

FEDERAL MARITIME COMMISSION

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INFORMAL DOCKET NO. 1582 (I)

CHILEAN NITRATE SALES CORP.

v.

PORT OF SAN DIEGO,  
SAN DIEGO UNIFIED PORT DISTRICT

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ORDER OF REMAND

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The Commission determined to review the decision of Settlement Officer Donald F. Norris dismissing the complaint filed by Chilean Nitrate Sales Corp. against the Port of San Diego for lack of jurisdiction. Upon review, the Commission is remanding the matter to the Settlement Officer for further action.

BACKGROUND

Chilean Nitrate Sales Corp. ("Chilean" or "Complainant"), a U.S. importer, filed a complaint against the Port of San Diego, San Diego Unified Port District ("Port") alleging, inter alia, that the Port violated section 10(d)(1) of the 1984 Shipping Act ("1984 Act"), 46 U.S.C. app. § 1709, by its wrongful termination of the space rental agreement between the Port and Chilean, and that Chilean suffered damages as a result thereof.<sup>1</sup>

Although it was not disputed that the Port was a marine terminal operator, the Settlement Officer found that, in

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<sup>1</sup> Chilean alleged that it suffered monetary damages in the amount of \$6,006.70 for the removal and transfer of its cargoes to other facilities as a result of the termination of the space rental agreement by the Port.

renting space to Chilean to store its inbound cargo, the Port was not acting in the capacity of a marine terminal operator. Therefore, he dismissed the complaint for lack of jurisdiction.

#### DISCUSSION

At this stage, the case presents two primary issues, i.e., Chilean's standing to file the instant complaint and the Commission's jurisdiction over the Port's space rental practice.

##### A. Standing

The Port contends that its agreement was entered into with SSA (Chilean's stevedore) and not Chilean.<sup>2</sup> Because Chilean was not in privity of contract with the Port, the Port argues that Chilean did not have standing to file the complaint. The Settlement Officer determined that Chilean

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<sup>2</sup>In 1977, Crescent Wharf & Warehouse Co. ("CWW"), acting as Complainant's stevedore, entered into an agreement with the Port to rent space on a monthly basis to store cargoes (nitrate of soda in bulk imported from Chile) on behalf of Complainant. In 1983, CWW was sold to Stevedoring Services of America ("SSA") which assumed CWW's obligations to provide stevedoring services for Complainant at the Port. Two years later, the Port gave SSA a 30-day notice to vacate the space occupied by Chilean's cargo. The Port stated that it had entered into a five-year lease with Holt Cargo Systems of California to store general cargo, and the space occupied by Chilean was the only space large enough to accommodate the new lease. Chilean removed and transferred its cargo to another location for which expenses were incurred. Chilean then filed an informal complaint with the Commission to recover these expenses and alleged that the termination of the space rental agreement was violative of the 1984 Act. In its response, the Port contends that the termination of the agreement was in accordance with the Port's Tariff 1-F, Item 225, and was not violative of the 1984 Act.

had standing because the stevedore was only acting as "conduits" for Chilean.

Section 11(a) of the 1984 Act, 46 U.S.C. app. § 1710, provides that "any" person may file a complaint to allege a violation of the Act and may seek reparation for any injury caused as a result of that violation. A contractual relationship between the parties is not required to support a complaint under section 11(a) of the 1984 Act. For the purpose of standing, it is sufficient for complainant to allege injury and charge the respondent with its cause. See Cargill, Inc. v. Waterman Steamship Corp. 21 S.R.R. 287, 300 (1981).

Therefore, the Presiding Officer correctly resolved the standing issue, but that decision is more properly based on section 11(a) of the 1984 Act than on the parties' relationship to each other.

B. Jurisdiction

It not being disputed that the Commission has in personam jurisdiction over the Port as a marine terminal operator, the question then remaining is whether the Commission has subject matter jurisdiction over the Port's

space rental practice.<sup>3</sup> Section 10(d)(1) of the 1984 Act provides that:

No common carrier, ocean freight forwarder, or marine terminal operator may fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.

Under section 10(d)(1), the Commission can only assert jurisdiction if the practice in question is related to or connected with "receiving, handling, storing, or delivering property."

The Commission has held that subject matter jurisdiction under section 17 of the Shipping Act, 1916

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<sup>3</sup> The Settlement Officer found that the Commission lacked jurisdiction because the storage facilities at the Port were not furnished in connection with a common carrier for two reasons. First, he found that because Chilean engaged a stevedore to discharge the cargo from the vessels at the Port, those vessels acquired a non-common carrier status. Second, he held that because the space was rented and occupied by Chilean, that space was no longer available to the public and had, therefore, become "proprietary." Due to this "proprietary" status, the Settlement Officer found that the storage rental agreement was not carried out in connection with a common carrier.

Under the 1984 Act, the definition of a "common carrier" is not limited in scope to only those who undertake to discharge their cargo when they arrive at ports. A common carrier is defined as a person who utilizes vessels to transport cargo from a U.S. port to a foreign port, or vice versa. Section 3(6) of the 1984 Act, 46 U.S.C. app. § 1702. Therefore, the fact that a shipper engages a stevedore to discharge its cargo from the vessels should not affect the carrier's status as "common carrier." The carriers in the instant case were "common carriers" regardless of whether they undertook to discharge cargo at the Port or not.

Moreover, the fact that a rental storage space, by virtue of its being rented and occupied, has become unavailable for use by the public, appears to have no bearing on whether or not such facilities are furnished in connection with a common carrier in the first instance.

("1916 Act"), 46 U.S.C. § 816 (the predecessor of section 10(d)(1) of the 1984 Act), extends to activities that are ancillary or auxiliary to the physical services performed at the terminals, if such services affect terminal efficiencies or the facilitation of cargo through the terminals, and need not be confined to practices involving physical labor in moving cargo around terminals.<sup>4</sup> Specifically, and as relevant here, the Commission has determined that its jurisdiction extends to those terminal practices that are related to the storage of cargo at the terminal -- until such cargo is taken into custody by inland carriers.<sup>5</sup>

The terms "storage" or "storing" are not defined in the 1984 Act. However, the Commission's regulations at 46 C.F.R. 515.6(d)(5) (1986) defines the term "terminal storage" as "the service of providing warehouse or other terminal facilities for the storage of inbound . . . cargo . . . including . . . closed or covered storage . . . ."

In the instant case, the transit shed was rented from the Port to store Complainant's "inbound cargo" from Chile. The shed was located at a "covered storage area" at the terminal, and the charge was listed in the Port's tariff. It, therefore, appears that the Port's space rental practice is subject to section 10(d)(1) of the 1984 Act.

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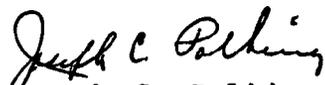
<sup>4</sup> Marine Terminal Practices of the Port of Seattle, 21 F.M.C. 401, 417 (1978).

<sup>5</sup> Id. at 433.

THEREFORE, IT IS ORDERED, That the Settlement Officer's decision to dismiss the complaint for lack of jurisdiction is vacated; and

IT IS FURTHER ORDERED, That this proceeding is remanded to the Settlement Officer for further action consistent with this Order.

By the Commission.

  
Joseph C. Polking  
Secretary