

# Misdirected container raises liability issues

## Can shipping lines hide behind BoL clauses?

BY Alan Peat

Shipping lines will accept responsibility for their mistakes – true or false?

That’s a question posed by Hariesh Manaadiar in his Shipping and Freight Resource blog, and one which FTW has investigated amongst a range of shipping specialists.

The question arose in a case study that is raging in one of the social media forums.

A forwarder booked two 20-foot containers with a shipping line to Doha on behalf of his client.

Due to a mistake by its staff, the shipping line shipped 1×20’ to Doha and put the other with another client’s container – and shipped it to Bremerhaven.

By the time the forwarder found this mistake, the container was already on its way to Bremerhaven. The shipping line has advised that the container will be rerouted

but the container will take about 60 days to reach Doha instead of the original transit time of 20 days if it had gone directly.

Due to this delay, the forwarder has lost his client (the shipper), because the shipper blames the forwarder, the shipper has lost future orders with his client and has lost his credibility in the market.

When the forwarder placed the shipping line on notice and raised a claim against it, the shipping line tried to hide under its bill of lading clauses (See box on pg 11).

“The hapless freight forwarder is left without a solution,” said Manaadiar, “as the shipping line is rejecting his claim for delayed delivery and loss of current and subsequent business of their client while the shipper is blaming the freight forwarder for the mishap and is expecting it to sort out the problem.”



The case of the rerouted container .. does the forwarder have a leg to stand on?

Now Manaadiar thought that the forwarder had a valid case, as the delay was due to the shipping line making the mistake, so FTW posed this question to our group of specialists.

“I think the carrier has a strong case for rejecting the claim in contract law, given the wording of the bill of lading (B/L) clauses,” said Mike Walwyn, director of Seaboard Maritime and

national vice-chairman of the SA Association of Freight Forwarders (Saaff). “However, I would think the forwarder has a strong claim in delict, given that it is a generally accepted principle

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that one cannot contract out of one's own negligence.

"If (as appears to be case), the forwarder suffered measurable loss as a result of negligence on the part of the carrier, then that loss should be recoverable in delict, together with possible damages."

A similarly supportive statement came from trade and maritime lawyer, Quintus van der Merwe of Shephstone & Wylie.

"It's always dangerous to try to give an opinion without all the facts," he said. "That said, I think most shipping lines are responsible.

"I have acted for a shipping line as well as an exporter in the last 12 months – and in both cases the shipping line ultimately accepted responsibility for their error. Certainly on the scant facts you have described, I think there would be a claim."

Riad Khan, CEO of the SA Ports Regulator, described

himself as "being evasive".

But, he added, "as in all these matters, it depends on the judge on the day, the quality of the legal teams on both sides and the jurisdiction within which the claim is raised. Also, the courage of the forwarder to take on the line with a pre-existing knowledge that a pyrrhic victory (or in some cases his desire for commercial suicide) can be quite hollow."

Dave Watts, Durban-based maritime adviser to Saaff, was wary to support the forwarder.

"The bill of lading is a contract between the shipper and the line," he said. "It's a contract, therefore all the provisions apply – including the host of get-out clauses all bills of lading have. When you contract, either accept the conditions or don't ship, its easy"

Asking if the forwarder would have a valid claim in court, he added: "I imagine

they might – depending on the jurisdiction. If the courts decide there was negligence, or better still gross negligence, then, depending on the law in that jurisdiction, they might view a claim positively. But I very much doubt it."

One thing is for sure, according to Watts. If the forwarder or shipper is a major client of the line, and moves plenty of containers, then the big business stick would do the trick and have the goods flown to Doha from Germany. "If not," he said, "tough luck."

One thing Watts didn't understand was why the shipper blamed the forwarder.

"It was hardly his fault," he said. But there is a tactic the forwarder could apply.

"Why not name and shame. Tell your friends these guys are inefficient and useless and duck any responsibility for their own mistakes. Go to Google, Facebook, Twitter – tell the world!"

## BoL clauses

"19.1 The Carrier may at any time and without notice to the Merchant:

(a) use any means of transport or storage;  
(b) transfer the Goods from one conveyance to another including transshipping or carrying the same on a Vessel other than the Vessel named on the reverse hereof or by any other means of transport whatsoever and even though transshipment or forwarding of the Goods may not have been contemplated or provided;

"19.2 The liberties set out in clause 19.1 may be invoked by the Carrier for any purpose whatsoever whether or not connected with the Carriage of the Goods. Anything done or not done in accordance with clause 19.1 or any delay arising therefore shall be deemed to be within the contractual Carriage and shall not be a deviation.

"20.1 Matters affecting performance. If at any time Carriage is or is

likely to be affected by any hindrance, risk, danger, delay, of whatsoever kind and howsoever arising which cannot be avoided by the exercise of reasonable endeavours, (even though the circumstances giving rise to such hindrance existed at the time this contract was entered into or the Goods were received for Carriage) the Carrier may at his sole discretion and without notice to the Merchant and whether or not the Carriage is commenced either:

(a) Carry the Goods to the contracted Port of Discharge or Place of Delivery, whichever is applicable, by an alternative route to that indicated in this TD or that which is usual for Goods consigned to that Port of Discharge or Place of Delivery. If the Carrier elects to invoke the terms of this clause 20(a) then, notwithstanding the provisions of clause 19 hereof, he shall be entitled to charge such additional Freight as the Carrier may determine."

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