



SEMAPHORE

Newsletter of the Maritime Law

Association of Australia and New Zealand



HMM Found Not in Breach of US Shipping Act

Federal Maritime Commission (FMC) Administrative Law Judge Linda Crovella has ruled that shipping company HMM did not violate the United States Shipping Act of 1984 in a case brought by shipper MSRF.

The dispute relates to a shipping contract drawn up for 2021-2022 trade to and from Asia for the Illinois-based gourmet foods and gifts manufacturer.

MSRF alleged that HMM:

- refused to provide MSRF enough commitments in its advance service contracts, instead providing only a fraction of the space MSRF needed at substantially higher prices
- refused to provide MSRF more than approximately nine of the promised 25 FEUs of allotted space, forcing MSRF to make alternate transportation arrangements with other common carriers at substantially-higher spot market prices
- HMM meanwhile resold the capacity allotted to MSRF to other shippers on the same spot market at substantially-higher rates than those to which it agreed in the service contract

HMM filed an answer denying the allegations and raising affirmative defences, including:

- lack of jurisdiction
- failure to state a claim under which relief may be granted
- failure to allege essential elements under the various sections of the Shipping Act alleged
- that the service contract at issue contains the complainant's exclusive remedies
- the FMC does not have the authority to award damages for a breach of contract claim
- HMM's conduct was reasonable
- third parties were responsible for any alleged damages
- the complainant failed to mitigate its damages

Judge Crovella found none of MSRF's claims were successful.

"MSRF entered into a service contract with HMM, which was amended 14 times, yet MSRF's claims primarily rely on the service contract as originally enacted, prior to the amendments," stated the decision.

"Many of the 14 amendments were at the initiation or for the benefit of MSRF, including the addition of shipping lanes and the continuation of 2021 prices during the contract extension. The duration of the service contract was extended by amendment, and through the end of the contract, HMM carried almost double the minimum quantity commitment of cargo (MQC).

"MSRF fails to acknowledge the ongoing communication and negotiation between parties that led to the amendments from which MSRF derived a substantial financial benefit.

“MSRF does not claim (and the evidence also does not support) that any kind of collusion or undue pressure led it to agree to these amendments. MSRF has not met its burden of establishing that HMM engaged in unjust or unreasonable conduct; provided service in the liner trade not in accordance with the rates, charges, classifications, rules, and practices contained in a tariff or a service contract; refused to deal or negotiate; or gave undue or unreasonable preference or advantage to another.”

March 2024

