

**GETTING PAID FOR WAITING – ISSUES REGARDING
DETENTION CHARGES IN TODAY’S TRUCKING INDUSTRY**

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Getting paid for detention is neither a recent or unique problem in the trucking industry. Although modeled after demurrage, detention has developed a character of its own in order to meet the specific needs in the motor carrier industry. The basic purpose of detention is not to raise revenue, but rather to discourage undue delay of motor carrier equipment by shippers and consignees.

The focus on detention was spiked by the new hours of service regulations put in place by the Federal Motor Carrier Safety Administration. While these regulations are currently being revisited in light of the U.S. Court of Appeals for the District of Columbia's recent decision, they remain in place at present.¹

The focus of this paper is to highlight some of the ways carriers through their applicable rules circulars or contracts should address detention issues in order to get paid.

Brief History of Detention

In 1973, the Interstate Commerce Commission instituted a rulemaking proceeding to develop uniform detention rules for motor common carriers of property. After years of developing an extensive record, uniform detention rules were adopted.²

In March 1981, the ICC issued a notice informing the public that it proposed to abolish the uniform detention rules to allow common carriers to establish their own non-discriminatory rules through tariff publication.³ After much comment, the ICC issued an Order eliminating the uniform rules and allowing all carriers to issue their own non-discriminatory detention rules in their respective tariffs.⁴

Twenty-two years have passed and the motor carriers are still tinkering with ways to reach workable and reasonable business solutions with customers regarding accessorial charges including detention.

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¹*Public Citizen et al. v. Federal Motor Carrier Safety Administration*, 374 F.3d 1209 (D.C. Cir. 2004).

²See *Detention of Motor Vehicles – Nationwide*; Ex Parte No.-MC-88 124 M.C.C. 680 (1976); 126 M.C.C. 803 (1977).

³See 46 F.R. 17234, March 18, 1981.

⁴See 132 M.C.C. 906 (1982).

How Can Carriers Protect Themselves To Get Paid?

The hours of service regulations sparked large and small carriers alike to deal with the detention issue(s). If not previously addressed in an applicable rules circular or existing contract, many carriers began contacting their customers to secure agreements regarding detention with power and without power.

The problem of detention consists of two distinct issues – detention of loaded trailers at their destination (destination detention), and detention of empty trailers at the origin of the shipments (origin detention). Different conditions surrounding the two types of detention require different treatment.

Destination detention generally occurs due to factors attributable to the consignee. Assuming that a carrier hauling a loaded trailer arrives at a reasonable time or a prearranged time, in theory there should be no reason to delay unloading the trailer. Reasonable or prompt arrival is not always the case, however. In addition, a consignee may have inadequate unloading facilities, otherwise adequate facilities may be overburdened with unusual peak time arrivals, or in some cases they simply may be inefficient and thereby incapable of expeditiously unloading trailers.

These factors and others combine to create detention of loaded trailers. The common thread is that destination detention is primarily caused by difficulties encountered in the physical unloading of the property and if these physical barriers were removed, then in theory no detention would occur.

It is well established in railroad law – from which motor carrier is derived – that a consignee becomes liable for demurrage, the rail equivalent of detention, when a rail car is spotted a consignee's location for unloading. Both the uniform bill of lading and the standard truckload bill of lading used by motor carriers provide that the consignee will pay all lawful charges accruing on shipments. This language tracks the federal statute establishing that the consignee is liable for additional rates and charges due after delivery unless it gives written notice before delivery that it is not the beneficial owner of the goods.⁵

One of the most prevalent issues facing motor carriers today in terms of collecting detention charges is when the consignee is responsible for the delay on a prepaid shipment. A motor carrier can bill a consignee for detention on prepaid shipments based on the carrier's rules or operating circulars incorporated into the bill of lading by reference. A carrier's rules tariff can be trumped and negated if a carrier has signed a contract that expressly supercedes the tariff, waives detention charges or otherwise precludes collection of detention from the consignee. While it is possible for a consignee to be liable for detention on prepaid shipments through properly drafted rules circulars and contracting practices, it is not enough in the truckload marketplace. Consignors of collect shipments and consignees on prepaid shipments traditionally have not been held responsible for detention. It is prudent to notify the contracting shipper's customer or vendor in advance that the carrier intends to hold it responsible for detention. Most consignors and consignees insist on appointments for pickups and deliveries. Sending

⁵See 49 U.S.C. 13706.

appointment confirmations via fax or email that explain the carrier's expectations regarding live loading or unloading, including references to free time, detention and the liability of the party incurring the charges is prudent.

