रेल दावा अधिकरण
गुवाहाटी न्यायपीठ

RAILWAY CLAIMS TRIBUNAL

GUWAHATI BENCH

STATION ROAD
GUWAHATI-781001

Mr. Mahtab Ahmad, Member (Judicial)

Mrs. Leena Sarma, Member (Technical)

Date of Judgment: **20.08.2025**

SL No	Case No.	Name of the Applicant (s)	Respondent Railway (s)	Name of the Applicant Counsel	Name of the Respondent Counsel
1.	OAIII-33/2024	M/s Shri Dutt India Pvt.Ltd	N.F. Railway	K.P. Maheswari	R.B. Prasad,CLA
2.	OAIII-11/2024 OAIII/GHY/11/2024 (ONLINE)	M/s CTA Logistics Ltd.	N.F. Railway	K.P. Maheswari	R.B. Prasad,CLA
3.	OAIII-09/2022 OAIII/GHY/09/2022 (ONLINE)	M/s Bajaj Steel	N.F. Railway	K.P. Mahes`wari	C.M. Pradhan
4.	OAIII-35/2023 OAIII/GHY/35/2023 (ONLINE)	M/s Mangal Murti Vanijya	N.F. Railway/ Eastern Railway	K.P. Maheswari	K.Gogoi
5.	OAIII-46/2019 OAIII/GHY/08/2019 (ONLINE)	M/s Mahalaxmi India Pvt Ltd.	N.F. Railway	K.P. Maheswari	C.M. Pradhan
6.	OAIII-63/2019 OAIII/GHY/24/2019 (ONLINE)	M/s Century Mercantile(P) Ltd.	N.F. Railway	K.P. Maheswari	P.S. Deka
7.	OAIII-67/2019 OAIII/GHY/28/2019 (ONLINE)	M/s Jain Corporation.	N.F. Railway	K.P. Maheswari	A.K.Sarma
8.	OAIII-73/2018 OAIII/GHY/13/2018 (ONLINE)	M/s Mega Alloys.	N.F. Railway	K.P. Maheswari	P.S. Deka

Mrs. Leena Sarma, Member (Technical)

COMMON JUDGEMENT

1. Since the common issue in all these cases are Demurrage, they are clubbed together in the spirit of Rule 24 of RCT (Procedure) Rules.

2. Case No. OAIII-33/2024:

i) The Claim pertains to a sugar rake booked from Baramati to Azara vide Inv/RR No 11/282000353 on 16.05.2024.

ii) The claim Notice under Section 106 has been stated to be filed on 08.06.2024. But on scrutiny it is found to be DC waiver request letter, not a Notice under Section 106 of the Railways Act, 1989. This letter has been quoted as the Notice in the Claim Application. However, another waiver letter filed on 25.10.2024, received on 28.10.2024 in GM's office and it is filed by Shri KP Maheswari, Advocate. Nowhere it is mentioned as the Notice. Since a Claim filed under Section 106(3) for refund of overcharge can not take shelter under any correspondence/request made earlier as the deemed notice as provided by Section 106(2) for compensation claim. Therefore, no valid Notice has been filed.

iii) If we examine from the point of merit, the first thing to be seen is the placement, release and the related issues. The rake was placed for unloading on 22.05.2024 and released on 23.05.2024 and penal Demurrage of Rs. 66150/- was realized from the applicant.

iv) The initial waiver letter Dated 08.06.2024 did not mention about the issue of Penal Demurrage but about heavy rainfall on the day. The issue of not giving wide publicity and 48 Hrs Notice was not raised there. This was not considered by the Railways as stated by the applicant.

v) The applicant further raised the issue of Azara terminal not having any infrastructural facility like lighting, approach road etc as mandated by Railway's circular Dated 01.09.2021 to deal with rakes round the clock.

