

BEFORE THE
FEDERAL MARITIME COMMISSION

DOCKET NO. 22-22



U SHIPPERS GROUP INC.,

COMPLAINANT,

v.

MAERSK A/S dba MAERSK,

RESPONDENT.

VERIFIED COMPLAINT

Complainant U Shippers Group Inc. (“U Shippers”) through its undersigned counsel, brings this Verified Complaint against Maersk A/S dba Maersk (“Maersk” or “Respondents”) alleging violations of the Shipping Act of 1984, 46 U.S.C. § 40101, *et. seq.* (the “Shipping Act”) as follows:

I. COMPLAINANT

1. U Shippers Group Inc. is a Delaware corporation, with a place of business at 85 Skillman Street, Brooklyn, New York, 11205. U Shippers was incorporated in January 2020 and is a Shippers’ Association under the Shipping Act.

2. For purposes of its service contracts with Respondents, U Shippers is a “shipper” as that term is defined by 46 U.S.C. § 40102(23).

II. RESPONDENT

3. Maersk A/S is a Danish global ocean carrier company located at Esplanaden 50, DK-1098 Copenhagen, Denmark. Maersk’s affiliate, Maersk Agency U.S.A., Inc., acts as its agent

in the United States, with an office located at 180 Park Avenue, Building 105, PO Box 950, 07932 Florham Park, NJ. Maersk operates as a carrier under the Shipping Act for shipping between the United States and foreign countries worldwide.

4. Maersk is a vessel-operating “ocean common carrier” as that term is defined by 46 U.S.C. § 40102(18).

III. JURISDICTION

5. The Federal Maritime Commission (“Commission”) has subject matter jurisdiction over this Complaint pursuant to the Shipping Act as amended, 46 U.S.C. § 40502, to regulate service contracts and does so in its regulations at 46 C.F.R. Part 530.

6. This Complaint is being filed pursuant 46 U.S.C. § 41301. U Shippers is seeking reparations for injuries caused to it by Respondent due to its violations of the Shipping Act.

7. The Commission has personal jurisdiction over Maersk as an “ocean common carrier” as that term is defined by 46 U.S.C. § 40102(18) that has entered into a “service contract” as that term is defined by 46 U.S.C. § 40102(21) with U Shippers.

8. Maersk’s actions alleged herein constitute failures by it to establish, observe, and enforce just and reasonable practices relating to receiving, handling, storing, and delivering the property of U Shippers in violation of 46 U.S.C. § 41102(c).

9. Maersk’s actions alleged herein constitute a provision of service in the liner trade that is not in accordance with the rules and practices contained in its Service Contract with U Shippers in violation of 46 U.S.C. § 41104(a)(2).

10. Maersk’s actions alleged herein, done in connection with its provision of service pursuant to its Service Contract with U Shippers constitute unfair and unduly discriminatory practices against U Shippers in the matter of rates or charges with respect to the ports for which U Shippers contracted with it in violation of 46 U.S.C. § 41104(a)(5).

11. Maersk's actions alleged herein with respect to its Service Contract with U Shippers have given undue and unreasonable preference and advantage to shippers other than U Shippers and imposed undue and unreasonable prejudice and disadvantage on U Shippers with respect to the ports for which U Shippers contracted with it, in violation of 46 U.S.C. § 41104(a)(9).

12. Maersk's actions alleged herein in the course of negotiating its Service Contract with U Shippers and providing service to U Shippers pursuant to its Service Contract constitute an unreasonable refusal to deal or negotiate with U Shippers in violation of 46 U.S.C. § 41104(a)(10).

13. The Commission has authority to rule on violations of the Act that occur in connection with service contracts. The Commission's obligations include ensuring the legality of service contracts, 46 U.S.C. § 40502 and 46 C.F.R. Part 530.1, and compliance with Commission Regulations.

IV. FACTUAL ALLEGATIONS

14. In June of 2020, Maersk, acting through its U.S. agent, entered into a shipping contract with U Shippers to provide its members with shipping space (the "Service Contract").

15. The Service Contract provided for, *inter alia*, minimum space commitments by Maersk for U Shippers.

16. Maersk was at the time introducing a new on-line booking system named Twill. The system, however, was still in development and not ready for general use. Maersk accordingly agreed to an arrangement whereby U Shippers would use Twill on an exclusive basis (except for previously existing shippers associations) for a two-year basis, in exchange for being the first shippers association introducing the system to its membership.

17. Beginning in late 2020 or 2021, Maersk embarked on a series of acts designed to shut out U Shippers from utilizing the space promised to it under the Service Contract.

