

TROUTMAN SANDERS LLP

ATTORNEYS AT LAW
A LIMITED LIABILITY PARTNERSHIP

401 9TH STREET, N.W. - SUITE 1000
WASHINGTON, D.C. 20004-2134
www.troutmansanders.com
TELEPHONE: 202-274-2950

C. Jonathan Benner
jonathan.benner@troutmansanders.com



205464

May 23, 2002

VIA HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Room 704
Washington, D.C. 20423

ENTERED
Office of the Secretary
MAY 24 2002
Part of
Public Record

RE: *DHX, Inc. v. Matson Navigation, et al.*
STB Docket No. WCC-105

Dear Secretary Williams:

Enclosed please find the original and eleven copies of "*Defendant Sea-Land Service, Inc.'s Motion to Dismiss Two Counts of the Amended Complaint*" in the above-referenced matter. In accordance with the STB Final Rule in Ex Parte 576, Electronic Access to Case Filings, the original is not bound, but clipped; however, the ten copies enclosed for Board Member and staff review are stapled.

Please acknowledge receipt and filing of the enclosed material by stamping the eleventh copy of this letter, which is enclosed for that purpose, and returning it to the individual making this filing for return to me.

Yours very truly,

C. Jonathan Benner /slb
C. Jonathan Benner

Enclosures

cc: Parties of Record

ATLANTA • HONG KONG • LONDON • NORFOLK • RICHMOND
TYSONS CORNER • VIRGINIA BEACH • WASHINGTON, D.C.

**Before the
SURFACE TRANSPORTATION BOARD**

DHX, Inc.

Plaintiff,

v.

Matson Navigation Company, Inc. and
Sea-Land Service, Inc.,

Defendants.

Docket No. WCC-105



ENTERED
Office of the Secretary
MAY 24 2002
Part of
Public Record

**DEFENDANT SEA-LAND SERVICE, INC.'S MOTION TO
DISMISS TWO COUNTS OF THE AMENDED COMPLAINT**

Defendant Sea-Land Service, Inc., now known as SL Service, Inc. ("SL"), by and through its undersigned counsel, hereby files this Motion to Dismiss Count 2 of the Amended Complaint against SL and Plaintiff's Claim as to both defendants in Part III of the Amended Complaint. Further, SL seeks a stay of discovery in this proceeding pending the Board's decision on the merits of the instant Motion to Dismiss.

INTRODUCTORY STATEMENT

SL had hoped that the Board's December 9, 2001 Order and its March 28, 2002 Order would result in a significant clarification and sharpening of the issues to be litigated in this proceeding. Instead, what had been a narrowly focused dispute over the reasonableness of the "overflow rates" contained in SL's Hawaii tariff has now been turned into a proceeding that seeks to challenge many aspects of SL's tariffs, operations and commercial dealings not only in Hawaii, but in other noncontiguous domestic trades. SL introduces this Motion by summarizing

the pleadings and Orders issued to date and by so doing seeks to place the instant Motion in the appropriate context.

On October 1, 1999, DHX commenced this proceeding by filing a document entitled *Petition of DHX, Inc. to Declare Certain Rate Increases Unreasonable*. The petition alleged that two rate increases, one on September 6, 1998 and the second on October 17, 1999, of minimum revenue charges applicable on overflow containers ("overflow rates") were unreasonable. On October 13, 1999 that filing was superseded or supplement by a document entitled *Complaint of DHX, Inc.* The Complaint, like the Petition before it, focused almost entirely on the alleged unreasonableness of the increases taken on the overflow rates.¹

Matson and SL each filed an Answer to the Complaint, and subsequently, each water carrier filed a Motion to Dismiss. In its December 3, 1999 Reply memorandum in opposition to the Motions to Dismiss, DHX again focused virtually entirely on the issue of the reasonableness of the increases taken on the overflow rates.²

On December 19, 2001 the Board issued its Order denying the Motions to Dismiss. In so holding, the Board agreed with Matson and SL that there were substantial shortcomings in the Complaint. The Board advised DHX that it could not prevail unless it could "flesh out the specific rates for specific shipments that it asserts are unreasonable." The Board further noted that the "main focus of the Complaint is that Matson and SL increased the minimum charge for

¹ The complaint did assert that the rates in question represented "but one example of unreasonable" practices but did not set out with specificity those other alleged unreasonable practices except to the extent necessary to place "in further perspective" the unreasonableness of the overflow rates.

