

ORIGINAL

U.S. DEPARTMENT OF TRANSPORTATION
SURFACE TRANSPORTATION BOARD

209268

DHX, INC.,

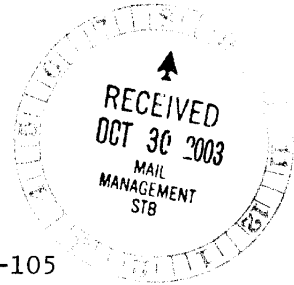
Complainant,

v.

STB Docket No. WCC-105

MATSON NAVIGATION COMPANY
And SL SERVICE, INC.,
f/k/a SEA-LAND SERVICE, INC.,

Defendants.



ENTERED
Office of Proceedings

OCT 30 2003

Part of
Public Record

VERIFIED STATEMENT OF MR. RALPH T. MEROLLA

My name is Ralph T. Merolla and I am Executive Vice President of DHX, Inc. My offices are located in Hayward, California and my duties include the overall responsibilities for sales for DHX in the United States - Hawaii/Guam trades. I am also responsible for the overall operations of DHX facilities in Hayward and our Northwest facilities located in Portland, Oregon and Seattle, Washington. I have been an employee of DHX, Inc. since 1980 and I am familiar with the operations and activities of DHX, the services that DHX provides, and the rates and pricing made available to the shipping public through DHX sales and marketing personnel.

I have been involved in the domestic and international transportation industry for over 20 years and am familiar with the services and operations of both the ocean common carriers and the freight forwarder industry. The responsibility for the Hayward and Northwest operations includes the supervision of DHX's terminal facilities and I have been involved in the management of those facilities since 1980.

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DHX, Inc. conducts business as a domestic freight forwarder, consolidator and international Ocean Transportation Intermediary, ("OTI"). As an OTI, DHX is licensed and bonded by the Federal Maritime Commission. DHX has an extensive international network of operations and facilities located throughout the Pacific Rim and Australia. DHX conducts business in the United States and between the continental United States and points in Hawaii, Guam, Alaska and Puerto Rico under a Freight Forwarder Permit issued to DHX by the Interstate Commerce Commission in 1983.

DHX, Inc. has always been an innovator in the transportation market place and has become an industry leader and the services that DHX offers are the standards by which other transportation companies are measured. DHX, unlike other forwarders and consolidators, operates its own trucks and delivery fleet both in the continental United States and in Hawaii and Guam. The terminal facilities maintained by DHX and utilized in the provision of our various services, including receiving, sorting, segregating, in transit storage, general warehousing, aggregating, consolidating and dispatching are state of the art, modern and highly efficient. DHX is not only "on-line" with the most modern computerized systems, access and tracing, but offers many "added value" services not generally available from average forwarder or consolidator operations. These services, highly trained personnel, and facilities have made DHX a "One Stop Shop" source for all air, ground and ocean transportation services.

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The nature of DHX's facilities, personnel, and expertise has lead DHX to become the agent, warehouseman, and consolidation terminal for several large retail chains that have extensive business operations and retail stores located in Hawaii and Guam. While this situation might be grounds for "self-congratulations" in the usual sense of a competitive market place, in the present situation it presents a profound paradox and a clear picture of the reasons associated with the decision by DHX management to bring these matters to this Board. The situation presents itself that the ocean carriers, who are both vendors to and competitors of DHX, have undertaken to implement a rate and pricing structure that has had a crippling effect as certain aspects of freight forwarders' business. The involved rate structure, which has been implemented through the unreasonable and unfair manipulation of the market by means of the ocean carriers' rate tariffs, has seriously damaged the forwarders' ability to compete for full containerload (also known as 'straight load') shipments in the United States Hawaii trade. The rate structure has been changed to create a tiered pricing which provides that proprietary shippers obtain more favorable rates and that freight forwarders are excluded from the rates necessary to compete for full container load cargoes. Further the rate structures to which freight forwarders have been isolated are too high in their entirety and thereby preclude freight forwarders from even making a rate quotation much less actually handling the freight shipments.

