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Demurrage and Detention Charges in Container Shipping

During the past two years, the Covid-19 lockdown measures have brought considerable port congestion and shipping delays around the world. There are now signs that congestion in some ports in China and in the USA is easing, but it will take some time before the situation will go back to the pre-pandemic level.

When a carrier or shipping line's containers are not delivered back within the allowed free days, the user will have to pay a demurrage and detention charge. Demurrage charges relate to the time a container is inside a terminal. Detention is a charge for the prolonged use of the container until it is returned empty to the shipping line. However quite often the containers' users are not responsible for the congestion and delays at port.

Shipping lines have been accused of abusing their position by charging unjust and unreasonable demurrage and detention charges.

The Director General of the British International Freight Association (BIFA) stated that BIFA members have been requested to pay detention and demurrage fees also in circumstances where they were not responsible and had no control over the congestion and delays of the service.

Recently Orange Avenue Express, Inc. (OAE), a motor carrier based in California, filed a complaint with the Federal Maritime Commission (FMC) alleging that Hapag Lloyd violated the Shipping Act regarding the return of empty containers. Hapag Lloyd reached a settlement agreement with the Federal Maritime Commission to pay the US Government a USD 2 million civil penalty.

The Commission's Bureau of Enforcement (BOE) in the USA found that Hapag-Lloyd should have had a reasonable basis to impose detention for failure to return an empty container after the expiration of free time. The focus should be on whether there were sufficient appointments available for a container to be returned prior to imposing a detention fee. In the circumstances, Hapag-Lloyd was unreasonable not to waive detention when appointments were not available for equipment return during the allocated free time.

The Commission has been raising concerns about demurrage and detention for many years and provided specific requirements regarding charging detention for the return of empty containers. Despite the Commission's efforts, Hapag-Lloyd had failed to change its behaviour or practice.

The International Federation of Freight Forwarders Association (FIATA) proposed best practices to resolve the situation. Merchants should not be subjected to unjust and unreasonable charges. FIATA suggest limiting the demurrage and detention charges to a maximum amount. Extend the free time period in case the terminal is unable to release/receive a container by the period that is equal to the duration of the inability. FIATA also encourage more data sharing in the maritime supply chain which would lead to greater transparency of information related to these charges. It remains to be seen what will happen next, will governments get more involved or is the whole issue too difficult to be resolved?

If you have any questions or concerns regarding demurrage or detention charges, please contact our specialist [Shipping & Logistics lawyers](#) on 023 8082 7416 or by emailing online.enquiries@la-law.com