vi) The main issue here is that the relevant circular Corrigendum No 32 to Rates Master circular on DC-WC-Waiver/2016 Dated 13.09.2022 has not been followed by the applicant while seeking relief for DC in the form of waiver request. As Para 2.7 of the Chapter III of the said Circular, Application for waiver will be considered only when preferred within the stipulated time period. 2ndly, as Para 4.0 of the Chapter III, processing of applications for waiver of demurrage and wharfage charges shall be done electronically. This system has been in place since 01.10.2022. The waiver application was filed on 08.06.2022, after 13 days of unloading. It was not within time and it was not filed electronically. Electronic processing has been made mandatory by the insertion of the word 'shall' in the Para 4.0. Therefore, waiver could not be considered and it was intimated to the applicant by the Railways.

vii) The issue of wide publicity and notice of 48 hrs which was raised much later also could not hold much ground in view of the fact that when everything became automatic & machine-driven, the facility for sending SMS/E Mail to the registered traders in the terminal should be in place unless the applicant furnishes proof of not getting any intimation. Such a proof has not been furnished.

viii) Based on the deliberations above, and the core issues of no Notice under Section 106 and submission of offline delayed application for waiver contrary to prescribed statutory provisions, and other issues too, the refund claim of Demurrage is dismissed in the instant case.

3. <u>Case No. OAIII-11/2024:</u>

i) The claim pertains to a mixed load of rake booked from LCH to Azara on 17.02.2023 under Inv/RR 212055452-212055465+ 282006864-282006901.

ii) The rake was placed for unloading on 24.02.2023 at midnight and released next day at 16.30 Hrs. Penal DC accrued is Rs. 99225/-.

iii) As per the applicant the rake was placed without prior intimation. Due to late placement no truck and labor were available at that time. No 48 Hrs notice and wide publicity was given as stated by the applicant in the Claim Application. Another issue raised in the context of demurrage is the lack of facilities in Azara as has been mandated in Railway circular for round the clock working of a terminal.

iv) Notice under Section 106 of the Railways Act, 1989 was received by the Railways on 28.04.2023. This is submitted by the consignee. In the absence of the Invoice being filed, it is presumed that M/S CTA Logistics is the rightful consignee and the Notice under Section 106 is deemed as valid.

v) The Claim Application has been filed and verified by Kanhaiyalal Bothra and it is seen from minutes of the Meeting of the Board of Directors that Mr. Bothra has been authorized to look after all Railway related matters and sign and verify claim applications. This is accepted as signed and verified by the authorized official of the company.

vi) From the documents it is apparent that M/S CTA Logistics has not submitted any waiver letter to the Railways. The applicant did not avail the alternative machinery set up by the statute to redress grievance and get relief. It has gone straight for claim settlement after 60 days of accrual and then to court Demurrage refund is not like any other refund issues. Demurrage is wagon detention charge and considered not freight but something connected with freight. If there were conditions beyond the control of the consignee for delayed release of wagons, this could be examined immediately when waiver application within 10 days of accrual is filed with the cogent reasons. Suppose there was a rainfall on that day, it can be examined immediately, not after a few months or not after few years in a court.

vii) Regarding advance intimation about arrival of rake, an advance information register has been filed by the Railways. Apart from this information, everything is system-based these days where ORR is received through the system. Rake movement is also monitored by the parties through the system which is called FOIS, Freight Operation Information System. Therefore, this lack of information about arrival of the rake and placement is not tenable. The same may be gauged from the relevant circular Corrigendum No 32 to Rates Master circular on DC-WC-Waiver/2016 Dated 13.09.2022 that intimation about imposition of penal DC has to be sent through SMS and email to the parties. When penal DC is imposed it is fitted into the Terminal Management System (TMS) of the terminals concerned and calculation is done by the system automatically. Moreover, intimation is sent to the registered traders of the terminal automatically. Therefore, it is not acceptable that there was no advance intimation to the applicant about imposition of penal DC unless some contrary evidence is produced by the applicant. What is the meaning of wide publicity and advance notice? To make the target group aware about the imposition of a hiked rate of DC.

viii) It is further pertinent to note that the rake was placed after one month of imposition of Penal DC. Being a regular customer of the Railways it is expected that the applicant would be well aware about imposition of a hiked rate of DC.

ix) Another issue raised in the Claim Application is lack of proper facilities. But the RTI Reply furnished by the Respondent to the applicant to the court vide letter Dated 02.04.2022 shows that basic facilities were available as mandated.

x) Considering all the points as enumerated above, the claim refund of Rs. 99225/- on account of DC is dismissed.

