

RELEASE OF CARGO WITHOUT PRESENTATION OF THE CORRECT DOCUMENTATION

There has been a noticeable increase in the unlawful or incorrect release of cargo, associated with one of the following release methods:

- a) Countries that require imported cargo to come immediately under the control of their Customs service, who then take on the responsibility for its release.
- b) Countries with legislation that permits the release of cargo without the presentation of the original bill of lading.
- c) Authorisation by the carrier's agent to release cargo without the permission of the shipper or the issuer of the original bill of lading.

There has been considerable coverage regarding the delivery of containerised cargo to locations such as Chile and Paraguay, whereby their Customs service takes immediate control of the cargo and subsequently release it, often without presentation of the original bill of lading.

Signum has recently encountered two situations whereby fraudsters have manipulated legislation that allows Customs, without consultation with the carrier's agent, to release cargo without presentation of the original bill of lading.

1. The Dominican Republic legislation stipulates that a carrier must deliver all cargo to the Dominican Port Authority/Customs with the carrier's liability ceasing at the point of entry.

Cargo can be released upon presentation of the original bill of lading, accompanied by the commercial invoice. In the absence of an original bill of lading, a bond to the value of the cargo, issued by a bona fide bank or insurance company, is acceptable.

The bond indemnifies any party against a loss that may occur as a result of the of the cargo being released. Neither the carrier nor their agent needs to be made aware of such a bond.

Signum was asked to enquire into a matter that involved a consignee who secured the release of his cargo by means of an insurance bond and then disappeared, having failed to make payment for the cargo.

Initially, the insurance company, who had supposedly issued the bond to the consignee, maintained that they could not account for its existence, suggesting that it had been fraudulently issued.

Enquiries revealed that a member of their staff, who was authorised to issue such bonds, had done so on the instructions of her ex-supervisor and a Customs Agent. When these two parties were interviewed, they denied the clerk's version of events.

The Dominican Republic legislation stipulates that provided an authorised person issued the bond, it protects any party who suffered a loss, which applied in this instance. This allowed the shipper to lodge a claim against the insurance company for the loss of the cargo.

2. A similar situation occurred when perishable cargo was released in Suape, Brazil, without presentation of the original bill of lading.

The consignee made a fraudulent application to a court under the provisions of the Brazilian Importation Legislation on perishable goods to secure the cargo's release.

He alleged that the shipper had reneged on a contract that allowed him to partly pay for the cargo prior to its receipt and then pay the outstanding amount by instalments. Due to the shipper's refusal to release the cargo under the terms of the contract and his intention to re-ship it would cause him an irreplaceable loss.

The court accepted this submission without seeking the view of the carrier's agent and ordered the release of the cargo against security lodged with the court in the form of deeds to a property owned by a third party.

After obtaining custody of the cargo, the consignee attended the court and produced a fraudulent document, showing that the shipper acknowledged the payment agreement. This caused the court to cancel the security and return the deeds of the property.

The court application and payment agreement were shown to be fraudulent and that the consignee had committed similar frauds. The only action that could be taken was to notify Customs and the law enforcement agency of this person's activities.

A more serious problem that continues to cause concern is where carriers' agents disregard their legal responsibility in respect of the notified release instructions and authorise a party to receive their cargo without presentation of the correct documentation.

This lack of judgement is all too often influenced by their close association with the consignee or their agent, with whom they have no legal obligation. Such releases can cause serious financial implications to the other parties.

The general methods used to secure the release of cargo are:

1. The consignee/agent promises to present the original bill of lading at a later date.
2. The production of a consignee/agent's letter of credit.
3. Bank reference confirming sufficient funds exist in the consignee's account.
4. The presentation of a forged document.

Signum was asked to enquire into the activities of an agency, whereby it appeared that over a period of time some 150 containers laden with cargo had been released in non-compliance to their release procedure. This procedure required both the Shipping Manager and another member of staff to authorise the release of containers, upon production of the correct documentation.

The Shipping Manager, due to his status and guile, was able, over several months, to authorise the release of these containers without complying with the agencies directive. Only when it became impossible for him to continue to deceive others as to his actions, did he decamp.

Prevention is simple. If the original bill of lading is not produced, or there is doubt as to whether it is genuine, then advice should be sought from the issuer of the document. If the matter cannot be resolved satisfactorily and safely, assistance should be obtained from the Club's local correspondents or the Members' usual contact at the Club. Signum is always available to investigate serious cases.