

BEFORE THE FEDERAL MARITIME COMMISSION

)	
M.E. DEY & CO., INC.)	
)	
COMPLAINANT,)	
)	
v.)	FMC DOCKET NO. 22-35
)	
HAPAG-LLOYD AG and HAPAG-LLOYD (AMERICA) LLC)	
)	
RESPONDENTS.)	
)	

ANSWER

Respondents Hapag-Lloyd AG and Hapag-Lloyd (America) LLC (“Hapag”) hereby answer the Amended Complaint of Complainant M.E. Dey & Co., Inc. (Dey).

1. To the extent a response is required, Hapag denies the allegations in Paragraph 1.
2. Paragraph 2 states a legal conclusion to which no response is required. To the extent a response is required, Hapag denies that the charges assessed were improper, denies that Hapag caused such charges to accrue, and denies that Hapag acted negligently in relation to these containers.

I. COMPLAINANT

3. Hapag lacks sufficient information to admit or deny the information in Paragraph 3.

II. RESPONDENTS

4. Admitted as to the first and third sentences. Admitted that Hapag provides container transportation. Denied as to the statement that Hapag provides container transportation through its common carrier subsidiaries and affiliated companies.

5. Hapag admits that Hapag-Lloyd (America) LLC is a United States subsidiary and agent of Hapag AG. Hapag admits that the claims against Hapag USA arise out of a common nucleus of operative facts with those against Hapag AG, and admits that the Commission has jurisdiction over Hapag AG, but denies that the Commission has jurisdiction over Hapag-Lloyd (America) LLC. The correct address for Hapag-Lloyd (America) LLC is 3 Ravinia Drive NE, Suite 1600, Atlanta, Georgia, 30346.

6. Admitted.

III. JURISDICTION

7. Denied.

8. The Complaint speaks for itself. Paragraph 8 states a legal conclusion to which no response is required. In the event that a response is required, Hapag denies that it violated 46 U.S.C. § 41102(c).

9. Admitted.

10. Admitted as to the first sentence. Denied as to the second sentence.

11. Paragraph 11 states a legal conclusion to which no response is required. To the extent that a response is required, Hapag denies that it violated 46 U.S.C. § 41102(c), 46 C.F.R. §§545.4 and/or 545.5 or that it failed to establish, observe, and enforce just and reasonable regulations and practices relating to receiving, handling, storing, or delivering property.

12. Paragraph 12 states a legal conclusion to which no response is required. To the extent a response is required, Hapag denies that the storage and demurrage charges in this action do not serve the FMC's goal to ensure that detention and demurrage act as a financial incentive to promote the efficient movement of cargo.

13. Denied.

IV. FACTUAL ALLEGATIONS

A. The Commission's Interpretive Rule

12. 46 U.S.C. § 41102(c) and 46 C.F.R. § 545.4(d) speak for themselves. (The Amended Complaint is incorrectly numbered. The numbering restarts at 12 for this paragraph. This Answer follows the numbering convention of the Amended Complaint).

13. 46 U.S.C. § 41102(c) speaks for itself.

14. 46 C.F.R. § 545.5(b) speaks for itself.

15. 46 C.F.R. § 545.5(c)(1) speaks for itself.

16. 46 C.F.R. § 545.5(c)(2)(i) speaks for itself.

17. Fact Finding 28 speaks for itself. 46 U.S.C. § 40102(17)(B) speaks for itself.

B. Contractual Relationship between Dey and Hapag

18. Admitted.

19. Admitted.

20. Admitted.

21. Admitted.

C. Timeline of Container Movement or Lack Thereof

22. Paragraph 22 contains no factual allegations with respect to Hapag and thus requires no response. To the extent a response is required, Hapag lacks specific information to admit or deny the allegations in Paragraph 22.

23. Paragraph 23 contains no factual allegations with respect to Hapag and thus requires no response. To the extent that a response is required, Hapag lacks sufficient information to admit or deny the allegations in Paragraph 23.

24. Paragraph 24 contains no factual allegations with respect to Hapag and thus requires no response. To the extent that a response is required, Hapag lacks sufficient information to admit or deny the allegations in Paragraph 24.