² DHX also complained that, by reason of various rule and definitional changes, it was forced to pay, for example, the actual machinery rate when it shipped machinery instead of using a rate for, say, copy paper. DHX also indicated that it felt unfairly excluded from what it called the "full containerload market".

an overflow container by 10% on September 6, 1998 and 7.5% on October 17, 1999.”³ The Board directed the parties to submit a joint procedural schedule for Board approval.

The parties were not able to agree upon a procedural schedule and, in response to the parties’ pleadings; the Board issued a procedural Order on March 28, 2002. In that Order the Board directed DHX to “submit an amended or supplemental complaint that properly identifies the grounds for action and the relief sought”. Further, the Board noted that “DHX has not demonstrated a need for the protracted discovery period it seeks” and limited the parties to a 30-day discovery period.

SL took the Board’s Order concerning the filing of an Amended Complaint and the 30-day discovery limitation to signify that the Board felt, as did SL, that the issues to be litigated, once properly framed by an amended complaint, would narrowly focus on the reasonableness of certain tariff rates, items, and rules contained in the defendant’s tariffs; specifically, the overflow rates described in the Complaint. SL concurred that 30 days was sufficient time to explore via discovery all pertinent issues relating to these rules and rates.

Contrary to the Board’s Order, however, starting in early March, 2002, DHX has filed a series of pleadings and discovery requests that attempt to expand, without further action by the Board, the scope of the issues in this case beyond a few tariff rules and transform this proceeding into what appears to be a review of the carriers’ entire tariff, operations and commercial activities throughout the noncontiguous domestic trades. Those pleadings and filings are as follows:

1. March 8, 2002. *Complainant’s First request for Admission and for Production of Documents*. This discovery request, served on Matson, seeks twenty-six (26) admissions.

³ The Board acknowledged the peripheral allegations raised by DHX and set out in Footnote 2.

It also seeks all documents dated or after October 1, 1997, in Matson's possession between Matson and SL and various SL subsidiaries and/or affiliates.

2. March 12, 2002. *Motion to Strike*. By this motion, DHX sought a ruling to strike as scandalous an observation by defendants that the plaintiff had implied that lengthy discovery would promote settlement of this litigation. The Board dismissed the Motion before SL replied to the allegations contained therein.
3. April 12, 2002. *Complainant's First Interrogatories and Second Request for Production of Documents*. This discovery request, also served upon Matson, contains ninety-seven (97) interrogatories and eight (8) document requests. The document requests alone, if not narrowed, call for the production of thousands of documents in Matson's possession dated on or after January 1, 1996.
4. April 13, 2002. *Complainant's First Interrogatories and First Request for Production of Documents to Defendant SL Service, Inc.* This discovery request contains eighty (80) interrogatories and ten (10) document requests. The interrogatories call for significant amounts of confidential commercial information pertaining to SL's shipper-customers, including forwarders that directly compete with DHX. Further, it seeks information and documents regarding SL's activities and client-base in the Alaska, Guam, and Puerto Rico trades, none of which are, we contend, relevant to this proceeding.
5. April 29, 2002. *Amended Complaint*. The Amended Complaint contains 16 separate counts against the defendants (most of which were not in the original complaint) and contains two hundred sixty six (266) numbered paragraphs.
6. May 10, 2002. *Notices of Oral Deposition and Production of Documents*. Plaintiff, by these notices, seeks to take the deposition of three (3) Matson executives.

7. May 17, 2002. *Motion for Protective Order*. By this Motion, DHX suggests that the defendant's discovery requests are broad and burdensome and seeks an extension of time to respond.⁴
8. May 21, 2002. *First Request for Admissions to Defendant CSX Lines*. These requests contain 25 requests for admissions.

SL has now filed an Answer to the Amended Complaint. By this Motion, SL seeks to narrow the scope of this litigation and the potentially vast and burdensome discovery requests placed upon defendants and plaintiff alike by narrowing the issues to be litigated. SL has limited its Motion to those two counts that on their face do not describe justiciable issues before the Board. Although SL is confident that plaintiff cannot prevail on the remaining counts, it will await resolution of those issues at trial.⁵

