

Statement of Judith Holyfield  
Staff Paralegal Specialist, STB Office of Proceedings

DHX, Inc. v. Matson Navigation Company and Sea-Land Service, Inc.  
STB Docket No. WCC-105

Good morning Chairman Nober, Vice Chairman Mulvey, and Commissioner Buttrey.

The draft decision before you would deny an amended complaint that DHX, Inc., a freight forwarder, filed challenging the reasonableness of certain rates and practices of Matson Navigation Company and Sea-Land Service, Inc. (now known as Horizon Lines). Matson and Horizon are two water carriers in the noncontiguous domestic trade between the United States mainland and Hawaii.

The record shows that defendants' main traffic source is larger shippers that generally tender full containerload traffic. DHX apparently developed a large customer base and a high volume business by soliciting a variety of traffic, including full containerload shipments. It then mixed and matched loads and used various rate provisions to produce total charges lower than those that large "beneficial" shippers could obtain for themselves. When defendants realized they were losing the traffic of their large shippers to competitors such as DHX, they began taking actions designed to induce these shippers to begin dealing directly with them again.

DHX argues that all of the actions that defendants have taken to recapture the traffic of large shippers constitute destructive, unreasonable practices in violation of 49 U.S.C. 13701(a). DHX also contends that defendants' practices are unlawful because they contravene various provisions of the Transportation Policy set out at 49 U.S.C. 13101(a). In addition, DHX argues that defendants' tariffs contain technical violations of the filing requirements of 49 U.S.C. 13702 and 49 CFR 1312.

The draft decision finds that the challenged practices reflect business decisions intended to increase defendants' respective market shares of the noncontiguous domestic trade and do not constitute unlawful actions. Moreover, the record shows that, where it makes business sense to do so, defendants do in fact give DHX favorable treatment, and that DHX is itself the beneficiary of many of the tariff provisions that it claims are unreasonable. The draft also finds that DHX's complaints amount to nothing more than allegations of discrimination; but, as noted in an earlier Board decision in this case, a claim of discrimination is not a proper basis for finding that a rate or practice is unreasonable because the ICC Termination Act repealed the provision that prohibited unreasonable discrimination by water carriers.

Finally, the draft finds that defendants have met the minimum requirements for tariffs in terms of both content and clarity.

We would be happy to address any questions you might have.