

**BEFORE THE FEDERAL MARITIME COMMISSION
WASHINGTON, D.C.**

BAL CONTAINER LINE CO., LIMITED X
:
:
Complainant,:
:
vs. :
:
SSA MARINE TERMINAL, :
SSA TERMINALS (PIER A), LLC :
:
Respondents. :
 X

FMC Docket No. 23-11



VERIFIED COMPLAINT

Complainant BAL CONTAINER LINE CO., LIMITED (“Bal Container”), by and through its undersigned attorneys, respectfully files this Verified Complaint against Respondents SSA MARINE TERMINAL and SSA TERMINALS (PIER A), LLC (collectively, “SSA”) pursuant to 46 U.S.C. Section 41301 to seek reparations for injuries to Complainant caused by Respondents’ violations of the Shipping Act of 1984, as amended, 46 U.S.C. Sections 40101 *et seq.* (the “Shipping Act”), alleged herein., and states as follows:

COMPLAINANT

1. Complainant Bal Container Line Co., Limited is a vessel operating common carrier with a principal place of business located at Office No. 2, 20/F, 135 Bonham Strand Centre, 135 Bonham Strand Sheung Wan, Hong Kong. Bal Container Line Co., Limited maintains an email address of qingzhi.liu@bal.cn.

RESPONDENTS

2. Upon information and belief, Respondent SSA Marine Terminal is a Delaware limited liability company with its principal place of business located at 1131 SW Klickitat Way, Seattle, WA, 98134. Upon information and belief, SSA Marine Terminal was acting by and through its agent SSA Terminals (Pier A), LLC. Upon information and belief Respondent SSA Terminals (Pier A), LLC is a limited liability company with its principal place of business located at 1131 SW Klickitat Way Seattle, WA 98134. These two entities are referred to as “SSA” herein. Upon information and belief, SSA maintains an email address of Tom.Hsue@SSAMarine.com.

3. Respondents are and were at all times pertinent to this Complaint a marine terminal operator within the meaning of the Shipping Act, 46 U.S.C.S. § 40102(15), subject to regulation by the Federal Maritime Commission.

JURISDICTION & LEGAL AUTHORITY

4. The Commission has jurisdiction over this Verified Complaint pursuant to 46 U.S.C. § 41301 because it alleges violations of the Shipping Act of 1984, 46 U.S.C. Sections 40101 *et seq.* alleged herein.

5. The Federal Maritime Commission has subject-matter jurisdiction over this dispute pursuant to the Shipping Act, 46 U.S.C.S. § 40101 *et seq.*

6. The Federal Maritime Commission has jurisdiction over SSA as a “marine terminal operator” within the meaning of the Shipping Act, 46 U.S.C.S. § 40102(15).

7. SSA’s actions alleged herein constitute failures by SSA to “establish, observe, and enforce just and reasonable regulations and practices relating to or connected with

receiving, handling, storing, or delivering property” in violation of the Shipping Act, including 46 U.S.C.S. § 41102(c) and Section 545.4 of the Code of Federal Regulations.

FACTUAL ALLEGATIONS

SSA’s Unjust and Unreasonable Congestion Surcharge

8. In August 2021 Bal Container entered into four vessel specific agreements with SSA for terminal services.

9. The agreement pertaining to Vessel Santiago was entered into in July 2021. The agreements pertaining to Vessels CONSTANTINA and TS MANILA were entered into in August 2021 and September 2021, respectively. The agreement pertaining to Vessel CSL SANTA MARIA 1242E was entered into in January 2022, (collectively the “Agreements”). A true and correct copy of the Agreements are attached hereto as Exhibits A – D and are hereby incorporated by reference.

10. Per the Agreements, SSA was to provide terminal services to Bal Container at Pier A, Long Beach California.

11. Four vessels of Bal Container called at SSA’s terminal in Long Beach between August 2021 and December 2021.

12. On November 22, 2021 SSA issued four invoices to Bal Container (9430013106, 9430013105, 9430013108, 9430013107) for a total of \$4,293,400 for congestion surcharge fees. A true and correct copy of the invoices are attached hereto as Exhibits E - H and are hereby incorporated by reference.

