

**FEDERAL MARITIME COMMISSION**

**WASHINGTON, D.C.**

**DOCKET NO. 1896(F)**

**LA TORRE'S ENTERPRISES, CESAR LA TORRE, KASKAMACH SRL,  
JAIME LA TORRE, AND JENNIFER LA TORRE**

v.

**NATURAL FREIGHT LTD./SKYTRUCK, AGILITY LOGISTICS,  
AND HANSA TRANSPORTS SAC**

---

**INITIAL DECISION<sup>1</sup> AND APPENDIX**

---

**I. INTRODUCTION**

**A. Overview and Summary of Decision**

On January 13, 2009, the complainants, La Torre's Enterprises, Cesar La Torre, Kaskamach SRL, Jaime La Torre, and Jennifer La Torre (collectively "La Torre") filed a claim alleging that the respondents, Natural Freight Ltd./Skytruck ("Natural Freight"), Agility Logistics ("Agility"), and Hansa Transports SAC ("Hansa") violated section 10(d)(1) of the Shipping Act of 1984, now codified at 46 U.S.C. § 41102(c).<sup>2</sup>

---

<sup>1</sup> The initial decision will become the decision of the Commission in the absence of review by the Commission. 46 C.F.R. § 502.318. An appeal by a party must be filed with the Commission's Office of the Secretary within twenty-two days from the date of service of the decision. 46 C.F.R. § 502.318.

<sup>2</sup> On October 14, 2006, the President signed a bill reenacting title 46, United States Code, Shipping, as positive law. The bill's purpose was to "reorganiz[e] and restat[e] the laws currently in the appendix to title 46. It codifies existing law rather than creating new law." H.R. Rep. 109-170, at 2 (2005).

The case stems from the 2006 shipment of two forty-foot containers by La Torre from California, USA, to Callao, Peru. The bill of lading, issued by Bronco Container Lines, Ltd., as carrier, lists “La Torre’s Enterprises” as the shipper; “Kaskamach SRL” as the consignee; “Natural Freight Ltd.” as the forwarding agent; and “Hansa Transports SAC” as the “domestic routing/export instructions/for delivery contact.” App. 1.<sup>3</sup> The bill of lading incorrectly describes the inventory as used monitors. App. 1. The inventory was seized by Peruvian customs officials who rejected an attempt to correct the description. Complainants seek compensation for the loss of the shipment.

Despite multiple opportunities to support its position, La Torre has not met its burden to prove that the respondents violated the Shipping Act. The Commission, like other administrative bodies, has treated *pro se* litigants with special leniency. *Bernard & Weldcraft Welding Equipment v. Supertrans Int’l, Inc.*, 29 S.R.R. 1340, 1341-1342 (ALJ 2002). However, such leniency does not relieve La Torre of the necessity of producing sufficient evidence to support its burden of proof.

La Torre has not identified any regulation or practice that the respondents failed to utilize and has not established that the incorrect description on the bill of lading caused the loss. Indeed, the evidence shows that the respondents had a policy to prevent bill of lading errors – they required shippers to provide the commercial invoice prior to departure of the shipment – and that the respondents’ representative requested this information on the day prior to the shipment. App. 3. Moreover, the evidence does not demonstrate that the bill of lading error caused the Peruvian customs officials to seize the shipment. Rather, the commercial invoices and customs paperwork, prepared by La Torre, did not meet Peruvian customs requirements. Accordingly, La Torre has not met its burden to establish that any of the respondents violated the Shipping Act.

After discussion of the procedural background, evidence, and arguments of the parties, part two provides specific findings of fact. The analysis and conclusions of law are in part three and the Order is in part four. As explained below, the evidence in the record does not support a finding that the respondents violated the Shipping Act. Therefore, the claim is dismissed with prejudice.

## **B. Procedural Background**

On January 13, 2009, pursuant to 46 C.F.R. § 502.304, La Torre filed a small claim form for informal adjudication (“Claim”) with supporting documents, including a bill of lading, emails, and Peruvian customs documents. Translations were provided, it appears by La Torre, without objection by respondents, and will be treated as accurate for purposes of this Initial Decision, with the limitations identified below, in part III.C.1.

On June 9, 2009, respondents Natural Freight and Agility filed their answer to the claim indicating that they object to the informal procedure. Therefore, on July 31, 2009, the case was referred to the Office of Administrative Law Judges for formal proceedings. *La Torre’s Enterprises*,

---

<sup>3</sup> Relevant documents found in the initial claim are listed in the attached Appendix (“Appendix” or “App.”).

*Cesar La Torre, Kaskamach SRL, Jaime La Torre, and Jennifer La Torre v. Natural Freight Ltd./Skytruck, Agility Logistics, and Hansa Transports SAC*, F.M.C. No. 1896(F) (July 31, 2009).

Respondent Hansa has not filed an answer and has not participated in the proceedings. Skytruck, as a separate entity from Natural Freight, was never served and is not a party to this action. Given the disposition herein, there is no need to amend the claim to add Skytruck as a party.

