



🔒 Shippers push back against congestion surcharges

NIT League questions the right of carriers to immediately implement congestion surcharges.

Chris Dupin and Eric Kulisch | Tuesday, November 18, 2014

With many ocean carriers announcing \$1,000 per FEU congestion surcharges for shipments moving through West Coast ports and planning to implement \$1,000 per FEU rate increases in the transpacific in mid-December, shippers are pushing back.

Elton Poisler, international logistics manager for Dupont, said it was troubling the congestion surcharges are being imposed at short notice.

“You are paying for your container to sit. Your container is on the water; it gets to the port; it doesn’t come off the vessel, and you are paying more for that,” noted Poisler. “And when it comes off the vessel, how are the carriers prioritizing the freight?”

Poisler was one of many shippers attending the annual meeting of National Industrial Transportation League, the nation’s largest shipper group, in Fort Lauderdale, Fla., this week.

Bruce Carlton, the president of the NIT League, said his members believe ocean carriers are misinterpreting Federal Maritime Commission regulations.

“It’s our belief that the requirement is to give notice to the customer before the customer tenders the freight,” he said. “Notice was only given a few days before the surcharges took effect, meaning the cargo left Asia two weeks ago and was already on the water. That doesn’t seem right.”

He said the NIT League has asked the FMC to investigate the situation and intercede, questioning the validity of anticipatory notices filed by liner companies last spring to protect themselves in case labor talks on a dockworkers contract led to a port shutdown.

“Going back and looking at those tariffs, they are a bit ambiguous. It’s hard to figure out what’s the triggering event,” Carlton said.

Jonathan Gold, vice president of supply chain and customs policy at the National Retail Federation, said many shippers have language in their contracts protecting them against additional surcharges, but whether those provisions apply in this instance depends on how they are worded.

“I’ll just tell my members to start charging charge-backs for failure to deliver. It’s the same kind of

situation,” Gold said.

David Smith, a member of the law firm Cozen O’Connor, which represents the TSA and individual shipping lines, said the majority of TSA members have announced congestion surcharges, but not all of them. He said there may be differences in the surcharges from carrier to carrier. He added that some carriers are basing when they will impose the surcharge on when cargo is received at origin, and others on the date they say it will be applied.

The FMC has questioned the ability of carriers to impose surcharges on cargo already on the water, but Smith said on Monday, “Ultimately, it depends on the terms of their filings and the circumstances of their tariff or service contract filings.

“From what I have seen, in many cases, it would be justified to apply it to cargo that is arriving today or afterward,” he continued.

While many carriers announced they would implement the surcharge starting on Monday, Smith noted that many have had the surcharges in rules tariffs they filed with the FMC months ago so that shippers were aware that they might be subject to the charges before they tendered their cargo.