18. In January 2021, through June 2021, Maersk repeatedly declined to provide the shipping volume it committed to in the Service Contract.

19. Maersk's refusal to provide contractually agreed upon space on its vessels forced U Shippers' members to obtain space on other vessels at inflated spot market rates.

20. The Service Contract obligated Maersk to pay U Shippers a Volume Incentive Program ("VIP") based upon the number of containers shipped by U Shippers.

21. Maersk's unreasonable practices in failing to provide allocated space reduced the amount of VIP payments which U Shippers was entitled to receive under the service Contract.

22. Additionally, Maersk ignored various request made by U Shippers for payouts per the VIP clause of the Service Contact. This unreasonable practice resulted in a cash flow shortage for U Shippers.

23. Instead of providing U Shippers with the space to which it was contractually obligated, Maersk provided that volume to spot market users and newly negotiated contract holders. Maersk's actions in refusing to provide contractually agreed upon space to U Shippers was designed, and did, allow Maersk to sell such space at substantial profits.

24. In some cases, Twill allowed non-members to book space using U Shippers' contract.

25. Maersk executed a contract with a newly formed shippers association and permitted this Shipping Association, to access Maersk's shipping space and the Twill system, and diverted the shipping volume which Maersk had committed to U Shippers.

26. Maersk's actions constituted an unreasonable practice in violation of the Shipping Act. Maersk's actions also permitted it to charge rates higher than it would have been permitted to charge pursuant to the Service Contract.

27. In November 2020, U Shippers and Maersk were negotiating an extension of the Agreement and the Twill system exclusivity, and U Shippers was informed that Maersk would extend both for an additional year until June 2023. Rates would be negotiated based on then existing long term market rates.

28. However, in June 2021, Maersk reneged on that promise and informed U Shippers that it would not be renewing either arrangement. As a result of Maersk's refusal to negotiate with U Shippers, U Shippers' members were forced to purchase space in June of 2021 on the inflated spot market.

29. At the same time it was refusing to negotiate with U Shippers, Maersk allowed U Shippers' members to setup a direct Twill account, thereby circumventing its shippers association exclusivity agreement with U Shippers.

30. The manager of U Shippers was informed by an agent of Maersk that one of the reasons that Twill refused to extend or renegotiate the Agreement was that it no longer wanted to deal with shipping associations.

31. In early 2022, U Shippers again reached out with the intent to sign a service contract with Maersk and provide the opportunity to honor their agreement with U Shippers. Maersk simply ignored communications regarding the matter.

32. Maersk engaged in the unreasonable practice of refusing to perform under the Service Contract it entered into with U Shippers.

33. U Shippers' written Service Contract with Maersk included a minimum quantity commitment ("MQC") to tender cargo from various points in East Asia for Maersk to transport via ocean vessels to the United States at agreed intervals and for agreed prices.

34. By definition, the Service Contract required Maersk to “commit[] to a certain rate or rate schedule and a defined service level, such as assured space, transit time, port rotation, or similar service features.”

35. Maersk engaged in the unreasonable and unfair practice of refusing to provide contractually agreed upon space on its vessels forced U Shippers’ members to purchase space on the inflated spot market.

36. Upon information and belief, Maersk changed its practice of providing contractually agreed upon space on its Service Contracts in parallel and seemingly coordinated fashion with other VOCCS, depriving U Shippers of its contractually agreed space allotments. *See* 46 U.S.C. § 40102(21). By definition, the Service Contracts required Maersk to “commit[] to a certain rate or rate schedule ***and a defined service level, such as, assured space***, transit time, port rotation, or similar service features.” *accord* 46 C.F.R. § 530.3(q); *see also* 46 U.S.C. § 40502(c)(7) (requiring service contracts to include “service commitments” as essential terms); 46 C.F.R. § 530.8(b)(5) (same); 46 C.F.R. § 530.8(c) (providing for the certainty of terms in service contracts by, *inter alia*, prohibiting such essential terms from being “uncertain, vague or ambiguous”).

37. Instead of selling the cargo space actually allotted to U Shippers under its Service Contract, Maersk denied U Shippers its allocated space and then sold such space to the highest bidder on the very same spot market to which their conduct forced U Shippers’ members to turn.

38. Upon information and belief, Maersk has engaged and is continuing to engage in substantially similar conduct with other shippers.

39. By refusing to allow U Shippers to utilize its allocated space, Maersk unreasonably reduced the VIP to which U Shippers would otherwise have been entitled.

