

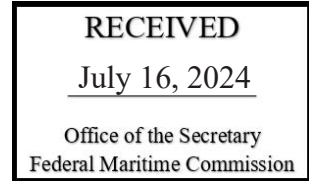


BEFORE THE  
FEDERAL MARITIME COMMISSION

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FMC DOCKET NO. 24-24

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S.P.F. LOGISTICS, INC.  
Complainant,

v.

HAPAG LLOYD AG  
Respondent.

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**VERIFIED COMPLAINT**

Comes now, Complainant S.P.F. Logistics, Inc. (“Complainant” or “SPF”), by its undersigned attorneys, and files this verified Complaint against Respondents, Hapag Lloyd AG (“Respondent” or “Hapag”) 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, S.P.F. Logistics, Inc. is a California corporation that is operating as a licensed motor carrier with a place of business at 2418 E. Sepulveda Blvd., Long Beach, California 90810. Complainant may be contacted through counsel, Stephen M. Uthoff at [suthoff@uthofflaw.com](mailto:suthoff@uthofflaw.com).

**II. THE RESPONDENT**

2. Respondent, Hapag Lloyd, AG is a corporation organized under laws of Germany. Hapag’s corporate headquarters is located at Ballindamm 25, D-20095, Hamburg, Germany.

3. Hapag does business in the United States, *inter alia*, through its agent, Hapag Lloyd (America) LLC, (“Hapag America”) a Delaware Limited Liability Company, with its principal place of business at 399 Hoes Lane, Piscataway, New Jersey, 08854. Hapag America is also qualified to do business in the state of California with an office at 555 W. Ocean Blvd., Suite 300, Long Beach, CA 90802.

4. At all times pertinent to this complaint, Hapag 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 005980.

5. Complainant believes the relevant email address for Hapag is c/o Jeff.Blaschko@hlag.com. Mr. Blasshko was the manager of terminal operations for Hapag in Long Beach, CA. Other publicly available email addresses are Uffe Ostergaard, President of Hapag America Uffe.Ostergaard@hlag.com and Thomas Engel, Sr. VP of Operations for Hapag America, Thomas.Engel@hlag.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 Hapag 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.

### **IV. FACTUAL ALLEGATIONS**

9. SPF is a motor carrier with operations at Long Beach, California.

10. As part of its operations in Long Beach, California SPF 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 Long Beach drayage operations, SPF is routinely required to pick up full imported 40 foot refrigerated<sup>1</sup> containers from and return the empty containers after unloading to Hapag designated terminal(s). Hapag uses several terminals in the Long Beach/Los Angeles port complex to handle its cargo and empties, such as Trapac Terminal, Total Terminals, Inc., Yusen Terminals, Inc., International Transportation Service, Inc., and SSA Terminal at Pier A.

12. SPF and Hapag are parties to the Uniform Intermodal Interchange and Facilities Access Agreement (“UIIA”). Hapag participates in the UIIA through Hapag America.<sup>2</sup>

13. Under the UIIA addendum applicable to Hapag, Hapag allows two days free time to return empty reefer containers after SPF has pulled full loads from Hapag’s terminals. Thereafter, per the Hapag Addendum to the UIIA, Hapag charges \$400.00 per day detention for each day the empty reefer container is not returned to Hapag beyond the free time allowed. Other rates may apply to different equipment such as forty foot or twenty foot dry containers.

14. Hapag 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. SPF may benefit from such agreements.

15. The cargo picked up from Hapag by SPF is generally considered overweight and must be hauled pursuant to permits issued by local and state jurisdictions on specialized chassis owned or controlled by SPF.

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<sup>1</sup> Commonly referred to as a “reefer(s)” or a “reefer container”.

<sup>2</sup> “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 September 2021 through November 2021 SPF in its ordinary course of business, pulled full 40' reefer containers from Hapag terminals to its yard in Long Beach. Ordinarily, upon arrival, since the containers are overweight, the Hapag containers are devanned and transloaded by SPF's sister company into trailers for delivery to SPF customers. As such, the empty Hapag empty containers are routinely available for return to Hapag within the 2 days free time as requested under the UIIA. SPF in the regular course would attempt to return the empty reefer containers to Hapag within two days from the date the containers had been interchanged out full from Hapag terminals.

17. Hapag had a system whereby motor carriers such as SPF would have to send an email to Hapag in order to get a daily report of empty return location availability.

