

BEFORE THE
FEDERAL MARITIME COMMISSION



DOCKET NO. 24-22

RECEIVED May 16, 2024 Office of the Secretary Federal Maritime Commission

GITI TIRE (USA) LTD.
Complainant

VERSUS

FLEXPOR INTERNATIONAL LLC,
Respondent

VERIFIED COMPLAINT

Complainant, Giti Tire (USA) Ltd. (“Giti” or “Complainant”), files this Complaint against Flexport International LLC (“Flexport” or “Respondent”), alleging violations of the Shipping Act of 1984, 46 U.S.C. § 40101, et. seq. (the “Shipping Act”) as amended by the Ocean Shipping Reform Act of 2022 (the “OSRA”) as follows:

I. COMPLAINANT

1. Giti Tire (USA) Ltd. is a Delaware corporation with its principal place of business located at 10404 6th Street Rancho Cucamonga, CA 91730.

II. RESPONDENT

2. Flexport International LLC is a Delaware limited liability company, with a principal office located at 760 Market Street, 8th Floor, San Francisco, CA 94102.

3. Flexport is and was at all times pertinent to this Complaint a non-vessel-operating common carrier (“NVOCC”) within the meaning of the Shipping Act, 46 U.S.C. § 40102(17),

subject to regulation by the Federal Maritime Commission (“FMC”). Flexport is a licensed NVOCC under the FMC and its License Number is 025219.

III. JURISDICTION AND LEGAL AUTHORITY

4. The FMC has subject-matter jurisdiction over this Complaint pursuant to the Shipping Act.

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

6. The FMC has personal jurisdiction over Flexport as a NVOCC as defined in 46 U.S.C. § 40102(17).

7. Flexport’s actions constitute a failure by the Flexport to meet the minimum requirements on detention and demurrage invoices sent to Giti in violation of 46 U.S.C. § 41104(a)(15), 46 U.S.C. § 41104(a)(14) and 46 U.S.C. § 41104(d).

8. Flexport’s actions also are unjust and unreasonable in violation of the requirements of 46 U.S.C. §41102(c) by invoicing demurrage and detention charges for weekend and holiday days during which the port or terminal was not available for return of containers.

9. Flexport’s actions also are unjust and unreasonable in violation of the requirements of 46 U.S.C. §41102(c), 46 U.S.C. § 41104(a)(15), 46 C.F.R. § 545.4, and 46 CFR § 545.5 by invoicing for unreasonable charges and utilizing unreasonable practices.

IV. FACTUAL ALLEGATIONS

10. In the regular course of its business, Giti shipped cargo from overseas ports to the United States. Giti entered into agreements with Flexport whereby Flexport, acting as NVOCC,

would ship containers from an overseas port to a destination designated by Giti. The large majority of these shipments came into the United States ports of Long Beach, Los Angeles, and Savannah

11. During the period between 2021 and 2023, Flexport shipped a substantial number of containers for Giti.

12. For each shipment, Flexport invoiced Giti for the associated charges. These invoices contained the freight charges for the ocean carriage of the containers. The invoices also contained millions of dollars in charges for demurrage, detention, storage, and other accessorial charges.

13. Flexport’s practices and invoices wrongfully and unreasonably required Giti to pay millions of dollars in unreasonable demurrage and detention charges, as well as millions of dollars of other accessorial charges at unreasonable rates.

14. Flexport’s conduct and invoices involve multiple, interrelated violations of the Shipping Act.

15. Throughout 2022 and 2023, Flexport issued hundreds of invoices to Giti with detention and demurrage charges that were improperly invoiced by Flexport in violation of the Shipping Act, 46 U.S.C. § 41104(a)(15).

16. The Shipping Act, as amended by the OSRA, at 46 U.S.C. § 41104(a)(15), requires that a “common carrier, either alone or in conjunction with any other person, directly or indirectly, shall not . . . invoice any party for demurrage or detention charges unless the invoice includes information as described in subsection (d) showing that such charges comply with (A) all provisions of part 545 of title 46, Code of Federal Regulations (or successor regulations); and (B) applicable provisions and regulations, including the principles of the final rule published on May 18, 2020, entitled ‘Interpretive Rule on Demurrage and Detention Under the Shipping Act.’”

17. 46 U.S.C. § 41104(d)(2) requires that an invoice for detention and demurrage charges must contain the following information:

- a. Date that the container is made available.
- b. The port of discharge.
- c. The container number or numbers.
- d. For exported shipments, the earliest return date.
- e. The allowed free time in days.
- f. The start date of free time.
- g. The end date of free time.
- h. The applicable detention or demurrage rule on which the daily rate is based.
- i. The applicable rate or rates per the applicable rule.
- j. The total amount due.
- k. The email, telephone number, or other appropriate contact information for questions or requests for mitigation of fees.
- l. A statement that the charges are consistent with any of Federal Maritime Commission rules with respect to detention and demurrage.
- m. A statement that the common carrier's performance did not cause or contribute to the underlying invoice charges.

18. Flexport's invoices to Giti were issued in violation of 46 U.S.C. § 41104(a)(15) because Flexport failed to include on the invoices the required information as delineated in 46 U.S.C. § 41104(d)(2). Consequently, the invoices lacked the necessary detail for Giti to determine the basis and validity of the individual detention and demurrage charges.

