment pre-dates the passage of OSRA 2022. Also, it is unclear why Claimant did not obtain the invoices from Hecny, its carrier, or dispute the charges with Hecny. No explanation was provided by Claimant on this question. Therefore, Claimant's allegations are unsupported by the evidence.

b. <u>The Invoices Remitted to the Shipper Comply with Section 41104(a)(15) and (d)'s Requirements</u>

Further, there is no showing that ZIM failed to comply with the provisions of section 41104(a)(15) and (d). As an initial matter, refunds of demurrage and detention payments may only be ordered if "the Commission determines, after an investigation in response to a submission under section 41310, that an invoice under subsection (a)(15) was inaccurate or false." 46 C.F.R. § 41104(d)(1). Bridgewell does not allege, nor does the evidence show, that ZIM issued inaccurate or false invoices for the demurrage charges. Thus, section 41104(d)(1) does not apply in this case.

Also, beyond its bare allegations, Claimant does not provide any specific examples of how ZIM's invoices fail to comply with the provisions of the Interpretive Rule on Demurrage and Detention or the Incentive Principle. Moreover, the invoices contain a statement that the demurrage charges "are consistent with relevant Federal Maritime Commission Rules with respect to Demurrage and/or Detention." *See* Answer, Ex. B. Therefore, there is no basis to find a violation of section 41104(a)(15).

Further, while Claimant alleges that the invoices failed to contain the minimum information required under 41104(d), a review of the fifteen invoices in the record, which, as previously shown, were remitted to Hecny, the shipper, shows that they all contain the required information under sections 41104(a)(15) and (d). All fifteen invoices contain: the date the containers were made available, the port of discharge; no earliest return dates because they were not exported shipments, but rather, were imported from Vietnam; the allowed free time in days; the start date of free time; the applicable demurrage rule on which the daily rate was based (ZIM's general tariff); the applicable rates per the applicable rule; the total amount due; the contact information for questions or requests for mitigation of fees; a statement that the charges are consistent with Federal Maritime Commission Rules with respect to Demurrage and/or Detention; and a statement that the carrier's performance did not cause or contribute to the total

charges in the invoice. *See* PFs 17-80. Thus, Claimant does not establish that the invoices failed to meet the sections 41104(a)(15) and (d) requirements. Accordingly, Bridgewell's claims with regard to those sections are dismissed.

2. Claimant Fails to Demonstrate a Section 41102(c) Violation

Section 41102(c) forbids a common carrier, marine terminal operator, or ocean transportation intermediary to 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).

Bridgewell alleges that ZIM "took advantage of widespread congestion issues across international and domestic supply chains during the Relevant Period of Time in connection with D&D charges and decided to implement unreasonable and unfair practices in relation to receiving, storing, or delivering property as prohibited by 46 U.S.C. §§ 41102(c)" (Claim, pg. 2 at no. 10). When asked to elaborate on this claim, Bridgewell asserted:

> During a period of widespread supply chain congestion following the response to COVID-19, ZIM exploited the situation by implementing unreasonable and unfair practices related to the D&D Charges. Despite the clear mandate of Congress under OSRA 2022, CMA failed to issue invoices for the D&D Charges yet still demanded payment from Bridgewell through third-party online portal systems. ZIM's practices compelled Bridgewell to pay the D&D Charges without the transparency or visibility needed to evaluate the proper application of free time, charge accumulation, or options to dispute or mitigate fees. By failing to communicate with Bridgewell and not providing the data elements required under OSRA 2022, ZIM imposed an undue burden on Bridgewell where it could not manage its supply chain during an already challenging period. Despite this, Bridgewell paid the D&D Charges via credit card upon receipt of notices through online portal systems to ensure the timely release of its containers. Bridgewell provided the FMC with the only information available to it (*i.e.*, the enclosed evidence that Bridgewell made sixteen (16) payments for the D&D Charges). Asking Bridgewell to produces [sic] additional information relative to those sixteen (16) payments requires Bridgewell to prove a negative despite the fact that ZIM – not Bridgewell – acted unreasonably by failing to satisfy its legal obligation to issue invoices under OSRA 2022.

C. Supp. Info, pgs. 3-4 at no. 9.

To succeed in a section 41102(c) claim, the claimant must demonstrate that the respondent is an ocean common carrier, marine terminal operator, or ocean transportation intermediary; the alleged illegal conduct is "occurring on a normal, customary, and continuous basis; the alleged practice or regulation relates to or is connected with receiving, handling, storing or delivering property; the alleged practice or regulation is unjust or unreasonable; and, the alleged practice or regulation in question is the proximate cause of the loss the claimant alleges it suffered. 46 C.F.R. § 545.4. Failure to demonstrate any of these five elements precludes the finding of a section 41102(c) violation and award of reparations to the claimant.

When asked to demonstrate that the alleged conduct occurred on "a normal, customary, and continuous basis," Bridgewell asserted that "ZIM engaged in conduct that was normal, customary, and continuous from August 30, 2022, through November 1, 2022, by collecting sixteen (16) payments from Bridgewell for detention and demurrage charges (the "D&D Charges") totaling $49,400.00 despite failing to issue invoices as required under the Ocean Shipping Reform Act of 2022 ("OSRA 2022") at 46 U.S.C. §§ 41104(a)-(d)." Even if this response were accurate, it would still be an insufficient response as the fact that ZIM might have collected payments from Bridgewell at a particular time despite not issuing invoices to Bridgewell does not demonstrate that ZIM engages in that practice on a normal, customary and continuous basis.

