

BEFORE THE  
FEDERAL MARITIME COMMISSION

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DOCKET NO. 24-28

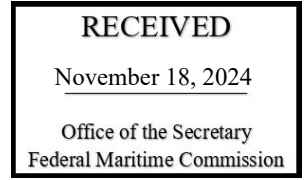
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BAYLINK SHIPPING INC.,  
COMPLAINANT

v.

ZIM INTEGRATED SHIPPING SERVICES, LTD,  
RESPONDENT.

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VERIFIED COMPLAINT

Complainant Baylink Shipping Inc. (hereinafter “Complainant” or “Baylink”) by its attorneys, the McKew Law Firm, PLLC, complaining of the respondent ZIM Integrated Shipping Services, Ltd. (hereinafter “Respondent” or “ZIM”) respectfully alleges upon information and belief violations of the Shipping Act of 1984, 46 U.S.C. § 40101, *et seq.* (the “Shipping Act”) as follows:

PARTIES

1. Complainant Baylink is a corporation organized and existing under the laws of the State of New York, with a principal place of business at 99 Tulip Avenue, Suite 205, Floral Park, New York.

2. Respondent ZIM is a global ocean carrier with a United States office located at 5801 Lake Wright Dr., Norfolk, Virginia, 23502 and with an email address: [dispute-request.us@zim.com](mailto:dispute-request.us@zim.com)

3. ZIM, by itself and through subsidiaries, affiliated companies, and agents provides container transportation.

4. ZIM is and was at all times pertinent to this Complaint a common carrier within the meaning of the Shipping Act, 46 U.S.C. § 40102(7), subject to regulation by the Federal Maritime Commission (the “FMC”).

#### JURISDICTION

5. The FMC has subject-matter jurisdiction over this Complaint pursuant to the Shipping Act of 1984, as amended.

6. This Complaint is being filed pursuant to Section 11(a) of the Shipping Act, 46 U.S.C. § 41301. Baylink is seeking, among other things, a cease and desist order arising from ZIM’s violations of the Shipping Act.

7. The FMC has personal jurisdiction over ZIM as a “common carrier” as defined in 46 U.S.C. § 40102(7).

#### FACTUAL ALLEGATIONS

8. Baylink is a non-vessel operating common carrier licensed by the FMC engaged in the business of arranging the international transport of cargo on behalf of, and providing related services to, its principals, agents and customers.

9. Non-party Easy Link Int’l Logistics (Shenzhen) Co., Ltd. (“Easy Link”), is a non-vessel operating common carrier unlicensed by the FMC with a principal office in Shenzhen, China, engaged in the business of arranging the international transport of cargo on behalf of, and providing related services to, its principals, agents and customers.

10. On June 24, 2021, Easy Link issued its house bill of lading EL2021051048 (the “HBL”) identifying Wehat Safety Helmets International Commercial Co., Limited (“Wehat”) as

shipper and Riomar Shoes (“Riomar”) as the consignee of one forty foot high cube container containing 618 cartons of cloth bags (the “Cargo”) to transport the Cargo from container yard to container yard from the port of loading in Yantian, China to the place of delivery in Houston, Texas. The HBL stated “for delivery of the goods apply to” Baylink. A copy of the HBL is annexed hereto as **Exhibit A**.

11. Wehat and/or Riomar contracted with Easy Link to transport the Cargo.

12. Neither Wehat nor Riomar contracted with Baylink to transport the Cargo.

13. As a non-vessel common carrier, Easy Link had to engage a vessel operating common carrier to transport the Cargo from its origin to its destination.

14. At all times pertinent to this Complaint, Easy Link had a service contract (the “Service Contract”) with ZIM to transport cargo via ocean carrier.