25. Paragraph 25 contains no factual allegations with respect to Hapag and thus requires no response. To the extent that a response is required, Hapag lacks sufficient information to admit or deny the allegations in Paragraph 25.

26. Paragraph 26 contains no factual allegations with respect to Hapag and thus requires no response. To the extent that a response is required, Hapag lacks specific information to admit or deny the allegations in Paragraph 26.

27. Paragraph 27 contains no factual allegations with respect to Hapag and thus requires no response. To the extent that a response is required, Hapag lacks sufficient information to admit or deny the allegations in Paragraph 27 or the subparts that follow.

28. Paragraph 28 contains no factual allegations with respect to Hapag and thus requires no response. To the extent that a response is required, Hapag lacks sufficient information to admit or deny the allegations in Paragraph 28.

29. Paragraph 29 contains no factual allegations with respect to Hapag and thus requires no response. To the extent that a response is required, Hapag lacks sufficient information to admit or deny the allegations in Paragraph 29 or the subparts that follow.

30. Paragraph 30 contains no factual allegations with respect to Hapag and thus requires no response. To the extent that a response is required, Hapag lacks sufficient information to admit or deny the allegations in Paragraph 30.

31. Paragraph 31 contains no factual allegations with respect to Hapag and thus requires no response. To the extent that a response is required, Hapag lacks sufficient information to admit or deny the allegations in Paragraph 31 or the subparts that follow.

32. Paragraph 32 contains no factual allegations with respect to Hapag and thus requires no response. To the extent that a response is required, Hapag lacks sufficient information to admit or deny the allegations in Paragraph 32.

33. Paragraph 33 contains no factual allegations with respect to Hapag and thus requires no response. To the extent that a response is required, Hapag lacks sufficient information to admit or deny the allegations in Paragraph 33.

34. Paragraph 34 contains no factual allegations with respect to Hapag and thus requires no response. To the extent that a response is required, Hapag lacks sufficient information to admit or deny the allegations in Paragraph 34.

35. Paragraph 35 contains no factual allegations with respect to Hapag and thus requires no response. To the extent that a response is required, Hapag lacks sufficient information to admit or deny the allegations in Paragraph 35.

36. Paragraph 36 contains no factual allegations with respect to Hapag and thus requires no response. To the extent that a response is required, Hapag lacks sufficient information to admit or deny the allegations in Paragraph 36.

37. Paragraph 37 contains no factual allegations with respect to Hapag and thus requires no response. To the extent that a response is required, Hapag lacks sufficient information to admit or deny the allegations in Paragraph 37.

38. Paragraph 38 contains no factual allegations with respect to Hapag and thus requires no response. To the extent that a response is required, Hapag lacks sufficient information to admit or deny the allegations in Paragraph 38.

39. Paragraph 39 contains no factual allegations with respect to Hapag and thus requires no response. To the extent that a response is required, Hapag lacks sufficient information to admit or deny the allegations in Paragraph 39.

D. Communication with Hapag and its Subcontractor, CSX

40. Admitted.

41. Paragraph 41 contains no factual allegations with respect to Hapag and thus requires no response. To the extent that a response is required, Hapag lacks sufficient information to admit or deny the allegations in Paragraph 41.

42. To the extent that Paragraph 42 requires an answer, Hapag does not have sufficient information to admit or deny what CSX advised Dey and New Age. Hapag denies that the chassis (sic) were not mounted due to its failure to provide chassis on arrival.

43. To the extent that Paragraph 43 requires an answer, Hapag does not have sufficient information to admit or deny that CSX advised Dey's trucker it could not come in to recover the containers with its own chassis, and Hapag denies that the reason the containers were

placed in stacks was due to a failure on Hapag's part to provide chassis to transport the containers at issue.

44. Paragraph 44 contains no factual allegations with respect to Hapag. To the extent that Paragraph 44 requires an answer, Hapag does not have sufficient information to admit or deny what CSX reported to New Age and Dey. Hapag denies the subjective statement that Hapag USA refused to accept any responsibility for this matter, denies the statement that CSX could not request that Hapag USA approve that the charges be waived, and denies the statement that it was up to Dey to contact Hapag USA.