4. Case No.III-09/2022:

i) The claim refund pertains to a cement rake booked on 30.05.2021 vide Inv/RR No 02/262000384 from PMLR to HMY (Harmuty).

ii) The rake was placed for unloading on 03.06.2021 at 10.50 Hrs and released on 04.06.2021 at 10.50 Hrs. Total Demurrage comes to Rs. 50873/-.

iii) Free time for the Mini rake is 5 Hrs and DC is to be charged for 19 Hrs. Railways have accordingly charged the DC. This is a normal DC, not a penal one and there was no circular to mandate calculation of reduced DC by the system.

iv) However, based on the Demurrage waiver letter Dated 05.06.2022, 35% DC waiver has been considered by the Railways.

v) This waived part of the DC which comes to Rs. 17806/- is to be refunded with 6% rate of interest from the date of filing to the date of this order.

5. Case No.OAIII-35/2023:

i) The Claim pertains to a mini rake of cement booked on 21.07.2022 from PACT/TDLE to Dibrugarh under Inv/RR No. 02/262003466.

ii) The Claim Application has been filed by Mukta Lohia proprietor of M/S Mangal Murti Vanijya. M/S Mangal Murti Vanijya is the consignee in the instant case. From GSTN Certificate issued on 10.12.2020 by the Govt of India, the Legal name of the Trade Name Mangal Murti Vanijya is Mukta Lohia. This proves she has the authority to sign, verify and file the Claim Application in the Tribunal.

iii) Claim Notice has been filed on 27.09.2022 by Manisha Sharma, Advocate is deemed to be valid Notice since it is submitted by an advocate and it is accompanied by relevant documents. However, the issue of Demurrage was not covered by this Notice.

There is another Legal Notice Dated 20.10.2022 which is termed as Legal Notice cum Appeal against Railway decision dated 11.08.2022. This is filed by Shri KP Maheswari, Advocate. Nowhere it is mentioned as Notice under Section 106 of the Railways Act, 1989. This Legal Notice cum Appeal has dealt with the issue of waiver and refund of Demurrage Charge. If we go by the wording of it, this is strictly not a Notice under Section 106(3) of the Railways Act, 1989. However, this is a technical issue and merit of the case is to decide the fate of the case.

In the Claim Application filed by the Applicant in the RCT, two letters have been cited as Claim Notice under Section 106 of the Railways ACT. 1989. One is waiver request letter Dated 29/07/2022 and the other is the one Dated 27.09.2022. First one is not a Notice and the 2nd one is a Notice pertaining to only Destination Terminal Charge and Calculation mistake. There is no valid notice for refund of DC.

iv) The first issue is refund of Destination Terminal Charge of Rs. 18720/-.

As per the Applicant, DBRG was never statutorily notified as freight terminals and hence terminal charges should not have been levied on them.

But it needs a little discussion. The entire demand is based on misunderstanding of the circular. Rates Circular No 24 of 2018 issued on 27.12.2018 which is the relevant circular in this context may be quoted to get an understanding of the issue,

*'In supersession of all previous instructions the sanction of the Competent Authority is hereby accorded for levy of Terminal charge @*20 per tonne on both inward and outward traffic for all commodities (excluding container traffic) being handled at Railway Goods sheds and Private Freight Terminals (PFTs) both greenfield and brownfield, to be collected by the Railways. In terms of Para 7.4 and Para 9.1 of Rates Circular No.14 of 2017 (LTTC policy), terminal charge will not be leviable in respect of all commodities covered in LTTC agreement in current year (12 months period as defined in the agreement) and will come into effect from the due date next year, as defined in the agreement.'*

As per this circular, Terminal Charge is leviable for all traffic in all goods sheds. DBRG is Railway owned goods shed. This particular consignment booked by the consignor is not covered under any Long Term Traffic Concession Policy.

