Ship v Shore Figures

Under Article III Rule 3 of the Hague/Hague Visby Rules (the "Rules") after the receiving the cargo, and on the demand of the shipper, the Master is obliged to issue a bill of lading evidencing amongst other things, the quantity of cargo to be carried. A recurring problem many carriers face when loading bulk cargoes is when the ship and shore figures of the quantity differ as to how much cargo has been loaded. Frequently the ships loaded figures are calculated on the basis of draught surveys while the shippers will have been determined by weigh bridge or silo measurements. In these circumstances, and provided the Master has reasonable grounds for suspecting the details that a shipper requires to be shown on the bill of lading are inaccurate, the Master may refuse to sign a bill of lading as presented. However, if the Master unreasonably refuses to sign or authorise the issue of a bill of lading for the shore figures "as presented" he runs the risk of being in breach of Article III rule 3 of the Rules and/or charter with consequent claims for delay and/or prejudice to the underlying sales contract while the issue is resolved.

As ever, when the requirement "reasonableness" is introduced what constitutes a reasonable refusal will turn on the particular facts and circumstances of any case. In this respect the following English decisions provide some useful guidance:-

1. In the "David Agrinides" the Master was asked to issue bills of lading containing a description of the cargo which he honestly did not believe accurately reflected the actual condition of the cargo. Although it was later found that the Master was being over zealous in his description of the cargo and should have obtained assistance at the time, the court said the obligation on the Master to issue a bill of lading was not a contractual guarantee of absolute accuracy as to the order and condition of the cargo, nor was there any basis for the implication of any such term.

2. In the "Boukadoura" Lloyd's Rep [1989] 1 393 there was a difference between the shore and the vessel figures of about 1%. The Master was prepared to put both the ship and the shore figures on the bill of lading, but to comply with the letter of credit, the shippers required only one set of figures, and insisted on the shore figures. In an attempt to resolve the dispute a second draft survey was carried out by an independent surveyor. This confirmed the ship's figures but the shippers nonetheless refused to accept a bill of lading showing the ship's figures. Ultimately, and after considerable delay a bill of lading based on the ship's figure was issued and the cargo was carried to a destination and discharged without any shortage claim. Charterers subsequently claimed for the time lost due to the delay at the load port. Although the charterparty provided for bills of lading to be issued by the Master "as presented" the court agreed that the Master was only obliged to show a bill lading of the quantity of cargo he reasonably believed to have been loaded.

There are no clear-cut guidelines to determine when or if a Master can reasonably refuse to issue a bill of lading if he considers the quantity of cargo shown on the bill of lading to be inaccurate. Each case will turn on its own facts and circumstances as well as the expert assistance and evidence of quantities provided to and received by the vessel is available. Further though, and irrespective of the law of the Charterparty, the law of the jurisdiction of loading will also be a relevant consideration. Therefore, as soon as the Master is aware of a problem in this respect it is important that he contacts the Club and/or Club's local correspondent for advice and guidance before any dispute escalates.

It is not unusual for bill of lading forms to contain a standard printed clause "said to be, said to weight" or "weight unknown". Such words, as against the shipper, are a statement by the carrier that he has no reasonable means of accurately establishing the amount of cargo loaded on board. In the New Chinese Antimony Viscount Reading, C.J. said that;

"Where the statement of the amount or quantity of the goods in the bill of lading is qualified by such words as "weight or quantity unknown," the bill of lading is not even prima facie evidence against the shipowner of the amount or quantity shipped, and the onus is on the cargo owner of proving what in fact was shipped" and by way of further explanation;

"Where in a bill of lading, which is prepared by the shippers for acceptance by the defendants' agent, the agent accepts in the margin a quantity "said to be 937 tons," and in the body of the bill of lading there is a clause "weight, &c., unknown," there is no prima facie evidence that 937 tons have been shipped."

However, the New Chinese Antimony was decided before the Rules were drafted. Article III Rule 4 provides that a bill of lading issued in accordance with Article III Rule 3 "shall be prima facie evidence of the receipt by the carrier of the goods therein described". Whether a bill of lading caused "weight unknown" is prima facie evidence of the weight of the cargo shipped was considered in The "Meta K". In this case the claimants under the bill of lading, who in fact were the shippers and charterers of the vessel and were claiming as assignees of the indorsees of the bill of lading, had signed the bill of lading on behalf of the carrier. They argued that the "weight unknown" clause offended against Article III Rule 8 of the Rules as well as section 4 of the UK Carriage of Goods by Sea Act 1992 "UK COGSA 1992". However, because of the circumstances in which the bill of lading was issued Clarke J (as he then was) took the view there was no evidence that the shipper had in accordance with Article III Rule 3 "demanded" a bill of lading that showed the weight of the cargo without the "weight unknown" qualification. As such the bill of lading did not offend against Article III Rule 8 and in the hands of the holder and was not conclusive evidence of the quantity shipped in accordance with section 4 of UK COGSA 1992.

