

AMERICAN ARBITRATION ASSOCIATION

DAVID HAYES, JERRY WEBB,)
 DAVID RUSH, VALARIE HELTON,)
 JOHN NUNN, SR., ROY SPARKS,)
 OLIN SPARKS, PAUL HAWKINS, and)
 FRANK CARTER, individually, and on)
 behalf of all others similarly situated,)
 Claimants,)
 vs.)
 M.S. CARRIERS, INC.,)
 Respondent.)

Case No.

ANSWER TO DEMAND
FOR ARBITRATION AND
COUNTERCLAIMS

ANSWER

Respondent M.S. Carriers, Inc. answers Claimants' Demand for Arbitration as follows:

I. Introductory Statement

M.S. Carriers, Inc. was formerly a regulated motor carrier involved in interstate commerce under authority issued by the United States Department of Transportation until it combined operations with Swift Transportation Co., Inc. in January 2002. The combined entity now operates under the name "Swift Transportation." M.S. Carriers was headquartered in Memphis, Tennessee. Swift Transportation is headquartered in Phoenix, Arizona, but maintains a Memphis-based facility that previously served as M.S. Carriers' headquarters. M.S. Carriers hauled freight throughout the continental United States, Canada, and Mexico.

During the time it was still operating, M.S. Carriers relied on both employee drivers, known in the industry as “company drivers,” as well as independent contractors that own or lease their own truck and in turn lease their truck and driving services to M.S. Carriers, known in the industry as “owner-operators.” All owner-operator drivers signed a detailed contract with M.S. Carriers and learned additional detailed information about the owner-operator program during an extensive orientation.

Claimants were formerly owner-operators for M.S. Carriers and are apparently affiliated with a group called Owner-Operator Independent Drivers Association (“OOIDA”), which has brought and/or financed numerous class actions against other motor carriers across the country.

II. Procedural History of this Litigation

The Claimants here, along with other plaintiffs, first filed this case in the United States District Court for the District of Arizona on June 6, 2002 against both respondent M.S. Carriers and its parent corporation, Swift Transportation. In federal court, they sought a preliminary injunction against both Swift and M.S. Carriers enjoining them from continuing to haul freight using owner-operators until they revised their owner-operator lease agreements consistent with OOIDA's demands and the claims made in the current Demand for Arbitration. The district court denied their request.

The plaintiffs in that case then took an interlocutory appeal to the Ninth Circuit Court of Appeals. After full briefing and oral argument, the 9th Circuit rejected plaintiffs' appeal and upheld the denial of a preliminary injunction. Afterward, the district court granted M.S. Carrier's motion to compel arbitration and stayed the case against M.S. Carriers.

III. Claimants' Claims Lack Merit

M.S. Carriers generally denies each and every allegation in Claimants' Demand for Arbitration. M.S. Carriers further denies any liability to Claimants and demands strict proof of all allegations. The factual allegations contained in Claimants' claims are inaccurate and unsupportable based on documents each of the Claimants signed. The legal claims they assert are based on OOIDA's tortured interpretation of the federal leasing regulations rather than the regulations themselves and the cases construing those regulations. While Claimants' Demand for Arbitration is patterned after many complaints that OOIDA has filed against other motor carriers in the past 10 years, these pattern allegations are filled with legal and factual errors as applied to M.S. Carriers.

For example, Claimants complain about various specific information that they claim is not set forth in their Contract Hauling Agreements. First, the law does not require that the agreements contain all the information that claimants allege is absent. Second, even the information that needs to be disclosed is not required to be in the actual owner-operator agreement so long as the information is otherwise made known to the owner-operator by other means. The information that Claimants allege was not provided in the agreement was either provided in the agreement or its attachments or was otherwise made known to the owner-operators by other means.

IV. Specific Affirmative Defenses

1. M.S. Carriers denies that its Contract Hauling Agreement with Claimants permits class arbitration and objects to any demand for class arbitration as both contrary to the parties' agreement and, in any event, inappropriate under the facts of this case. M.S.

Carriers further states that M.S. Carriers owner-operators that contracted with Swift after the business consolidation have contracts with Swift that specifically preclude class-wide arbitration, and thus, cannot be a part of this action as a matter of law.

2. Claimants have failed to state a valid cause of action on which relief may be granted.

3. Claimant's claims, and the claims of the individual members of the putative class, are barred, in whole or in part, by the doctrines of set off or recoupment, and any amounts that M.S. Carriers may be found to owe to Claimants, or the individual members of the putative class, must be reduced or offset by whatever amounts that Claimants, or the individual members of the putative class, may be found to owe M.S. Carriers.

4. Claimants' claims are barred because they failed to exhaust administrative remedies.

5. The AAA does not have jurisdiction over Claimants' Demand for Arbitration under 49 U.S.C. § 14701 *et seq.* because under the doctrine of primary jurisdiction the Surface Transportation Board and/or the Federal Highway Administration have exclusive jurisdiction to hear these claims.

6. Claimants have waived any claim or should be estopped from asserting such claims by continuing to do business with M.S. Carriers.

7. Claimants' claims are barred by the doctrine of laches.

8. Claimants' claims are barred because M.S. Carriers substantially complied with the applicable regulations.

9. All or part of Claimants' claims or the members of the putative class are barred by the applicable statutes of limitations.

