

Before the Federal Maritime Commission

Public Hearing on Petition No. P4-16

Prepared Statement of Richard J. Roche

My name is Rich Roche. I am the Vice President of International Transportation at Mohawk Global Logistics.

I also serve as Chairman of the NVOCC subcommittee at NCBFAA, a role I have held for the past 8 years. I speak here today - not just as an active NVO - but as a voice for the many small to medium sized NVO's that are part of our membership, and for their customers who ultimately bear the brunt of unexpected costs.

I am a graduate of the US Merchant Marine Academy, and sailed on my license for 6 years following graduation - upgrading to unlimited Chief Mate upon oceans, and 1st Class Pilot in New York Harbor.

After coming ashore, I worked on the carrier side of the business with Hapag-Lloyd before switching to the Freight Forwarding and NVOCC side 24 years ago. I have been a qualifying individual and owner of an NVOCC during that time - before coming to Mohawk Global some 8 years ago.

I recently served on Commissioner Dye's Supply Chain Innovation Team, and thank the Commission for that privilege.

I am here today - not to eliminate **Demurrage & Detention (D&D)** - but rather to seek a solution that such charges may be applied fairly - with more transparency in their application - and more standardization where additional free time should be granted.

As an active NVOCC, Mohawk regularly works within the confines of standard free time – 4 days to evacuate containers from the pier – 2 days from rail ramps. Our clients expect us to pull their containers within free time so as to avoid D&D charges. Otherwise we would pull and store them off dock. We understand that D&D as it exists today is designed to incentivize rapid pick-up and return of containers with punitive consequences for those that don't perform. That system works most of the time.

It is deviation from the norm that becomes the basis for our complaint. Congestion from any cause (labor, system crash, vessel bunching, and weather), or terminal glitches (like lost containers, closed sections of the yard, and in some cases equipment shortage), may contribute to D&D being assessed unfairly due to circumstances beyond our control.

Contrary to what we have heard from one carrier, we cannot freely negotiate with other carriers if we don't like the result of their D&D mitigation. We have MQC's to honor, and both loading and delivery schedules to keep, that we have sold against their service. Cargo is often loaded well in advance of our knowing about congestion issues at destination. When caught in a heavy congestion scenario it is usually extremely difficult - if not impossible - to find anyone at the carrier or the terminal to negotiate extended free time. When we do get someone, they might argue that the line is not 6 hours long, because they only see 2 hours of back-up. Meanwhile our trucker's geo-fence shows him slowly advancing - in line - wrapped around to the other side of the port. There is an interesting difference in point of view of those collecting the charges and those paying.

We have an agreement with our house drayage carrier to pick up 25 containers per day at the port. If we have 100 containers arrive with first availability on Monday, we can get them all out by Thursday without incurring demurrage. If there is a problem at the terminal on Monday, and we cannot get 10 containers out that day, we will have 10 in demurrage on Friday, unless we make other arrangements during that week. Frequently congestion is not limited to a single day, so the problem multiplies. 10 each day becomes 40 in demurrage by Friday. During such times no other truckers are available, and without an extension of free time, we will be charged, even though the cause is beyond our control.

Demurrage is a cash on-the-barrelhead business, paid up front, and provides NVOCCs with virtually no seat at the bargaining table. We are left to beg for refunds after the fact, which many times falls on deaf ears. The good news is these periods of congestion have become fewer lately, as the industry has identified better ways to handle the cargo flow - but they will happen again. We still need to make some changes to be ready for the next round.

The Commission should understand that this topic is not limited to force majeure or congestion events, but rather from a variety of one-off circumstances that we deal with throughout the year - again out of the NVOCC's control - but also without any structured recourse. I have two live examples right now:

1. Our trucker got availability for our container at a West Coast terminal in mid-November, but the first available appointment was 4 days following expiry of free time. The trucker began his appeal for extended free time with the terminal, but had to prepay the demurrage on the day of the appointment because extended free time was not granted until later that day. When he got there, the container could not be located and after a couple hours, and the trucker was cancelled out of the terminal. They got another appointment, also in demurrage, applied for extended free time, but again had to prepay before the extension was granted - and for a second time the terminal could not locate the container and cancelled the trucker out. The third time was the charm - though no clear response was given on extension of free time again - the container was located - and we are still trying to get a refund of the \$ 1700 demurrage paid by the trucker. All the while this was transpiring, we incurred additional charges as a result of the MTO's failure, but did not charge them for 2 weeks delay, truck waiting time, and 2 dry runs.

2. We just picked up a container on Friday (January 14) that has been sitting at the Dallas rail ramp since January 3. The railroad requires that a chassis be used from the carrier's pool, which was depleted even before this container arrived. We were not given any estimate for how long the container might sit, but only a notice that we were in the demurrage period and would have to pay from last free day starting January 5. We immediately escalated the situation to the carrier who was apologetic, and advised they would see if they could waive demurrage since it did not sound fair. One week later, facing 8 days of demurrage, a chassis came available late Friday afternoon. The carrier acquiesced to extend free time same day, and we picked up the container within hours, with no demurrage charged. While an equitable resolution was reached, it require a week's worth of dialogue, and even on the day of availability, the response could not be counted on. This speaks to the arbitrary nature of such decisions, with refunds after the fact being even harder to achieve.

Getting back to congestion, we polled our membership at NCBFAA about statements made by MOL (in this proceeding) regarding its ability and willingness to negotiate demurrage and detention. We had 89 responders (close to 10% of all members).

- 93% said they have been assessed these charges during periods of congestion
- 94% of the respondents did not agree that MOL worked out an acceptable arrangement or compromise
- 89% indicated the same for the rest of the industry, in other words, that they were not able to work out an acceptable arrangement or compromise to mitigate demurrage/detention costs.

The reality is there is little incentive for the Carriers or MTO's to want to change the current process. It remunerates them when delays are caused by the shipper / trucker / or NVOCC – and rightfully so. When the carrier or terminal is the cause of the problem however, they can simply stand behind their tariffs to print money, with no incentive to fix the problem, or even entertain the argument. Further, they have unilateral power to decide who pays and who gets absolved after the fact. This has to change.

We have recommend that our members use CADRS and know they have been successful in some cases, but there is a hesitancy to use that solution too often, and in the end, any costs that do not get mitigated or cancelled are generally passed on U.S. consumers.

We agree with the remedy proposed by the Coalition, so that there is some equitable shift of the burden in these cases. In our view, the FMC should issue an interpretative rule so that:

1. Triggers are established that automatically extend free time for certain causes.
2. Carriers are not permitted to hold up container release when claims are asserted, only to add even more demurrage.
3. The punitive portion of demurrage charges be rescinded in force majeure cases.

In conclusion:

- The status quo is unfair / patently discriminatory / and burdensome at best
- We would like to see the Commission put the burden on Carriers and MTO's to justify the D&D costs when the importer / exporter and their agents are not at fault
- We would also ask the Commission to consider exempting D&D tariffs from rate provisions of the Shipping Act so they cannot be enforced under filed rate doctrine.

Respectfully Submitted,

Richard J. Roche

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Mohawk Global Logistics

and

NVOCC Subcommittee Chair
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