On November 24, 2009, a Notice of Assignment and Order to Supplement the Record was issued. *La Torre's Enterprises, Cesar La Torre, Kaskamach SRL, Jaime La Torre, and Jennifer La Torre v. Natural Freight Ltd./Skytruck, Agility Logistics, and Hansa Transports SAC*, F.M.C. No. 1896(F) (ALJ Nov. 24, 2009). On January 4, 2010, the matter was reassigned to the undersigned Administrative Law Judge. *La Torre's Enterprises, Cesar La Torre, Kaskamach SRL, Jaime La Torre, and Jennifer La Torre v. Natural Freight Ltd./Skytruck, Agility Logistics, and Hansa Transports SAC*, F.M.C. No. 1896(F) (ALJ Jan. 4, 2010).

On January 8, 2010, the deadline for La Torre's brief, La Torre filed a four page document ("Brief"). On January 12, 2010, an Order Accepting Submission was issued, ensuring that the parties were properly served with La Torre's brief. *La Torre's Enterprises, Cesar La Torre, Kaskamach SRL, Jaime La Torre, and Jennifer La Torre v. Natural Freight Ltd./Skytruck, Agility Logistics, and Hansa Transports SAC*, F.M.C. No. 1986(F) (ALJ Jan. 12, 2010). La Torre's brief consisted of a handwritten note from Jennifer La Torre stating: "Attached please find a brief of the events, if any other information is required, please do not hesitate to contact me at any time." Brief at 1. Attached were a change of address notice and a two-page summary of events, similar to the initial claim filed in the matter.

On February 2, 2010, Natural Freight and Agility filed their Brief in Opposition to La Torre's Enterprises Claim ("Opposition"), proposed findings of fact, responses to Jennifer La Torre's statement, and a declaration of the corporate legal manager for Agility Logistics, Caryn Lewis-Bugg ("Opp., Decl.").

Pursuant to the Notice of Assignment and Order, La Torre had until March 5, 2010, to file a reply brief. *La Torre's Enterprises, Cesar La Torre, Kaskamach SRL, Jaime La Torre, and Jennifer La Torre v. Natural Freight Ltd./Skytruck, Agility Logistics, and Hansa Transports SAC*, F.M.C. No. 1986(F) (ALJ Nov. 24, 2009). No reply brief was filed.

On October 7, 2010, the parties were ordered to supplement the record. *La Torre's Enterprises, Cesar La Torre, Kaskamach SRL, Jaime La Torre, and Jennifer La Torre v. Natural Freight Ltd./Skytruck, Agility Logistics, and Hansa Transports SAC*, F.M.C. No. 1986(F) (ALJ Oct. 7, 2010). Pursuant to that Order, on October 22, 2010, La Torre filed a Declaration to Supplement Record ("Supp.") with numbered exhibits. On October 27, 2010, Natural Freight and Agility filed a Response to La Torre Enterprises' Supplemental Briefing ("Supp. Resp."). No additional briefing is anticipated. Accordingly, the matter is ripe for decision.

### **C. Evidence**

All of the documents submitted by the parties are hereby admitted. This Initial Decision is based on the initial claim, attachments, exhibits, briefs, proposed findings of fact and conclusions of law, supplemental briefing, and replies thereto filed by the parties. The documents attached to the initial claim did not have exhibit numbers. The initial claim documents that are cited in this Initial Decision are more fully identified in the Appendix. All of the documents were considered, even if they were not cited and are not listed in the Appendix. Where information, such as a date, was missing from the English translation, the original Spanish version was used to supply the information.

This Initial Decision addresses only material issues of fact and law. Under the Administrative Procedure Act (“A.P.A.”), an Administrative Law Judge may not issue an order “except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence.” 5 U.S.C. § 556(d); *Steadman v. SEC*, 450 U.S. 91, 98 (1981). Proposed findings of fact not included in this Initial Decision were rejected, either because they were not supported by the evidence or because they were not dispositive or material to the determination of the allegations of the claim or the defenses thereto. Administrative adjudicators are “not required to make subordinate findings on every collateral contention advanced, but only upon those issues of fact, law, or discretion which are ‘material.’” *Minneapolis & St. Louis Ry. Co. v. United States*, 361 U.S. 173, 193-194 (1959).

### **D. Arguments of the Parties**

La Torre alleges a violation of section 10(d)(1) of the Shipping Act. La Torre contends that the respondents should not have shipped the containers at issue without an accurate description in the bill of lading and that the containers were abandoned because of respondents’ failure to obtain their release from Peruvian customs authorities. Claim at 2. Specifically, La Torre alleges that no container should be shipped without the proper documentation and knowledge of its contents, and instead, should have been held in storage. Claim at 2. La Torre argues that Hansa, an agent of Natural Freight, was responsible for all customs documentation in its primary stage. Supp. at 1. La Torre believes the respondents acted with negligence and malice. Claim at 2. La Torre suffered a significant financial loss. Claim at 2.

