

Window on Washington: Demurring Under Demurrage

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On May 15, 2020, the U.S. Federal Maritime Commission published its final rule governing detention and demurrage for containerized cargo, after a seventeen-month fact-finding investigation led by Commissioner Rebecca Dye. Although the Commission at points in the rulemaking process downplayed the significance of the rule as just interpretive guidance to navigate existing obligations under 46 USC § 41102, the new rule should change the way shippers, carriers, and ports think about demurrage and detention fees going forward.

Container demurrage and detention charges have long rankled and divided the American shipping community. On the one side, shippers, intermediaries, and truckers have regularly complained the charges unfairly penalize them for failures to remove a container or return it timely. Some contend that shipping lines, facing freight rate pressures, rely upon the crutch of demurrage and detention fees to pad bottom lines in the same way air passengers perceive the proliferation of air carrier fees for things like bags, legroom, and refreshments. On the other side of the equation, port operators and ocean carriers have historically contended that the charges facilitate the efficient flow of cargo through ports and the timely return of equipment.

In 2016, aggrieved shippers, intermediaries, and truckers took action by petitioning the Commission for relief from demurrage and detention fees which do not abate consistently were caused by events outside the control of the paying parties, alleging them to be contrary to the Shipping Act's requirements for "just and reasonable rules and practices." The Commission named Commissioner Dye the Fact-Finding Officer charged with developing a record on five subjects related to demurrage and detention: (a) Comparative commercial conditions and practices in the United States vis-à-vis other maritime nations; (b) tender of cargo; (c) billing practices; (d) practices regarding delays caused by intervening events; and (e) dispute resolution practices. While the fact-finding investigation concluded that demurrage and detention are valuable charges insofar as they incentivize the prompt movement of cargo, it found that international supply chain actors could benefit from more transparent, consistent, and reasonable practices. Commissioner Dye recommended transparent and standard language for demurrage and detention practices, clearer and more accessible billing practices and dispute resolution processes, dispute resolution guidance, consistent notice to shippers regarding container availability, and a "Shipper Advisory Board."

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