18. Upon sending a request to Hapag (at [LGBEMPTIES@hlag.com](mailto:LGBEMPTIES@hlag.com)) Hapag would respond to the email inquiry at its discretion or not at all.

19. Hapag would often reply that no locations were accepting the empty reefer containers or that empty returns were only allowed on a "dual" transaction basis. 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. As indicated in their published daily matrix, Hapag would not waive detention charges if a dual transaction location was available even if an empty container could have otherwise been returned.

20. If Hapag actually posted or emailed availability of an empty return location, before an empty container could be returned, the motor carrier must then make an appointment with the designated terminal. When SPF attempted to secure appointments to return the empty containers, SPF would often be notified that all appointments had been filled or that the terminal would not

accept empty containers, contrary to Hapag's designation. Hapag's position is that it had no control over the terminal appointment system and thus would not waive detention for lack of appointments. Further after requests, Hapag failed to provide an overall solution to the daily refusal to accept empty reefer container returns or lack of appointments.

21. If possible, SPF would take advantage of available regular or "dual" gate appointments. However, because of the continuous lack of Hapag's empty return locations, empty containers began accumulating at the SPF and its neighbor's yard. Since the full containers were originally pulled as overweight containers on specialized tri-axle chassis, many empties remained on the specialized SPF owned chassis for some period of time.

22. To maintain operations, SPF was forced to have the containers removed from the chassis and stacked in a neighbor's yard at SPF expense.

23. Although stacking the containers was an operational necessity, it created other issues and expense for SPF. Once the empties were taken off of chassis and stacked, when an empty location and appointment became available, SPF would have to secure a chassis, and incur extra time, labor and expense in order to re-mount the empty container to a chassis to have it delivered to a terminal. Thus, SPF incurred flip and storage charges in its efforts to return empties to Hapag.

24. Despite its best efforts to return empty containers because of the lack of available appointments, dual transactions or the volume of empty, stacked containers caused by Hapag's past actions, it was impossible to return all empty containers at once.

25. Hapag would charge detention in an unreasonable, arbitrary and capricious manner. To illustrate: 1) Hapag would issue its daily empty return availability; 2) if no empty return locations were available, Hapag waived detention charges for that day only; 3) if any locations

were identified for empty returns (either dual or regular) Hapag will not waive detention charges regardless of whether a dual transaction existed or if appointments were available at the terminal; 4) SPF would then determine if appointments are actually available for the returns; 5) if appointments were available SPF would return empties to the extent it reasonably could, given that the containers were no longer on chassis or if dual appointments were feasible; 6) in addition to the lack of dual transactions or lack of appointments, SPF became potentially responsible for detention on any containers in the stack (caused by Hapag's prior refusal to accept empties) that could not be returned if operationally it was impossible to return the containers. Thus, Hapag would still charge daily detention even if the empty, in reality, could not be returned through the actions of Hapag or its designated terminals. To be clear, as stated in its daily empty availability matrix, Hapag has made it clear that detention charges will not be waived for any days where they have designated for dual or regular empty transactions or if no appointments were available at the terminal or if SPF lacked the ability to take advantage of a dual appointment.

26. Working diligently with the availability allowed by Hapag, SPF has received substantial detention invoices from Hapag which have been disputed without success.

27. Apart from monitoring available slots to return empties through publicly available information, SPF also sent further inquiries directly to Hapag America seeking a solution to return empties to Hapag without result.

28. Attached as Exhibit A is a list of known empty containers at issue. Investigation is continuing to determine if further containers are at issue. Exhibit A lists the date the full container was interchanged out of the Hapag designated terminal, the believed last free day and when the container was ultimately accepted by Hapag. Exhibit A also includes the amount of unreasonable

detention that has been charged by Hapag on those containers<sup>3</sup>. SPF contends that it would have been able to return containers to Hapag during free time but for Hapag and its terminal's actions. To date all disputes by SPF have been denied by Hapag.

29. As of the filing of this complaint all containers have been returned.

30. Instead of adequately allowing for opportunities to return empty containers, Hapag involuntarily forced SPF to be responsible to store Hapag empty containers without compensation. Hapag's actions also interfered with the overall operations of SPF, since, *inter alia*, it unreasonably has to be "on call" to be ready if Hapag suddenly agrees to accept empty containers. Investigation and discovery are continuing as to further damages caused and suffered by SPF.