Therefore, Terminal Charge is leviable as per statute on this commodity at the booking and destination terminals.

Freight Marketing Circular 20/2020 Dated 14.10.2020 as referred to by the Applicant has no relevance for Terminal Charge issue. The issue dealt by this FM Circular as is evident from the caption is 'Development of Goods-sheds at small/road-side stations through Private Investment.' has got nothing to do with the case under consideration.

Moreover, the judgment of the Hon'ble Gauhati High Court in MFA 100/2011 delivered on 25.06.2015 may also be taken into account to decide the issue in favour of the Respondent.

Considering all the aspects, this Claim refund of Rs. 18720/- on account of Terminal Charge has been dismissed.

v) The Second issue is calculation mistake. For this issue, the applicant has raised the instruction contained in the order and judgement of the Hon'ble Gauhati High Court in MFA 72/2014 dated 23.02.2018. However, this order has been stayed by Hon'ble Supreme Court and therefore, this is no longer applicable for calculating freight.

Moreover charges like Bagibeel charge (BRRB), Mini Rake surcharge (MNRK) etc. are charges correctly levied as per extant circulars of the Railways.

Therefore, freight Rs. 2,265, 884/- is correctly charge and no refund is due on this account.

vi) The last issue is refund of Demurrage.

a) The rake was placed for release on 23.07.2022 at 17.20 Hrs and released on 24.07.2022 at 19.40 Hrs.

b) There were waiver request letters, one dated 29.07.2022 and an appeal on 24.08.2022.

c) The waiver request was regretted as is evident from the extant documents like the Railways letter 11.08.2022, 07.09.2022 and 14.03.2023.

d) In the waiver request letter, the issues like Penal Demurrage, lack of Notice or Wide Publicity etc. were not raised. Late placement, their inability to arrange for trucks and labors next day etc were only raised. These were first raised as late as on 20.10.22 in their legal notice, after three months of release of the rake.

e) From Annexure R 4, it is understood that the Penal DC was imposed from 1^{st} June/2022 to 31^{st} August/2022.

The rake was placed on 23.07.2022, well after 52 days of imposition of Penal DC. What is the purpose of wide publicity and advance notice? It is a customer friendly measure suggested by the statute so that the traders are suddenly not caught unaware about a raised wagon detention charge and take prompt measures to release the rake. In this case, the applicant is a regular customer as declared by him in his DC Waiver Application and therefore, must be very much aware about imposition of Penal DC. That is why this issue was not raised in their DC waiver request letters. Had this issue been raised at the appropriate time, Railway could have take rectification measures if there was any lacuna in the implementation stage and punish the concerned staff for not displaying in the Notice Board or not intimating the registered traders. Since this was not an issue, it was not raised.

Further, it is not acceptable that rake arrival and placement was not known in view of the fact that these days, everything is system-based. ORR is generated through the system by the authorized consignee; the rake movement can be monitored live in the Freight Operating Information System (FOIS).

Considering all these facts, the refund claim for Demurrage Claim for Rs. 92138/- is dismissed.

6. **Case No.OAIII-46/2019:**

i) The Claim pertains to a sugar rake booked on 30.07.2016 from DD to BPRD under Inv/RR No 01-21/212003992-212004012.

ii) The rake was placed on 08.08.2016 and it was released on 12.08.2016.

iii) Though the Claim Application talks of penal DC, on scrutiny it is found to be normal Demurrage. Their inability to arrange for labour and trucks and rainfall during that period led to the delayed release of the wagons and accumulation of DC of Rs. 283091/-.

