

Salted Beef: Who presides over ocean shipping disputes, when, and why

by *Steven W. Block* April 2005

Reprinted with permission from
Marine Digest and Transportation News

The world of waterborne carriage is so technically, operationally and legally specialized that it long ago developed its own jurisdictional program of dispute resolution. Beginning in the English cradle of our legal system, and continuing through much of the last century, there actually were separate federal courts devoted to nothing but refereeing maritime mêlées. These tribunals, known as Courts of the Admiralty, boasted industry-knowledgeable judges and specialized procedural rules tailor-made for maritime law. They eventually were merged into the general federal court system, which hears the lion's share of ocean shipping lawsuits.

With the advent of transportation regulation, federal agencies were created to monitor each mode primarily with regard to their complex economic issues. In the maritime world, the U.S. Federal Maritime Commission (FMC) was created and tasked with overseeing international ocean shipping, largely in the context of our industry's antitrust immunity and, until deregulation was implemented in May 1999, virtually exclusive tariff-based common carriage system.

If you had a claim based on damaged freight, personal injury, collision, oil spill, salvage or other matter subject to federal admiralty jurisdiction, you went to court. The court typically would be federal, although plaintiffs usually may take their adversaries to state-court mats if they so chose. If you thought a steamship line was charging you more freight than its FMC-filed tariff specified, or had violated some other provision of the various federal shipping acts to your detriment, then off to Washington, DC you went to plead a case to an FMC administrative law judge (ALJ), whose verdicts were subject to review by the FMC's panel of commissioners.

This system isn't unique to ocean transport. Many regulated industries have such parallel jurisdictional systems designed to ensure that certain federal regs and policy are enforced uniformly by experts sporting the right knowledge and know how. Courts get to decide most disputes, but they must defer to government agencies in matters under the latter's Congressionally bestowed dominion. This concept spawned the primary jurisdiction doctrine, which basically says that a court must bounce to an agency's ALJ any claim whose subject matter falls under that agency's province.

But sometimes the issue isn't entirely clear. Take, for example, a recent spat between American Warehousing of New York (AWNY) and the Port Authority of New York and New Jersey (the Port Authority). Both AWNY and the Port Authority are federally licensed marine terminal operators (MTOs) regulated by the FMC. FMC regs prohibit MTOs from discriminatory practices in leasing. The Port Authority felt that AWNY, which specializes in warehousing cocoa inbound from foreign originations, was making

improper use of a pier's northern half, and filed a garden-variety eviction proceeding in a New York State court. AWNY concurrently knocked on the FMC's door, seeking a ruling that the Port Authority had violated the Shipping Act of 1984 by discriminatorily excluding AWNY from half of the pier. AWNY urged that its predecessor tenant got to use the pier's northern half, which it believed the lease encompassed, and that AWNY should be afforded equal treatment.

AWNY sought to freeze the court action pending the FMC's resolution of all MTO issues in AWNY's FMC petition. The Port Authority took umbrage at that notion; believing the feds' specialized expertise wasn't needed to resolve a primarily landlord-tenant issue. Besides, courts (and not the FMC) have jurisdiction over maritime contracts, which the Port Authority believed its AWNY lease was. There was no reason to send this chocolate mess to a federal agency whose expertise wasn't needed. It should stay in court.

In a well-reasoned opinion that shows just how ambiguous shipping issues can be when it comes to jurisdiction, the court pretty much agreed with the Port Authority on all points. A court is every bit as qualified (and probably more so) to decide lease issues as would be an ALJ who is impressively versed in esoteric ocean shipping policy and regs. The Empire State has far more interest in this kind of issue's outcome than Uncle Sam, which points to a New York court as the proper tribunal. Shipping statutes and FMC regs are thorough (sometimes painfully so), and nowhere do they say that an already strapped federal agency should be burdened with deciding eviction proceedings. And even if the FMC has primary jurisdiction over MTO leases as a general matter, it doesn't follow that the feds must decide every nit-picking detail pertaining to them.

But at the end of the day, the court reluctantly sided with AWNY, and stayed the Port Authority's lawsuit until the FMC issues a decision. All told, the FMC had accepted jurisdiction over AWNY's discriminatory practices claim. It conceivably could issue rulings which might be at odds with decisions of the court. You never want two separate tribunals hearing the same (or even overlapping) issues. Thus, the FMC will rule first, and the court will attend to any remaining points deferentially.

This case reveals a pitfall in our dual jurisdictional system. Here, both parties made good arguments as to why the tribunal of their choosing was appropriate. But we can see how a party can make a federal case out of virtually any argument simply by broadening it to include allegations of federal shipping statute violations. Fearing inconsistent rulings, courts often feel obliged to bow out to agencies who have little alternative but to accept jurisdiction (barring blatantly frivolous assertions). A solution, in some instances at least, would be broader agency discretion to decline jurisdiction over matters whose issues only tangentially touch on matters of agency expertise.

Ref: Port Authority of New York and New Jersey v. American Warehousing of New York, 2005 WL 433390 (Civil Court, City of New York, Kings County 2005)