Respondents Natural Freight and Agility argue that the claim is defective because, *inter alia*: 1) the claim was untimely pursuant to the Carriage of Goods by Sea Act (“COGSA”), which governed the shipment at issue; 2) the claim failed to identify any actions taken by Agility or Natural Freight that would justify reparations on behalf of La Torre; 3) neither Agility nor Natural Freight assumed any obligations to clear the goods in question through Peruvian customs; 4) the claim failed to specify what actions of the respondents violated the Shipping Act; and 5) the claim failed to substantiate the alleged damages. Opposition at 4; Supp. Resp. at 3.

## **II. FINDINGS OF FACT**

Although La Torre did not provide proposed findings of fact and conclusions of law, it did provide statements highlighting the key facts it alleges as well as providing supporting documents with contemporaneous information regarding the shipment. Respondents Agility and Natural Freight submitted proposed findings of fact and responses to La Torre's allegations. Hansa did not participate.

### **A. Complainants**

La Torre's Enterprises, Cesar La Torre, Kaskamach SRL, Jaime La Torre, and Jennifer La Torre (collectively "La Torre") are the complainants in this matter. The complainants include both the buyer and the seller of the merchandise. Supp., Ex. 6. La Torre's Enterprises is listed as the shipper on bill of lading LSA-1958 for the shipment at issue here. App. 1. La Torre's Enterprises is located in El Cerrito, CA, 94530. App. 1. Jaime La Torre signed the appeal to the Superintendent of Customs in Peru as the general manager of Kaskamach S.R.L. on July 27, 2006. Supp., Ex. 2. La Torre made shipments to Peru both before and after the shipment at issue. App. 7; Supp., Ex. 5.

### **B. Respondents**

Respondent Hansa Transports SAC has not participated in these proceedings. Respondent Hansa is listed on bill of lading LSA-1958 as providing domestic routing and was the entity that La Torre worked with while the containers were in Peru. App. 1, 6, 8. According to the bill of lading, Hansa is located in Lima, Peru. App. 1.

Natural Freight is listed as the forwarding agent on the bill of lading. The address listed for Natural Freight is 6033 W. Century Blvd., Suite 670, Los Angeles, CA, 90045. App. 1. Natural Freight sought payment for the shipment, and it has asked that any award be off-set against the outstanding bill for the shipment, which is \$7,868.22 plus accrued interest. Opposition at 10-11. Natural Freight has not explained why it would be able to collect on the shipment without having assumed responsibility for the shipment.

Natural Freight contends that it has not assumed legal responsibility for the actions of Skytruck. Respondent Natural Freight is a separate legal entity from Skytruck, although the complainants refer to Natural Freight Ltd./Skytruck. Opp., Decl. at 2. Natural Freight had a minority ownership position in Skytruck during the time of the transportation at issue, although it no longer has any ownership interest in Skytruck. Opp., Decl. at 2. Skytruck, as a separate entity from Natural Freight, was never served and is not a party to this action.

Skytruck's representatives assisted La Torre in arranging the shipment, although Skytruck is not listed on the bill of lading. The emails initiating the shipment were between Jaime La Torre and a representative with a skytruck.com email address. App. 2. The emails requesting additional

information from La Torre prior to the shipment were signed “Sincerely yours, NATURAL FREIGHT LTD.” and the form language at the end of the email stated “All services provided are subject to the terms and conditions of service which are available at [www.naturalfreight.com](http://www.naturalfreight.com) and/or [www.skytruck.com](http://www.skytruck.com).” App. 2 (capitalization in original).

Respondent Agility is an indirect subsidiary of The Public Warehousing Company SC which subsequent to the shipment at issue also indirectly acquired Natural Freight. Opp., Decl. at 1. Agility’s involvement in this action was to attempt to answer questions from La Torre years after the shipment. Opp., Decl. at 1. Agility has been unable to locate records and correspondence relating to the shipment. Opp., Decl. at 3.

Natural Freight is not an authorized customs broker in Peru. Opp., Decl. at 1. Entry documents required by Peruvian customs are not prepared by carriers or NVOCCs. Opp., Decl. at 1. According to corporate legal manager for Agility Logistics, Ms. Lewis-Bugg, an “exporter, such as La Torre, has the duty to provide a commercial invoice to a transportation provider with a correct description of the goods being transported so that such information can be included on the bill of lading.” Opp., Decl. at 3. She concludes that here, “La Torre apparently failed to provide such a commercial invoice. If La Torre had done so, the bill of lading would have indicated what goods were being shipped, rather than identifying the goods as ‘used monitors.’” Opp., Decl. at 3.

### **C. La Torre’s Shipment**

On April 11, 2006, Jaime La Torre sent an email to Ana Maria del Carpio, a Skytruck representative. The email, translated from Spanish, stated: “Hello Ana Maria, I need two 40’ HC at Octavio’s, invoice to Latorre’s, ship to Kaskamach, we’ll be loading lamps and accessories” and listed her address. App. 2. The containers were apparently provided as there is a bill of lading for the shipment. App 1.

La Torre argues that while Ana Maria del Carpio was on vacation, Alonzo Bernal was left in her place. Claim at 1. La Torre states in her claim that:

Mr. Bernal didn’t have a clue on how to proceed nor did he know our company’s name (according to Mr. Bernal instead of La Torre’s Enterprises he called our Company “Amkotron” refer Email dated 4/26/2006). At that point both containers left to Callao, Peru without the exporters Invoice, detailing the contents of said containers.

