

BEFORE THE
FEDERAL MARITIME COMMISSION

FMC DOCKET NO.

24-13

ACCESS ONE TRANSPORT, INC.
Complainant,

v.

COSCO SHIPPING LINES CO. LTD.
Respondent.



VERIFIED COMPLAINT

Comes now, Complainant Access One Transport, Inc. (“Complainant” or “ACCESS ONE”), by its undersigned attorneys, and files this verified complaint against Respondent, COSCO Shipping Lines Co. LTD. (“Respondent” or “COSCO”) alleging violations of the Shipping Act of 1984, as amended, 46 U.S.C. §40101, et. seq. (the “Act”) as follows:

I. THE COMPLAINANT

1. Complainant, Access One Transport, Inc. is a California corporation that is operating as a licensed motor carrier with a place of business at 1233 W. Gardena Blvd., Suite 100, Gardena California 90247. Complainant may be contacted through counsel, Stephen M. Uthoff at suthoff@uthofflaw.com.

II. THE RESPONDENT

2. Respondent, COSCO is a corporation organized under laws of China. COSCO’s corporate headquarters is located at No.378, Dong Da Ming Road, Shanghai, China.

3. On information and belief, COSCO does business in the United States through, *inter alia*, its agent, COSCO Shipping (North America), Inc. aka COSCO America (“COSCO NA”), with its principal place of business at 100 Lighting Way, 3rd Floor, Secaucus, New Jersey 07094. COSCO NA is also qualified to do business in the state of California with an office at 588 Harbor Scenic Way, Long Beach, CA 90802. At all times relevant COSCO was responsible for the actions of COSCO NA in relation to the allegations of this complaint.

4. At all times pertinent to this complaint, COSCO was and is an ocean common carrier as defined by the act at 46 USC §§40102(7) and (18) and is identified as Federal Maritime Commission (the “Commission”) organization number 015614.

5. COSCO has published a “customer service hotline” email address as cs.hq@coscon.com.

III. JURISDICTION AND LEGAL AUTHORITY

6. The Commission has subject matter jurisdiction over this complaint pursuant to the Act, 46 USC §40101 *et. seq.*

7. The Commission has personal jurisdiction over COSCO as an ocean common carrier as contemplated by the Act as defined in 46 USC §§40102(7) and (18).

8. This complaint seeks reparations, equitable and other relief for alleged violations of 46 USC §41102(c) by Respondent’s failure to establish, observe, and enforce just and reasonable practices related to receiving, handling, storing and delivering property. Complainant also alleges certain conduct by Respondent to be an unreasonable preference or practice per 46 U.S.C. §41104(a)(3) and (8) and are independent violations of the Act.

IV. FACTUAL ALLEGATIONS

9. ACCESS ONE is a motor carrier with operations at Gardena, California.

10. As part of its operations, ACCESS ONE will dray full and empty containers to and from various terminals located in the Ports of Los Angeles and Long Beach.

11. As part of its drayage operations, ACCESS ONE is routinely required to pick up full imported ocean containers from and return empty containers to COSCO designated terminal(s). COSCO uses several terminals in the Long Beach/Los Angeles port complex to handle its cargo and empties.

12. ACCESS ONE and COSCO are parties to the Uniform Intermodal Interchange and Facilities Access Agreement (“UIIA”). COSCO participates in the UIIA through COSCO NA.¹

13. Under the UIIA addendum applicable to COSCO, COSCO allows four business days free time to return empty containers after full loads are pulled from COSCO’s terminals. Thereafter, per the COSCO Addendum to the UIIA, COSCO charges various rates per day detention for each day the empty container is not returned to COSCO beyond the free time allowed depending on the size and configuration of the empty container.

14. COSCO may have further agreements directly with shippers, consignees, beneficial cargo owners or other parties which extend the amount of free time allowed or that may change the amount of detention charged on a daily basis. ACCESS ONE may benefit from such agreements.

15. The containers picked up from COSCO by ACCESS ONE are placed on chassis owned or controlled by third parties and ACCESS ONE is charged a daily rate for their use.

