

Demurrage Payments Under Kuwaiti Law

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Due to the risk of the shipper or the consignee failing to return containers back to the shipping carrier empty, all shipping lines have stipulated in their bills of lading (B/L) (which govern the relation between the shipper, carrier, and the consignee) a specific condition concerning demurrage. This condition applies to the merchant (shipper/consignee) and stipulates who shall be charged fees arising from fault or negligence in not returning the containers back empty to the carrier. Shipping lines are keen to impose such a condition because such malpractice by the merchant results in enormous losses to the carrier who will be unable to exploit its containers.

The essential role of the bill of lading

The B/L is a contract of carriage which prescribes the obligations between the shipper, the carrier and the consignee. It is also the document to which the port and the customs authorities refer in their inspections of cargoes.

If a dispute arises out of transportation of goods by sea, the terms and conditions of the B/L shall apply to all the parties to the contract for the purposes of determining the responsibility and liability of the parties.

According to Kuwaiti Law No. 28 of 1980 (Maritime Law), the B/L shall be in writing and has three functions used to prove a shipment's contents: as evidence of the transportation, as a representation of the goods to which it relates, and as evidence of the information included therein, among the carrier, the consignee and in respect of third parties.

Furthermore, Kuwait has ratified the Brussels Treaty of 1924 for the Unification of Certain Special Rules Relating to Bills of Lading (Hague Rules). Consequently, the Hague Rules are applicable as part of Kuwaiti law and apply to maritime cargo claim disputes.

The responsibility of the shipper to pay demurrage

The shipper is the party who starts the route of transportation by the submission of a shipping order (S/O) to the carrier for transportation of consignments to a determined destination. According to Article 176 of the Maritime Law, the carrier issues a B/L upon receipt of the information provided by the shipper, including the consignee's details. However, in some cases, the shipper shall be obliged to pay the demurrage stipulated by the shipping line when the consignee does not appear at the port of discharge (POD) to take delivery, for the reasons outlined below.

The transfer process is based on the shipper's S/O in accordance with Article 179(2) of the Maritime Law, which stipulates that *'The shipper shall be responsible before the carrier for compensation of detriment resulting from inaccuracy of the submitted information in respect of commodities. The carrier, may not adhere to inaccuracy of the information stated in the bill of lading before anyone other than the shipper'*.

Also, Article 4.3 of the Hague Rules stipulates that *'The shipper shall not be responsible for loss or damage*

sustained by the carrier or the ship arising or resulting from any cause without the act, fault or neglect of the shipper, his agents or his servants'.

Consequently, the shipper is liable to compensate the carrier for damages arising due to inaccurate information relating to the consignment provided by the shipper, or to his and his agents' fault or negligence. According to the same principle, the shipper will also be responsible for the information related to the consignee at the POD.

The responsibility of the consignee to pay the demurrage

The consignee is the party who shall attend the shipping carrier or its agents to accomplish the procedures required to deliver the cargo. However, in some cases when the consignee accepts consignments and obtains the delivery order (D/O) from the carrier/carrier's agents, the consignee may delay returning the containers back empty to the carrier, or suddenly stop the customs procedures and leave the consignments inside the container without continuing the procedures required to deliver the cargo. There is no doubt that both actions change the nature of the container from a valuable piece of equipment in the transport operation into just storage for the consignee's cargo, which potentially causes huge losses to shipping carrier.

The Kuwaiti legislator has counteracted such indecent action in Article 175(2) of the Maritime Law, which declares the rights and obligations of the consignee, who committed to the terms of the B/L as owner of the consignments, and confirmed that once the consignee attends to the carrier holding the B/L, the consignee shall be obliged by the conditions of the B/L. This concept has been clearly stated by the explanatory memorandum of the Maritime Law, which state that the consignee shall bear the obligations arising from the contract of carriage if accepted explicitly or implicitly.

The consignee who attends to the carrier/carrier's agents and obtains the D/O will, therefore, be liable to pay demurrage if he delays in returning the containers back empty or does not complete the procedure of delivering the cargo from the containers.

The legal recommendation

Having regard to our experience before the courts in the Middle East and North Africa, and due to the specific nature of maritime transportation, it is recommended not only to rely on the demurrage condition stated on the back page of the B/L or through advertising the same on the carrier's website, but also to mention this clause clearly on the front page of the B/L, by which the merchant (neither shipper nor consignee) will be liable for the demurrage. Calculations of charges should also be stated clearly on the B/L. This will make it easier to convince the court of the carrier's right to collect the demurrage from the merchant and its exact amount. In addition, it will minimise the number of documents submitted before the court to prove the carrier's rights, which will surely lead to obtaining the court's judgment more quickly.