Claim at 1.

The evidence shows that Alonso Bernal, a Natural Freight representative, in an undated email, asked Jaime La Torre for the “address where I could forward all documentation for export” as the address he had was being rejected. App. 3. On April 25, 2006, Jaime La Torre provided an address for La Torre’s Enterprises in El Cerrito, California. App. 3. Mr. Bernal then responded

“Can I please ask for the documentation for the last shipment of Amkotron, invoice, weight etc.” App. 3. This is the information that the respondents would have needed to accurately describe the merchandise on the bill of lading. On April 26, 2006, Jaime La Torre responded only “Thank you for your interest Alonso, But can you tell me What is [Amkotron]?” App. 3 (capitalization in original).

Bill of lading number LSA-1958, dated April 26, 2006, shows the shipper as “La Torre’s Enterprises,” consignee as “Kaskamach SRL” in Lima, Peru, and the forwarding agent as “Natural Freight Ltd.” App. 1. The bill of lading describes the shipment as “KHJU 840 343-7 1 x 40 ft. HC” and “CMCU 492 764-5 1x40 ft. HC,” with each container carrying 450 packages for a total of 900 packages listed as “used monitors.” App. 1 (capitalization changed). The weight is listed as “31752 kgs, 70000 lbs.” App. 1. Bronco Container Lines, Ltd. was listed as the carrier. App. 1.

According to La Torre’s claim, once the items arrived in Peru, the discrepancy between the actual contents and the bill of lading description was identified. Claim at 2. Hansa, the company handling the shipment at that point, had fifteen days to request a change of the item description from the Peruvian customs authorities. Supp., Ex. 4. Hansa worked through or with a company called Cosmos Maritime Agency S.A.C. (“Cosmos”).

On May 14, 2006, Cosmos timely requested that the description of “used monitors” on the bill of lading be corrected to:

Container CMCU4927645 Quads, electric mini scooters, motorcycle ramps, helmets, pressure washers, skates, generators, car accessories, lamps, lamp accessories, chimney protectors.

Container KHJU8403437 Lamps, picture frames, lamp shades, lamp accessories, cellular car chargers, cellular cases, hand free, chimney protectors.

App. 5.

On May 18, 2006, Hansa sent an email to La Torre which stated: “Enclosed please find [a] letter of responsibility which would have to be signed [on] letterhead paper and return via mail or Fax. At the same [time] please include copy of payment for the correction.” App. 6. La Torre refused to pay for the shipment or the correction. Claim at 2.

In a May 24, 2006, email (date in Spanish original only), La Torre wrote to Skytruck stating:

these two containers have problems by error in the descriptions of the merchandise, [which is the] error of Natural Freight when it declared monitors instead of lighting fixtures. Please take the necessary actions to correct this error because I’m about to [lose] them if these correction[s] are not made, enclosed please find the original email ordering such containers.

App. 7. The Skytruck representative replied that she was on leave but would respond more fully when she returned to her office. App. 7.

Jaime La Torre then wrote that “this is not the first time that this error is committed, before this, customs did not notice said mistake, unexplainable, but that’s how it happened. The thing is if you don’t help me out to resolve this problem, I’m at risk that customs will seize the containers.” App. 7.

On May 24, 2006, the Skytruck representative responded that she had sent the petition for correction of description of the load to Hansa and was waiting to see if she needed to send a new bill of lading. The representative then stated:

Jaime [La Torre,] as I commented in my previous e-mail, it is the entire responsibility of the exporter to provide the commercial invoice 48 hrs before vessel departure to be able to manifest in the Bill of lading without any problems and prevent any future problems. For which I’ll be grateful [*sic*] take under consideration that any fine for correction or overstay shall be the sole responsibility of Latorre Enterprises.

Thanking you in advance for any future shipments, is ESSENTIAL, that the commercial invoice is submitted 48 hrs before vessel departure date, since in this way we could avoid unnecessary expenses such as corrections of load description, that would originate “roll over fee” that all forwarders are actually charging when they have to do a “roll” of the bookings, when the department of documentation has not receipt [*sic*] the proper instructions [regarding] how to emit the Bill of lading, unfortunately as forwarders agents we cannot create quantities, weight and description to avoid penalties.

App. 7 (capitalization in original).

In a translated May 25, 2006, email, a representative of Hansa stated to Skytruck and La Torre:

The containers are actually immobilized by customs and awaiting their notification of the necessary requirements to free said containers. This is due to the petition for the change of description; custom[s] considers that there are huge differences between description and actual contents, therefore decided to immobilize it for inspection. . . . We are on top of this case to resolve it as soon as possible. If you have any questions do not hesitate to contact me[.]

App. 8.

A May 30, 2006, notice from Natural Freight to La Torre’s Enterprises regarding a different shipment includes the policy that cargo details, including container number, seal number, number

of pieces loaded, gross weight, and commodity description should be provided twenty-four hours prior to sailing, or, if the vessel sails on the weekend, no later than Friday by 3:00 p.m. Supp., Ex. 5.

