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Eric Johnson, Senior Technology Editor | Apr 22, 2022 5:01PM EDT



The case could open the floodgates for more actions against container lines, with the Federal Maritime Commission asking shippers to bring complaints to their attention. Photo credit: Shutterstock.com.

Correction: An earlier version of this story misstated the size of the civil penalty assessed to Hapag-Lloyd.

A US administrative law judge on Friday ordered Hapag-Lloyd to pay \$822,220 in civil damages stemming from a Federal Maritime Commission (FMC) investigation into whether the carrier improperly assessed detention charges to a California drayage provider on 11 containers in mid-2021.

In justifying the amount of the penalty, which will be paid to the US Treasury, the FMC's Bureau of Enforcement (BOE) determined that Hapag-Lloyd acted "knowingly and willfully...[in]...imposing and

refusing to waive detention charges where there were insufficient appointments to return these empty containers.”

The detention charges, assessed by Hapag-Lloyd's North America agent to Golden State Logistics (GSL), amounted to \$10,135.

At the heart of the case is whether Hapag-Lloyd recognized that GSL was actively attempting to return empty containers to the appropriate terminals at the ports of Los Angeles and Long Beach. GSL asserted in a December claim against the shipping line that it could not make appointments to return the empties, despite repeated attempts and despite using a technology platform called BlueCargo that aggregates and displays empty appointment availability across all terminals in LA-LB.

The drayage provider further asserted that attempts to have the detention fees waived were denied or ignored by Hapag-Lloyd.

“We are thoroughly looking into this ruling and will then decide upon further legal action,” Hapag-Lloyd spokesman Tim Seifert told JOC.com Monday.

Potential bellwether case

The case could well be a bellwether for future actions against shipping lines relating to what shippers and drayage providers consider unfair assessment of demurrage and detention fees, also called per diem. The FMC has encouraged those parties to bring cases forward and has been particularly focused on the issue of excess penalties collected by shipping lines in situations out of the control of shippers or their drayage representatives.

“While this is not a significant number of containers or days [of detention], Hapag-Lloyd has been clear that this was their normal policy and practice,” the ruling said. “Therefore, it may be presumed that this issue was not isolated to these shipments, but that detention was imposed, and not waived, on other empty containers that could not be returned due to insufficient appointments.”

The amount of the penalty is sure to embolden other parties seeking to waive detention penalties incurred owing to a lack of available empty appointments. That issue plagued Los Angeles and Long Beach throughout the latter half of 2021 as an onslaught of import cargo clogged terminals with laden containers, hampering the ability for ships to berth and for empties to be returned. The ports have since started to unbury themselves.

The administrative law judge determined that not all 11 empties were hit with unfairly assessed detention fees, but noted that GSL’s repeated attempts to find available appointments were sufficient to show intent. A key part of the law surrounding the ability of carriers to assess penalties for excess detention is to incentivize the rapid return of empties back to the shipping lines.

Hapag-Lloyd argued that the BOE did not have jurisdiction over the case, and GSL’s failure to return the empties on time was “due to the acts and/or omissions of the motor carrier and/or the cargo interest, and Hapag-Lloyd’s conduct was reasonable in light of the totality of the circumstances.”

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