15. Pursuant to its Service Contract, Easy Link contracted with ZIM to transport the Cargo from its origin to its destination. Upon receiving the Cargo, on June 24, 2021, ZIM issued its bill lading ZIMUSHH30475863 (“BL”) identifying Easy Link as shipper and Baylink as consignee of one forty foot high cube container No. ZCSU7103757 (the “Container”) containing the Cargo to transport the Cargo from container yard to container yard from the port of loading in Yantian, China to the place of delivery in Houston, Texas. On the BL, Baylink was also identified as the “Notify” party. A copy of the BL is annexed hereto as **Exhibit B**.

16. The BL consignee Baylink did not contract with ZIM to transport the Container of Cargo.

17. At no time was the BL consignee Baylink the owner of the Cargo.

18. During transit of the Cargo, the Cargo was telex released.

19. At no time did the BL consignee Baylink endorse the BL or otherwise accept the terms and conditions of the BL.

20. Upon arrival of the Cargo at the destination port, the BL consignee Baylink notified the HBL consignee Riomar of the Cargo's arrival.

21. On August 5, 2021, Koyote Trucking retrieved the Container of Cargo from ZIM at the destination port.

22. At no time did the BL consignee Baylink issue a delivery order or other authorization or consent to ZIM for Koyote Trucking to retrieve the Container of Cargo from ZIM at the destination port.

23. ZIM delivered the Container of Cargo to Koyote Trucking without presentment receipt of a delivery order or other authorization or consent from the BL consignee Baylink.

24. ZIM's delivery of the Container of Cargo to Koyote Trucking without presentment of a delivery order or other authorization or consent from the BL consignee Baylink was wrong and improper.

25. On August 6, 2021, the BL consignee became aware that the Container of Cargo had been retrieved from ZIM at the destination port.

26. Subsequently, the BL consignee Baylink learned that the Container had not been timely returned to ZIM.

27. The BL consignee Baylink requested that ZIM provide it with the identity of the trucker that retrieved the Container and provide Baylink with the Container pick-up documents which would identify the trucker that retrieved the Container.

28. ZIM wrongly and improperly failed and refused to provide to the BL consignee Baylink the identity of the trucker that retrieved the Container or provide Baylink with the Container pick-up documents which would identify the trucker that retrieved the Container.

29. The HBL consignee Riomar, Koyote Trucking, and/or an unknown third party detained the Container for 628 days, finally returning it on April 24, 2023.

30. The BL consignee Baylink was not informed that the Container was being returned on April 24, 2023.

31. At no time during the 628-day Container detention period did the BL consignee Baylink have care, custody or control over the Container.

32. At no time during the 628-day Container detention period did ZIM inform the BL consignee Baylink that ZIM would hold BL consignee Baylink responsible for detention on the Container.

33. During the 628-day Container detention period, ZIM informed HBL consignee Riomar that ZIM would hold it responsible for any detention on the Container.

34. On or about July 24, 2023, the BL consignee Baylink finally learned the identity of the trucker that had retrieved the Container when ZIM issued its Final Invoice DIAH1660051074 dated May 1, 2023, in the total amount of \$136,920 to Koyote Trucking (“Detention Invoice 1”).

A copy of Detention Invoice 1 is annexed hereto as **Exhibit C**.

35. At no time did Baylink have a business relationship with Koyote Trucking.

36. At no time did Baylink engage Koyote Trucking to transport containers on its behalf.

37. Subsequently, ZIM issued and delivered to the BL consignee Baylink its Final Invoice DIAH1660053867 dated August 28, 2023, in the total amount of \$136,920 (the “Detention Invoice 2”). A copy of Detention Invoice 2 is annexed hereto as **Exhibit D**.

38. Baylink informed ZIM that it disputed Detention Invoice 2 issued to Baylink.

#### ALTERNATIVE DISPUTE RESOLUTION

39. Baylink has unsuccessfully attempted to resolve this dispute with ZIM prior to filing this verified complaint.

40. Baylink requested the assistance of the FMC’s Office of Consumer Affairs and Dispute Resolution Service.

41. On June 28, 2024, FMC’s Office of Consumer Affairs and Dispute Resolution Service office closed the case without any resolution.