Two commercial invoices were used in the request to correct the bill of lading description. The commercial invoices, which were printed on La Torre's stationary, dated April 18, 2006, and labeled pe-1026 and pe-1027, indicate a sale to Kaskamach SRL in Lima, Peru. Supp., Ex. 6. The description in pe-1026 is: "900 pieces of pressure washers, mini bikes 49cc, air compressors, helmets, mini electric ATVs, car accessories, electric generators, electric pedal mopeds, skateboard sets, rampa [*sic*] multifold, air tool sets, dirt bikes, dirt bike gears, lighting accessories." Supp., Ex. 6. The description in pe-1027 is in Spanish, however, it is shorter than the description in pe-1026 and lists similar items. Supp., Ex. 6. It is not clear when the commercial invoices were provided to the respondents, although the evidence shows that they were not provided prior to the April 26, 2006, departure of the shipment.

Peruvian customs officials denied the request for correction, or ratification, of the bill of lading. A June 22, 2006, Peruvian customs document described the containers at issue and the request for ratification and concluded:

That the commercial invoices # pe-1026 and pe-1027 do not contain a detailed description of the merchandise, do not indicate quantities, characteristics, do not indicate measurements, new or used, serial numbers or codes, nor brands, models, number of units in each package, therefore the documentation presented by the shipping agent's representative (Cosmos) cannot sustain the petition for ratification of the manifest, furthermore there is a difference in the gross weight of -22 972,00Kg compared with the gross weight declared and received which has not been justified.

App. 11. The document then indicated that the petition for ratification of merchandise is declared inadmissible and that the merchandise will be administratively seized. App. 11. Peruvian customs included an inventory of fifty-three different items found in the shipment, including the quantity and description of each. App. 11. This inventory list is significantly more detailed than the commercial invoice prepared by La Torre. For example, the Peruvian inventory listed item number twenty-nine as seven sets of "rim covers, Whell, model KT .962 4 pieces, 3 15"sets and 4 14" sets" and item number fifty-three as forty units of "Kryptonicks skate and helmets, 35 w/ helmets 5 w/out." App. 11.

Cosmos and Hansa did not appeal the Peruvian customs officials denial of the request for correction. However, on July 27, 2006, an attorney hired by La Torre requested reconsideration of the decision. Supp., Ex. 2. According to La Torre's claim, however, its attorney was unsuccessful in having the decision overturned and the matter was not pursued further.

On November 22, 2006, a letter was sent to Cesar La Torre, La Torre Enterprises, attempting to collect a debt owed to Natural Freight Ltd., presumably for this shipment. App. 12.

On January 2, 2007, the Peruvian customs officials “grant[ed] five (5) working days . . . to legally import this merchandise, otherwise you would not be able to retrieve such merchandise and it shall be disposed of as stated by law.” App. 13. Unfortunately, La Torre was unable to obtain the merchandise.

La Torre continued to seek compensation for the loss from respondents, without success. In 2008, La Torre claimed a \$30,000 loss, and in the current litigation, claims a \$50,000 loss. App. 15; Claim at 2. The commercial invoices show a combined value of \$23,800. Supp., Ex. 6.

On February 14, 2007, an email was sent from Reto Kaufmann, VP, Skytruck Air/Sea Transport Inc. to Jaime La Torre stating that “all legal matters for Natural Freight Ltd are now handled by their New York corporate office” and that “your case/file was transferred to the former VP of administration [at] Natural Freight Ltd in New York . . . for collection purposes.” App. 14.

On July 22, 2008, Jennifer La Torre personally visited the legal department of Agility and spoke with Caryn Lewis-Bugg, the corporate legal manager. Ms. Lewis-Bugg told Ms. La Torre that Agility was not the party that had provided the transportation at issue, and provided her with the address of Skytruck. Opp., Decl. at 2. There is no information regarding whether La Torre ever contacted Skytruck.

### III. ANALYSIS AND CONCLUSIONS OF LAW

#### A. Burden of Proof

Pursuant to Rule 155 and the A.P.A., “the burden of proof shall be on the proponent of the rule or order.” 46 C.F.R. § 502.155; 5 U.S.C. § 556(d) (“Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof.”); *Sea-Land Serv. Inc.*, 30 S.R.R. 872, 889 (2006). The Commission has said that “the party seeking affirmative relief from the Commission has the initial burden of establishing a violation of the Act. . . . [and] the ultimate burden of proof or persuasion remains fixed throughout the litigation on the complainant.” *California Shipping Line, Inc. v. Yangming Marine Transport Corp.*, 1990 WL 427466, at \*10 (FMC Oct. 19, 1990). The party with the burden of proof must prove its case by a preponderance of the evidence. *Steadman v. SEC*, 450 U.S. 91, 102 (1981). When the evidence is evenly balanced, the party with the burden of proof must lose. *Director, Office of Workers’ Compensation Programs v. Greenwich Collieries*, 512 U.S. 267, 281 (1994).