¹ “Ocean carrier practices, whether incorporated in the UIIA, or not, are within the Commission's purview under section 41102(c).” Final Rule, 85 FR at 29649

16. In relation to the complaint herein, from on or about April 2021 through August 2022, ACCESS ONE in its ordinary course of business, pulled full containers from COSCO designated terminals for delivery to its customers. After its customers had unloaded the cargo therein, ACCESS ONE in the regular course would attempt to return the empty containers to COSCO within the free time allowed.

17. COSCO, would provide available location(s) for return of the empty containers on a routine basis.

18. The notifications would identify the specific terminal, the type of equipment which may be returned, if the terminal had availability and if other restrictions were imposed, such as a “dual” transaction. Not all dates had general availability for empty returns.

19. A dual transaction requires the motor carrier to pick up a full container at the same time it dropped off an empty container. If a motor carrier does not have a corresponding full pick up at the terminal it may not drop off the empty.

20. Where COSCO designated an empty return location, before an empty container could be returned, the motor carrier must then make an appointment with the designated terminal. ACCESS ONE for a time used a third party service and also directly used terminal resources to determine if appointments were available at the designated COSCO terminals. ACCESS ONE often discovered there were no actual appointments available to return empty containers to COSCO terminals even when COSCO had designated a terminal for returns.

21. Further, on the rare occasion when availability was shown and appointments were available, there were limits as to how many empties could be returned in a given day.

22. In the regular course of business, ACCESS ONE would also contact the terminals directly in an attempt to secure appointments to return empty containers without result. When

ACCESS ONE attempted to secure appointments to return the empty containers, ACCESS ONE would often be notified that all appointments had been filled or that the terminal would not accept empty containers, contrary to COSCO's designation.

23. Because ACCESS ONE was required to hold onto empty containers and their corresponding chassis for multiple days, storage was incurred and chassis charges were assessed. Also because containers could not be directly returned to COSCO, additional stop off and re-delivery charges were assessed.

24. Despite its best efforts to return empty containers because of the lack of available appointments, dual transactions or the volume of empty containers at its facility caused by COSCO's past actions, it was impossible to return all empty containers at once even if some limited appointments were available.

25. COSCO has charged detention in an unreasonable, arbitrary and capricious manner. To illustrate: 1) COSCO would issue daily empty return availability; 2) if any locations were identified for empty returns COSCO charged detention if the empty container was out beyond free time; 3) ACCESS ONE used its best efforts to determine if appointments were actually available for the returns; 4) if appointments were available ACCESS ONE would return empties to the extent it reasonably could; 5) COSCO charged ACCESS ONE detention for any empty container not returned during freetime regardless of the lack of any appointments to do so. Thus, COSCO would still charge daily detention per container even if the empty, in reality, could not be returned through the actions of COSCO or its designated terminals.

26. Working diligently with the availability allowed by COSCO, ACCESS ONE returned the empties it had on hand over time, but nevertheless received substantial detention invoices from COSCO which have been disputed.

27. In addition to the detention invoices from COSCO, ACCESS ONE has received invoices from the third party chassis providers and has also accrued storage, stop off and re-delivery charges related to the COSCO empties. In some instances, COSCO ultimately waived detention charges on some containers, but nevertheless ACCESS ONE still incurred such damages.

28. ACCESS ONE contends that it would have been able to return containers to COSCO during free time but for COSCO and its terminal's actions.

29. Instead of adequately allowing for opportunities to return empty containers, COSCO involuntarily forced ACCESS ONE to act as a storage facility for COSCO empty containers without compensation. Such actions not only should have incurred storage and related charges for the containers for COSCO's account, it also caused ACCESS ONE to incur and assess storage and chassis charges to its customers, and interfered with ACCESS ONE's operations and its relationship with its customers.

30. Further as a result of the disputed detention invoices, notwithstanding the lack of response from COSCO on the disputes, COSCO has on multiple occasions threatened to "shut out" ACCESS ONE from access to COSCO shipments.

