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China - Bulk Cargo Shortage at Loading Port

Dear Sirs/ Madam,

Recently, several queries were received from the Club seeking our experiences in handling cases when the shortage of discharged quantity did not exceed 0.5% and the consignee still claimed for shortage on the ground of short loading at the loading port.

We did deal with several similar cases from last year and would like to share the experiences with the Club/Members as follows.

A New Judgement Regarding Shortage at Loading Port

Civil Judgment (2020) Y72MC No.871 made by Guangzhou Maritime Court on December 28, 2020 states that the Carriers shall be liable for the shortage of less than 0.5% of the B/L quantity.

In this case, the Shippers provided a draft survey report at the loading port to prove that the Carriers issued a clean bill of lading under the circumstance of knowing that the cargo was short loaded. The Court considered that the Carriers were negligent and did not support the 0.5% trade allowance claimed by the carriers.

The judgement has been appealed and the second trial judgement has yet to be made.

Basis of the Judgement: the Supreme Court's Opinion

Wang Shumei, Deputy Chief Judge of the Fourth Civil Division of the Supreme People's Court, gave the summary speech at the National Maritime Trial Practice Symposium on June 16, 2017. In terms of "the Carrier's liability for shortage of bulk cargo", one of her points is "the Carriers are allowed to raise a defense of exemption of liability of trade allowance within 0.5% of the draft survey on the premises that the Carriers do not have any faults of non-prudential obligation on the care of cargo obligation. If there is evidence to the contrary that the Carriers are at fault (e.g., bill of lading is issued against the Shippers' declaration and the LOI when cargo is short loaded at the port of loading), the Carriers' defense of 0.5% trade allowance shall in principle not be sustained, even if the deficiency is less than 0.5%."

Impact of the Supreme Court's Opinion

A law firm in Guangdong, on behalf of a corn import company, filed a series of such claims in 2020, trying to rely on the Supreme Court's opinion to get compensation.

The above judgement of the Guangzhou Maritime Court was issued for one of the claims, which undoubtedly encouraged the Receivers to pursue the other claims. We therefore anticipate that there might be more similar types of claims in future.

In a similar case handled by our Guangdong office, Owners in Germany rejected the claim in the first instance. However, a summons was later served by the Chinese Court in Germany. With the assistance of our Guangdong Office, the claim was settled at an acceptable level to both sides.

Suggestions

1. For shipment of bulk cargo destined to China, please make sure that the draft survey report of either loading port or discharging port would not be disclosed to the cargo interests including Shippers, Consignees, and Charterers, especially the draft survey report arranged by the Carriers or conducted by the crew members themselves.
2. Please let the Master and crew members know that there is no good for the Carriers to defend shortage claim in China by arguing short loading at the loading port. On the contrary, it may cause liability for the Carriers. Do not present/provide the draft report at the loading port to anyone including the cargo interest's representative, the cargo interest's surveyor, Customs, MSA, Port Authorities, agents, etc.
3. It is suggested that the draft survey be named "Preliminary Information Advice" other than "draft survey report" if the bulk cargo carried is bound for China. It is also suggested to include the following remarks on such document: "This Preliminary Information Advice is not a Certificate or Report and is not intended for negotiation nor does it have any commercial value in any respect whatsoever. "

4. Be cautious about demanding LOI from the Shippers for shortage at the loading port since it may be considered as evidence of the Carriers' negligence in issuing B/L by the Chinese court.

5. It is advisable that Owners commence settlement negotiation before the claimants take any legal actions. To this end, we highly recommend Clubs/Members to contact us earliest so that timely assistance can be provided.

Best regards,



Luo Yong

General Manager