I. THE LEGAL STANDARD GOVERNING THIS MOTION

The complaint provisions of 49 U.S.C. § 14701(b) permit the Board to dismiss complaints that do "not state reasonable grounds for investigation and action." *See Trailer Bridge, Inc. v. Sea Star Lines, LLC*, STB Docket WCC 104 (STB Served December 7, 1999)(Citing *ZoneSkip Inc. V. UPS, Inc. and UPS of America, Inc.* 8 I.C.C.2d 645 (1992), *aff'd mem.* 998 F.2d 1007 (3d Cir. 1993). A motion to dismiss will be granted if there are no material issues of fact to be resolved in the proceeding. *Caribbean Shipper's Association, Inc. v. NPR, Inc.* STB Docket WCC 100 (STB Served March 25, 1997), *aff'd sub nom. Caribbean Shippers*

⁴ SL will file its response to that Motion shortly. It is worth noting here that plaintiff's counsel asserts in its May 17th Motion that the defendants failed to respond to his request for more time to respond to discovery. *See* Motion at 3, n.1. Counsel for SL had suggested to plaintiff's counsel that all discovery timeline issues be discussed immediately following the filing of defendants' answers on May 20. DHX's counsel apparently decided to move preemptively before such consultations could occur.

⁵ Even if SL's Motion to Dismiss is granted, the balance of the Plaintiff's Amended Complaint is left in the case, Plaintiff has, by substantially expanding the scope of this docket, mooted the previously ordered procedural schedule.

Assoc., Inc. v. NPR, Inc., 145 F.3d 1362 (D.C. 1998). Consequently, in considering a motion to dismiss, the STB construes factual allegations in a light most favorable to the complaint. *Sierra Pacific Power Co. v. Idaho Power Co. v. Union Pacific Railroad Co.*, STB Docket 42012 (STB served Jan. 26, 1998).

In considering a motion to dismiss a court must assess the legal feasibility of the complaint and not weigh the evidence. *Odom v. Columbia University*, 906 F. Supp. 188, 193 (S.D.N.Y. 1995). A Motion to Dismiss should not be granted “unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim[s] which would entitle him to relief.” *Cohen v. Koenig*, 25 F.3d 1168, 1172 (2nd Cir. 1994). Consequently, all factual allegations in the complaint, with certain exceptions, are accepted as true, and the complaint is viewed in the light most favorable to plaintiff. See e.g., *Jackson National Life Insurance Co. v. Merrill Lynch & Co.*, 32 F.3d 697, 699 (2nd Cir. 1994); *NL Industries, Inc. v. Kaplan*, 792 F.2d 896, 898 (9th Cir. 1986). A complaint may not be dismissed “unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S. Ct. 99, 2 L.Ed.2d 80 (1957).

As an exception to the standard set out above, a court need not accept conclusory allegations, unreasonable inferences, or unwarranted deductions of fact. *Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981) *cert. denied*, 454 U.S. 1031, 102 S. Ct. 567, 70 L.Ed.2d 474 (1981). A court may disregard allegations in the complaint if contradicted by facts established by exhibits attached to the complaint, *Dunning v. First Boston Corp.*, 815 F.2d 1265, 1267 (9th Cir. 1987), or accept as true allegations that contradict facts which may be judicially noted. *Mullis v. United States Bank Ct.*, 828 F.2d 1385, 1388 (9th Cir. 1987), *cert. denied*, 486 U.S. 1040, 108 S. Ct. 2031, 100 L.Ed.2d 616 (1988).

Generally, in deciding upon a motion to dismiss, a court is limited to considering the facts alleged in the complaint, documents attached to the complaint or incorporated in it by reference, matters of which the court may take judicial notice, and documents either in plaintiff's possession or which plaintiff relied on in bringing suit. *See, e.g., Brass v. American Film Technologies, Inc.*, 987 F.2d 142, 150 (2nd Cir. 1993); *Cortec Industries, Inc. v. Sun Holding L.P.*, 949 F. 2d 42, 48 (2nd Cir. 1991); *Jenkins v. Virgin Atlantic Airways, Ltd.*, 46 F. Supp. 2d 271 (S.D.N.Y. 1999); *Kraemer v. Elmira Auto Paint Supplies, Inc.*, 903 F. Supp. 315, 317 (N.D.N.Y. 1995).