V. CAUSATION - VIOLATIONS OF THE SHIPPING ACT
AND INJURY TO COMPLAINANT

31. In reference to the aforementioned pled facts and recitals Complainant further alleges the following violations of the Act.

32. COSCO is a common carrier by water as defined by the Act.

33. The Act at 46 USC §41102(c) provides: "**(c) Practices in handling property.** A common carrier, marine terminal operator, or ocean transportation intermediary may not fail to

establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.”

34. The return of empty containers to a common carrier relates to or is connected with the receiving, handling, storing, or delivering property, as contemplated by the Act (see 46 C.F.R. §565.5(c)(ii)). An ocean carrier such as COSCO is responsible for having adequate terminal facilities for its operations, including empty returns, see 85 FR 29638, 29650.

35. The Commission has adopted interpretive rule at 46 C.F.R. §565.5 to help identify unreasonable practices as contemplated by 46 U.S.C. §41102(c). It provides in its relevant part:

“(c) Incentive principle—

(1) General. 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.

(2) Particular applications of incentive principle—...

(ii) Empty container return. Absent extenuating circumstances, practices and regulations that provide for imposition of detention when it does not serve its incentivizing purposes, such as when empty containers cannot be returned, are likely to be found unreasonable.

(d) Demurrage and detention policies. The Commission may consider in the reasonableness analysis the existence, accessibility, content, and clarity of policies implementing demurrage and detention practices and regulations, including dispute resolution policies and practices and regulations regarding demurrage and detention billing. In assessing dispute resolution policies, the Commission may further consider the extent to which they contain information about points of contact, timeframes, and corroboration requirements. ...

(f) Non-Preclusion. Nothing in this rule precludes the Commission from considering factors, arguments, and evidence in addition to those specifically listed in this rule.”

36. The above factual recitals establish that COSCO’s practices have impacted freight fluidity and COSCO’s unreasonable practices and policies have and continue to give rise to the

imposition of detention charges and related damages incurred by ACCESS ONE when empty containers cannot be returned. Examples include:

a. Where dual transactions are required to return an empty container. ACCESS ONE submits this is an unreasonable practice regardless if ACCESS ONE can take advantage of such appointments². In the alternative, if a dual transaction was not available to ACCESS ONE, no detention should be charged. Further requiring a dual transaction to return an empty without penalty of detention, in addition to violating 46 U.S.C. §41102(c), constitutes an unreasonable preference or practice per 46 U.S.C. §41104(a)(3) and (8) and thus is an independent violation of the Act.

b. Where COSCO designates a terminal for return of empties but the terminal itself has no appointments (or an inadequate number of appointments) to allow a return of an empty.

c. COSCO created operational difficulties for ACCESS ONE requiring ACCESS ONE to store containers at its facility. Thereafter if empty return appointments are available, there was no consideration if operationally the empty can be returned, given the number of empties being stored and power available for its reasonable return. The number of containers refused by COSCO or its agent terminals that had to be stored at ACCESS ONE or its designated locations (without compensation) should be taken into account when determining the ability to return only a limited number of containers at any one time.

d. COSCO's refusal to accept empties impacted ongoing cargo fluidity.

² As noted by the Commission at 85 FR 29638, 29655 "The Commission is particularly concerned about the reasonableness of dual move requirements, or more specifically, an ocean carrier imposing detention when a trucker's inability to return a container within free time is due to it not being able to satisfy a dual move requirement."

e. Any shut out of ACCESS ONE resulting from the improper detention invoices.

37. COSCO's actions also caused additional injury to ACCESS ONE including; 1) COSCO created operational difficulties for ACCESS ONE whereby it is required to maintain COSCO empties on chassis for unreasonable amounts of time in its yard causing further charges and damages; 2) ACCESS ONE has been forced to invoice its own customers for or otherwise accrue additional charges; 3) generally interfering with the efficient operations of ACCESS ONE, including harming the relationship with ACCESS ONE and its customers and requiring ACCESS ONE to act as an involuntary, uncompensated storage yard for COSCO equipment; 4) threatened to "shut out" ACCESS ONE's ability to retrieve COSCO shipments for ACCESS ONE's customers.

