



BEFORE THE
FEDERAL MARITIME COMMISSION

DOCKET NO. 22-07

ACME FREIGHT SERVICES CORP.

COMPLAINANT,

v.

TOTAL TERMINALS INTERNATIONAL

RESPONDENT.

COMPLAINT

Complainant Acme Freight Services Corp. (“Complainant” or “ACME”), by its undersigned attorneys, files this Complaint against Respondent herein, alleging violations of the Shipping Act of 1984, 46 U.S.C. § 40101, *et. seq.* (the “Shipping Act”) as follows:

I. COMPLAINANT

1. Complainant ACME is a corporation organized and existing under the laws of the State of California, with a principal place of business at 550 East Carson Plaza Drive, Suite 201, Carson, CA 90746.

II. RESPONDENT

2. Total Terminals International, LLC (“TTI”) is a corporation organized and existing under the laws of the State of Delaware with a principal place of business at 301 Mediterranean Way, Long Beach, CA 90802. TTI is and was at all times pertinent to this Complaint a marine

terminal operator (“MTO”) within the meaning of the Shipping Act, 46 U.S.C. § 40102(15), subject to regulation by the Federal Maritime Commission (“FMC”).

III. JURISDICTION

3. The FMC has subject-matter jurisdiction over this Complaint pursuant to the Shipping Act of 1984, as amended.

4. This Complaint is being filed pursuant to Section 11(a) of the Shipping Act, 46 U.S.C. § 41301. ACME is seeking reparations for injuries caused to it by Respondent due to its violation of 46 U.S.C. § 41102(c).

5. The FMC has personal jurisdiction over TTI as a “MTO” as defined in 46 U.S.C. § 40102(15).

6. Respondent’s actions alleged herein constitute failure by Respondent to establish, observe, and enforce just and reasonable practices relating to receiving, handling, storing, and delivering the property of ACME, in violation of 46 U.S.C. § 41102(c) and 46 C.F.R. §§545.4 and 545.5.

IV. FACTUAL ALLEGATIONS

7. In or about November 2020, five containers said to contain medical gloves (hereinafter, the “Containers”) were shipped from Malaysia to the Port of Long Beach, California under master bill of lading No. MEDUPM708400 issued by Mediterranean Shipping Co. (“MSC”) and house bill of lading No. PAPKGLGB203043 issued by Seamaster Logistics (“Seamaster”). The Containers were part of a lot of 20 containers of medical gloves purchased by the importer of record CMJ Medical Supply LLC (“CMJ”), with the remaining containers transported by other carriers. Acting as agent for Seamaster, ACME was listed the consignee and notify party on the MSC master bill of lading governing the Containers.

8. Prior to the arrival of the Containers, CMJ took delivery of two of the containers transported by another carrier and found the containers were stuffed with used gloves and empty boxes and not new medical gloves. On information and belief, CMJ suspected fraud and reported the matter to U.S. Customs and Border Protection (“CBP”) and the Federal Bureau of Investigation. Consequently, CBP issued a hold for inspection on the remaining containers purchased by CMJ, including the Containers.

9. The Containers arrived and were discharged at the TTI terminal at Long Beach on or about January 16, 2021. Pursuant to the CBP hold and inspection order, the Containers were transferred to a facility operated by Price Transfer on January 29, 2021, for inspection by CBP. The Containers were returned to the TTI terminal on or about February 22, 2021, but remained on a government hold imposed by CBP and were unavailable for pick up or release.

10. In or about July 2021, CBP issued an Emergency Action Notice requiring that the Containers be re-exported from the U.S. to Malaysia. ACME worked diligently to obtain the required authorities to ship the Containers back to Malaysia and paid the freight for the return of the Containers to Malaysia. The Containers were re-exported on or about November 2, 2021.

11. The last free day expired on February 27, 2021. TTI assessed demurrage on the Containers starting on February 28, 2021. TTI assessed demurrage charges on the Containers while they were subject to a government hold in the total amount of \$185,000. TTI assessed the demurrage charges at both the base and penalty levels while the Containers were unavailable for pick up due to the extended governmental hold imposed by CBP.