As a general proposition, a court may take judicial notice of facts outside the pleadings without converting the motion into one for summary judgment only when the facts are properly the object of "strict" notice. *See Mack v. South Bay Beer Distributors, Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986). *See also Schwartz v. Commonwealth land Title Insurance Co.*, 374 F. Supp. 564 (E.D. Pa. 1974). Facts properly held the object of judicial notice in the context of a motion to dismiss under 12(b)(6) include, among others, records and reports of administrative bodies, *Interstate Natural Gas Co. v. Southern California Gas Co.*, 209 F.2d 380, 385 (9th Cir. 1953), items in the record of the case or matters of general public record, *Phillips v. Bureau of Prisons*, 591 F.2d 966, 969 (D.C. Cir. 1979), and copies of a document attached to the complaint as an exhibit. *Case v. State Farm Mutual Automobile Insurance Company*, 294 F.2d 76 (5th Cir. 1961).

The Board may take official notice of defendants' tariffs. Water carriers operating under the jurisdiction of the Board in the noncontiguous domestic trade are required to "publish and file with the Board tariffs containing the rates established for such transportation or service." 49 U.S.C. §13702(b)(1). Tariffs that are required by law to be filed with federal agencies are public records of which a court, or this Board, may take judicial notice. *See, e.g., Henson v.*

C.S.C. Credit Services, 29 F.3d 280, 284 (7th Cir. 1994) (Because a tariff is a public record, the Court can take judicial notice of it and consider it without converting the motion to one for summary judgment); *Marcus v. A T & T Corp.*, 938 F. Supp. 1158, 1164-65 (S.D.N.Y. 1996) (Because tariffs are public documents required to be filed with a federal agency, the court may take judicial notice.); *American Export Lines, Inc. v. J & J. Distributing Co.*, 452 F. Supp. 1160, 1164 (D.N.J. 1978). Further, a shipper, such as DHX, is on constructive notice of those provisions in a tariff which are required by law to be filed with the FMC or (now) the Board. *See C.N.A. de Seguros La Previsora v. M/V Seawolf et al.*, 1990 AMC 2755 (S.D.N.Y. 1989), *see also Moonwalk International Inc. v. S.S. Seatrain*, 1985 AMC 1270 (SDNY 1984) (The filing of a tariff gives constructive notice to those terms required by law to be filed).

II. THE ALLEGATIONS CONTAINED IN COUNT 2 OF THE DHX COMPLAINT ARE FACTUALLY DEFICIENT AND MUST BE DISMISSED

DHX asserts, in Count 2 of its Amended Complaint against SL, that SL's Tariff CSXL 468 is subject to and governed by the National Motor Freight Classification ("NMFC") STB NMFC-V and reissues thereof. Amended Complaint, Paragraph 207. DHX also asserts that Rule 882 of SL's tariff conflicts with certain items contained in STB 100-V. Amended Complaint, Paragraphs 208-209. DHX states that the NMFC sections at issue "take precedent" over the terms of Rule 882, the "Overflow Rule."

Plaintiff's conclusory allegations are factually incorrect on their face. The Count must be dismissed. The incorporation of the NMFC tariff is limited by the terms of the SL tariff to only those specific rates and rules that expressly reference the NMFC. Rule 882 does not mention the NMFC. Consequently, based upon the plain and unambiguous text of Rule 100, the NMFC is irrelevant and of no import to any interpretation of Rule 882. Because the conclusory allegation that forms the basis of Count 2 is demonstrably incorrect the Count must be dismissed.

DHX's allegation that SL's tariffs are "subject to and governed by" the NMCF is apparently rooted in Rule 100 of STB CSXL 468 (and STB SEAU 468 before that). The entire rule is set out as follows:

To the extent indicated in individual rules or rate items specified, this tariff is governed by the tariffs (including supplements thereto or reissues thereof) listed below:

1. ATA Hazardous Materials Tariff No. 111-L, ICC 111-L, Martin E. Foley, Issuing Officer.
2. National Motor Freight Classification NMF 100-V, ICC NMF 100-V, Martin E. Foley, Issuing Officer.
3. The Official Intermodal Equipment Register, ICC OIER 6039-D, Intermodal Publishing Company, Ltd., Agent.
4. Standard Transportation Commodity Code Tariff ICC STCC 6001-N.

STB CSXL 468. See Attachment 1 (Emphasis added).

As is apparent from a review of the plain text of this rule, the National Motor Freight Classification ("NMFC") tariff is a governing tariff only to "the extent indicated in individual rule or rate items". The NMFC is not, by the clear and unambiguous terms of STB CSXL 100, applicable to the entire tariff. The NMFC is applicable to those specific rules or rates in which the NMFC is specifically mentioned as having some governing influence.