As the complainant, La Torre has the burden of proving entitlement to reparations.<sup>4</sup> See *James J. Flanagan Shipping Corp. v. Lake Charles Harbor and Terminal Dist.*, 30 S.R.R. 8, 13 (2003) (quoting *Waterman v. Stockholms Rederiaktiebolag Svea*, 3 F.M.B. 248, 249 (1950)) (“As the Federal Maritime Board explained long ago: ‘(a) damages must be the proximate result of

---

<sup>4</sup> Reparations under the Shipping Act and damages are synonymous. See *Federal Maritime Comm’n v. South Carolina State Ports Auth.*, 535 U.S. 743, 775 (2002) (Breyer, J., dissenting).

violations of the statute in question; (b) there is no presumption of damage; and (c) the violation in and of itself without proof of pecuniary loss resulting from the unlawful act does not afford a basis for reparation.”); *Tractors and Farm Equipment Ltd. v. Cosmos Shipping Co., Inc.*, 26 S.R.R. 788, 798-799 (ALJ 1992).

## **B. Statute of Limitations**

Respondents Natural Freight and Agility argue that La Torre’s claim is time barred based upon the Carriage of Goods by Sea Act (“COGSA”) one year statute of limitations. They argue that COGSA provides the exclusive remedy barring all other causes of action arising out of loss or damage associated with the shipment of goods.

The claim *sub judice*, however, alleges a violation of the Shipping Act, specifically challenging the respondents’ practices related to receiving and handling property. Pursuant to the regulations covering formal procedures for adjudication of small claims, “[i]n the event the respondent elects not to consent to determination of the claim under [informal procedures], it shall be adjudicated by the administrative law judges of the Commission under procedures set forth in this subpart, if timely filed under [46 C.F.R.] § 502.302.” 46 C.F.R. § 502.311. Pursuant to 46 C.F.R. § 502.302(a), “[c]laims alleging violations of the Shipping Act of 1984 must be filed within three years from the time the cause of action accrues.” 46 C.F.R. § 502.302(a).

The shipment at issue occurred on April 26, 2006. According to the Secretary of the Commission, the informal docket was filed by La Torre on January 13, 2009, within the Shipping Act’s three year limitations period. Accordingly, because the action was filed within the three year limitations period established by the Shipping Act, it is not time barred. Therefore, the merits of the claim will be considered.

## **C. Discussion**

### **1. There is insufficient evidence to establish a section 10(d)(1) violation.**

Section 10(d)(1), now section 41102(c), states: “(c) **Practices in handling property.**--A common carrier, marine terminal operator, or ocean transportation intermediary may not fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.” 46 U.S.C. § 41102(c). An ocean transportation intermediary may be a non-vessel-operating common carrier (“NVOCC”) or an ocean freight forwarder (“OFF”). 46 U.S.C. § 40102(19).

For purposes of this discussion, it will be assumed that the respondents, at the relevant time, were common carriers or ocean transportation intermediaries to whom section 10(d) would apply, as they are clearly not marine terminal operators. Moreover, although Natural Freight and Skytruck are treated by La Torre as the same company, the evidence does not support this assertion, and they will be treated as separate companies in this decision.

As discussed above, the English translations are accepted as submitted by La Torre, although they are not duly verified under oath to be accurate translations. It is noted upon close review that the translations are not completely accurate. Of particular concern is an entire paragraph which is missing from an email. In the Spanish original of Appendix 7, on the first page, the fifth paragraph is missing from the English translation. Specifically, the English version is one paragraph shorter and the information about Alonso is missing. Other translations are missing dates and are clearly not exact translations. These discrepancies do not favorably impact upon La Torre's credibility. Not wanting to increase La Torre's costs, by requiring verified translations of a substantial number of documents, verified translations were not required at this level of the proceeding.

**a. The evidence shows that the respondents had just and reasonable regulations and practices.**

Section 10(d)(1) prohibits a common carrier or ocean transportation intermediary from failing to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property. La Torre has not identified any such specific regulation or practice that respondents failed to utilize. Indeed, the evidence shows that the respondents had a policy to prevent bill of lading errors – they required shippers to provide the commercial invoice prior to departure of the shipment – and that the respondents' representative requested this information on the day prior to the shipment. App. 3. This policy constitutes a regulation and practice as required by section 10(d)(1).

The containers were loaded by La Torre, so the respondents would have to rely on La Torre to identify the contents. The evidence indicates, however, that La Torre did not provide the proper paperwork prior to departure and La Torre admits that the containers left before La Torre provided the proper paperwork. Brief at 1. The evidence supports the conclusion that the commercial invoices, dated April 18, 2006, Supp., App. 6, were not provided to the respondents prior to departure. La Torre failed to follow the respondents' policy requiring a commercial invoice prior to shipment.

On April 25, 2006, the day prior to the shipment's departure, respondents' representative sent an email to Jaime La Torre asking "for the documentation for the last shipment of Amkotron, invoice, weight etc." App. 3. Although the request for the documentation refers to La Torre by the wrong name, in the context of the email thread, seen more clearly in the Spanish version, it is clear that the question is addressed to La Torre. In the email thread, just the day before, Jaime La Torre had provided the correct mailing address for La Torre's Enterprises. It is reasonable to conclude that the request for documents referred to this shipment.