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The "paradox" is that while DHX has become the industry leader in less than containerload transportation and distribution, these price and rate structures PRECLUDE AND EXCLUDE DHX from obtaining or utilizing the very rates that are offered by the carriers to DHX's consolidation accounts. In fact, the arrangements which the carriers establish include that DHX be specifically excluded from utilization of those rate and service price structures. A secondary effect is to hamper DHX's ability to solicit those accounts that have both full containerload and less than containerload business. Even though DHX is a "One Stop Shop", in Hawaii/Guam, DHX can not successfully offer and provide the full range of rates and services that such companies require for their combined LTL and FCL transportation needs. The tariff rate structures that the carriers have established, when combined with the practice of off-tariff contracts or arrangements, are and have been very destructive to the market place and competitive environment for ocean transportation services in the United States Hawaii trade. I am familiar with the matters raised by DHX and in furtherance of DHX's claims, I can state as follows --

1. Sea-Land Service entered the Hawaii/Guam trades in approximately 1987 by purchasing the assets of United States Lines, Inc. Since that time, Sea-Land Service, which became CSX Lines in January of 2000, has continued to use a specific method of sales commonly called "cherry picking". What this practice is, is that it involves offering to cer-

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tain identifiable customers/shippers better rates than what are generally available in the given market. The term also refers to the fact that these certain shippers have "premium" cargoes that are high paying to the steamship lines. Sea-Land did not, and has not, engaged in wholesale rate cutting to obtain either customers or market share. The result, is that over a period of time, Sea-Land builds a customer basis of highly profitable cargoes. The "bonus" is that once a carrier can reach a threshold level of such types of cargoes, it becomes easier to "cherry pick" because of the significant levels of profitability that then exist. This marketing and sales practice however, is only successful so long as there is a more dominant carrier(s) in the given market. The larger carrier, in this case, Matson, can not react to the loss of a specific customer without overall reduction of a much larger customer rate base.

2. The business and cargoes of freight forwarders and consolidators were immediately sought by Sea-Land but they were not as successful as they would have liked due to service limitations. However, between 1987 and 1992, Sea-Land did establish a solid customer base in the trade.

3. DHX, during this same period of time, was actively developing its full containerload business. The DHX business was growing as an overall element and by 1994 had become a significant part of DHX's business and profitability.

6.

4. Mr. Dechter, President of DHX, delegated to me the primary responsibility for the negotiation of ocean freight rates with the carriers due, in part, to my many years of experience, knowledge and understanding of the ocean transportation industry.

5. During the period 1992 to 1994, Matson was incurring a loss of freight forwarder business to Sea-Land, including the business of DHX. The matter was actually a question of the split of the business, percentage-wise, between Matson and Sea-Land Service.

6. As a result, Matson published a mixed shipment rule that was intended to provide freight forwarders with reduced rates on certain commodities without a wholesale rate reduction.

7. The carriers in the Hawaii trade would publish rates that were applicable on 'multiple containers' but the carriers always declined to publish volume pricing such as Time Volume Rate Agreements ("TVAs"). The freight forwarders, including DHX, were told that the tariff rates were sufficient and that the carriers, specifically Matson, were not going to engage in volume pricing.

8. The tariffs of the carriers, as they existed in the mid- 1990s through 1998 involved a complex inter-relationship of tariff items to obtain a multiple container rate. These tariff items were mixed shipment rule, overflow container rule, definition of shipment rule, and various Note Kits in specific rate items.

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9. The carriers encouraged freight forwarders to use these rules rather than the carriers simply publishing volume rates. This practice continued even after the carriers were authorized to have service contracts under the ICC Termination Act of 1995.

10. The carriers also established tariffs that appeared to be specifically intended for proprietary shippers. While Sea-Land created these rates within Tariff SEAU 468, Matson established a distinctly separate tariff, Tariff 2034. The rates in Tariff 2034 were attractive and were generally lower than Matson's port to port rates in Matson Tariff 14-F.

