



SEMAPHORE

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Association of Australia and New Zealand



Carriers Face Heavy Penalties from FMC

Shipping lines will now be wary of copping heavy fines from the United States Federal Maritime Commission (FMC) for unjust and unreasonable application of container detention fees.

In April, German carrier Hapag-Lloyd was ordered to pay a US\$822,220 civil penalty by the FMC for “unreasonable” invoicing of empty container detention fees – subsequently revised to a US\$2 million settlement agreement.

A cease and desist order was also imposed on the carrier.

The case was the first brought under the demurrage and detention rule of the United States’ Shipping Act by the FMC’s Bureau of Enforcement (BOE). It related to a collective total of US\$10,135 in detention charges invoiced to Los Angeles trucking firm Golden State Logistics (GSL) last year, for 11 empty containers that were returned one to 11 days after the free-time period expired.

GSL refused to pay the fees on the basis that there was a continued lack of appointments available at the Port of Los Angeles and Long Beach (LALB) terminal for it to return the containers. GSL had repeatedly been in contact with Hapag-Lloyd to highlight the issue, had requested assistance or alternative return locations, and had requested a waiver of the fees.

In her ruling, FMC chief administrative law judge Erin Wirth said the decision addressed whether it was appropriate to impose detention when empty containers could not be returned because of what the BOE described as a “scarcity or finite opportunity” of appointments.

“As a simplified example of the argument, if there are 100 appointments and 125 containers that need to be returned, even though 100 containers were returned, no amount of detention fees could incentivise the return of the remaining 25 containers,” stated the ruling.

“... BOE, which has the burden of proof, does not establish by a preponderance of the evidence that all of the detention charges for these 11 containers were unreasonable. However, BOE does establish that on some of the days for which detention was charged, there were not sufficient appointments to return the containers, and Hapag-Lloyd AG’s policy and practices regarding detention charges were unreasonable.

“Therefore, the evidence supports a finding that Hapag-Lloyd AG violated section 41102(c) by imposing and refusing to waive detention charges where there were insufficient appointments to return these empty containers.”

The BOE requested an element of the fine be viewed as a deterrent, given the carrier’s “knowing and wilful” actions as well as continuing violations.

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