



रेल दावा अधिकरण
गुवाहाटी न्यायपीठ

RAILWAY CLAIMS TRIBUNAL

GUWAHATI BENCH

STATION ROAD
GUWAHATI-781001

Mrs. Leena Sarma, Member (Technical)

Mr. Mahatab Ahmad, Member (Judicial)

Date of Judgment: 20.05.2024

Sl. No	O.A. No.	Applicant	Respondent	Applicant's Counsel	Respondent's Counsel	Date of filing in O.A
1.	OAIH-48/2019 OAIH/GHY/10/2019 (ONLINE)	M/s United Commercial Co.	N.F. Railway	K P Maheshwari	AK Sarma	19.02.2019
2.	OAIH-58/2019 OAIH/GHY/19/2019 (ONLINE)	M/s Jiwan Trading Co.	N.F. Railway	K P Maheshwari	AK Sarma	04.04.2019
3.	OAIH-13/2022 OAIH/GHY/13/2022 (ONLINE)	M/s Rahul Trading Co.	N.F. Railway	K P Maheshwari	AK Sarma	16.02.2022
4.	OAIH-11/2022 OAIH/GHY/11/2022 (ONLINE)	M/s Rahul Trading Co.	N.F. Railway	K P Maheshwari	AK Sarma	16.02.2022
5.	OAIH-50/2019 OAIH/GHY/12/2019 (ONLINE)	M/s United Commercial Co.	N.F. Railway	K P Maheshwari	AK Sarma	19.02.2019
6.	OAIH-30/2021 OAIH/GHY/30/2021 (ONLINE)	M/s Century Mercantile Pvt Ltd.	N.F. Railway	K P Maheshwari	PS Deka	03.08.2021

Mrs. Leena Sarma, Member (Technical)

COMMON JUDGEMENT

Since in all these seven claim applications, more or less similar issues are involved, therefore these applications were heard together and are being decided by Common Judgment.

Details of Invoice no., railway receipt no., date of booking, consignment booked and claim of the applicant against each OA, are as follows:-

SI. NO.	O.A. No.	Invoice no./RR no., date of booking & consignment	Claim for refund of overcharges on account of
1.	OAI-48/2019 OAI/GHY/10/2019 (ONLINE)	43/212019233 to 84/212019274 dated 13.10.2017 Ex. GRMT to SCA, Sugar Booked in trainload.	(a) Demurrage Charge.
2.	OAI-58/2019 OAI/GHY/19/2019 (ONLINE)	02/212000587 dated 14.01.2018 Ex. AAR to NBQ, I/Salt Booked in trainload.	(a) Demurrage Charge.
3.	OAI-13/2022 OAI/GHY/13/2022 (ONLINE)	04/212010890 to 09/212010895 dated 29.05.2021 Ex. GANDHIDHAM to NEW BONGAIGAON 42 Wagon Salt Booked in trainload.	(a) Demurrage Charge.
4.	OAI-11/2022 OAI/GHY/11/2022 (ONLINE)	i) 06/212015407 dated 29.05.2021 Ex. CHIRAI to NEW BONGAIGAON ii) 07/212015408 dated 29.05.2021 Ex. CHIRAI to NEW BONGAIGAON, 25 Wagon Salt Booked in trainload.	(a) Demurrage Charge.
5.	OAI-50/2019 OAI/GHY/12/2019 (ONLINE)	01 to 42 RR 212019107 to 212019148 dated 05.10.2017 Ex. GRMT to SCA Sugar Booked under trainload.	(a) Demurrage Charge.
6.	OAI-30/2021 OAI/GHY/30/2021 (ONLINE)	06/212002017 dated 23.07.2020 Ex. TSG to CSG 21 Wagon Sugar Condition in trainload.	(a) Demurrage Charge.

These cases are clubbed together for hearing and passing a common judgment in the light of Rule 24 of RCT (Procedure) Rules, 1989 since they have one issue in common: refund of Demurrage Charge.

1. OA III-48/2019

- i) The Claim pertains to a sugar rake booked from GRMT to SCA on 13.10.2017.
- ii) Penal Demurrage charge of Rs.138915/- was collected at Salchapra
- iii) 30% of the accrued Demurrage Rs.41675/- was waived by the Railways and rest not waived.