45. Denied.

46. Hapag lacks sufficient information to admit or deny the allegations in Paragraph 46.

47. Hapag lacks sufficient information admit or deny the allegations in Paragraph 47.

48. Hapag lacks sufficient information to admit or deny whether Dey was advised that it would not be able to speak to a manager without a second escalation request.

49. Hapag lacks sufficient information to admit or deny whether Dey initiated such a request.

50. Admitted.

51. Denied as to the subjective statement that Hapag USA sought to renege on a previous agreement to waive demurrage. Admitted as to Hapag's request that Dey immediately pay the \$156,932.00 in demurrage charges. Admitted as to Hapag's agreement to waive the demurrage charges. Admitted as to Hapag USA not acting to waive CSX's demurrage charges, but denied as to the characterization of those charges as "identically unjustifiable."

52. Hapag lacks sufficient information to admit or deny whether Dey was forced to pay the storage charges assessed by CSX in order to obtain the release of the containers at issue.

53. Denied.

54. Hapag lacks sufficient information to admit or deny whether Dey was forced to pay \$136,500 in rail storage charges. Hapag denies that the containers were unavailable for pick as a result of Hapag and CSX's actions.

55. Admitted as to whether Hapag have paid the \$136,500.00. Hapag does not have sufficient information to admit or deny whether CSX has paid \$136,500.00 to Dey.

56. Paragraph 56 states a legal conclusion to which no response is required. To the extent a response is required to Paragraph 56, Hapag denies that the charges accrued were solely the result of Hapag's actions or those of their subcontractor, CSX, and denies that the assessed charges "fly in the face" of the incentive principle.

IV. VIOLATIONS OF THE SHIPPING ACT

COUNT I: VIOLATIONS OF 46 U.S.C. § 41102(c)

57. Hapag repeats each and every response above as if fully set forth herein.

58. Section 41102(c) of the Shipping Act speaks for itself.

59. Admitted.

60. Admitted as to the statement that Hapag USA is Hapag AG's agent. Denied as to the subjective characterization that the demurrage charges were unjustified.

61. Admitted.

62. Paragraph 62 states a legal conclusion to which no response is required. To the extent that a response is required, Hapag denies that its demurrage/detention practices are unjust

and unreasonable, and denies that the conduct herein at issue occurred on a normal, customary and continuous basis.

63. Paragraph 63 states a legal conclusion to which no response is required. To the extent a response is required, Hapag denies that it failed to establish and observe just and reasonable practices in violation of § 41102(c).

64. Paragraph 64 states a legal conclusion to which no response is required. To the extent a response is required, Hapag denies that it failed to establish and observe just and reasonable practices in violation of § 41102(c).

65. Paragraph 65 states a legal conclusion to which no response is required. To the extent a response is required, Hapag denies that it failed to establish and observe just and reasonable practices in violation of § 41102(c).

66. Paragraph 66 states a legal conclusion to which no response is required. To the extent a response is required, Hapag denies that it failed to establish and observe just and reasonable practices in violation of § 41102(c).

67. Paragraph 67 states a legal conclusion to which no response is required. To the extent a response is required, Hapag denies that it failed to establish and observe just and reasonable practices in violation of § 41102(c).

**COUNT II:
VIOLATIONS OF 46 U.S.C. § 41104(a)(14) -
OSRA – UNREASONABLE CHARGES**

68. Hapag repeats each and every response above as if fully set forth herein.

69. 46 U.S.C. § 41104(a)(14) speaks for itself.

70. Paragraph 70 states a legal conclusion to which no response is required. To the extent a response is required, Hapag denies that its practices in connection with the assessment of demurrage charges in September and October 2022 were in violation of 46 U.S.C. §41104(a)(14).

71. 46 C.F.R. § 545.5(c)(1) speaks for itself. Sentence two states a legal conclusion to which no response is required. To the extent a response is required, Hapag denies that the demurrage charges associated with this Complaint were unreasonable practices as defined under the Shipping Act and OSRA.

