

Recent Texas Decision Brings Hope to Warehouseman In The Face Of Demurrage Charges

A decision by the United States District Court for the Northern District of Texas may mean good news for carriers and warehouses faced with unjustified demurrage charges.

In an unpublished opinion dated October 27, 2005, the court held that Defendant Carry Transit, a transloader and food grade bulk carrier, was not liable for demurrage charges imposed by the Union Pacific Railroad. Union Pacific had contracted with various shippers (Carry Transit's customers) to move freight to Carry Transit's receiving yard in Arlington, Texas where it was then either transported to its final destination or temporarily held for storage. Once the Union Pacific cars arrived at the receiving yard, Carry Transit unloaded the freight and returned the empty cars to Union Pacific. Union Pacific claimed that Carry Transit failed to return Union Pacific's rail cars within the specified "free time" established by Union Pacific's published tariff. Because Carry Transit's customers had unilaterally named them as consignee in the bills of lading provided to Union Pacific, the railroad claimed that Carry Transit was liable for cumulative demurrage charges totaling \$778,200.00.

The court relied heavily on the fact that Carry Transit was not a party to the transportation contracts between its customers and Union Pacific, negating Union Pacific's argument that Carry Transit was a consignee for the goods and therefore responsible for the demurrage charges. Specifically, the court held that the shippers' unilateral decision to name Carry Transit as a consignee in the bill of lading did not automatically render Carry Transit a consignee liable for demurrage charges. Rather, the

court suggested that the shippers who contracted with Union Pacific and named Carry Transit as the consignee in the bills of lading should be liable for the additional fees. Additionally, the court undermined Union Pacific's argument that Carry Transit was liable for the demurrage charges because Union Pacific was not put on notice that Carry Transit was not the proper consignee. On the contrary, the court stated that while Union Pacific may have recourse against the shipper, a cause of action did not arise from the shippers' error in naming Carry Transit as consignee.

Although this unpublished opinion lacks precedential value and may not be cited as authority, it should be noted that the court cites to several favorable cases with respect to the issue of demurrage charges. For instance, the court relies on various cases that have also held that a party who is not a consignee or a party to a transportation contract cannot be held responsible for demurrage charges.¹ Additionally, the court refers to *Southern Pacific Transportation Co. v. Matson Navigation Co.*, a California case holding that a carrier-consignee who is merely named in the railroad bill of lading "without either more involvement on its part, or some culpability for the delay" cannot be held liable for demurrage charges.²

Despite the positive case law cited above, it is important for a warehouse logistics facility to exercise care in ensuring that they are not named as a consignee in a bill of lading provided to a transportation company. Rather, a warehouse should ensure that the railroad is made aware that they are a designated warehouse agent, providing services on behalf of the shipper. This may be done by requiring the customer/shipper to sign an

¹ See *Illinois Cent. R.R. Co. v. S. Tec Dev. Warehouse, Inc.*, 337 F.3d 813, 820 (7th Cir. 2003); *Union Pac. R.R. Co. v. Ametek, Inc.*, 104 F.3d 558, 563 (3d Cir. 1997); *CSX Transp., Inc. v. City of Pensacola, Fla.*, 936 F.Supp. 880, 883 (N.D. Fla. 1995); *Middle Atl. Conference v. United States*, 353 F.Supp. 1109, 1117-19 (D.D.C. 1972).

² *Southern Pacific Transportation Co. v. Matson Navigation Co.*, 383 F.Supp. 154 (N.D. Cal. 1974)

agreement stating that the warehouse is merely a designated agent and not a shipper/consignee or party to the transportation contract. A warehouse may also send a form letter to the railroad stating that the warehouse does not hold title to the goods, is not a party to the transportation contract and therefore should not be named as the consignee for the shipment of the goods.

Finally, it is also recommended that warehouses implement strict procedures for reviewing bills of lading for inbound and outbound shipments. Warehouse employees should ensure that all bills of landing for outbound shipments identify the consignor/shipper as the customer and that the warehouse, if identified at all, is merely acting as an agent of the consignor. Alternatively, a warehouse should have their employees sign the Section 7 “Non-Recourse” provision contained in a box on the front all standard uniform bills of lading. Signing this provision has the effect of putting the outbound carrier on notice that you are not responsible for freight charges and all freight charges for outbound shipments must be billed to the consignee. In order to avoid freight charges for inbound shipments, warehousemen should ensure that their customer is identified as the consignee on the bill of lading or make a notation confirming that the warehouse is an agent for the customer/shipper and is not responsible for any freight charges. Preventative measures such as these will help avoid disputes regarding liability for demurrage charges and the costly and time consuming litigation that will inevitably follow.

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