S E R V E D
February 19, 2015
FEDERAL MARITIME COMMISSION

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DOCKET NO. 1949(F)

WALTER MUZORORI

v.

CANADA STATES AFRICA LINES INC. (CSAL)

INITIAL ORDER

On December 23, 2014, the Commission received Walter Muzorori's initial filing of an informal complaint under Subpart S. On January 29, 2015, respondent Canada States Africa Lines, Inc., filed an objection to proceeding under Subpart S. On February 2, 2015, a Notice of Assignment was issued converting this to a formal proceeding under Subpart T and appointing the Administrative Law Judge. 46 C.F.R. § 502.311.

The Commission's rules governing discovery are not applicable to proceedings under Subpart T; therefore, there is no formal discovery in this proceeding. While there is no formal discovery, the parties are urged to cooperate and voluntarily produce information requested by the other party. The parties shall submit a joint status report on or before March 19, 2015, summarizing their progress.

The Commission's Rules provide that the "administrative law judge may require the submission of additional affidavits, documents, or memoranda from complainant or respondent." 46 C.F.R. § 502.314. Accordingly, if a party is unable to obtain information from another party by voluntary means, on or before March 19, 2015, the party seeking the information may file a motion requesting that the Administrative Law Judge require submission of the information pursuant to Rule 314. The motion shall explain why the information is relevant to this proceeding, what attempts have been made to obtain the information voluntarily, and why the information cannot be obtained in some other manner.

A motion for additional information shall be served by email on the other parties. A party opposing the motion shall serve and file its response within ten business days of service of the motion. A motion or opposition should be filed with the Commission pursuant to Rule 320, 46 C.F.R. § 502.320. In addition, the filing party shall send the document electronically to the Commission at the following email addresses: secretary@fmc.gov and judges@fmc.gov. Neither the motion nor the opposition may exceed ten pages, excluding exhibits or appendices, without leave of the presiding officer.

To prevail in a proceeding brought to enforce the Shipping Act, a complainant has the burden of proving by a preponderance of the evidence that the respondent violated the Act. 5 U.S.C. § 556(d) ("Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof."); 46 C.F.R. § 502.155; *Exclusive Tug Franchises*, 29 S.R.R. 718, 718-19 (ALJ 2001). Pursuant to section 11(g) of the Shipping Act "the Federal Maritime Commission shall direct the payment of reparations to the complainant for actual injury caused by a violation of this part." 46 U.S.C. § 41305(b). Commission case law states that: "(a) damages must be the proximate result of 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." *Waterman v. Stockholms Rederiaktiebolag Svea*, 3 F.M.B. 248, 249 (1950); *see also James J. Flanagan Shipping Corp. v. Lake Charles Harbor & Terminal Dist.*, 30 S.R.R. 8, 13 (FMC 2003). If the complainant establishes a violation, he will need to also establish damages, which would generally not include costs that would otherwise have been incurred. In addition, settlement offers should not be communicated to the Office of Administrative Law Judges and will not be considered in awarding damages.

The Commission has permitted proceedings to continue even where there was an arbitration award, finding that the Federal Maritime Commission has jurisdiction to determine whether there are violations of the Shipping Act. *Anchor Shipping Co. v. Aliança Navegação E Logística Ltda.*, 30 S.R.R. 991, 999 (FMC 2006); *Cargo One Inc. v. COSCO Container Lines Co., Ltd.*, 28 S.R.R. 1635, 1645 (FMC 2000). The parties may want to review these decisions, which are available on the Federal Maritime Commission docket activity web page.

The parties shall discuss with each other whether settlement is possible. The joint status report due on March 19, 2015, should not go into details regarding settlement negotiations but should indicate whether or not settlement was discussed. In addition, the parties may raise any issues that need to be resolved prior to issuing a briefing schedule.

Erin M. Wirth

Erin M. Wirth
Administrative Law Judge