

(S E R V E D)
(NOVEMBER 9, 2010)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

DOCKET NO. 10-10

DRAFT CARGOWAYS INDIA (PVT.) LTD.

v.

DAMCO USA, INC., DAMCO A/S, AND A.P. MOLLER-MAERSK A/S

NOTICE OF FILING OF COMPLAINT AND ASSIGNMENT

Notice is given that a complaint has been filed with the Federal Maritime Commission (“Commission”) by DRAFT CARGOWAYS INDIA (PVT.) LTD. (“DRAFT”), hereinafter “Complainant,” against DAMCO USA, INC. (“DAMCO US”), DAMCO A/S and A.P. MOLLER-MAERSK A/S (“MAERSK”), hereinafter “Respondents”. Complainant asserts that it is a corporation organized and existing pursuant to the laws of India and registered as a foreign corporation in the State of Virginia and a duly licensed and bonded non-vessel-operating common carrier (“NVOCC”). Complainant alleges that Respondent DAMCO US is a Delaware corporation and a licensed NVOCC and freight forwarder, that Respondent DAMCO A/S is a corporation organized and existing pursuant to the laws of Denmark and an NVOCC registered with the Commission; and that Respondent MAERSK is a corporation organized and existing pursuant to the laws of Denmark and a vessel- operating common carrier operating in the U.S. global trades.

Complainant asserts that Respondents violated Sections 8(a)(1), 10(b)(2)(A), 10(b)(11), 10(b)(13) and 10(d)(1) of the Shipping Act of 1984, 46 U.S.C. §§40501(a)(1), 41104(2) and (11), 41103(a) and 41102(c). Complainant alleges that Respondent DAMCO A/S provided NVOCC services to Complainant. DAMCO A/S retained MAERSK as the ocean common carrier and DAMCO US as delivery agent for the shipments at issue. Complainant alleges that Respondent DAMCO US “invoiced and attempted to collect amounts from Complainant for demurrage and detention” on the shipments at issue and that “DAMCO A/S’ published tariff did not contain any demurrage and detention provisions....” Complainant alleges that Respondent DAMCO US has “made... false representations, misleading statements or omissions in a Complaint (...) filed in the United States District Court for the Eastern District of Virginia” pertaining to the same shipping transactions. Complainant also alleges that Respondents “have repeatedly utilized a ‘bait and switch’ scheme... in misleading the shipping public, including DRAFT, ... by utilizing DAMCO US, DAMCO A/S , and MAERSK as interchangeable parts” and that the scheme is a “practice.” Complainants assert that by using this scheme Respondents “knowingly disclosed, offered, solicited and received information concerning the nature, kind, quantity, destination, shipper, consignee, and routing of the property...without the consent of DRAFT and us(ed) that information to the detriment and disadvantage to DRAFT.” Complainant asserts that it “has lost significant business to MAERSK generated by its Indian accounts related to subject shipments.”

Complainant states that as a direct result of Respondents’ violations of the Shipping Act, it has suffered injury. Complainant requests the Commission: compel Respondents to

answer the complaint; find Respondents in violation of the Shipping Act; award reparations to Complainant in the amount of \$20,725.00 “for amounts paid for demurrage and detention”, and \$150,000 for lost business and clients; pay interest, costs and attorneys’ fees; order Respondents to “cease and desist in the action filed in the United States District Court, Eastern District of Virginia... and to cease and desist in attempting to collect amounts for demurrage and detention in the amount of \$174,412.50; and impose any other relief as the Commission determines to be proper, fair, and just.

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 C.F.R. 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 C.F.R. 502.61, the initial decision of the presiding officer in this proceeding shall be issued by November 9, 2011 and the final decision of the Commission shall be issued by March 8, 2012.

Karen V. Gregory
Secretary