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Bulletin 728 - 12/10 - Grain Shortage Claims/Trade Allowances - Saudi Arabia

Recent experience in Saudi Arabia suggests that a significant majority of claims arise from the discharge of grain cargoes, particularly barley and corn, whereas those commodities appear to make up only a small proportion of imports into the country.



Similar numbers of claims are received from Jeddah and Yanbu, on the Red Sea Coast, and Dammam, in the Arabian Gulf. Bulk grain cargoes are generally discharged into trucks. In almost all disputes, the receivers seek to rely upon figures generated by shore weighbridges, rather than draught surveys. In some cases, the differences between the ship and shore figures produce large potential liabilities.

The local P&I Correspondent during the period 1985-87, faced with numerous bulk barley shortage claims, conducted a large investigation with the assistance of SGS.

The study revealed a close correlation between shortage and load ports. Canadian barley had a very high level of good outturn. Shortage rarely exceeded 0.25% and there was frequently a small excess. Australian barley likewise had generally good outturn results. We find that these results are still relevant today. The majority of the large shortage figures appear to emanate from cargoes loaded in Black Sea ports, where we believe load figures can be in doubt. In particular, cargoes are being loaded from barges or railway trucks, from which load figures appear neither accurate nor reliable.

In general, the accuracy of port weighbridges in Jeddah Port appears to be good. They are calibrated about every 3 months, and we are able to be provided the calibration certificates without question. The minimum measurement accuracy of the port weighbridges is 20 kg, i.e. the machinery records all weights to the nearest 20 kg. However, even when multiplied by the total number of trucks used for discharge, a 20 kg difference per truck does not add up to an enormous shortage.

Cargo discharged into the privately operated silos in the port is a different matter. These silo operators are responsible for their own check and calibration. We have on occasion found very large inaccuracy, and poor operating procedures. The private silo operators have previously been unable to obtain an official customs certificate of shortage when the cargo is cleared from the port.

Security has become so tight in Jeddah in recent years, that we no longer think it possible to engineer the disappearance of complete trucks through the port gates. Even if it were possible, it requires the "disappearance" of a good number of trucks to produce a large shortage.

The local P&I Correspondents advise that best practice for minimising or avoiding such claims probably starts at the load port. Accurate draught surveys should be conducted and compared with the shippers' figure. If material differences are noted, then the appropriate protests should be lodged. On completion of loading, the hatch covers should be sealed. At the discharge port, the Correspondents recommend that a surveyor be appointed to attend onboard and to liaise with the receivers, who should be invited to witness the unsealing of the hatch covers and to participate in draught surveys, and ensure that "Empty Hold Certificates" are issued on completion of discharge.

For all grain ships now arriving at Saudi Ports, the receiver will issue a notice to the agents advising that on completion of discharge if any shortage is noted, they will require a P&I Club letter of undertaking for the value of the shortlanded cargo, otherwise they will not permit the vessel to sail.

All receivers used to demand a P&I Club letter of undertaking for any shortage, and would not accept any LOU to include any reference to a trade allowance.

The legal position in respect of shortage claims depends entirely on the contract of carriage and the evidence available. If the contract gives the owners no protection, the chances are high that the Saudi courts will hold the owners responsible for shortage based on the usual customs outturn certificate (based on weighbridge figures).

However, there have now been significant developments with a number of shortage claims going through the Saudi Courts. There have now been 7 judgements issued by the Saudi Courts accepting the concept of a transport/trade allowance, one of the judgements being final and unappealable. In view of this development, we are finding that the majority of Saudi receivers are now allowing a ship to sail on completion of discharge if any shortage is noted to be less than 0.5% of the manifested quantity, but some are still adamant and will still request a P&I Club LOU for the smallest of shortages.

There is no duty of disclosure of documentation in Saudi law, so we cannot insist that the consignee produce the sale contract or insurance policy, even though it is known to us that many cargo underwriters give cover subject to a deductible of 0.5%, which tends to reinforce the argument for the trade allowance. The courts may consider such demands for documents irrelevant unless we have good evidence to show that the cargo purchase is based on outturn quantity or draught survey, not bill of lading figures. This will require the supplier to confirm the basis on which the cargo was sold.

We strongly recommend that owners pay close attention to the detail of the contract of carriage:

1. Ensure that any charterparty is properly incorporated into the bill of lading by reference to date, place, and form of the contract;
2. Ensure that the bill of lading contains a jurisdiction and/or arbitration clause;
3. If the cargo purchase is based on draught survey, the c/p should similarly contain a clause stating that Owners' liability for shortage is to be calculated by draught survey on arrival.
4. If draught survey at loading indicates shortage, Owners are best advised to give notice to consignees if the c/p and b/l's of lading offer the protection outlined as above.

Detailed information on "Measurement of Bulk Cargoes - Draught Surveys" can be found in the "Carefully to Carry" section of the Club's website.

Source of Information :

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