19. In addition to other penalties, Flexport's issuance of invoices in violation of 46 U.S.C. § 41104(a)(15) triggers 46 U.S.C. § 41104(f), titled "Elimination of charge obligation," which provides that the "[f]ailure to include the information required under subsection (d) on an invoice with any demurrage or detention charge shall eliminate any obligation of the charged party to pay the applicable charge."

20. Flexport's actions and invoicing practices also violate the Shipping Act provisions prohibiting unjust and unreasonable practices and unreasonable charges, 46 U.S.C. § 41102(c) and 46 U.S.C. §41104(a)(14).

21. Flexport issued hundreds of invoices containing detention and demurrage charges for days on which the relevant port was closed, including holidays and weekend days, and the container could not be returned. Such charges did not incentivize the movement of containers or function to promote cargo fluidity.

22. In multiple instances, Flexport also issued invoices to Giti for detention and demurrage charges that Flexport already had invoiced to other parties, such as a motor carrier, involved in the shipment. Issuance of these duplicative invoices was done by Flexport in violation of the Shipping Act.

23. Many of the accessorial charges invoiced by Flexport to Giti were excessive in quantum. Flexport's charges in many instances were four or five times the market rate for equivalent services. Such extreme pricing constitutes unjust and unreasonable practices in violation of 46 U.S.C. § 41102(c).

24. Giti contacted Flexport to advise of the deficiencies in the above referenced invoices. Giti also requested that Flexport provide the supporting documentation for the data

underlying the invoiced detention and demurrage charges so that Giti could assess the validity and accuracy of the charges.

25. Flexport refused to provide further documentation validating the invoiced charges. Instead, Flexport provided Giti with a document it called an “OSRA Addendum.” The OSRA Addendum listed a number of invoices and purported to provide the missing data required by the OSRA to be included on invoices for demurrage and detention charges.

26. Flexport did not, however, reissue complete invoices to Giti. Accordingly, the OSRA Addendum did not cure the invoicing defects, as Giti still has not received invoices from Flexport that comply with the requirements of 46 U.S.C. § 41104.

27. Further, despite repeated requests from Giti, Flexport refused to provide any data to support the validity and source for the new information that it listed on its OSRA Addendum. Considering the passage of time and Flexport’s steadfast refusal to provide any supporting documentation, Giti has no way to assess the accuracy of Flexport’s charges.

28. Giti has attempted to resolve this dispute directly with Flexport prior to filing this Verified Complaint. Giti engaged in numerous discussions with Flexport regarding Giti’s claims, but Flexport was unreceptive to adjustment of its invoices to account for the above detailed Shipping Act violations. Thus the discussions were unsuccessful in resolving the dispute.

V. CAUSATION

29. As a result of Flexport’s above detailed violations of the Shipping Act, Giti has paid and has been invoiced for millions of dollars of improper detention and demurrage and other accessorial charges.

VI. DAMAGES

30. Given the foregoing, Giti avers it has incurred over \$12,724,433 in damages.

31. Giti has been invoiced by Flexport for \$5,341,580 in demurrage and detention charges for holiday and weekend days on which the designated port was not open or available to received containers.

32. Flexport has issued invoices with a total of \$4,545,735 for demurrage and detention charges that lack the required information set forth in section 41104(d)(2) of the Shipping Act.

33. Flexport has issued invoices with \$7,204,243 in demurrage and detention and other accessorial charges that are excessive and unreasonable in violation of the Shipping Act.

34. Flexport has issued Giti invoices with over \$66,675 in duplicate charges that were also invoiced to a motor carrier or other party in addition to Giti. The total sum of duplicate charges likely is significantly higher, but Flexport has refused to provide any of the supporting documentation underlying its invoices to Giti. That documentation likely will reveal additional instances in which Flexport issued invoices for the same charges to multiple parties.

35. Some of Flexport's invoices contain charges that violate the Shipping Act for multiple of the reasons set forth in paragraphs 31-34 above. Accordingly, those invoiced charges are included in the totals for multiple of the categories. However, Giti does not seek double recovery for any invoiced charges and the total claimed damages is the figure set forth in paragraph 30.

VII. REQUEST FOR RELIEF

36. Giti respectfully requests that Flexport be required to answer the charges made in this Complaint, and that after the Commission's investigation and hearing, the Commission issue an order:

- a) Finding Flexport to have violated 46 U.S.C. § 41104 and 46 U.S.C. § 41102;
- b) Refunding Giti and/or eliminating the payment obligation of Giti for the non-compliant invoices and charges issued by Flexport as set forth above;
- c) Requiring Flexport to pay Giti reparations for the unlawful conduct described above, together with interest and Giti's attorney's fees and costs as described in 46 U.S.C. §41305; and
- d) Such other and further relief as the FMC determines to be just and proper.

VIII. REQUEST FOR ORAL HEARING

37. Giti requests a hearing on this matter, and further requests that the hearing be held in at the Commission's regional office or other appropriate location in Los Angeles, California.

Respectfully submitted,

/s/ Michael Harowski

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VERIFICATION

I, Simon Chen, Head of Logistics & DC of Giti Tire (USA) Ltd., hereby declare and attest under penalty of perjury that I have read the foregoing Verified Complaint and believe, to the best of my knowledge, information, and belief, that the facts stated therein are true and correct.

Date: 15 May 2024



Simon Chen
Head of Logistics & DC