11. As one of my functions, I was in regular contact with Matson pricing personnel in order to attempt to obtain rates. This included attempting to obtain access to specific rates in Tariff 2034. Tariff 2034 did have some "open" general rates, but the price levels could not support a competitive rate quotation. They were simply too high.

12. The need to obtain access to a competitive rate is a problem for a forwarder all by itself. Such matters normally come up in the context of sale's calls or rate quotation where there is a need to quickly respond to the customer. If DHX is foreclosed from a competitive ocean rate, DHX by the very reason of the delay in making a response, can lose the customer transaction. It is also clear that the customer will be less likely to call DHX seeking a rate quotation in the future.

13. Matson has maintained Tariff 2034-E as containing many, many restricted rates to which DHX has had to submit requests for access or participation. Sometimes Matson will afford DHX access to the involved rate, more often than not however, DHX can not gain access to the sought rate. The rate is usually a condition precedent to handling shipments for customers. The ability to foreclose a competitive ocean rate, which Matson and Sea-Land/CSX Lines routinely afford to non-forwarders, ham strings forwarders, including DHX, on a competitive basis. It is not as if DHX were requesting a "special" or seriously reduced rate, these are rate items that are used every day by proprietary shippers but denied to forwarders.

14. I have had many conversations with representatives of the carriers regarding access to volume pricing. The answer is the same -- "no". As recently as January 28, 2002 I and Mr. Gary Clemens met with Mr. Daniel Downes of CSX Lines in Seattle. We discussed the fact that Matson initiates and Sea-Land follows yearly increases imposed on the forwarders. He also acknowledged that large shippers, such as Costco and Wal-Mart as example, had 2-3 year contracts which exempted them from the annual general rate increases. When the issue of volume contracts was raised, Mr. Downes explained to me that CSX Lines was not interested in going in that direction due to being afraid that the same thing would happen in Hawaii that happened in the Puerto Rico trade lane.

15. In July 1998, Matson published changes to its Tariff 14-F and Tariff 2016-D which impacted the Rules that were used by DHX and the other forwarders to handle full containerload cargoes. Sea-Land quickly followed in August 1998.

16. The tariff changes were phased in between September 6, 1998 and the end of November 1998. The impact on freight forwarders, including DHX, was substantial and immediate. The container shipping costs went up both as to the per hundred weight rates (used by commodities forwarders such as DHX) and the charges, such as minimum overflow cargo/container charges. Additionally, DHX was no longer able to "mix" full containers and the definition of shipment was reduced.

17. From the period September 1998 through October 1999 the fundamental ocean transportation costs for forwarder cargoes went up. It is noted that the carriers have also taken general rate increase each spring since February 1999 through April 2002.

18. A direct result of this was that DHX lost customers, business and had to raise its rates to its own LCL customers.

19. DHX did however, retain the business of one of its major accounts--Ross Stores. DHX provides an LCL service as well as a peddler delivery service in Hawaii which neither carrier could provide. Hence, DHX moves containers from a Ross warehouse facility in Oakland under DHX's bills of lading. It is noted however, that the rates that the carriers now choose to impose upon Ross are almost equal to the Freight All Kinds rates that the carriers want the commodities freight forwarders to use.

VERIFICATION

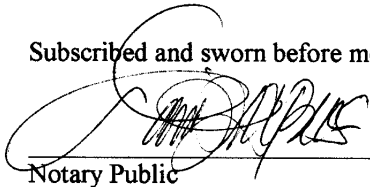
State of California
County of Los Angeles

SS

Ralph Merolla being duly sworn deposes and says that he has read the foregoing statement, knows the facts asserted there are true and that the same are true as stated.

Signed Raffaele T. Mevalla aka. Ralph T. Merella

Subscribed and sworn before me this 22nd day of October 2003.



Notary Public

My Commission Expires _____