The NMFC is not incorporated by reference into the text of the Overflow Rule. (See STB CSXL 468, Rule 882 set out as Attachment 2). The NMFC is not mentioned anywhere in the text of Rule 882. Consequently, the NMFC has absolutely no relevance to the interpretation or the meaning of Rule 882. This is clear from the plain text of Rule 100 and from the plain text of Rule 882. In other words, the factual predicate upon which DHX rests its Count Two are incorrect and can be demonstrated to be incorrect from documents that are matters of public record.

Further, the Plaintiff has relied extensively on carriers' tariffs in framing its 16 count complaint. The tariff, including the rules mentioned above, is required by law to be available for public inspection. 49 U.S.C. § 13702(b)(1). Pursuant to that statute, the tariff sections referred to above and annexed as Exhibits to the Amended Complaint, are all publicly available at www.csxlines.com. Based upon a review of the Amended Complaint it is clear that Complaisant either had the tariff in its possession or relied on in bringing suit. *See, e.g. Brass v. American Film Technologies, Inc.*, 987 F.2d 142, 150 (2nd Cir. 1993). In either case, the Board may review the tariff without converting this into a motion for summary judgment.

For the reasons set out above the allegations contained in Count 2 are the type of conclusory allegations that the Board need not accept in ruling on SL's Motion. For purposes of this Motion it appears to a certainty that the plaintiff cannot establish any set of facts which would entitle them to the relief sought and dismissal of the count is in order. *See Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S. Ct. 99, 2 L.Ed.2d 80 (1957). Count 2 of the Amended Complaint should be dismissed.

III. THE ALLEGATIONS OF PART III OF THE AMENDED COMPLAINT ARE, IF ANYTHING, PURE ANTITRUST ALLEGATIONS AND, THEREFORE, MUST BE DISMISSED FROM THIS PROCEEDING

Part III of the Amended Complaint, pp. 42-45, contains DHX's sole claim against both defendants, Matson and SL, jointly. This claim contains 18 numbered paragraphs, 250-266 (#251 is used twice). The 249 paragraphs of DHX's Amended Complaint that precede the conspiracy claim in Part III of the Amended Complaint allege a variety of claims regarding every possible aspect of the rates and practices employed by SL and Matson in the Hawaii trade. Following this barrage of allegations, DHX sets out paragraphs 250 - 266 of its Amended Complaint containing allegations of conspiracy and collective activity. At paragraph 251, DHX

alleges that the defendants have engaged in rate and price “matching” and at paragraph 255, DHX alleges that the defendants “communicate prices.” These allegations, in conjunction with the other allegations of Part III, demonstrate that the sole basis for Part III of the Amended Complaint is some sort of conspiracy claim not cognizable under the governing statutes administered by the Board.

The extent to which DHX’s collusion claim can describe activity under ICCTA is highly doubtful. DHX’s approach appears to be to throw up numerous allegations and then wait to see if any of them can be wedged into an “unreasonable practices” rubric. In fact, the allegations even if proven, appear to describe activity best examined in another forum. The fact that DHX does not allege or cite to other federal law should not bar the dismissal of this count from this proceeding. *Cf. Universal Communications Corp. v. Burns*, 449 F.2d 691, 693 (5th Cir. 1971) (In a decision affirming the dismissal of a state court action because it was really a federal question, the court stated that “[i]t is no answer that plaintiff did not mention federal labor legislation in his complaint”). The Board has recognized the doctrine of artful pleading and has ruled that an artfully pled filing cannot evade jurisdictional constraints. *See Delaware and Hudson Railway Co. -- Lease and Trackage Rights Exemption -- Springfield Terminal Ry. Co.*, 8 I.C.C. 2d 839 (1992). Therefore, DHX’s failure to cite other federal laws such as the antitrust laws in its artfully pled conspiracy count should not prohibit the Board from dismissing the count.

This proceeding is not a case where the Board has granted antitrust immunity under the Board’s pervasive authority to regulate interstate commerce. *See* 49 U.S.C. § 10706 (Authority to immunize approved rate agreements from antitrust laws); 49 U.S.C. § 11321 (Authority to exempt a railroad from antitrust laws in combination transactions). Rather, this is a matter where

DHX is alleging collective acts that are not subject to the Board's authority. *See Canadian National Ry. Co. et al. --Control --Illinois Central Corp. et al.*, STB Finance Docket No. 33556, Decision No. 37 (STB served May 25, 1999).

