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BEFORE THE
FEDERAL MARITIME COMMISSION

 ORIGINAL

Docket No. 13-07

FILED

AUG 05 2014

Federal Maritime Commission
Office of the Secretary

GLOBAL LINK LOGISTICS, INC.,

COMPLAINANT,

v.

HAPAG-LLOYD AG,

RESPONDENT.

**GLOBAL LINK LOGISTICS, INC.'S MOTION FOR LEAVE TO FILE RESPONSE TO
AMICUS BRIEF OF THE WORLD SHIPPING COUNCIL**

The World Shipping Council has moved to file an amicus brief in support of Hapag-Lloyd in this Proceeding. In its motion for leave to file an amicus brief, and in its attached proposed amicus brief, the World Shipping Council asserts that the Commission's adoption of the position asserted by Global Link Logistics would undermine service contracts as the legal and commercial instruments that define the terms of transportation of the nation's international liner commerce. It further asserts that adoption of Global Link's position would nullify the sanctity of service contracts and create massive commercial uncertainty in the market for ocean transportation services in the U.S. foreign trades. Because the World Shipping Council raises significant policy issues that were not fully addressed in Global Link's Exceptions, and because of the importance of these issues, Global Link moves to file the attached response to the World Shipping Council's amicus brief. Counsel for the World Shipping Council has authorized Global

Link counsel to state that the World Shipping Council does not oppose Global Link's motion for leave to file its response. Global Link's response is filed conditionally with this motion.

**GLOBAL LINK LOGISTICS, INC.'S REPLY TO AMICUS BRIEF
OF THE WORLD SHIPPING COUNCIL**

In its amicus brief in support of Hapag-Lloyd's (Hapag's) position in this proceeding, the World Shipping Council contends that the Commission should not permit Global Link to develop the facts in support of its claims against Hapag because even allowing Global Link to present its case would undermine service contracts as the legal and commercial instruments that define the terms of transportation for the nation's international ocean commerce. The World Shipping Council further contends that even hearing Global Link's case would nullify the sanctity of service contracts and create massive commercial uncertainty in the market for ocean transportation services in the U.S. foreign trades.

While it is perhaps understandable, given the one-sided nature of the current service contract regime that is in place, that The World Shipping Council wants the Commission to avert its eyes rather than delve into the realities of service contracts and how they operate in the real world of maritime transportation, its assertions cannot withstand analysis. Quite simply, for the Commission to carry out its Congressional mandate to ensure that common carriers' practices are just and reasonable, does not, and cannot, run afoul of the Shipping Act.

Lost in the strenuous oratory of the amicus's arguments are the actual legal questions presented by Global Link's exceptions to the Initial Decision. Does the Commission have jurisdiction to determine whether it is fair and reasonable when, in contravention of its normal and customary practices, a carrier: 1) unilaterally raises rates charged an NVOCC seven times

during the life of the contract; 2) unilaterally decides, after the service contract has been signed, that it will no longer service primary ports to and from which the NVOCC and its customers intend to ship; 3) selectively engages in a bait and switch by suggesting that the minimum quantity commitment would be reduced and then refusing to do so after having made it impossible for the NVOCC to ship the amount specified in the service contract; 4) reduces the NVOCC's allocation of space on its vessels, clearly preventing the NVOCC from being able to ship the minimum quantity commitment; and 5) still sue the NVOCC for onerous penalties based upon its inability to get its customers to ship at the inflated rates to ports which they do not use? Global Link submits that the answer to the question should be obvious.

Rather than address the obvious inequity of permitting such unreasonable practices, the World Shipping Council seeks to defend this indefensible state of affairs under the flag of deregulation. In fact, however, under a wholly deregulated system, the service contract at issue in this proceeding could not exist as no rational party would enter a contract in which its counterpart has virtually no liability, is entitled to unilaterally raise rates to whatever amount it sees fit, alter or discontinue its service so that the buyer can no longer use the service, and still be subject to steep penalties for not being able to use the services.¹ This is the system the amicus seeks to justify and defend.

¹ Further, even if the World Shipping Council's policy argument had merit, which it does not, Global Link should be permitted to prove, as alleged in its Complaint, that it is an unreasonable practice for Hapag to indicate to Global Link that its minimum quantity commitment would be reduced and then to refuse to do so after it was impossible for Global Link to ship the amount specified in the Service Contract (Complaint at IV (NN)), and for Hapag to reduce Global Link's allocation of space on its vessels, clearly preventing Global Link from being able to ship the minimum quantity commitment, and then to still seek recovery under a liquidated damages clause as if these actions had not occurred. Complaint at IV (OO).

In fact, as Global Link has candidly admitted, most carriers do not take unfair advantage of the massive leverage the current system of one-sided service contracts give them because they have adopted usual and customary practices whereby they work with their shipper/customers on a cooperative basis to maximize shipments on their vessels and to reduce or eliminate minimum volume requirements when they cannot be met. But this imposes an obligation on the Commission, if it is to fairly regulate a system of service contracts as Congress intended, to closely examine fairly pled allegations that a carrier such as Hapag in this case has abused its service contract powers to engage in unfair, unreasonable and discriminatory practices. Cutting off Global Link's ability to even try to prove the substance of its Complaint – as the World Shipping Council contends – hardly fulfills this obligation and should not be countenanced.²

Conclusion

Despite The World Shipping Council's arguments to the contrary, the Commission has jurisdiction, and should exercise it, to determine whether it is an unjust and unreasonable practice for Hapag to unilaterally raise rates to whatever amount it sees fit, discontinue its service so that

² The World Shipping Council also conveniently ignores the inconsistency inherent in its argument that it is merely seeking to impose free market principles upon Global Link, while simultaneously arguing that carriers should have the ability to unilaterally raise rates pursuant to a tariff publication as a means of imposing whatever charges they deems fit upon disfavored customers.

Global Link and its customers can no longer use the service, and still sue Global Link based upon its inability to Hapag's services.

Respectfully submitted,

A handwritten signature in blue ink, consisting of a large 'D' followed by a smaller 'P' and a stylized flourish.

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document was delivered to the following addressees at the addresses stated by depositing same in the United State mail, first class postage prepaid, and/or by electronic transmission, this 5th day of August 2014:

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