38. The above recitals support an award of reparations under 46 USC §41102(c) as further interpreted by 46 C.F.R. §545.4 and 46 U.S.C. §41104(a)(3) and (8).

VI. DAMAGES

39. COSCO's violations of the Act have caused the following damages to Complainant.

- a. detention charges assessed against ACCESS ONE that have not been previously waived by COSCO in the minimum amount of \$336,635.00; and
- b. Chassis charges associated with the storage of COSCO's empty containers in the minimum amount of \$124,160.00; and
- c. Storage costs for of COSCO's empty containers in the minimum amount of \$139,690.00; and
- d. Stop off charges in the minimum amount of \$31,875.00; and
- e. Re-delivery charges in the minimum amount of \$20,400.00; and

f. damages associated with the interference of existing contracts between ACCESS ONE and its customers according to proof; and

g. damages associated with the inability to accept certain work because of the lack of space and/or equipment caused by the empty COSCO containers according to proof; and

h. damages associated with the disruption of the operations of ACCESS ONE as a result of COSCO's refusal to accept its empty containers according to proof; and

i. damages related to any "shut out" of ACCESS ONE from its ability to pick up COSCO shipments for ACCESS ONE's customers according to proof.

40. In addition to the damages suffered by ACCESS ONE, based upon information and belief, the violations committed by COSCO have also affected similarly situated motor carriers and members of the public.

41. The above are minimum amounts of damages suffered. Investigation and discovery are continuing as to all damages. ACCESS ONE reserves the right to provide proof of all damages for the purposes of reparations pursuant to 46 C.F.R. §§502.251 et. seq.

VII. REQUEST FOR RELIEF

42. WHEREFORE ACCESS ONE requests entry of an order against Respondent for the following: ACCESS ONE requests that COSCO be required to answer the charges made in this complaint; that after hearing or other summary determination, the Commission order respondent to:

a. Cease and desist from violating the Act including but not limited to assessing unlawful detention and any shut out of ACCESS ONE; and

b. to put in place lawful and reasonable practices to avoid continuing and future violations of the Act.; and

c. Payment of reparations and damages for the unlawful conduct described herein, in amounts according to proof, in the minimum amounts identified above for, but not limited to the following;

i. for reimbursement of detention invoices paid or cancellation of open detention invoices; and

ii. For chassis related fees; and

iii. For container storage; and

iv. For stop off charges; and

v. For re-delivery charges; and

vi. For damages associated with the interference with ACCESS ONE's current and prospective contracts; and

vii. For disruption of ACCESS ONE's operations, including any shut out, resulting from Respondent's unlawful conduct; and

viii. For interest on the amounts awarded; and

d. For attorney's fees and costs pursuant to 46 USC §41305, 46 C.F.R. §502.254 or as otherwise recoverable; and

e. For payment of any other sums the Commission deems appropriate; and

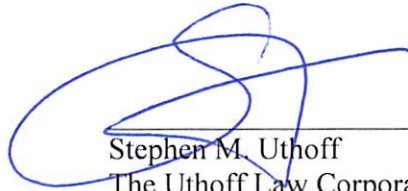
f. For such other relief as the Commission deems just and proper, including injunctive relief, temporary or permanent.

VII. REQUEST FOR ORAL HEARING

43. Complainant requests a hearing on this matter and further requests that the hearing be conducted at the Commission's regional office or other appropriate location in Los Angeles, County California.

Date: February 27, 2024

Respectfully submitted,



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Verification

I Nobu Suzuki, president of Access One Transport, Inc. am authorized to make this verification on behalf of Access One Transport, Inc. I hereby declare under penalty of perjury that I have read the contents of this complaint and that the facts stated therein are true based upon my knowledge information and belief, on information as gathered by the employees and agents of ACCESS ONE and based upon information publicly available. I declare that the foregoing is true and correct under the laws of the United States.

Date: 2/27/2024

DocuSigned by:
Nobu Suzuki
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Nobu Suzuki