

**BEFORE THE  
FEDERAL MARITIME COMMISSION**

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**Doka U.S.A Ltd.,**  
Complainant,

v.

Docket No. 22-32

**MSC Mediterranean Shipping Company (USA) Inc.,**  
Respondent

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**VERIFIED COMPLAINT**

**INTRODUCTION**

1. Complainant Doka USA Ltd., (“Doka” or “Complainant” ) by its attorneys at Reeves McEwing LLP brings this Verified Complaint against MSC Mediterranean Shipping Company (USA) Inc. (“MSC” or “Respondent”) pursuant to violations of the Shipping Act of 2022 (“the Shipping Act”), 46 U.S.C. 41102(c); 46 U.S.C. § 41104(a)(15); 46 USC §§41104(d); and/or 46 C.F.R. §545.5 by MSC, and pursuant to the Federal Maritime Commission’s (“FMC[’s]”) authority to permit the filing of complaints under Section 11(a) of the Shipping Act, 46 U.S.C. § 41301(a), in response to Respondent’s violations of the Shipping Act.

**COMPLAINANT**

2. Doka is an international corporation which sells innovative formwork, solutions and services in all areas of construction, with an office at 214 Gates Road in Little Ferry, New Jersey.

3. At all times material hereto, Doka was the receiver and consignee of various containerized cargo shipped from overseas to ocean terminals in Seattle, Washington.

### **RESPONDENT**

4. MSC Mediterranean Shipping Company (USA) Inc., is a corporation incorporated in New York with a principal place of business at 80 State Street, Albany, NY 12207.

5. MSC is and was at all times pertinent to this Complaint a vessel-operating ocean common carrier as that term is defined by 46 U.S.C. § 40102(18).

### **JURISDICTION**

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

7. This Complaint is being filed pursuant to Section 11(a) of the Shipping Act, 46 U.S.C. § 41301(a). Doka is seeking reparations for injuries caused to it by Respondent due to its violation of 46 U.S.C. 41102(c), 46 U.S.C. § 41104(a)(15) and 46 U.S.C. § 41104(d).

8. The FMC has personal jurisdiction over MSC as a vessel-operating ocean common carrier as that term is defined by 46 U.S.C. § 40102(18).

9. Respondent's actions alleged herein constitute failure by the Respondent to meet the minimum requirements on detention and demurrage invoices sent to Doka in violation of 46 U.S.C. 41102(c), 46 U.S.C. § 41104(a)(15) and 46 U.S.C. § 41104(d).

## FACTUAL ALLEGATIONS

10. On or about June 23, 2021 MSC issued SEAWAYBILL No. MEDUUT103923 (BOL) for the carriage of six containers containing plywood ("Containers") from Saint Petersburg, Russia to Seattle, Washington.
11. Doka was listed as the consignee on the aforementioned BOL.
12. The Containers were discharged at the Port of Seattle on or about October 16, 2021.
13. On or about October 19, 2021, Doka's custom's broker filed an entry with US Customs and Border Protection ("CBP"), who accepted the entry with a rejected cargo release.
14. The rejected cargo release was due to irregularities in the BOL and/or manifest, which did not match the information in the CBP's database.
15. The BOL and manifest were created by Respondent MSC.
16. Doka and/or its customs broker called and emailed MSC on multiple occasions over several months to request that MSC amend the manifest or otherwise assist Doka in securing the release of the Containers.
17. MSC failed to respond to Doka's communications in a timely manner, and took no steps to obtain the release from CBP for several months, all the while assessing charges against the cargo for demurrage, detention, and dwell fees.
18. Doka was ready, willing and able to pick up the Containers within a few days of their arrival in Seattle in October 2021.
19. Doka's customs broker filed multiple entries in response to CBP's requests, but these were also rejected because MSC failed to correct the manifest and AMS problem.

20. Despite best efforts from Doka, the Containers were put into General Order in or about November, 2021.

21. Doka or its customs broker continued to contact various personnel at MSC, requesting assistance in obtaining an automated release manifest for the Containers, however MSC failed to provide the requested assistance which would have allowed the immediate release of the Containers.

22. After dozens of phone calls and emails to MSC, the Containers were eventually released by CBP in February 2022.

23. Doka paid over \$6,000 to satisfy the General Order and administrative fees.

24. By the time CBP finally released the Containers in February of 2022, MCS's demurrage and detention charges were over \$260,000, far exceeding the value of Doka's cargo within the containers.

25. MSC's unreasonable delay in acting to fix the Automated Manifest System problem with CBP resulted in unfair, unreasonable and exorbitant charges for demurrage, detention and "dwell" fees that have made it commercially unfeasible for Doka to retrieve its cargo.

26. MSC's actions and inactions in this case caused the demurrage and detention charges to accrue.

27. MSC's demurrage, detention and other charges did not and have not served their intended primary purpose of encouraging the prompt retrieval of cargo at the discharge port.

## **CAUSES OF ACTION**

### **I. Violation of Section 41102 (c) of the Shipping Act**

28. The allegations contained in Paragraphs 1 through 27 are incorporated by reference, as if set forth fully herein.

29. Respondent violated 46 U.S.C. 41102(e) of the Shipping Act in that such Respondent failed to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with demurrage/storage/detention charges, which would allow for release of the Containers; by failing to provide timely and accurate services to Complainant.

30. MSC wrongfully withheld and continues to withhold the Containers, damaging Doka's ability to operate its business.

## **II. Violation of 46 U.S.C. § 41104(a)(15); 46 USC §§41104(d)**

31. The allegations contained in Paragraphs 1 through 30 are incorporated by reference, as if set forth fully herein.

32. Respondent violated 46 U.S.C. § 41104(a)(15) and 46 USC §§41104(d) in that Respondent's performance was a cause or contributed to the underlying invoice charged for demurrage and detention.

## **DAMAGES**

33. As a direct result of the foregoing, Complainant seeks the waiver of demurrage, detention, and dwell charges, as well as consequential damages from Respondent as a result of its wrongful and unreasonable actions.

## **REQUEST FOR RELIEF**

34. Complainant requests that respondent be required to answer the charges made in this complaint; that, after a hearing, the Commission order respondent(s): to cease and desist from violation of the Shipping Act; to put in place lawful and reasonable practices; to pay

complainant reparations for the unlawful conduct in the amount as indicated under the Damages section of this Complaint, with interest and attorney's fees and any other sum the Commission determines to be proper; and that the Commission make any further orders as it determines to be proper.

**ORAL HEARING**

35. Oral hearing is requested in New Jersey or via virtual technology.

Respectfully submitted,

REEVES MCEWING, LLP

*/s/ Mary E. Reeves*

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**Respondent**

MSC Mediterranean Shipping Company (USA) Inc.

80 State Street

Albany, New York 12207

*Gerome.Stewart@MSC.com*

**VERIFICATION**

I, John Barton, am the formwork plywood manager of Doka USA Ltd. I have read the foregoing Complaint, and verify that the factual statements therein are true and correct to the best of my knowledge, information and belief.

  
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JOHN BARTON

DATE: 11/2/2022