iv) It is understood from the Corrigendum letter issued on 10.04.2019 in reply to an RTI Application that no waiver application is received from BPRD station or from the party in the Sr DCM/Rangiya's office though there was an earlier reply dated 06.03.2019 where it was acknowledged that the waiver application is under process. However, for the purpose of adjudication, the corrigendum is to be accepted as the authentic official communication.

v) However, the Applicant submitted their waiver application dated 12.10.2016 received in the Office of the General Manager on 13.10.2016. A delayed waiver application which was submitted much after the statutory time period for filing without being accompanied by delay condonation application loses its standing as a valid and relied upon document to decide the issue.

vi) The most important issue is there was no Notice under Section 106 of the Railways Act, 1989. The much delayed waiver application Dated 12.10.2016 has been cited as the Notice in the Claim Application filed in the RCT. It is a claim for refund, not a claim for compensation for loss etc. Therefore, any other letter or any other query submitted to the Railways can not act as a substitute for a proper Notice under Section 106. The leeway given in Section 106(2) for compensation claim is not applicable for a refund claim filed under Section 106(3).

vii) There was no valid waiver application, no Notice under Section 106 of the Railways Act, 1989 and no justifiable ground to consider refund in the instant case.

viii) Based on these deliberations, the claim refund is dismissed.

7. <u>Case No.OAIII-63/2019</u>:

i) The claim pertains to a sugar rake booked from ARAG to AZARA on 27.02.2018.

ii) The rake was placed on 20.03.2018 at 6.40 Hrs in the morning and released on 21.03.2018 at 15.40 Hrs.

iii) Penal Demurrage of Rs. 202708/- was collected from the Applicant.

iv) The main issue for refund of Penal Demurrage as given in the Claim Application is lack of wide publicity and 48 Hrs advance Notice.

v) From the Waiver Application letter Dated 05.04.2018 addressed to Sr DCM/Rangiya, it is admitted by the Applicant that they had received the RR late evening and therefore, could not start unloading. Another point raised there is that the Penal DC started on the day the rake was placed in the terminal on 20.03.2018.

vi) Late or delayed receipt of the RR from the consignor is not the fault of the Railways and it is understood that the precious assets of the Railways like the wagons, engines etc. can not be allowed to be detained for the fault of the consignor/consignee.

vii) From the same waiver letter Dated 05.04.2018, it is apparent that the applicant was aware about imposition of Penal DC and even quoted the circular No and the date from when the Penal DC would be effective. He never stated that he was unaware about imposition. Only thing it was not imposed when the rake was booked. The rake was booked almost a month before the arrival. It was booked on

27.02.2018 and arrived on 20.03.2018. From this waiver letter it is obvious that he was aware of imposition. There might have been Notice and information through phone etc. as claimed by CGS/Azara vide his letter Dated 06.09.2024.

viii) There has been no Claim Notice under Section 106 of the Railways Act, 1989. Waiver Application Dated 05.04.2018 has been cited as the Claim Notice. Therefore, there has been no valid Claim Notice under Section 106 of the Railways Act, 1989.

ix) Considering all these facts, the Claim refund on account of Demurrage of Rs. 202708/- has been dismissed.

8. <u>Case No.OAIII- 67/2019</u>:

i) The claim pertains to salt booked in train-load from SNLR to NBQ vide Inv/RR No 01/212003390 and 02/212003391 on 17.10.2017.

ii) The rake was placed on 26/10/2017 at 10.45 Hrs and released on 27/10/2017 at 10.45 Hrs.

iii) Demurrage accrued was Rs. 94500/-.

iv) The reason cited for their inability to release the rake on time was Chhath Puja which fell on 26.10.2017 and this led to not having sufficient labor on that day.

v) In the Affidavit Dated 15.03.2024, the Applicant stated that it is a case of Penal Demurrage. However, on scrutiny of the papers, it is apparent it was a case of normal Demurrage.

vi) From the file of records it is seen that the waiver application of the applicant has been examined in detail by the Division and the Sr DCM/Rangiya has regretted the prayer by giving a detailed speaking order Dated 17.11.2017.

vii) The court can intervene when there was a bad executive order or there was no order. In the instant case, it is seen that the decision not to waive was taken after applying mind taking into account the extant circumstances.

viii) Further, the waiver letter Dated 27.10.2017 has been cited as the Notice under Section 106 of the Railways Act, 1989 in the Claim Application. This is not a Notice under Section 106 of the Railways Act, 1989 for a claim of refund under Section 106(3).

ix) Considering all the facts above, the refund claim of Rs. 94500/-on account of Demurrage Charge is dismissed.