40. Maersk ignored requests made by U Shippers for payouts per the VIP provisions of the Service Contract. This action has resulted in a cash crunch by U Shippers.

41. Maersk engaged in the unreasonable practice of not only refusing to provide contractually agreed upon space under its service contract with U Shippers but instead allocating such space to individual members of U Shippers or to other shippers' associations.

42. Maersk compounded the damages suffered by U Shippers by unreasonably refusing to deal and negotiate with U Shippers on future service contracts.

43. Maersk refused to negotiate or provide service contracts to U Shippers despite having promised to do so,

44. Maersk further acted unreasonably in entering into services contracts with a newly formed shippers association, despite Maersk and U Shippers having agreed that in exchange for U Shippers and its members being the first shippers to utilize the Twill system that Maersk was introducing, U Shippers would have the exclusive right for a two-year period to enter into service agreements with shipper associations that did not preexist U Shippers' Service Contract.

45. Maersk has ignored various request made by U Shippers for payouts per the VIP agreement. This action has resulted in cash crunch by U Shippers.

V. SHIPPING ACT VIOLATIONS

46. The above actions by Maersk constitute violations of the Shipping Act, including, specifically:

- a. 46 U.S.C. §§ 41102(d) and 41104(a)(3) (resorting to any “unfair or unjustly discriminatory action”);
- b. 46 U.S.C. § 41104(a)(2)(A), (providing service “not in accordance with the rates, charges, classifications, rules, and practices contained in . . . published or a service contract;”

- c. 46 U.S.C. § 41104(a)(10), (unreasonably refus[ing] to deal or negotiate including with respect to vessel space accommodations provided by an ocean common carrier.”
- d. 46 U.S.C. § 41102(c) (failure to establish, observe, and enforce just and reasonable practices relating to receiving, handling, storing, and delivering the property of U Shippers);
- e. 46 U.S.C. § 41104(a)(5) (unfair and unjustly discriminatory practices against U Shippers in the matter of rates or charges);
- f. 46 U.S.C. § 41104(a)(2) (not acting in accordance with the rules and practices contained in the Service Contract);
- g. 46 U.S.C. § 40102(21) (failing to “commit” to a certain rate or rate schedule and a defined service level, such as assured space, transit time, port rotation, in the Service Contract); and
- h. 46 U.S.C. § 41104(a)(9) (giving undue and unreasonable preference to shippers other than U Shippers).

VI. CAUSATION AND INJURY TO COMPLAINANT

47. As a result of the above actions and Shipping Act violations by Maersk, U Shippers and its members have been damaged monetarily, in the form of lost fees and higher shipping costs from alternative carriers which amounts are believed to be in excess of \$180 million dollars and currently accruing and to be further demonstrated in this proceeding.

VII. PRAYER FOR RELIEF

WHEREFORE Complainant requests the following relief:

- 1. The Commission undertakes to investigate the Respondents’ conduct that violates the Act and Commission Regulations in accordance with 46 U.S.C. §§ 41301(c) and 41302;

2. An Order finding that Maersk has violated 46 U.S.C. § 41102(c) in connection with their respective receipt, handling, storage, and delivery of the property of U Shippers; that Maersk has violated 46 U.S.C. § 41104(a)(2), 41104(a)(5), and 41104(a)(9) in connection with its Service Contract with U Shippers; and that Maersk has violated 46 U.S.C. § 41104(a)(10) by unreasonably refusing to deal or negotiate with U Shippers;

3. An Order compelling Maersk to cease and desist from violating the Shipping Act and putting in place lawful and reasonable practices to preclude Maersk from refusing to provide U Shippers with its allotted space at the prices agreed under the Service Contract;

4. Maersk be ordered to pay reparations and civil penalties for violations of the Act and the Commission's Regulations in accordance with 46 U.S.C. § 41305, with interest pursuant to 46 U.S.C. § 41305(a), U Shippers' reasonable attorneys' fees as "the prevailing party" pursuant to 46 U.S.C. § 41305(e), and any other sum the Commission determines to be proper; and

5. Such other and further orders or relief as the Commission deems just and proper.

VIII. REQUEST FOR ORAL HEARING

Complainant requests an oral hearing in Washington, DC.

Dated: August 25, 2022

Respectfully submitted,

By: /s/ Efrem Schwalb
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Attorneys for U Shippers Group Inc.

VERIFICATION

I, Feige Oberlander, am the Director of U Shippers Group Inc. 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: August 24, 2022

DocuSigned by:
Feige Oberlander
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Feige Oberlander