#### VIOLATIONS OF THE SHIPPING ACT

##### COUNT 1

42. Plaintiff repeats and realleges the allegations above as though fully re-stated and set forth herein.

43. 46 U.S.C. 41104(a)(14) provides, among other things, that a common carrier such as ZIM shall not assess a detention charge that does not comply with the “Interpretive Rule on Demurrage and Detention under the Shipping Act”, 46 C.F.R. §545.

44. 46 C.F.R. §545(c)(1) provides,

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.

45. 46 C.F.R. §545(c)(2)(ii) provides,

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.

46. ZIM's issuance of a Detention Invoice to Baylink does not comply with the "Interpretive Rule on Demurrage and Detention under the Shipping Act".

47. BL consignee Baylink never contracted with ZIM for transport of the Container of Cargo.

48. ZIM wrongly and improperly delivered the Container of Cargo to Koyote Trucking without presentment of a delivery order or other authorization or consent from the BL consignee Baylink.

49. ZIM wrongly and improperly released the Container of Cargo to a trucker unknown to the BL consignee Baylink instead of to Baylink's designated trucker.

50. During the 628-day Container detention period, ZIM wrongly and improperly failed and refused to provide the BL consignee Baylink with the identity of the trucker that retrieved the Container from ZIM.

51. During the 628-day Container detention period, ZIM wrongly and improperly failed and refused to provide the BL consignee Baylink with any documents that would identify the trucker that retrieved the Container from ZIM.

52. During the 628-day Container detention period, ZIM failed and neglected to inform the BL consignee Baylink that ZIM would hold Baylink responsible for any detention on the Container.

53. Instead, during the 628-day Container detention period, ZIM informed HBL consignee Riomar that ZIM would hold Riomar responsible for any detention on the Container.

54. The BL consignee Baylink had no financial incentive to facilitate the return of the Container as ZIM had failed to inform Baylink that ZIM would hold Baylink responsible for any detention on the Container and, in fact, ZIM communicated that it would hold Riomar responsible for any detention on the Container.

55. Likewise, imposing detention charges on BL consignee Baylink only after return of the Container would not incentivize Baylink to facilitate the return the Container.

56. Furthermore, during the 628-day Container detention period, the BL consignee Baylink could not and did not exercise care, custody or control over the Container so imposing detention charges on Baylink would not incentivize Baylink to facilitate the return the Container.

57. In fact, it was ZIM's own actions and omissions that precluded Baylink from facilitating the timely return of the Container.

58. The total of Detention Invoice 2 far outstripped the cost of a new replacement container.

59. In violation of 46 U.S.C. 41104(a)(14), ZIM's imposition of unjust, unreasonable, and excessive detention charges after return of the Container on BL consignee Baylink, an entity with no ability to exercise care, custody or control over the Container due to ZIM's actions and omissions, does not serve a financial incentive to promote freight fluidity such as the return of the Container.

## COUNT 2

60. Plaintiff repeats and realleges the allegations above as though fully re-stated and set forth herein.

61. 46 U.S.C. § 41104(a)(15) and (d)(2) provides that a "common carrier, either alone or in conjunction with any other person, directly or indirectly, shall not . . . invoice any party for



demurrage and detention charges unless the invoice includes information as described in subsection (d)...” which states

An invoice under subsection (a)(15), unless otherwise determined by subsequent Commission rulemaking, shall include accurate information on each of the following, as well as minimum information as determined by the Commission:

- (A) Date that 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 invoiced charges.

62. ZIM violated 46 U.S.C. § 41104(a)(15) and (d)(2) by issuing an inaccurate Detention Invoice 2 to the BL consignee Baylink.

63. ZIM Detention Invoice 2 states that it is for “Detention-Import”.

64. However, the Detention Invoice 2 inaccurately states that the applicable detention or demurrage rule is “Demurrage Rule ZIMU-136 / Rule 5”.