Similarly, while it asserted that ZIM's failure to provide the invoices "compelled Bridgewell to pay the [demurrage] Charges without the transparency or visibility needed to evaluate the proper application of free time, charge accumulation, or options to dispute or mitigate fees," which imposed an undue burden on Bridgewell where it could not manage its supply chain during an already challenging period," (C. Supp. Info, pg. 2-3, at nos. 6 and 9), Bridgewell does not specify in what ways it suffered a burden and could not manage its supply chain, how ZIM took unfair advantage of the conditions created by the COVID pandemic, or how the demurrage charges imposed by ZIM failed to comply with section 545.5's Incentive Principle. Moreover, Bridgewell fails to explain why it waited until March 2024 to initiate a dispute with ZIM or why it failed to follow up when ZIM responded to its letter (see PF 90).

Accordingly, because it has been found that ZIM appropriately remitted the invoices in question to its shipper, Hecny, and did not have any obligation to remit the invoices to Bridgewell, and that Bridgewell does not demonstrate any specific conduct by ZIM that was unfair or unreasonable, Bridgewell fails to demonstrate any practice or regulation by CMA CGM that was unjust or unreasonable, in violation of section 41102(c). Since the failure to demonstrate any element under section 545.4 precludes a finding that the respondent violated section 41102(c) or award of reparations, Bridgewell's section 41102(c) claim is similarly dismissed.

3. Claimant Fails to Demonstrate a Section 41102(d)(2) Violation

Claimant also alleges, without elaboration, that ZIM "took advantage of widespread congestion issues across international and domestic supply chains during the Relevant Period of Time in connection with D&D charges and decided to implement unreasonable and unfair practices in relation to receiving, storing, or delivering property as prohibited by 46 U.S.C. § 41102(d)(2)." (Claim, pg. 2 at no. 10).

Section 41102(d)(2) prohibits common carriers, marine terminal operators, and ocean transportation intermediaries acting alone or in conjunction with any another person from directly or indirectly to -

> (2) resort to any other unfair or unjustly discriminatory action for-
> (A) the reason that a shipper, an agent of a shipper, an ocean transportation intermediary, or motor carrier has-
> (i) patronized another carrier; or

(ii) filed a complaint against the common carrier, marine terminal operator, or ocean transportation intermediary; or

(B) any other reason.

46 U.S.C. § 41102(d)(2) (2022).

Similar to other instances in its Claim where Claimant alleged that ZIM engaged in conduct proscribed by the Shipping Act, Claimant fails to specify how, or provide evidence that ZIM violated section 41102(d). Claimant merely makes a bare allegation that ZIM "took advantage of widespread congestion issues across international and domestic supply chains during the Relevant Period of Time in connection with the D&D charges" and that ZIM "decided to implement unreasonable and unfair practices in relation to receiving, handling, storing, or delivering property." When pressed for further information substantiating its claim, Claimant again asserted, without elaboration, that:

> During a period of widespread supply chain congestion following the response to COVID-19, ZIM exploited the situation by implementing unreasonable and unfair practices related to the D&D Charges. Despite the clear mandate of Congress under OSRA 2022, ZIM failed to issue invoices for the D&D Charges yet still demanded payment from Bridgewell through third-party online portal systems. ZIM's practices compelled Bridgewell to pay the D&D Charges without the transparency or visibility needed to evaluate the proper application of free time, charge accumulation, or options to dispute or mitigate fees. By failing to communicate with Bridgewell and not providing the data elements required under OSRA 2022, ZIM imposed an undue burden on Bridgewell where it could not manage its supply chain during an already challenging period.

C. Supp. Info, pg. 3 at No. 9.

Again, Bridgewell merely provided circular and repetitious answers that failed to elucidate the issues. For example, Bridgewell did not provide any information corroborating that ZIM refused to communicate with it or even demanded payment from Bridgewell, or that Zim compelled it to pay the charges "without the transparency or visibility needed to evaluate" the charges. Moreover, as previously found, the evidence shows that ZIM remitted the invoices to Hecny, the shipper, and no evidence in the record suggests that ZIM engaged in conduct that was unfair or unjust. Accordingly, Claimant's section 41102(d)(2) is also dismissed.

Although Bridgewell paid a significant amount of demurrage charges, without more, the undersigned has no basis to conclude that those charges were improper or unreasonable. Therefore, because Claimant fails to demonstrate that ZIM violated the Shipping Act, it is not entitled to recover reparations.

IV. CONCLUSION

Claimant Bridgewell fails to demonstrate that ZIM violated the Shipping Act. Accordingly, it is hereby **ORDERED** that Bridgewell's request for reparations be **DENIED** and its claim be **DISMISSED WITH PREJUDICE**.

THERESA DIKE Digitally signed by THERESA DIKE
Date: 2025.07.14 07:47:51 -04'00'

Theresa Dike
Small Claims Officer