12. ACME was required to pay, and did pay, the demurrage charges imposed by TTI under duress in order to be permitted to re-export the Containers and thereby avoid the accrual of additional demurrage and potential governmental penalties.

13. ACME made several requests to TTI for a waiver or discount of the demurrage charges due to the unavailability of the Containers for pick-up, but TTI flatly refused.

14. After numerous attempts to obtain relief from TTI were unsuccessful, ACME engaged counsel to contact TTI and attempt to resolve the issue of the demurrage charges assessed by TTI. By letter dated, February 11, 2022, counsel for ACME advised TTI that ACME believed that the assessment of demurrage charges during the CBP hold on the Containers was inconsistent with the FMC's interpretative rule on demurrage and detention found at 46 C.F.R. §545.5 and Section 41102(c) of the Shipping Act. TTI did not respond to ACME's February 11, 2022 letter, and accordingly, ACME's final attempt to engage TTI in a good faith discussion of the demurrage charges was unsuccessful.

V. VIOLATIONS OF THE SHIPPING ACT

15. Section 41102(c) of the Shipping Act (46 U.S.C. § 41102(c)) prohibits a common carrier or marine terminal operator from failing to "establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property." Section 345.5 of FMC regulations (46 C.F.R. § 545.5) provides in pertinent part that "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."

16. Respondent TTI is a marine terminal operator as defined by the Shipping Act.

17. Respondent's practices and regulations relating to the assessment of demurrage are directly related to receiving, handling, storing, or delivering property, are occurring on a normal, customary, and continuous basis, and are unjust and unreasonable.

18. Respondent has failed to establish and observe just and reasonable practices in violation of § 41102(c) by assessing demurrage charges against containers, including the Containers that are subject to a governmental hold for examination by Customs, and therefore, unavailable for pick-up.

19. Respondent failed to establish and observe just and reasonable practices in violation of § 41102(c) by assessing demurrage charges that serve no incentivizing principle and do not promote freight fluidity.

20. Respondent failed to establish and observe just and reasonable practices in violation of § 41102(c) by refusing to extend free time and/or waive or reduce demurrage charges for the Containers, which were unavailable for pickup.

VI. CAUSATION AND INJURY TO COMPLAINANT

21. As a result of Respondent's violations of the Shipping Act, the Complainant has sustained injuries and damages in the amount of \$185,000.

VII. ALTERNATIVE DISPUTE RESOLUTION

22. ACME made numerous unsuccessful attempts to resolve this matter with TTI prior to filing this Verified Complaint. TTI failed to respond to ACME's last request for good faith discussions regarding the disputed demurrage charges.

VIII. PLACE OF HEARING

23. Complainant requests a hearing on this matter, and further requests that the hearing be held at the Federal Maritime Commission, 800 N. Capitol St., NW, Washington, D.C. 20573-0001.

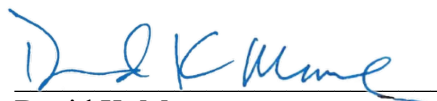
IX. PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests that Respondent be required to answer the charges in this Complaint, and that after the Commission's investigation and hearing, the Commission issue an order:

- 1) Requiring Respondent to pay Complainant reparations for the unlawful conduct described herein, along with interest and Complainant's attorneys' fees and costs, pursuant to 46 U.S.C. 41305;
- 2) Requiring the payment of any other amounts that the Commission deems appropriate; and
- 3) Providing such other and further relief that the Commission deems just and proper.

DATE: March 10, 2022

Respectfully submitted,

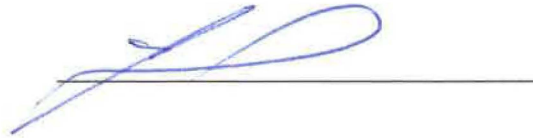


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VERIFICATION

I, Mary Ann Shih, am the Manager of Complainant Acme Freight Services Corp. and hereby declare and attest under penalty of perjury that I have read the forgoing Verified Complaint and believe, to the best of my knowledge, information, and belief, that the facts stated therein are true and correct.

Dated: March 7, 2022:

A handwritten signature in blue ink is written over a horizontal line. The signature is stylized and appears to be 'M. Shih'.