

FEDERAL MARITIME COMMISSION

DOCKET NO. 21-16

**WAN HAI LINES, LTD. AND WAN HAI LINES (USA) LTD. — POSSIBLE VIOLATIONS
OF 46 U.S.C. § 41102(C)**

SETTLEMENT AGREEMENT

This Agreement is entered into between:

- (1) The Federal Maritime Commission's Bureau of Enforcement, hereinafter referred to as the BOE, and
- (2) Wan Hai Lines, Ltd. and Wan Hai Lines (USA) Ltd., hereinafter referred to as Wan Hai or Respondents.

WHEREAS, the Federal Maritime Commission (Commission) initiated this proceeding against Respondents for the recovery of civil penalties for alleged violations of 46 U.S.C. § 41102(c) of the Shipping Act of 1984 (Shipping Act); and

WHEREAS, BOE was made a party to this proceeding; and

WHEREAS, such a proceeding is based on the Commission's allegation that Respondents engaged in certain practices; to wit:

Between May 18, 2020, and April 22, 2022 Wan Hai knowingly and willfully failed to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property, by unreasonably refusing to waive detention charges, in violation of 46 U.S.C. §41102(c) of the Shipping Act of 1984;

WHEREAS, Respondents deny such allegation;

WHEREAS, the Commission is authorized under section 41109 of the Shipping Act, 46 U.S.C. § 41109, and Subpart W of the Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.601, et seq. to settle and collect civil penalties arising from the alleged violations set forth and

described above; and

WHEREAS, BOE and Respondents believe it is in the best interests of the parties and the shipping public to resolve this proceeding under the conditions stated herein rather than engage in continued litigation;

WHEREAS, as set forth below and without admitting that any of its practices constituted a violation of the Shipping Act, Respondents have agreed to modify their practices and agreed to undertakings intended to address the conduct that is the basis of the alleged violations set forth and described above;

NOW THEREFORE, in consideration of the premises herein, and in compromise of all civil penalties arising from the alleged violations set forth and described above, Respondents and the BOE hereby agree upon the following terms:

1. Respondents would make no admission of a 46 U.S.C. § 41102(c) (hereinafter, "Shipping Act") violation.
2. Respondents shall pay a civil penalty of \$850,000.00 to the Commission by cashier's or certified check or an online payment.
3. The Commission would waive its right to bring any further enforcement action against Respondents with respect to any alleged violation of the Shipping Act on the basis of Respondents' practices with respect to the billing or assessment of detention, or per diem or Respondents' processing of disputes related to any of the foregoing during the period May 18, 2020 to April 22, 2022.
4. Wan Hai will cease collection attempts with respect to detention assessed against the Shipments at Issue which were previously enumerated in the Order of Investigation and Hearing issued on December 30, 2021.
5. Respondents would agree to the following undertakings:
 - A. Wan Hai will publish to its website the following policy with respect to the submission of requests for waivers or refunds of detention charges:
 - i. All disputes or requests for waiver or refund of detention charges imposed by or on behalf of Wan Hai should be submitted to:

<Website will list current email address and phone no.>
 - ii. Request for a Waiver

When a person (for the purposes hereof, “person” shall include a person or entity) requests a waiver or refund of detention charges imposed by or on behalf of Wan Hai, a person must provide credible evidence that at all locations where Wan Hai equipment could be returned for all days covered by the dispute:

- a. (1) An appointment was required for a transaction involving only the return of equipment of the size and type at issue or (2) the acceptance of an empty container of the size and type at issue was conditioned upon the pickup of a loaded container from the terminal (a “dual-transaction”); and
- b. For all days covered by the dispute, the motor carrier was (as applicable) unable to secure an appointment or did not have a dual-transaction available.
- c. A person contacted Wan Hai equipment control department upon the motor carrier’s inability to secure an appointment/perform a dual transaction to report same.

iii. Evidence of Unavailability

For purposes of the foregoing, the following guidance is provided as to proof of unavailability of appointments:


- a. A person wishing to obtain a waiver or refund of detention charges imposed for a specific date (each such date a “Waiver Date”) on the grounds that an appointment was not available on the Waiver Date must provide a screenshot of the appointment system(s) of each terminal utilized by Wan Hai at the relevant port (in the case of equipment returned to the port) or of the appointment system of each inland facility used by Wan Hai in a particular inland region (in the case of equipment return to such a facility) taken the day prior to the Waiver Date and on the Waiver Date. Such screenshots must be taken not later than three (3) hours following the time at which appointments are made available by the terminal or other facility.
- b. Screenshots of third-party websites purporting to show unavailability of appointments will be accepted as valid evidence of the information displayed therein provided they meet the following criteria:
 1. The third-party website is in widespread use and is generally recognized as reliable and accurate.
 2. The screenshot(s) shows the entire screen (including URL) and appointment information for all shifts for all Wan Hai terminals.
 3. The screenshot(s) include an automatically generated date/time stamp or an image of the date and time displayed on screen.

4. The screenshot(s) submitted documents the basis for the dispute (i.e., lack of appointments, chassis restrictions, dual turn requirements, etc.).
 - c. If a screenshot shows an available appointment that the disputing person asserts could not be used by the motor carrier, the dispute must include a description of why the appointment could not be used.
 - d. With respect to an inability to perform a dual-transaction, the party submitting the dispute must include a statement from the motor carrier that it attempted in good faith to arrange for a dual-transaction and after reasonable efforts was unable to do so.
 - iv. The dispute will be denied with respect to any day covered by the dispute for which such evidence is not provided.
 - v. Wan Hai shall grant such request unless it has conducted an appropriate investigation into the claim and determined in good faith that appointments were reasonably available at the relevant terminal(s) or other facilities on the date(s) in question. In making such good faith assessment, Wan Hai may consider the following:
 - a. Reports from the relevant facility that appointments were reasonably available.
 - b. Reports maintained by Wan Hai that appointments were reasonably available on the date/time in question.
 - c. Such other factors and evidence as may reasonably bear on the validity of the request, including, but not limited to, relevant data relating to equipment return on the Waiver Date.
 - vi. Wan Hai will endeavor to respond to the dispute within thirty (30) days.
 - B. Wan Hai will conduct a training session regarding the FMC's Interpretative Rule, 46 C.F.R. § 545.5, for all employees involved in the billing of detention, demurrage, or per diem or the handling of disputes related thereto.
 - C. Wan Hai will clarify in its communications with motor carriers that the return location information posted on its website with respect to the return of empty equipment in Los Angeles/Long Beach is advisory only and is not intended to constitute an exhaustive list of the locations to which a motor carrier may return Wan Hai equipment.
 - D. Wan Hai will post on its website a complete list of locations that it has authorized to accept empty Wan Hai containers, updated daily by 4pm.
 6. BOE and Respondents shall jointly submit to the Administrative Law Judge a motion seeking approval of this Agreement.
 7. Upon the Commission's approval of the Agreement, the \$850,000.00 shall be paid to the

Commission within 30 business days of the approval becoming administratively final.

8. BOE and Respondents hereby waive all rights now and in the future to seek judicial review or otherwise challenge or contest the validity of the order entered pursuant to this Agreement.
9. Upon approval of the terms set forth in this Agreement by the Administrative Law Judge and the Commission, this instrument shall forever bar the commencement or institution by the Commission of any assessment or enforcement proceeding or other claim for recovery of civil penalties from Respondent, its officers, directors, or employees with respect to any alleged violation of the Shipping Act on the basis of Respondents' practices with respect to the billing or assessment of detention or per diem or Respondents' processing of disputes related to any of the foregoing that occurred between May 18, 2020, and April 22, 2022.
10. It is expressly understood that this Agreement is not, and is not to be construed as, an admission by Respondent to the alleged violations set forth and described above.

WAN HAI LINES, LTD

Signature:  Date: 2022/04/21
Printed Name and Title: Tenny Hsieh, President

APPROVAL AND ACCEPTANCE

The above Terms and Conditions and Amount of Consideration are hereby approved and accepted:

By the Federal Maritime Commission:

Benjamin K. Trogdon, Director
Bureau of Enforcement