9. Case No.OAIII-73/2018:

i) The Claim pertains to a rake of sponge iron booked on 23.03.2016 under Inv/RR No 10-15/262001263-262001268 from TSM to NGC.

ii) The Claim Application has been signed and verified by Shri Mahesh Kumar Khatuwala, Partner of M/S Mega Alloys. Though no RR has been produced by either party, the firm concerned has submitted through an affidavit that they are the endorsed consignee and this fact is not challenged by the Respondent in their WS. Further, from GSTN Certificate, it is apparent that Shri Mahesh Khatuwala is one of the two partners of the applicant firm and it is understood that he has been authorized to file this claim in the absence of any cogent contrary evidence.

iii) The rake was placed in two parts on 29.03.2016 at 6AM: 33 wagons placed on line no 10 and 9 wagons on SP II Line. The rake was released at 15 Hrs of 30.03.2016.

iv) Total Demurrage collected is Rs. 157778/-.

v) The main reason as the delayed release was blockage in front of SP II Line.

vi) The Waiver Application Dated 30.03.2016 was regretted not only as not having 'sufficient ground' but also as 'time barred'. When the rake was released on 30.03.2016 and the application was placed on the same day, it can not be termed as 'time barred'.

vii) It is mentioned that there has been no Claim Notice under Section 106 of the Railways Act, 1989. The Waiver Application Dated 30.03.2016 was cited as the Claim Notice.

viii) However, when the 9 wagons were placed in a line where unloading was not possible due to obstruction by heavy iron equipments and when this fact was brought to the notice of the Railway administration on the day of placement with enclosed photographs, no action was taken. No evidence has been cited to prove that this issue was deliberated or taken note of while regretting the waiver request. Moreover, an application filed on time was dubbed as 'time barred'. Looking at the entire scenario, this Demurrage charge is termed as illegal charge where a Claim Notice is not warranted.

ix) Rs.1,57,778/- is to be refunded with 6% rate of interest from the date of filing to the date of this order.

ORDER

1. Considering all the aspects, the claim for refund of Demurrage charges for **CaseNo.OAIII-33/2024**, **CaseNo.OAIII-11/2024**, **CaseNo.OAIII-35/2023**, **Case No.OAIII-46/2019, CaseNo.OAIII-63/2019, CaseNo.OAIII-67/2019, Case No.OAIII-73/2018**, is denied to the applicant. Hence, dismissed.

2. For Case No **OAIII-09/2022,** Rs. 17,806/-(Rupees Seventeen Thousand Eight Hundred and Six Only) is allowed to the applicant for the demurrage claim. Respondent is directed to pay with 6% rate of interest from the date of filing to the date of this order. This has to be paid within 90 days from the date of receipt of the order failing which 9% rate of interest has to be paid from the 91^{st} day of the receipt to the date of actual payment.

3. For Case No **OAIII-73/2018,** Rs. 1,57,778/-(Rupees One Lakh Fifty Seven Thousand Seven Hundred and Seventy Eight Only) is allowed to the applicant for the demurrage claim. Respondent is directed to pay with 6% rate of interest from the date of filing to the date of this order. This has to be paid within 90 days from the date of receipt of the order failing which 9% rate of interest has to be paid from the 91st day of the receipt to the date of actual payment.

4. With these observations and directions, the above Eight(8) cases are hereby stands disposed of accordingly.

5. Let the case files be consigned to the record room after due compliance.

(Mahtab Ahmad)
Member (Judicial)

(Leena Sarma)
Member (Technical)

ED