V. CAUSATION AND INJURY TO COMPLAINANT

72. Paragraph 72 states a legal conclusion to which no response is required. To the extent a response is required, Hapag lacks sufficient evidence to admit or deny the amount of the charge assessed by CSX, and lacks sufficient evidence to admit or deny whether that amount has been refunded by CSX. Hapag denies that the demurrage charges associated with this Complaint were wrongly assessed or unreasonable practices as defined by the Shipping Act and OSRA.

VI. ALTERNATIVE DISPUTE RESOLUTION

73. Sentence one contains no factual allegations with respect to Hapag. Hapag lacks sufficient information to admit or deny that Dey and New Age made multiple phone calls and emails to Hapag USA. Admitted that Dey sent a letter to Hapag detailing the charges. Denied as to the characterization of those charges as unreasonable.

74. Admitted that Hapag USA waived its demurrage charge. Admitted that Hapag has not agreed to refund the demurrage charges, but denied as to the subjective characterization that those payments were made under duress.

75. Paragraph 75 contains no factual allegations with respect to Hapag and thus requires no response.

VII. Affirmative Defenses

1. The Federal Maritime Commission lacks subject matter jurisdiction.
2. The Federal Maritime Commission lacks personal jurisdiction over Hapag-Lloyd (America) LLC.
3. M.E. Dey fails to join an indispensable party, i.e., CSX.
4. M.E. Dey fails to state a claim upon which relief can may be granted in that the conduct which is the subject of the complaint does not constitute a practice within the meaning of 46 U.S.C. §41102(c).
5. M.E. Dey fails to state a claim upon which relief may be granted in that it was the responsibility of M.E. Dey and/or New Age to provide chassis for the containers at issue.

VIII. PRAYER FOR RELIEF

WHEREFORE, Respondent respectfully request that the complaint be dismissed with prejudice.



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VERIFICATION OF RESPONDENT HAPAG-LLOYD AG

Daniel von Below hereby verifies as follows:

1. I am Managing Director Corporate Secretary / Compliance of Hapag-Lloyd AG.
2. I am authorized to make this verification on behalf of Hapag-Lloyd AG.
3. I hereby verify that the facts contained in the foregoing answer and affirmative defenses are true and correct to the best of my knowledge, information, and belief.
4. I verify the foregoing under penalty of perjury under the laws of the United States.

Dated: March 27, 2023



Name: Daniel von Below

Title: Director Corporate Secretary / Compliance

VERIFICATION OF RESPONDENT HAPAG-LLOYD AG

Thomas Mansfeld hereby verifies as follows:

1. I am General Counsel of Hapag-Lloyd AG.
2. I am authorized to make this verification on behalf of Hapag-Lloyd AG.
3. I hereby verify that the facts contained in the foregoing answer and affirmative defenses are true and correct to the best of my knowledge, information, and belief.
4. I verify the foregoing under penalty of perjury under the laws of the United States.

Dated: March 27, 2023



Name: Thomas Mansfeld

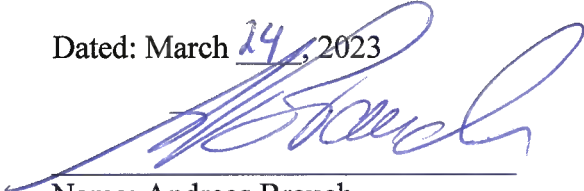
Title: General Counsel

VERIFICATION OF RESPONDENT HAPAG-LLOYD (AMERICA) LLC

Andreas Brauch, hereby verifies as follows:

5. I am SVP Business Admin. & Finance of Hapag-Lloyd (America) LLC.
6. I am authorized to make this verification on behalf of Hapag-Lloyd (America) LLC.
7. I hereby verify that the facts contained in the foregoing answer and affirmative defenses are true and correct to the best of my knowledge, information, and belief.
8. I verify the foregoing under penalty of perjury under the laws of the United States.

Dated: March 24, 2023



Name: Andreas Brauch

Title: SVP Business Admin. & Finance