Conversely, detention charges for loading present a significantly different set of circumstances. The element of certainty which characterizes unloading is replaced by uncertainty of the time in which a shipment is loaded and subsequently moved. Carriers deal with issues of spotting of trailers for loading, computation of free time, free time of vehicles with power, and prearranged scheduling.

Whether it is a rules circular or a contract, the application of free time, detention for vehicles with power units and detention with vehicles without power units at destination and origin should be addressed. To follow are some examples of wording for contracts and/or tariffs that can be implemented.

Free Time⁶

Carrier shall allow [INSERT] of free time both for loading and unloading for vehicles with power units and drivers.

Carrier shall allow [INSERT] of free time both for loading and unloading of spotted trailers. Such time shall commence from the time the trailer is spotted or from the time the trailer was requested to be spotted, whichever is later, but Saturdays, Sundays or holidays shall not be included in the calculation of free time.

Detention – Vehicles with Power Units

With respect to detention with power units, the following language should be considered in a tariff or contract:

- (A) This item and/or section applies on shipments when the carrier's vehicles with driver and power units are delayed or detained beyond the free time provided for herein at time of delivery to the consignee or at time of pick-up at the consignor's place of business when such delay is not the fault of carrier.
- (B) Charges for detention will be charged to the consignee in the case of unloading and to the shipper in the case of loading.
- (C) When computing time, the beginning time shall be the time the driver notifies the shipper or consignee of driver's arrival and that the trailer is available for loading or unloading, as the case

⁶Most carriers compute time by use and verification of a Qualcomm report, satellite communication or onboard tracking device.

may be, but in no case shall time commence prior to the time of any appointment or the actual time of loading or unloading, whichever is first.

(D) When computing detention charges, all non-working time shall be excluded. Non-working time includes lunch breaks, coffee breaks and rest breaks.

(E) If, at the end of the business day, unloading has not been completed and cannot be completed that day, the shipper or consignee shall be given the following options:

(1) Carrier may return to carrier's terminal with what freight has not been unloaded, but carrier shall return the following day with the balance of the freight at the commencement of shipper's or consignee's work day; or,

(2) Carrier will spot trailer at shipper or consignee location and return the following day, and further, trailer will be subject to charges for detention without power pursuant to Item and/or Section ___ beginning immediately upon spotting of the trailer; and,

(3) In either case, any unused free time from the first day will continue into the second day, charges to commence when all free time has expired.

(F) If a vehicle is both unloaded and reloaded, each transaction will be considered separately and free time shall apply to each separately.

(G) When delay occurs beyond free time, the charge for detention shall be **\$[INSERT]** per hour or fraction thereof.

(H) Carrier shall give shipper or consignee the opportunity of signing the detention records and the shipper or consignee is to make any corrections to these records at the time. If shipper or consignee refuses to sign these records, carrier's records will govern.

Detention – Vehicles Without Power Units

With respect to detention regarding vehicles without power units, the following language can be used:

- (A) This item or section applies when carrier spots a trailer at the facilities of the shipper or consignee for the loading or unloading of shipments upon the request of shipper, but neither this item and/or section nor detention under any other term or condition shall apply if the carrier spots the trailer for carrier's convenience with or without the authorization of shipper or consignee.
- (B) Time shall commence with the spotting of the trailer and shall end when carrier is notified by the shipper or consignee that the trailer is available for removal from the premises of the shipper or consignee.
- (C) If a trailer is both unloaded and reloaded, an additional two (2) hours free time shall be allowed.
- (D) After expiration of free time as provided herein, charges for delaying the trailer beyond free time shall be **[\$INSERT]** per 24 hour period or fraction thereof, plus a repositioning cost of **[\$INSERT]**.

Conclusion

More so than ever, the old adage "time is money" has no truer meaning in the trucking industry. Making sure that motor carriers adequately protect themselves through contract or by rules circular so that accessorial charges such as detention can be collected in the event of delay is pivotal.