- iv) Applicant has got no objection to pay Demurrage as such. He is prepared to pay the normal Demurrage of Rs.42000/-.
- v) His objection to the payment of penal demurrage is that it was imposed after not giving wide publicity. However, this point was not raised while applying for waiver. It was a new point raised in the application stage. Moreover, it is also found from the documents submitted by the respondent that the same applicant had paid Penal DC for a rake released on 01/11/2017. Therefore, it is not a fact that the applicant was not aware about the imposition.
- vi) Therefore, refund of DC/Penal DC is dismissed.
- vii) Whether the waived amount Rs.41675/-has been refunded or not is not known. If refund of the waived amount is not done, Rs.41675/- has to be refunded with 9% rate of interest from the date of submission of refund request to the date of this order.

2. OA III-58/2019

- i) The Claim pertains to an I/Salt rake booked from AAR to NBQ on 14.01.2018.
- ii) DC accrued was Rs.100800/-.
- iii) Rake was placed on 26.01.2018 and released on 27.01.2018.
- iv) From the Railways letter No.C/104/RNY/DC/NBQ/484/17-18 Dated 26.06.2018 it is understood that the waiver application made by the applicant with the Railways was time-barred. Therefore, the prayer was not considered.
- v) One waiver application Dated 09.02.2018 has been found in the case file. This is time barred. But it is not known whether the Railway's letter was making reference to this letter or another one in view of the fact that the Railways letter had mentioned the date as Nil. WS filed by the Railways had mentioned that the waiver application was made on 13.02.2018.

- vi) Another application Dated 08/08/2018 was made as an appeal by the applicant to the GM & DRM. No reference was made to the issue of time barred and no appeal was made for delay condonation. The appeal was probably ignored. No reference has been found in the WS filed by the Railways.
- vii) Looking at the overall scenario, it is established that at no stage the applicant tried to address the issue of delay though the first application was rejected/dismissed precisely on this issue.
- viii) Considering all these, the application for refund of Demurrage of Rs.100800/-has been dismissed.

3. OA III-13/2022

- i) The Claim pertains to a salt rake booked from Gandhidham to New Bongaigaon on 29.05.2021.
- ii) Total DC accrued is Rs.1,57,500/-.
- iii) Railway had waived 40% of the DC amount vide Railways letter dated 11/14-06-2021 and unwaived amount of Rs.94500/- has been paid by the applicant.
- iv) The applicant had referred to COVID related concessions being given to the customers on Demurrage and asked for calculation on the basis of those concessions. Rate charged per hour was Rs.150/-. However, in the Claim Application filed by the applicant, it is claimed that this should have been Rs.75/- but no circular to support this rate has been submitted.
- v) It is found that an appeal against 40% waiver was submitted to the competent authority of the Division, all aspects were examined and 40% waiver was confirmed.
- vi) Therefore, it is seen that the waiver decision was taken after proper deliberation as is obvious from the file records submitted in the court and this court is not in a position to reverse or modify

it since there has been no evidence to suggest that it was a bad or unjust executive decision taken in haste.

vii) The refund claim is dismissed.

4. OA III-11/2022

- i) The Claim pertains to a salt rake booked from Chirai to New Bongaigaon on 29.05.2021.
- ii) The Demurrage accrued to the consignment was Rs.97500/-.
- iii) 20% Demurrage waived by the Railway authority.
- iv) The applicant had mentioned about concessions during COVID time on Demurrage. However, the relaxations were over by 31.05.2020 as is evident from the circular issued on 15.05.2020. Any other relaxation as mentioned was for terminals working on EOL system and not applicable in the instant case. There was no COVID related relaxation/concession regarding Demurrage during the period of booking and unloading.
- v) From records it is felt that the waiver order and the order on the appeal were taken after due consideration of all the material facts placed before the authority and therefore, this court is not in a position to intervene.
- vi) Considering all the facts, the claim for refund is dismissed.

5. OA III-50/2019

- i) The Claim pertains to a sugar rake booked on 05.10.2017 from GRMT to SCA.
- ii) Penal Demurrage accrued was Rs.119070/-.
- iii) Railway waived 10% of this Demurrage as intimated by the Railways letter dated 11.12.2017.

- iv) It is not known from the extant records whether any appeal against this 10% waiver was submitted or not.
- v) In the Claim Application and the written arguments submitted by the applicant, it is made clear that they do not have any objection in paying their normal Demurrage. Their grievance is against levy of penal demurrage since it was imposed without 'wide publicity'.
- vi) However, this is a new point introduced at the application stage.
This issue was never raised while requesting for waiver. In other words, Railways was not given any opportunity to defend itself at the appropriate time and it was raised after one and a half year. The DC accrued on 01.11.2017 and the issue of Penal Demurrage and giving Wide Publicity was raised on 19.02.2019. When they do not have any objection to the payment of normal demurrage, they had indirectly accepted that accrual of Demurrage was their fault.
- v) Considering all factors, it is decided to dismiss their claim for refund of demurrage.
- vi) However, if the 10% already waived is not refunded, that may be refunded with 9% rate of interest to the date of filing a letter seeking refund to the date of this order.

