

The Responsibility for Payment of Demurrage According to Kuwaiti Law

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All shipping lines have contracts of carriage, called 'Bills of Lading' which govern the relation between the shipper, carrier, and the consignee. Due to the fact that in some cases neither the shipper nor the consignee complies with their obligations to provide the shipping carrier with the containers back empty, a specific condition concerning 'demurrage' applies to the merchant (shipper/consignee) who will be charged due to his direct fault or negligence if he fails to give containers back empty to the carrier, since such malpractice can cause enormous losses to the carrier who will be unable to make use of his containers.

The Essential Role of the Bill of Lading

Legal precedents and jurists agree that the Bill of Lading is the contract of carriage which documents the obligations between the shipper, the carrier and the consignee, as well as the document upon which the port and the customs authorities refer to for cargo inspections if needed.

If a dispute arises on the occasion of the transportation of goods by the sea, the information and the conditions of the Bill of Lading shall apply to all the parties to the contract and shall determine the responsibility and the liability of the parties arising in this issue.

According to the Kuwaiti Maritime Trade Law, Law No. 28 for the year 1980 (the "Maritime Law"), the Bill of Lading shall be made in writing and has three important roles between the carrier, the consignee and in respect of third parties;

- to prove the shipment's contents;
- to prove the transportation; and
- to represent the goods as a proof in establishment of the information therein.

The shipping carrier issues the Bill of Lading upon the shipper's request and in accordance with the information provided to him from the shipper, which is stated in the Shipping Order. When the consignee submits the original of the Bill of Lading to the shipping carrier or his agent, it obtains the Delivery Order, which enables it to start the customs procedures to deliver the cargo.

Furthermore, Kuwait ratified the Brussels Treaty of 1924 for the Unification of Certain special rules relating to Bills of Lading ("the Hague Rules"). Consequently, the Hague Rules are applicable as part of Kuwaiti law to be applied to maritime cargo disputes.

The Responsibility of the Shipper to Pay Demurrage

The shipper is the party who starts the transportation process by the submission of the Shipping Order to the carrier for transport of the consignments to a determined destination. According to article 176 of the Maritime Law, the carrier issues a Bill of Lading based upon the information provided by the shipper, including the consignee's details. However, in some cases, the shipper is entitled to pay the demurrage stipulated by the shipping line when the consignee does not appear at the port of discharge .

The transfer process is based on the shipper's Shipping Order, as above mentioned, and 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 flowing from his (or his agent's) fault or negligence, or from the lack of consignment information provided by the shipper. According to the same principle, the shipper will also be responsible for the information related to the consignee at the port of discharge, as the original consignment/consignee/destination information was provided by the shipper. Consequently, the shipper shall be responsible for the payment of the demurrage to the carrier (as mentioned in the Bill of Lading) when the consignee nominated in the Shipping Order does not turn up to receive the consignment.

The Responsibility of the Consignee to Pay the Demurrage

The consignee is normally the party responsible for following the procedures required to receive the cargo from the shipping carrier or his agents. However, in some cases when the consignee accepts the consignments and obtains the Delivery Order from the carrier/carrier's agents, the consignee may delay in 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. Both actions change the nature of the container from valuable equipment in the transport operation into just storage for the consignee's cargo, which may cause huge losses to the shipping carrier.

Article 175(2) of the Maritime Law has sought to counteract such indecent actions, by declaring that the consignee (who committed to the terms of the Bill of Lading as owner of the consignments) shall be obliged by the conditions of the Bill of Lading once the consignee attends to the carrier holding the Bill of Lading. This concept has been clearly stated in the commentary on article 175(2) in the explanatory memorandum to the Maritime Law, which states that the consignee shall bear the obligations arising from the contract of carriage, whether this was accepted explicitly or implicitly.

According to the conditions mentioned in the Bill of Lading, the consignee shall be responsible for the payment of the demurrage to the carrier once he delivers the Delivery Order to the carrier/ carrier's agents. Whether the fault is the delay in returning the containers back empty or whether it is in the procedure of delivering the cargo from the containers not being completed, once the consignee attends to the carrier/carrier's agent holding the Bill of Lading it will be considered as acceptance to the conditions and the obligations under the Bill of Lading.

Legal Recommendations

In addition to relying on the demurrage condition on the back page of the Bill of Lading or on advertising the same on the carrier's website, it is recommended to also clearly mention this clause on the front page of the Bill of Lading whereby the merchant will be liable for the demurrage and the precise charges and calculations should be stated. This will be clearer evidence before a court of the carrier's right to collect the demurrage from the merchant and of its exact amount and will also minimise the documents submitted before the court which may help to save time in obtaining judgment.