10. Claimants' claims for damages are barred, in whole or in part, by their failure to mitigate such damages.

WHEREFORE, M.S. Carriers request that the Arbitrator reject Claimants' request for class arbitration, enter judgment in favor of M.S. Carriers on all of Claimants' claims, award M.S. Carriers its attorney's fees and costs, and for such further award as the arbitrator deems equitable and just.

**M.S. CARRIERS' COUNTERCLAIMS AGAINST CLAIMANTS
PAUL HAWKINS, DAVID RUSH, OLIN SPARKS AND ROY SPARKS**

M.S. Carriers, Inc., for its counterclaims against claimants Paul Hawkins, David Rush, Olin Sparks and Roy Sparks, states as follows:

1. On or about October 5, 1998, claimant Paul Hawkins entered into an Equipment Lease with M.S. Carriers Warehousing & Distribution whereby Hawkins leased certain motor vehicle from M.S. Carriers Warehousing & Distribution. Exhibit A.

2. On or about April 28, 1999, claimant David Rush entered into an Equipment Lease with M.S. Carriers Warehousing & Distribution whereby Rush leased certain motor vehicle from M.S. Carriers Warehousing & Distribution. Exhibit B.

3. On or about August 23, 2000, claimant Olin Sparks entered into an Equipment Lease with M.S. Carriers Warehousing & Distribution whereby Olin Sparks leased certain motor vehicle from M.S. Carriers Warehousing & Distribution. Exhibit C.

4. On or about September 1, 1999, claimant Roy Sparks entered into an Equipment Lease with M.S. Carriers Warehousing & Distribution whereby Roy Sparks leased certain motor vehicle from M.S. Carriers Warehousing & Distribution. Exhibit D.

5. Pursuant to the terms of their Equipment Leases, M.S. Carriers Warehousing & Distribution leased certain motor vehicle equipment to these claimants in exchange for their promise to make certain payments to M.S. Carriers Warehousing & Distribution as provided in the Equipment Lease. In addition, claimants Paul Hawkins, David Rush, Olin Sparks and Roy Sparks promised to lease this motor vehicle equipment from M.S. Carriers Warehousing & Distribution for a specified period of time.

6. Claimants Paul Hawkins, David Rush, Olin Sparks and Roy Sparks unilaterally and prematurely terminated or otherwise defaulted on their Equipment Leases with M.S. Carriers Warehousing & Distribution, thereby causing damage to M.S. Carriers Warehousing & Distribution.

7. Pursuant to paragraph 20 of the Equipment Lease, M.S. Carriers Warehousing & Distribution and claimants Paul Hawkins, David Rush, Olin Sparks and Roy Sparks specifically agreed that M.S. Carriers Warehousing & Distribution would be entitled to any attorneys' fees and other expenses necessary to enforce the terms of the Equipment Lease.

8. Because M.S. Warehousing & Distribution is a subsidiary of M.S. Carriers that no longer enters into new lease agreements for truck tractors to owner-operators, M.S. Carriers has no expenses and simply passes its revenue through to its parent companies. Accordingly, M.S. Warehousing & Distribution has assigned its rights under the Equipment

Leases with claimants and all other owner-operators who leased their equipment and driving services to respondent M.S. Carriers, including any and all claims for damages for breach of these Equipment Leases.

9. Subject matter jurisdiction is appropriate over M.S. Carriers' claims against claimants Paul Hawkins, David Rush, Olin Sparks and Roy Sparks pursuant to 28 U.S.C. § 1367(a).

Count I
Breach of Contract

10. Respondent M.S. Carriers hereby incorporates each and every allegation contained in paragraphs 1-11.

11. Respondent M.S. Carriers, through its predecessor in interest M.S. Warehousing & Distribution, and claimants Paul Hawkins, David Rush, Olin Sparks and Roy Sparks entered into an Equipment Lease whereby M.S. Carriers agreed to lease certain motor vehicle equipment to claimants Paul Hawkins, David Rush, Olin Sparks and Roy Sparks and claimants Paul Hawkins, David Rush, Olin Sparks and Roy Sparks agreed to pay certain lease payments.

12. M.S. Carriers has fully performed its obligations under the Equipment Lease.

13. Claimants Paul Hawkins, David Rush, Olin Sparks and Roy Sparks have failed to perform their obligations under the Equipment Lease in that they failed to complete the term of the Equipment Lease. Therefore, claimants Paul Hawkins, David Rush, Olin Sparks and Roy Sparks have breached the parties' agreement, thereby causing damage to M.S. Carriers.

WHEREFORE, respondents M.S. Carriers prays for judgment against claimants Paul Hawkins, David Rush, Olin Sparks and Roy Sparks, for damages in a fair and reasonable amount to be proven at the arbitration hearing, together with interest, reasonable attorneys' fees and costs allowed by law and contract, and for such other relief as the Court deems just and equitable under the circumstances.

Respectfully submitted,



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ATTORNEYS FOR RESPONDENT

Certificate of Service

The undersigned hereby certifies that on the 25th day of January, 2005, a true and correct copy of the above and foregoing, Answer to Demand for Class Arbitration, was served via U.S. Mail, postage prepaid, addressed to:

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