The allegations contained in Part III of the Amended Complaint are, in essence, claims of conspiracy and price fixing. These claims should be dismissed from this proceeding as they should be decided by a court if Plaintiff wishes to pursue them. The defendant carriers contest these allegations, but even as alleged, we suggest that they do not describe a violation of statutes within the Board's supervisory authority. This will not prevent the Board from reviewing the other 249 allegations against SL and Matson individually (except as set out in Part II of this motion to dismiss) but instead will help to focus the Amended Complaint on matters more appropriately before the Board. Part III of the Amended Complaint should be dismissed.

CONCLUSION

For the foregoing reasons, the Board should grant SL's Motion to Dismiss. In addition, the Board should order that all discovery be held in abeyance until the Board rules on this Motion. *See Meridian Southern Railway - Acquisition and Operation - Line of Kansas City Southern Railway Co.*, STB finance Docket No. 33854 (STB served May 15, 2000). Given the extraordinary breadth of discovery submitted by DHX to both carriers, any progress toward eliminated points of contention, such as those addressed above, may expedite and promote economy in the conduct of this proceeding. This request is also consistent with the request by DHX in its May 17th Motion because the suspension of the discovery procedural schedule would permit the plaintiff time to work on its responses to the defendants' discovery requests while all other discovery aspects were held in abeyance. SL respectfully suggests that, whether or not its

Motion is granted, the Board should revise the procedural schedule in view of Plaintiff's Motion for a Protective Order and the expanded scope of the Amended Complaint.

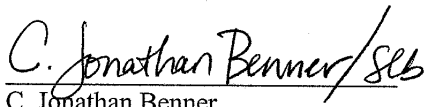
PRAYER FOR RELIEF

WHEREFORE, SL respectfully requests that:

- A. Count 2 of the Amended Complaint against SL be dismissed;
- B. Part III of the Amended Complaint be dismissed;
- C. The Board issue a stay of discovery pending resolution of this Motion to Dismiss;
- D. The Board issue a revised procedural schedule; and
- E. The Board grant such additional relief as it may deem appropriate.

Respectfully submitted,

Robert S. Zuckerman
SEA-LAND SERVICE, INC.
Suite 350 West
2101 Rexford Road
Charlotte, NC 28211


C. Jonathan Benner
Leonard L. Fleisig
Sandra L. Brown
TROUTMAN SANDERS LLP
401 Ninth Street, NW
Suite 1000
Washington, D.C. 20004
(202) 274-2880

Counsel for Sea-Land Service, Inc.

Dated: May 23, 2002

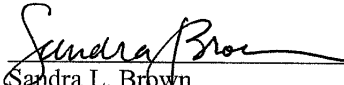
CERTIFICATE OF SERVICE

I hereby certify that on May 23, 2002 a copy of the foregoing Defendant Sea-Land Service, Inc.'s Motion to Dismiss Two Counts of the Amended Complaint was served by facsimile and overnight delivery upon:

Rick A. Rude
Attorney At Law
207 Park Avenue
Suite 103
Falls Church, Virginia 22046

and by hand delivery upon:

Richard A. Allen
Scott M. Zimmerman
ZUCKERT, SCOUTT & RASENBERGER, LLP
888 Seventeenth Street, NW
Suite 600
Washington, D.C. 20006


Sandra L. Brown

TARIFF RULES LISTING
CSX LINES - TARIFF # 468

Page: 1
Date: 07MAR2002

TARIFF CSX LINES, LLC - STB CSXL-468 (BETWEEN US, PR, CN, & HI)

RULE# CYC# APP TITLE

100- GOVERNING PUBLICATIONS

Filed on: 18FEB2002 Effective: 18FEB2002 Thru: Expire:

RULE TEXT

To the extent indicated in individual rules or rate items specified, this tariff is governed by the tariffs (including supplements thereto or reissues thereof) listed below:

1. ATA Hazardous Materials Tariff No. 111-L, ICC 111-L, Martin E. Foley, Issuing Officer.
2. National Motor Freight Classification NMF 100-V, ICC NMF 100-V, Martin E. Foley, Issuing Officer.
3. The Official Intermodal Equipment Register, ICC OIER 6039-D, Intermodal Publishing Company, Ltd., Agent.
4. Standard Transportation Commodity Code Tariff ICC STCC 6001-N.