65. Pursuant to ZIM’s published tariff, Rule 5 of ZIM’s tariff ZIMU-136 is actually entitled “Detention – Use Charges and Free Time”. A copy of ZIM’s Rule 5 of its tariff ZIMU-136 published on June 23, 2022, is annexed hereto as **Exhibit E**.

66. In contrast, pursuant to ZIM’s published tariff, its applicable rule for demurrage is Rule 4 of ZIM’s tariff ZIMU-136 entitled “Demurrage and Free Time at U.S. Ports of Discharge”.

A copy of ZIM's Rule 4 of its tariff ZIMU-136 published on June 23, 2022, is annexed hereto as **Exhibit F**.

67. ZIM's Detention Invoice 2 issued to BL consignee Baylink is inaccurate and thus violates 46 U.S.C. § 41104(a)(15) and (d)(2).

68. The BL consignee Baylink has no duty to pay Detention Invoice 2 pursuant to 46 U.S.C. § 41104(f), which provides that the "[f]ailure to include the information required under subsection [46 U.S.C. § 41104(d)] on an invoice with any demurrage or detention charge shall eliminate any obligation of the charged party to pay the applicable charge."

### COUNT 3

69. Plaintiff repeats and realleges the allegations above as though fully re-stated and set forth herein.

70. 46 U.S.C. 41102(c) prohibits a common carrier or marine terminal operator from failing to "establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property."

71. ZIM wrongly and improperly delivered the Container to Koyote Trucking without receipt of a delivery order or other authorization or consent from the BL consignee Baylink.

72. During the 628-day Container detention period, ZIM wrongly and improperly failed and refused to provide the BL consignee Baylink with the identity of the trucker that retrieved the Container from ZIM.

73. During the 628-day Container detention period, ZIM failed and refused to provide the BL consignee Baylink with any pick-up documents that would identify the trucker that retrieved the Container.

74. The total of Detention Invoice 2 issued to BL consignee Baylink far outstripped the cost of a new replacement container.

75. ZIM issued Detention Invoice 2 which inaccurately states that the applicable detention is “Demurrage Rule ZIMU-136 / Rule 5”.

76. Upon information and belief, the aforementioned acts and omissions of ZIM are occurring on a normal, customary, and continuous basis.

77. The aforementioned practices of ZIM are connected to receiving, handling, storing or delivering property.

78. In violation of 46 U.S.C. § 41102(c) and 46 C.F.R. § 545.4, it is unjust and unreasonable for ZIM to assess detention against a consignee that has no care, custody or control over a container as a direct result of ZIM’s aforementioned actions and omissions.

#### CAUSATION AND INJURY TO COMPLAINANT

79. As a result of ZIM’s violations of the Shipping Act, Baylink has sustained injuries and monetary damages. ZIM’s unlawful conduct is continuing and Baylink continues to sustain injuries and damages.

#### REQUEST FOR AN ORAL HEARING

80. Baylink requests a hearing on this matter, and further requests that the hearing be held at the Federal Maritime Commission, 800 N. Capitol St., NW, Washington, D.C. 20573-0001.

#### PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests that Respondent be required to answer the charges in the Complaint, and that after thorough investigation that the Federal Maritime Commission issue an Order:

- a) Ordering that Respondent cease and desist its unlawful conduct including any efforts by Respondent to collect from Complainant the detention charges accrued by Container ZCSU7103757 set forth in Respondent's invoice DIAH1660053867 in the total amount of \$136,920;
- b) Requiring Respondent to pay Complainant's attorneys' fees and costs pursuant to 46 U.S.C. § 41305(e); and,
- c) Providing Complainant such other and further relief that the Federal Maritime Commission deems is just and proper.

Dated: New York, New York  
November 18, 2024

MCKEW LAW FIRM, PLLC  
*Counsel to Baylink Shipping Inc.*

By: 

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VERIFICATION

I, Jason Zhang, am President of Complainant Baylink Shipping Inc. and 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.

Dated: November 18, 2024

A handwritten signature in black ink, appearing to read 'Jason Zhang', written over a horizontal line.

Jason Zhang