6. OA III-30/2021

- i) The Claim pertains to a mini sugar rake booked from TSG to CGS on 23.07.2020.
- ii) Total Demurrage accrued was Rs.76073/-.
- iii) The rake placed for unloading on 25.07.2020 at 14 Hrs (Saturday) and released on 26.07.2020 at 17.50 Hrs (Sunday).

- iv) The period was in the midst of COVID lockdown when no movement of individuals was allowed during Saturdays and Sundays as per Govt of Assam notification Dated 18.07.2020.
- v) There was an application for waiver filed by the party with the CGS/Changsari on 26.07.2020 which was duly acknowledged by the Commercial Supervisor/Goods. No action seemed to have taken on this application by the Railways.
- vi) There was another application Dated 17.08.2020 to GM/NFR, CCM/NF/NFR and DRM/Rangiya/NF Railway asking for full waiver. There has been no response to the applicant as is evident from the documents filed.
- vii) There has been no proper Notice under Section 106 of the Railways Act/1989. But this issue has not been raised by the Railways either in the WS or at a later stage. In the absence of such a plea from the Railways, it is presumed that they must have taken the waiver seeking letter Dated 17.08.2020 as the Notice.
- viii) From all the documents, it is obvious that the situation of that period was not conducive for quick release of wagons in view of very precarious COVID 19 situation in mid July of 2020. It is a situation which can be foreseen when Saturday and Sunday were barred for human movement by an order of the state government.
- ix) Since no action was taken by the Railways on the waiver application filed by the applicant and situation as substantiated by the documents to be grim, the Tribunal has decided to refund 50% of the total accrued & deposited amount to the applicant.
- x) Rs.38036/- to be refunded with 6% rate of interest from the date of payment to the date of this order.

(Mahtab Ahmad)
Member (Judicial)
RCT/GB

(Leena Sarma)
Member (Technical)
RCT/GB

ORDER SHEET
Original Application No: – OAIH-30/2021
OAIH/GHY/30/2021(ONLINE)
Dated: 20.05.2024

Claim application is partially allowed. Common Judgment pronounced
today vide separate detailed order.

(Mahtab Ahmad)
Member (Judicial)
RCT/GB

(Leena Sarma)
Member (Technical)
RCT/GB

ORDER SHEET
Original Application No: – OAIH-13/2022
OAIH/GHY/13/2022(ONLINE)
Dated: 20.05.2024

Claim application is dismissed. Common Judgment pronounced today
vide separate detailed order.

(Mahtab Ahmad)
Member (Judicial)
RCT/GB

(Leena Sarma)
Member (Technical)
RCT/GB

ORDER SHEET
Original Application No: – OAIH-50/2019
OAIH/GHY/12/2019(ONLINE)
Dated: 20.05.2024

Claim application is dismissed. Common Judgment pronounced today
vide separate detailed order.

(Mahtab Ahmad)
Member (Judicial)
RCT/GB

(Leena Sarma)
Member (Technical)
RCT/GB

ORDER SHEET
Original Application No: – OAIH-58/2019
OAIH/GHY/19/2019(ONLINE)
Dated: 20.05.2024

Claim application is dismissed. Common Judgment pronounced today
vide separate detailed order.

(Mahtab Ahmad)
Member (Judicial)
RCT/GB

(Leena Sarma)
Member (Technical)
RCT/GB

ORDER SHEET
Original Application No: – OAIH-48/2019
OAIH/GHY/10/2019(ONLINE)
Dated: 20.05.2024

Claim application is dismissed. Common Judgment pronounced today
vide separate detailed order.

(Mahtab Ahmad)
Member (Judicial)
RCT/GB

(Leena Sarma)
Member (Technical)
RCT/GB

ORDER SHEET
Original Application No: – OAIH-11/2022
OAIH/GHY/11/2022(ONLINE)
Dated: 20.05.2024

Claim application is dismissed. Common Judgment pronounced today
vide separate detailed order.

(Mahtab Ahmad)
Member (Judicial)
RCT/GB

(Leena Sarma)
Member (Technical)
RCT/GB