***** End of Report *****

TARIFF RULES LI STING
CSX LINES - TARIFF # 468

Page: 1
Date: 07MA Y2002

TARIFF CSX LINES, LLC - STB CSXL-468 (BETWEEN US, PR, CN, & HI)

RULE# CYC# APP TITLE

882- 15 O SHIPMENTS EXCEEDING THE CAPACITY OF ONE CONTAINER (OVERFLOW)
Filed on: 18APR2002 Effective: 21APR2002 Thru: Expire:

RULE TEXT

In order for provisions of this Rule to apply, all containers in a shipment must be tendered to and loaded to the same vessel/voyage and all cargo must be rated on either a Weight or Measure basis or, if in a mixed shipment, under the provisions of either Paragraph A or C of Rule 645.

Applies only when Shipper loads non-refrigerated cargo:

- A. When a single shipment exceeds the capacity of one container the following provisions will apply:
(Applies only on dry cargo.)
1. Each container, except the last, must be loaded as fully as the character of the freight and other conditions permit, so that no more of the same shipment can be loaded safely therein.
 2. Each container, except the last, will be rated as if it is a separate shipment.
 3. The charges on the excess or "overflow" cargo in the last container will be assessed at the applicable rate for each article; subject, however, to a minimum charge for shipments to Hawaii for the last container of
\$1702 Per 20' container,
\$2378 per 40' standard container,
\$2825 per 40' high cube container and
\$3319 per 45' container.
Shipments from Hawaii are not subject to these minimum charges for the overflow container.
- B. Shipper must specify on bill of lading which container is to be considered the lead container and which is to be considered the overflow.
- C. Not applicable on shipments moving in bulk tanks, flatbed containers, or open-top containers. Twenty (20) ft closed containers may NOT be utilized as lead containers. Not applicable on straight loads of commodities rated on a PC basis, or on mixed shipments rated under Paragraph B of Rule 645 (Mixed Shipments).

Applies only when Shipper tenders loads of refrigerated

TARIFF RULES LI STING
CSX LINES - TARIFF # 468

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RULE TEXT

cargo:

- A. Except as provided in subparagraph B, when a refrigerated shipment is loaded by Shipper, each container in the shipment will be rated as if it were a separate shipment.
- B. Except as otherwise provided in individual rate Items, for each vessel/voyage, Shipper may include one overflow container for chilled cargo and one overflow container for frozen cargo. The charges on the cargo in such overflow container will be assessed at the applicable containerload rate for each article, subject to a minimum charge of \$2414 per container. When an overflow container is rated under an Item which has multiple rates based on different minimum weights, the containerload rate applicable to the overflow container shall be determined as if the overflow container were a separate shipment. For purposes of interpreting this Rule, (1) the term "chilled" shall mean a shipment on which the thermostat setting is 29 or more degrees Fahrenheit, and (2) the term "frozen" shall mean a shipment on which the thermostat setting is less than 29 degrees Fahrenheit.
- C. Shipper must specify on the bill of lading which container is to be considered the lead container and which is to be considered the overflow.
- D. Not applicable on shipments moving in refrigerated containers with Modified or Controlled Atmosphere or Dual-Temps. Not applicable on straight loads of commodities rated on a PC basis or on Mixed Shipments rated under Paragraph B of Rule 645.

ASSESSORIAL CHARGE CALCULATION

SET (1 OF 4)
WHEN: CONTAINER-SIZE EQ 20
AND: BASIC-OCEAN- FREIGHT EQ 1702.00 USD
THEN: BASIC-OCEAN- FREIGHT= 1702.00USD

SET (2 OF 4)
WHEN: CONTAINER-SIZE EQ 40
AND: BASIC-OCEAN- FREIGHT EQ 2378.00 USD
THEN: BASIC-OCEAN- FREIGHT= 2378.00USD

SET (3 OF 4)
WHEN: CONTAINER-SIZE EQ 40B
AND: BASIC-OCEAN- FREIGHT EQ 2825.00 USD
THEN: BASIC-OCEAN- FREIGHT= 2825.00USD

SET (4 OF 4)

TARIFF RULES LI STING
CSX LINES - TARIFF # 468

Page: 3
Date: 07MA Y2002

ASSESORIAL CHARGE CALCULATION

WHEN: CONTAINER-SIZE EQ 45B
AND: BASIC-OCEAN- FREIGHT EQ 3319.00 USD
THEN: BASIC-OCEAN- FREIGHT= 3319.00USD

***** End of Re port *****