S&P Journal of Commerce

FMC rules for truckers in chassis dispute with ocean carriers

An FMC hearing examiner had previously ruled that ocean carriers violated the US Shipping Act of 1984 when requiring truckers to use a specific chassis provider under merchant haulage agreements. Photo credit: Ari Ashe / Journal of Commerce.

Ari Ashe, Senior Editor | Feb 14, 2024, 2:57 PM EST

The US Federal Maritime Commission (FMC) has ordered ocean carriers to stop mandating that cargo owners and their truckers use specific chassis on merchant haulage business, a decision that could shake up how containers are transported in the US.

The closely watched ruling, issued Tuesday, upholds a decision made by a hearing examiner in 2023 in favor of the American Trucking Associations (ATA). The Ocean Carriers Equipment Management Association (OCEMA) appealed that decision to the full FMC.

At issue are the two different arrangements made between cargo owners and ocean carriers. In so-called carrier haulage agreements, the ocean carrier is responsible for door-to-door transportation. In merchant haulage agreements, the ocean carrier is only responsible for the ocean and port, while the cargo owner handles the container's inland move.

The hearing examiner had ruled that ocean carriers violated the US Shipping Act of 1984 when requiring truckers to use a specific intermodal equipment provider (IEP) under merchant haulage agreements. The examiner also found that chassis rental rates for merchant haulage went up 35% between 2018 and 2020 and 90% between 2013 and 2020 in one US region, while they remained virtually unchanged for cargo owners under carrier haulage agreements.

The FMC agreed the practices of ocean carriers were unreasonable and not necessary to ensure the smooth flow of cargo.

"In most situations, motor carriers do not have a viable alternative to paying the price the designated IEP imposes [because] chassis are a necessity and substituting trucker-owned wheels is generally not economically feasible," the FMC wrote. "These restrictions also effectively shut out potential chassis provider competitors or at least markedly impede their ability to compete for motor carriers' merchant haulage business."

The FMC ruling that ocean carriers violated the Shipping Act was restricted to five locations at the heart of the complaint — the ports of Los Angeles, Long Beach and Savannah, and inland rail ramps in Chicago and Memphis.

The Commission remanded the case to the original hearing examiner to settle other issues not covered in the initial ruling, such as whether truckers and cargo owners suffered any financial damage and deserve compensation.

Jonathan Eisen, chair of the Intermodal Carriers Conference within the ATA, said the FMC's ruling affirmed the group's contention that "ocean carriers were acting in violation of the Shipping Act with regards to the chassis provisioning process."

"What we expect is that [ocean carriers] will abide by the cease-and-desist order issued by the Commission to comply with the law," Eisen said in a statement. "Allowing motor carriers the ability to choose their chassis provider will bring the full power of the free market to bear and motor carriers will work with their supply chain partners to find the best solutions for their customers…"

OCEMA could not immediately be reached for comment.

Rejecting claims of supply chain impact

OCEMA previously argued that if the FMC affirmed the initial ruling, it would lead to more chassis shortages because IEPs would not know how many units to station in ports and rail terminals. If units are not positioned correctly across the US, then there could be a repeat of pandemic-driven disruption from 2020 to 2022 when bare chassis pools gridlocked supply chains, the IEPs and OCEMA wrote in their filings.

The Commission rejected the arguments.

"[They] do not point to statistics or expert evidence indicating the likelihood that the scenario they paint of supply chain disruption, inadequate chassis supplies, or other difficulties stemming from the cease-and-desist order will actually occur," the FMC wrote. "While a period of readjustment is certainly possible if ocean carriers stop using exclusive arrangements, it is equally possible that the chassis supply market will adjust within a reasonable time frame and reach a new equilibrium.

"Changing which provider supplies the chassis will not alter traffic volume or demand — the same number of chassis will still be required — but who supplies them will be open to competition," it added.

Precedent for inland moves

Tuesday's decision seemingly puts to rest the argument that the FMC has no authority on issues beyond the ports, as anything within the US is considered domestic transportation. FMC Chairman Daniel Maffei has said that the FMC's reach extends beyond the port, but this is the first decision to put that opinion in writing.

"Their argument, if accepted, would effectively give [OCEMA and ocean carriers] free rein to adopt practices that restrain competition or impose unjust and unreasonable conditions on other transportation service providers or shippers," the FMC wrote. "[The] argument that the Commission lacks jurisdiction over merchant haulage issues because they involve overland transportation is likewise untenable. The Commission and the courts have repeatedly recognized that the Shipping Act's authority does not end at the port's boundary."

To determine whether the Shipping Act applies, the FMC said it looks at whether the conduct has a "connection to ocean transportation service for foreign shipments, not where the activity takes place."

That language could help the FMC's National Shipper Advisory Committee (NSAC), which has urged the agency to extend the interpretative rule on detention and

demurrage from ports to rail terminals. NSAC argues that the FMC's authority extends inland on carrier haulage business, so demurrage is unenforceable if it violates the interpretative rule in both marine and rail terminals.

Contact Ari Ashe at ari.ashe@spglobal.com.