31. As more evidence of its intentional custom and practice of refusing empty returns, Hapag's refusal to accept empty containers is not limited to the Ports of Long Beach and Los Angeles. On information, at the time relevant to this dispute, Hapag issued a blanket refusal to accept empty containers for at least one of its designated terminals in the Port of Oakland.

32. In addition to the actions above, Hapag has also commenced suit against SPF in an effort to collect these unlawful detention charges.

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

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

34. Hapag is a common carrier by water as defined by the Act.

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<sup>3</sup> As mentioned in paragraph 32 herein, Hapag has commenced suit against SPF alleging \$131,119.00 in disputed detention charges. However, Hapag did not include a list of the applicable containers in its suit. Thus, investigation is continuing to determine if Hapag seeks detention on containers not included in Exhibit A and SPF reserves the right to include those or similar detention charges as part of this claim.

35. 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.”

36. 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. §545.5(c)(ii)). An ocean carrier such as Hapag is responsible for having adequate terminal facilities see 85 FR 29638, 29650.

37. The Commission has adopted interpretive rule 46 C.F.R. §545.5 to help identify unreasonable practices as contemplated by 46 USC §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.”



38. The above factual recitals establish that Hapag's practices have impacted freight fluidity and Hapag's unreasonable practices and policies have and gave rise to the imposition of detention charges upon SPF when empty containers cannot be returned. Examples include:

a. Where dual transactions were required to return an empty container. SPF submits this is an unreasonable practice regardless if SPF can take advantage of such appointments<sup>4</sup>. In the alternative, if a dual transaction was not available to SPF, no detention should be charged.

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

c. Where Hapag creates operational difficulties for SPF whereby it is required to deck and stack Hapag's empty containers. Thereafter if a single empty return is available, there is no consideration if operationally the empty can be returned, including the requirement to have chassis available, to the container placed on a chassis and to meet any appointment. Further the number of containers refused by Hapag that had to be stored by SPF without compensation, should be taken into account when determining the ability to return only a limited number at any one time.

39. Hapag's actions also caused additional injury to SPF including; 1) Hapag created operational difficulties for SPF whereby it is required to maintain Hapag empties on its specialized chassis for unreasonable amounts of time and/or stack Hapag empty containers; 2) generally

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<sup>4</sup> 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."

interfered with the efficient operations of SPF; 3) required SPF to store Hapag equipment without compensation; 4) SPF is now forced to defend suit from Hapag.

40. The above recitals support an award of reparations under 46 USC §41102(c) as further interpreted by 46 C.F.R. §545.4.

## **VI. DAMAGES**

41. Hapag's violations of the Act have caused the following damages to Complainant.

a. The cost of storage of Hapag's empty containers; and

b. The chassis use fees associated with the storage of Hapag's empty containers;

and

c. To the extent applicable, the cost to flip Hapag's empty containers to and from the chassis when necessary; and

d. detention charges assessed against SPF; and

e. re-delivery charges; and

f. damages associated with the disruption of the operations of SPF as a result of Hapag's refusal to accept its empty containers;

g. damages associated with defending suit by Hapag including costs and fees therein; and

g. investigation as to other damages suffered by SPF is ongoing.

42. In addition to the damages suffered by SPF, based upon information and belief, the violations committed by Hapag have also effected similarly situated motor carriers and members of the public.

43. Detention charges assessed by Hapag are included in the amounts listed in Exhibit A. Storage charges related to Hapag's actions are estimated to be at minimum \$57,750.00

Investigation and discovery are continuing as to all damages. SPF reserves the right to provide proof of all damages for the purposed of reparations pursuant to 46 C.F.R. §§502.251 et. seq.

**VII. REQUEST FOR RELIEF**

44. WHEREFORE Complainant requests entry of an order against Respondent for the following: Complainant requests that respondent 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; and
- b. to put in place lawful and reasonable practices to avoid continuing and future violations of the Act.; and
- c. Payment of reparations for the unlawful conduct described herein, in amounts according to proof for, but not limited to the following;
  - i. For container storage, chassis use and redelivery fees; and
  - ii. For flip charges; and
  - iii. for reimbursement or cancellation of detention invoices listed in Exhibit A or as otherwise issued by Hapag; and
  - iii. For disruption of SPF's operations resulting from Respondent's unlawful conduct according to proof;
  - iv. for damages associated with defending suit by Hapag; and
  - v. 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**

45. 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: 7/16/2024

Respectfully submitted,

DocuSigned by:  
*Stephen M. Uthoff*  
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**Verification**

I Peter Balov, president of S.P.F. Logistics, Inc. am authorized to make this verification on behalf of SPF. 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 SPF and based upon information publicly available. I declare that the foregoing is true and correct under the laws of the United States.