Where there is a dispute as to the accuracy of the ship or shore figures to be inserted in the bill of lading, the options available to the Master will be limited to:

1. A Letter of indemnity from the shippers and/or charterers, whichever provides the better security. As a matter of English law, letters of indemnity are generally unenforceable against the party providing the indemnity where that indemnity is to cover intentional misdescription as to the condition or quantity of cargo loaded. This is because absent a genuine dispute as to the quantity loaded, an indemnity provided in these circumstances is evidence of the carriers involvement in a fraudulent misrepresentation as to the quantity of cargo loaded. If a bill of lading is issued that is "known by the carrier or Master of an entered vessel to contain an incorrect description of the cargo or its condition or quantity" this will prejudice the carrier's P&I cover. An LOI in this respect would not reinstate cover with the Club. However, if there is a genuine dispute between the parties where, for example, the Master reasonably and honestly believes that the cargo is not in an apparent good condition but is subsequently advised by a competent surveyor that condition of the goods does not justify clawing of the bill of lading, an indemnity in these circumstances may be enforceable, albeit that the English courts take a strict view of whether in fact there is a genuine dispute between the parties as opposed to a misrepresentation of the cargoes condition and great care should always be taken when agreeing to accept any LOI in respect of the clawing of
2. Obtain guidance from the court as to the loaded quantity of cargo. At face value this is the option with the greatest certainty but courts in different jurisdictions may favour evidence for the shore in preference to the ship, and an application to the court can be both time consuming and costly, with consequent delay to the vessel.

3. Issue a Note of Protest: It is unlikely that shippers or charterers will accept a Note of Protest ("NOP") attached to the bill of lading. The effect would be as if the bill of lading had been clausured with the ship’s figures with the consequence that there is a dispute as to the quantity of cargo shown on the bill of lading as loaded. However, in circumstances where the charterers are authorised to issue bills of lading in accordance with the master’s receipts, such a chain of correspondence emphasising charterers’ limited authority in this respect (if or when there is knowledge of breach of authority) will be useful evidence in support of a claim for indemnity from charterers. In addition, a documentary chain will assist the defence of claims made under the bills of lading, provided the bill of lading is not conclusive evidence against the carrier as to the quantity shipped.

4. Ensure that bills of lading are issued with the words “weight unknown”. As discussed above, in the right factual circumstances, the approach of the English courts probably is that in the absence of evidence of a demand for a bill of lading showing the quantity of cargo loaded, a carrier should be able to rely on a “weight unknown” clause.

Unfortunately, there is no clear remedy to resolve the dispute over bill of lading figures. Much will turn on the law of the jurisdiction in which the ship loads. The carrier must be careful not to refuse to issue or sign bills of lading with shore figures unless there are no reasonable grounds for disputing the validity of the shore figures. In this event, the costs of any consequent delay to the vessel are likely to be for the carriers account. What constitutes reasonable grounds in these circumstances is unlikely to be straightforward and may require expert advice. For these reasons as a first step it is important that draught surveys are undertaken, and as soon as there is a risk of a dispute developing the Club, and the Club’s local correspondence’s, advice is sought.

1. In the absence of a demand the carrier is not bound to issue a bill of lading. This is distinct from the right of a charterer to require the Captain to issue bills of lading “as presented” under the charterparty.

2. Article III Rule 3 does not differentiate between the issue of a “shipped on board” bill of lading and a “received for shipment” bill of lading. Article I(E) does define the carriage of goods as from the time of loading.

3. “After receiving the goods into his charge, the carrier … shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things:”

4. … that the endorsements on the master’s receipts and bills of lading indicated much more serious levels of contamination and discoloration in a cargo of urea than he could reasonably have observed.

5. But see Article III r4 of the Rules and s 4 of the UK COGSA 1992, as well as The *Mata K* below.


8. “Any clause relieving ….. the carrier … from liability for loss or damage….. or lessening such liability … shall be null and void and of no effect.”

9. “A bill of lading … shall in favour of the person who has become the lawful holder of the bill of lading, be conclusive evidence against the carrier of the shipment of the goods.”
