



LP Bulletin

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Bulletin 1072 - 12/15 - Discharging Bulk Grain and Ore Cargoes in Guangdong Province (mainly Nansha, Guangzhou, Dongguan, Shenzhen, Yangjiang, Zhanjiang) - China

According to the Club's correspondents based in China, there has been a noticeable increase in the shortage claims at ports in the Guangdong Province. Local Receivers have been adopting an aggressive stance towards Carriers once a cargo shortage exceeding 0.5% is discovered by China Inspection and Quarantine services or the cargo surveyors report.

Local Receivers are reportedly claiming directly against the Carrier, particularly of foreign-flag vessels.

To avoid potential shortage claims the Club's correspondent recommends

- A. Conduct a joint draft survey at the loading port. Ideally, with as many parties as possible - e.g. ship, local authorities, independent surveyor on behalf of Owners / Charterers / Shipper / Consignee, if any. If the draft calculation reveals a short-loading at loading port, a LOP/statement concerning the cargo discrepancy should be issued and the Charterer should be put on notice of such cargo short-loading.
- B. During sea passage to the discharging port, the Charterer's voyage instructions should be properly followed - e.g. cargo ventilation/bilge water's sounding/pumping. Relevant records should be kept and sent to parties concerned inclusive of the Charterer at regular intervals during the voyage.
- C. Joint draft surveys should be conducted at the discharging port. Again, all parties interested in the shipment should be involved. Normally the local CIQ would be tough and very difficult to be dealt with and due to language barrier, the communication between foreign Master & C/O and CIQ is always difficult. The Carrier is therefore advised to appoint an independent surveyor to participate in such a draft survey.
- D. If more than one discharging ports are involved, special attention should be paid by the Carrier, which means together with the independent surveyor appointed by the Carrier, the ship should monitor the discharging operation prudently and, if appropriate, ensure the figures are as accurate as possible.

Local Correspondents have summarised the most effective defences available to members discharging in Guangdong Province below:

a) The Carrier's "responsibility period"

Under Chinese law, the responsibility of the Carrier with respect to non-containerized cargo covers the period during which the carrier is "in charge" of the cargo. This commences when the

cargo is loaded onto the vessel and finishes when the cargo is discharged. As such, responsibility ends when the cargo passes over the rail with the result that the Carrier cannot be responsible for any shortage that arises post-discharge. Shore figures, upon which claims can be based, often record the quantity well after discharge.

b) The defence of the shipper figure in the Bills of Lading

Bulk cargoes are often carried under Bills of Lading in the Congebill, Baltimore or North American Grain Forms. These contain printed description clauses such as "weight, measure, condition, contents and value unknown" on their face. Those words are viewed as standard by the Chinese courts when Bills of Lading are issued clean. The printed descriptions are not deemed to relieve the Carrier of the obligation to check the loaded cargo quantity and enter a remark that actually describes the cargo. Without an additional remark, therefore, the Carrier is obliged to deliver the cargo as described and in the stated quantity to the holder of the bill of lading. In those circumstances the Carrier ostensibly has no defence.

c) CIQ report

Local cargo receivers or subrogated cargo insurers usually adopt the CIQ report as the primary evidence any cargo claim. CIQ is considered a competent inspector to perform statutory commodity inspections on behalf of the State or Government. In court a CIQ report will usually have more weight than any other report issued on a commercial or private basis. Unless there is strong rebuttal evidence to hand the CIQ Weight Certificates will be taken by the local courts to record the actual discharged quantity.

d) Trade allowance

The internationally accepted trade allowance's application is only arguable at best in Guangzhou. Although the majority of the courts in the PRC have already permitted its application, an important decision in 2012 by the second instance Guangdong Provincial Higher People's Court rejected a Carrier's defence based on trade allowance and/or measurement error. The Court decided that no evidence exists to support the application of a trade allowance and/or measurement error in the shipping industry. Moreover, because the CIQ report had been corrected in that instance there could be no considerable measurement error. This decision lies at the root of the current difficulty experienced by Carriers in defending cargo shortage claims in the above ports.

e) Moisture variation defence

According to the Chinese Maritime Code a Carrier is not liable for loss or damage arising or resulting from the nature of the cargo or an inherent vice. If a Carrier is able to produce evidence that the shortage arises from inherent vice or a loss of moisture during the voyage, the Carrier might have a viable defence.

The correspondent urges Carriers to obtain a cargo quality certificate (that includes moisture content data) at both load and discharge ports. Consignees should have this type of certificates as it is a key component in the trading process.

Consignees tend to retain these documents even when the Carrier makes an application to court for their disclosure (either by the Consignee or possibly by CIQ) because judges have rejected such applications in the past.

In practice, even if the quality certificate (whether obtained upon request or by application to court) records a reduction in moisture level, it is open to the judge to decide that there is no correlation between the shortage and that reduction if the shortage quantity is far in excess of the draft survey result.

f) Removal of water en route

During transportation of some bulk ore cargo (such as iron ore, petcoke, sulphur), water would separate out from cargo and be pumped out en route.

This type of defence relies heavily on the bilge record. Unfortunately, some local courts view those records suspiciously since they are produced by ship rather than by an independent party.

Judges reject defences based on these bilge records. However, successful defences based on this argument / evidence have been run in the past.

g) Hatch sealing

Although sometimes vessel's hatch covers are properly sealed upon completion of loading this is not considered to be a defence against a claim brought by a third party, such as a cargo receiver.

Source of Information

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