7/15/2024

DocuSigned by:  
*Peter Balov*  
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\_\_\_\_\_  
Peter Balov

CONTAINER	Master Bl	container type	load out	LFD	empty in	HL INVOICE	AMOUNT
HLBU9196028	HLCUSCL210752243	40' reefer	9/9/2021	9/10/2021	9/24/2021	2120103406	\$1,200.00
HLBU9094936	HLCUSCL210818030	40' reefer	9/29/2021	10/1/2021	10/19/2021	2120197162	\$1,600.00
LNXU7555696	HLCUSCL210747971	40' reefer	9/9/2021	9/10/2021	11/4/2021	2120269012	\$9,200.00
CXRU1310900	HLCUSCL210786561	40' reefer	9/9/2021	9/13/2021	11/4/2021	2120269077	\$8,800.00
UACU4726977	HLCUSCL210765365	40' reefer	9/10/2021	9/19/2021	9/20/2021	2120163018	\$400.00
HLBU9529664	HLCUSCL210786572	40' reefer	9/10/2021	9/19/2021	9/20/2021	2120163027	\$400.00
GESU9508532	HLCUSCL210786540	40' reefer	9/10/2021	9/19/2021	9/20/2021	2120163027	\$400.00
TCLU1089602	HLCUSCL210744550	40' reefer	9/10/2021	9/13/2021	11/4/2021	2120261405	\$9,200.00
HLBU9159050	HLCUSCL210784450	40' reefer	9/10/2021	9/13/2021	11/4/2021	2120261406	\$9,200.00
HLBU9027584	HLCUSCL210752064	40' reefer	9/10/2021	9/13/2021	11/4/2021	2120261435	\$9,200.00
BMOU9216712	HLCUSCL210752181	40' reefer	9/11/2021	9/14/2021	9/24/2021	2120103552	\$1,200.00
HLBU9033740	HLCUEUR2107GVSF3	40' reefer	9/11/2021	9/14/2021	9/24/2021	2120103558	\$1,200.00
TCLU1044486	HLCUSCL210814124	40' reefer	9/11/2021	9/15/2021	9/24/2021	2120103567	\$800.00
HLBU9237765	HLCUSCL210813936	40' reefer	9/11/2021	9/15/2021	10/21/2021	2120207003	\$4,800.00
UACU4783426	HLCUSCL210744505	40' reefer	9/14/2021	9/15/2021	11/4/2021	2120261407	\$9,200.00
HLBU9473204	HLCUSCL210784300	40' reefer	9/14/2021	9/15/2021	11/4/2021	2120261408	\$9,200.00
HLBU9455710	HLCUEUR2107GOOS2	40' reefer	9/14/2021	9/15/2021	11/4/2021	2120261437	\$9,200.00
TCLU1180630	HLCULAT210704910	40' reefer	9/14/2021	9/17/2021	11/4/2021	2120261440	\$8,800.00
CAIU5669602	HLCUSCL210813779	40' reefer	9/14/2021	9/15/2021	11/4/2021	2120269150	\$9,200.00
HLBU9386748	HLCUSCL210813874	40' reefer	9/14/2021	9/15/2021	11/4/2021	2120269159	\$9,200.00
UACU4795089	HLCUSCL210775708	40' reefer	9/16/2021	9/17/2021	11/4/2021	2120261446	\$8,800.00
HLBU9112407	HLCUSCL210842022	40' reefer	9/16/2021	9/20/2021	11/4/2021	2120261451	\$8,400.00
TTNU8982520	HLCUSCL210785610	40' reefer	9/29/2021	10/1/2021	10/19/2021	2120197165	\$1,600.00
HLBU9259189	HLCUEUR2108EDYK7	40' reefer	10/21/2021	10/26/2021	11/9/2021	2120286348	\$4,000.00
HLBU9186101						2120286436	\$2,000.00
							<b>\$127,200.00</b>