When Jaime La Torre found out about the customs problem, she stated "enclosed please find the original email ordering such containers" but did not refer to any other information she had provided regarding the contents of the containers. App. 7. Indeed, La Torre did not provide a copy of the commercial invoices in this proceeding until they were specifically requested. The evidence shows that the invoices were not provided timely to the respondents. Respondents' emails indicate

that respondents' policy was not to rely on emails sent to specific employees. App. 7. This email policy makes sense in situations such as this where an employee may be unavailable or on leave.

On May 24, 2006, after problems with the shipment arose, a Skytruck representative reiterated to Jaime La Torre that "it is the entire responsibility of the exporter to provide the commercial invoice 48 hrs before vessel departure to be able to manifest in the [b]ill of lading without any problems" and that the bill of lading is based on the commercial invoice issued by the exporter. App. 7. Jaime La Torre responded that she had sent the commercial invoice and all necessary information to another person. App. 7. There is no claim that this was a new policy or that La Torre was unaware of this policy.

There is no evidence in the record that La Torre followed respondents' policy or that La Torre responded to the email requesting the necessary information sent the day prior to the shipment. This failure to provide an accurate list of the containers' contents is particularly surprising given problems with a prior shipment. Specifically, La Torre writes that "this is not the first time that this error is committed, before this, customs did not notice said mistake, unexplainable, but that's how it happened." App. 7. Although the error had occurred before, there is no indication that La Torre took steps to ensure that the correct items were declared on this shipment.

La Torre argues that the respondents should not have shipped the containers without the correct description. However, La Torre apparently did not object previously when the incorrect item description was used and Peruvian customs authorities did not notice. In addition, failure to ship timely could create additional problems and liabilities for all parties. The evidence establishes that the respondents had an appropriate policy, requiring providing a commercial invoice prior to departure, and that La Torre did not provide the necessary information despite a specific request to do so. Thus, the evidence does not support La Torre's claim that the respondents failed to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.

**b. The evidence does not establish that the bill of lading error caused the seizure by customs.**

An "exporter, such as La Torre, has the duty to provide a commercial invoice to a transportation provider with a correct description of the goods being transported so that such information can be included on the bill of lading." Opp., Decl. at 3. The evidence does not establish that the respondents had agreed to complete the customs paperwork. Rather, the evidence in the record shows that entry documents required by Peruvian customs are not generally prepared by carriers or NVOCCs. Opp., Decl. at 1. Moreover, Natural Freight is not an authorized customs broker in Peru. Opp., Decl. at 1. The evidence shows that "La Torre apparently failed to provide such a commercial invoice. If La Torre had done so, the bill of lading would have indicated what goods were being shipped, rather than identifying the goods as 'used monitors.'" Opp., Decl. at 3. There is no evidence that the respondents completed any of the customs paperwork or agreed to handle customs clearance.

La Torre alleges that the seizure of the containers was caused by the incorrect description on the bill of lading. Customs seized the containers because the shipment did not comply with customs requirements. Customs relied on more than just the bill of lading description in deciding to seize the containers. Moreover, this is not the appropriate forum to litigate Peruvian customs determinations.

There is no evidence that La Torre ever provided a description that would have been acceptable to Peruvian customs officials. In the initial April 11, 2006, email requesting the containers, La Torre describes the items as “lamps and accessories,” although the shipment contained a wide variety of items. Compare App. 2 with App. 11. Again, in a May 24, 2006, email, La Torre refers to the items as “lighting fixtures” and refers to the original email ordering such containers. App. 7. These very brief descriptions only describe a portion of the actual shipment.

Respondents’ representative, Cosmos, timely requested the bill of lading description be changed to: “Quads, electric mini scooters, motorcycle ramps, helmets, pressure washers, skates, generators, car accessories, lamps, lamp accessories, chimney protectors” for one shipment and “Lamps, picture frames, lamp shades, lamp accessories, cellular car chargers, cellular cases, hand free, chimney protectors” for the other shipment. App. 5. The request attached the bill of lading along with “flyer document copy” and packing list. The “flyer document copy” is the commercial invoice, according to the response to the request. The packing list is not in the record.

Cosmos’ request to correct the bill of lading description relies upon the commercial invoices. The commercial invoices provided descriptions that were only slightly more detailed than the “lamps and accessories” description. The description in commercial invoice pe-1026 is: “900 pieces of pressure washers, mini bikes 49cc, air compressors, helmets, mini electric ATVs, car accessories, electric generators, electric pedal mopeds, skateboard sets, rampa [*sic*] multifold, air tool sets, dirt bikes, dirt bike gears, lighting accessories.” Supp., Ex. 6. The description in commercial invoice pe-1027 is in Spanish; however, it is shorter than the description in pe-1026 and appears to list similar items including lamps and lamp accessories. Supp., Ex. 6.