13. On January 2, 2022 SSA issued five invoices to Bal Container (9430013584, 9430013587, 9430013583, 9430013586, 9430013588) for a total of \$4,556,000

for congestion surcharge fees. A true and correct copy of the invoices are attached hereto as Exhibits I-M and are hereby incorporated by reference.

14. The total congestion surcharge fee imposed on Bal Container was \$8,849,400, stemming solely from the calls of four vessels from August 2021 to December 2021.

15. Invoice 9430013105 corresponds to 1,043 containers that arrived at Pier A in Long Beach, California on August 11, 2021, August 21, 2021, and August 22, 2021. After applicable free time, all containers that remained at SSA's terminal were charged \$100 per day, per container, by SSA, solely as a congestion surcharge. The total amount charged for invoice 9430013105 is \$953,500.

16. Invoice 9430013106 corresponds to 624 containers that arrived at Pier A in Long Beach, California between August 28, 2021 and October 5, 2021. After applicable free time, SSA charged a congestion surcharge of \$100 per day, per container, for each container. The total charged for invoice 9430013106 is \$964,600.

17. Invoice 9430013107 corresponds to 1,001 containers that arrived at Pier A in Long Beach, California between September 14, 2021 and September 22, 2021. After applicable free time, SSA charged a congestion surcharge of \$100 per day, for each container. The total charged for invoice 9430013107 is \$1,375,400.

18. Invoice 9430013108 corresponds to 714 containers that arrived at Pier A in Long Beach, California between October 6, 2021 and October 9, 2021. After applicable free time, SSA charged a congestion surcharge of \$100 per day, for each container. The total charged for invoice 9430013108 is \$999,900.

19. Invoice 9430013583 corresponds to 6 containers that arrived at Pier A in Long Beach, California on August 11, 2021 and August 21, 2021. After applicable free time,

SSA charged a congestion surcharge of \$100 per day, for each container. The total charged for invoice 9430013585 is \$51,700.

20. Invoice 9430013586 corresponds to 40 containers that arrived at Pier A in Long Beach, California between September 14, 2021 and September 16, 2021. After applicable free time, SSA charged a congestion surcharge of \$100 per day, for every container. The total charged for invoice 9430013586 is \$237,800.

21. Invoice 9430013588 corresponds to 1,215 containers that arrived at Pier A in Long Beach, California between October 24, 2021 and October 26, 2021. After applicable free time, SSA charged a congestion surcharge of \$100 per day, for every container. The total charged for invoice 9430013586 is \$3,035,900.

22. On information and belief, Invoice 9430013584 and 9430013587 applied the same congestion fee charge of \$100 per container per day totaling \$1,230,600.

23. SSA's sole justification for the \$100 per day per container congestion surcharge was a single line to Bal Container, which stated: "[i]n the event Carrier or Consignees fail to remove the containers within the free time allowed, Carrier agrees to pay 100% demurrage per the Port Tariff *plus an extra \$100 per unit per day for terminal congestion fee.*" (emphasis added).

24. At no time did SSA tell Bal Container what the purpose of the congestion surcharge was, what the triggering event was, what ending date or event would potentially end the fee, how the fee would help to alleviate congestion, or any other relevant required information.

25. Based upon the foregoing, SSA failed "to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling,

storing, or delivering property” of Bal Container, which proximately caused Bal Container’s loss, in violation of the Shipping Act, including 46 U.S.C.S. § 41102(c).

26. As alleged herein and in violation of the Shipping Act, including 46 U.S.C.S. § 41102(c), SSA assessed Bal Container for congestion fees that were of no fault of Bal Container, and even egregiously continued to assess Bal Container congestion fees despite certain containers being placed by SSA in “inaccessible” areas at its terminal.

27. These charges are inconsistent and/or did not comply with all applicable provisions and regulations, including without limitation section 41102(c) of the Shipping Act and part 545 of title 46, Code of Federal Regulations (or successor regulations).

28. Part 545 of the Code of Federal Regulations offers interpretations and statement of policy. Section 545.4 interprets 46 U.S.C. 41101(c) to require the following elements in order to establish a successful claim for reparations for “unjust and unreasonable practices.”