Peruvian customs officials denied the request to correct the bill of lading description. The request denial says that “the commercial invoices . . . do not contain a detailed description of the merchandise, do not indicate quantities, characteristics, do not indicate measurements, new or used, serial numbers or codes, nor brands, models, number of units in each package” and that the difference in gross weight “has not been justified.” App. 11. Based on “the difference between the merchandise contained in the loads and the description declared in the loads manifest,” customs decided that the immobilized merchandise would be seized. The request to change the bill of lading description was denied.

Even if the bill of lading had described the containers as “lamps and accessories,” or even the expanded description requested by Cosmos, it is not clear that these descriptions would have met Peruvian customs requirements. The more expansive descriptions in the request for correction of the bill of lading and in the commercial invoice were denied as not being specific enough because

they did not “indicate quantities, characteristics, do not indicate measurements, new or used, serial numbers or codes, nor brands, models, number of units in each package.” App. 11. La Torre never provided information this detailed to any of the respondents. Moreover, there is no explanation in the record for the discrepancy in the weight reported. While the incorrect description on the bill of lading may have initially caught custom’s attention, the evidence does not demonstrate that the seizure was the result of the bill of lading description. Rather, the other customs paperwork, including the commercial invoice and packing list, were not sufficient to satisfy Peruvian customs requirements.

The evidence does not establish a violation of the Shipping Act. The evidence does not demonstrate that the respondents were responsible for preparing customs entry documents. Although La Torre claims that it was the misdescription on the bill of lading which caused the cargo to be seized, the documents from the Peruvian customs officials specifically mention discrepancies between La Torre’s commercial invoices and the actual contents of the containers. It appears that the commercial invoices and customs paperwork which were prepared by La Torre did not meet customs standards. Accordingly, even if respondent violated the Shipping Act, the violation did not cause the injury and the loss was not caused by the respondents’ actions.

**2. There is insufficient evidence to establish a violation of any other section of the Shipping Act, including section 10(a).**

The evidence does not establish a violation of any other section of the Shipping Act. Although La Torre did not allege a violation of section 10(a), now section 41102(a), considering that it is unrepresented, that possibility has been considered because the section specifically mentions false classification. This section states: “**(a) Obtaining transportation at less than applicable rates.**--A person may not knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, false measurement, or any other unjust or unfair device or means, obtain or attempt to obtain ocean transportation for property at less than the rates or charges that would otherwise apply.” 46 U.S.C. § 41102(a).

This section is not applicable to these facts. In this case, there is no evidence that respondents received any benefit from the incorrect description on the bill of lading. If anyone had benefitted, it would have been La Torre, the complainant. There is no evidence that the respondents knew the correct description of the cargo for which transportation was to be obtained or that respondents were primarily responsible for misdescribing the cargo so as to obtain transportation at less than the appropriate rates, as there was in other cases. *See, e.g., Shipman Int’l (Taiwan) Ltd.*, Docket. 97-06 (ALJ Feb. 23, 1998), Notice Not to Review (March 30, 1998); *Kin Bridge Express Inc. and Kin Bridge Express (U.S.A.) Inc.*, Docket 98-08 (ALJ June 24, 1999), Notice Not to Review (August 2, 1999). Accordingly, these facts do not support a claim for a violation of section 10(a) or any other section of the Shipping Act.

**ORDER**

For the reasons set forth above, it is hereby **ORDERED** that the claim herein be **DISMISSED WITH PREJUDICE** and that this proceeding be **DISCONTINUED**.

*Erin Masson Wirth*

Erin Masson Wirth  
Administrative Law Judge

## APPENDIX

This Appendix lists documents found in La Torre's initial claim, filed on January 13, 2009, which are cited in the Initial Decision. Dates refer to the date listed in either the English translation or the original Spanish version.

### **App. Description**

1. Bill of Lading No. LSA-1958, dated April 26, 2006.
2. Email from Jaime La Torre to Ana Maria Martinez, dated April 11, 2006.
3. Email exchange between Jaime La Torre and Alonso Bernal, dated April 26, 2006.
4. Email to Agility Logistics, regarding LSA-1958 claim, dated April 29, 2008.
5. Document to Commissioner of the Maritime Custom of Callo, dated May 14, 2006.
6. Letter from Hansa to Jaime La Torre, dated May 18, 2006.
7. Email exchange between Jaime La Torre and Ana Maria del Carpio, through May 24, 2006.
8. Email from Lorena Camino Bazan, Hansa to Jaime and Ana Maria, dated May 25, 2006.
9. Sunat document, Immobilization Act – Preventative Seizure, dated June 2, 2006.
10. Request to the Mayor of the Maritime Customs of Callao, dated June 22, 2006.
11. Resolution of the Jefatural Division, Sunat stamp on top, dated June 22, 2006.
12. Letter from Seals & Tenenbaum to La Torre Enterprises, dated November 22, 2006.
13. Maritime Customs Administration Notification, dated January 2, 2007.
14. Email from Reto Kaufmann to Jaime La Torre, dated February 14, 2007.
15. Email from Jaime La Torre to Agility Logistics, dated April 29, 2008.