- (a) The respondent is an ocean common carrier, marine terminal operator, or ocean transportation intermediary;
- (b) The claimed acts or omissions of the regulated entity are occurring on a normal, customary, and continuous basis;
- (c) The practice or regulation relates to or is connected with receiving, handling, storing, or delivering property;
- (d) The practice or regulation is unjust or unreasonable; and
- (e) The practice or regulation is the proximate cause of the claimed loss.

29. At all times relevant to this claim, SSA was and presently is a marine terminal operator.

30. The unreasonable and unjust congestion fee charges issued to Bal Container occurred on a normal, customary and continuous basis from August 2021 to December 2021 in the uniform amount of \$100 per container per day.

31. The congestion fee charges relate to receiving, handling, storing or delivering property. Specifically, the congestion fee charge is related to SSA's handling of Bal Container's vessels and containers.

32. The congestion fee charge is unjust and unreasonable because it does not serve to address the issue of congestion and it imposed a burden on Bal Container Line. Congestion is not alleviated through a flat indiscriminate charge.

33. The congestion fee charge is unjust and unreasonable because SSA never explained the congestion charge nor how it alleviates congestion. Rather, the congestion fee charge is a mere *one sentence* that states, "[i]n the event Carrier or Consignees fail to remove the containers within the free time allowed, Carrier agrees to pay 100% demurrage per the Port Tariff ***plus an extra \$100 per unit per day for terminal congestion fee.***" (emphasis added).

34. The congestion fee charge is unjust and unreasonable because the mere one sentence notice does not contain the required information in order for it to be "clear and definite".

35. The congestion fee charge is unjust and unreasonable because SSA continued to charge for congestion despite placing Bal Container's containers in an "inaccessible" area in the terminal.

36. The congestion fee charge is unjust and unreasonable because it is not clear and definite as is required by the Federal Maritime Commission. To be clear and definite, the purpose of the surcharge must be clearly defined. The event or condition that both (1) trigger and (2) would terminate the surcharge must be clearly identified. Otherwise, the Commission can initiate enforcement actions for improperly established tariffs. As mentioned above, SSA's congestion fee charge did not state a purpose. The triggering event that would terminate the

charge was also not clearly identified. SSA cannot and will not be able to say that a single sentence satisfies the legal requirements.

37. Importantly, SSA's congestion fee charge does not clearly identify any Tariff that states the congestion charge.

38. The congestion fee charge is the proximate cause of the loss Bal Container suffered in an amount no less than \$8,849,400.

CAUSATION

39. As set forth above, as a direct and proximate result of SSA's aforementioned violations of the Shipping Act, 46 U.S.C.S. § 40101, *et seq.*, Bal Container has sustained actual injuries and damages.

40. As a direct and proximate result of SSA's aforementioned violations of the Shipping Act, SSA wrongfully and unreasonably charged Bal Container \$8,849,400 for congestion fees for containers unremovable from the port.

41. Pursuant to the Shipping Act, 46 U.S.C.S. § 41305, Bal Container is entitled to reparations for the injuries SSA caused to Bal Container due to SSA's aforementioned violations of the Shipping Act.

DAMAGES

42. Bal Container has sustained actual injuries and damages of at least \$8,849,400 as a direct and proximate result of SSA's aforementioned violations of the Shipping Act, 46 U.S.C.S. § 40101, *et seq.*

PRAYER FOR RELIEF

43. Complainant respectfully requests that Respondents be required to answer the charges made in this Complaint and that, after a hearing, the Federal Maritime Commission order Respondents:

- a. To cease and desist from violation of the Shipping Act;
- b. To put in place lawful and reasonable practices;
- c. To strike the above mentioned invoices.
- d. That the Federal Maritime Commission makes any further orders

as it determines to be proper.

HEARING REQUESTED

44. Complainant respectfully requests oral argument/hearing on this matter and further requests that the hearing be held in Long Beach, California.

Respectfully submitted this 12th day of October, 2023.

KEESAL, YOUNG & LOGAN



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BAL CONTAINER LINE CO., LIMITED

VERIFICATION

I, Liu Qingzhi, am the Owner's Representative of Complainant Bal Container Line Co., Limited.

I have read the foregoing Verified Complaint and believe, to the best of my knowledge, information, and belief, including information received from others, that the facts stated therein are true and correct. I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 12, 2023.


