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Claims Procedures

Probably one of the major concerns for any importer or exporter is that their cargo being damaged. But as we all know the truth is that cargo would get damaged not every time but once in a while something goes wrong and a claim against an airline would need to be instituted.

The effective handling of claims has become an important part in the freight business.

We at Morgan Cargo would like to help you in the fast and effective administration of your claims for any cargo that we send and receive on your behalf. We hereby supply the following as basic guide.

Basic requirements

In order to submit and administer a claim either yourself or on your behalf, the following mandatory information is required. Some of the information may be available on file but in order to prevent confusion and misunderstandings, the following needs to be supplied in writing, either by letter, fax or e-mail by the claimant within **14 days** from date of flight (this 14d day is the time when the airline is informed of your intention to claim against them. This is the pro-forma claim that is submitted):

- Air waybill number
 - Flight number & date
 - Commercial invoice
 - Destination
 - Name of shipper
 - Packing list
 - Name of consignee
 - Claim amount
 - Discrepancy/ irregularity report by GHA
 - Invoice number
 - Bill of Entry / DA
 - Written complaint from consignee
 - Copy of MAWB/HAWB – endorsed with discrepancy
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- All claims are always subject to proof of value. In addition to the mentioned information it is **imperative** that documentary evidence in the form of a Suppliers Invoice, stipulating the cost price of the goods, loss adjuster's report, and destruction certificate be submitted in substantiation of the amount being claimed.
 - In order to substantiate the claim amount, have a loss adjuster assess the loss/damage and furnish a report of the findings.
 - Should the cargo have to be destroyed, please obtain a destruction certificate.
 - If the cargo can be sold at i.e. a lower price/local market in order to minimize the loss suffered, proof of such sale/recovery is to be forwarded for submission to the airline.
 - The claimant may include in the price claim amount the survey fees and destruction costs.
 - Furthermore, certain frequently claimed for items are not permitted i.e. loss of turnover, phone calls, extra transportation costs etc. These items are considered to be consequential by nature and the carrier/agent are not liable for such like items. Freight charges are deemed fully earned and Airlines in most cases refuse to consider refunds.
 - Should the carrier require a Cession of Rights, the said document will be forwarded for completion by the relevant party.

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Important notice

As carriage by air is not solely governed by the provisions of the Warsaw Convention Article 26, as amended, should your client/consignee have a claim the following procedures are to be followed as the onus is on the consignee to prove damage:

1. In the case of **damage/loss**, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within fourteen (14) days from the date of receipt of cargo.
2. In the case of **delay** the complaint must be made at the latest within twenty one days (21) from the date on which the cargo has been placed at his disposal.
3. Every complaint must be made in writing upon the document of carriage (AWB) OR by separate notice in writing dispatched within the times aforesaid.
4. Receipt by the person entitled to delivery of the cargo without complaint is prima facie evidence that the same have been delivered in good condition and in accordance with the document of carriage.
5. Failing complaint within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on his part.
6. The onus is therefore on “the person entitled to delivery, which is the consignee, to prove that the damage occurred whilst the goods were in the custody of the carrier.

The requirements are the same in Montreal Convention of 1999.

In the event that the claim is not submitted within the specified time period, the claim is then time barred. The effect of this time bar is that no further action may be instituted against the airline for the loss or damage suffered.

Procedure for instituting a claim with the airline / agent

1. When notified of a potential claim/problem or made aware of it, a pro-forma claim to be submitted with the relevant airline
2. Submission will be done by e-mail / fax a pro-forma claim within the aforesaid times which consists of
 - a. A covering fax stating a pro-forma claim being lodged against AWB nr.
 - b. Attached thereto a copy of the relevant AWB
 - c. Formal letter addressed to the relevant airline indicating what the reason for the claim is, say for example damage to cargo due to mishandling.
3. Depending on the basis of the claim, we will request the relevant documentation from the shipper and consignee in order to submit a price claim to the relevant carrier
 - a. Once the relevant documentation has been obtained, we will compile a documentation bundle that we then submit to the airline,
 - b. And keep a copy of the documentation on your own file for reference purposes.
4. Depending on the airline they will normally forward you a acknowledgment that the claim has been received and that the claim is under investigation.

What is the basis of most claims lodged against airlines:

The majority of claims can be contributed to the following reasons:

- Quality deterioration of product due to temperature variation during transit or storage at the airline awaiting to be moved to the aircraft.
- Damage to cargo - broken boxes etc.
- Cargo short landed - missing presumed stolen cargo
- Delay – flight or truck
- Cancellation of flight
- Offloads at the time of departure of a flight
- Documentation lost / misplaced
- Truck accidents
- Cargo not sent / returned to either agent or shipper
- Pallet / cargo substitution

Invariably when a claim is submitted with a carrier, it is lodged in lieu of mishandling of the cargo. The term “mishandling” covers a broad spectrum and gives the claimant some room to manoeuvre without getting to specifics. In

other words, it allows one to fight the claim on more than one level and from more than one angle. If the claim is based on a specific ground, then one is governed by the rules relating to that ground only.

There are a number of things and scenarios one has to keep in mind when a claim has been lodged i.e.

➤ **Damaged cargo & deteriorated product**

○ **Damage to cargo:**

- One must also keep in mind that the damage can be visible or concealed.
- When the damage is visible the claimant should do a complete inspection of the cargo and get an independent surveyor to complete a report on the whole shipment.
- When the damage is concealed it is not apparent and every individual piece must be opened to inspect for damage. This is normally where the consignment is made up out of more than one piece and where the shipment is packed into boxes and crates. The whole shipment should be inspected and an independent surveyor should complete a report on the whole shipment.
- On both visible and concealed damage, always take photo's of the damaged cargo.

○ **Deteriorated products**

- With perishable cargo one must look if the product is still fit for its intended purpose. If the local health authorities do not clear the cargo because it is not fit for its intended purpose, then the airline would be liable for the loss. The report from the local health authority is needed to support the claim.
- If the produce is cleared by the local health authorities and the claimant rejects the cargo. The claimant would then have to prove his case against the airline.

○ **Calculating liability, limits of liability and consequential damages:**

- Calculating liability:
 - All the relevant documentation that relates to the claim is taken into consideration.
 - Also if the cargo was sold at a salvage price, the salvage price is taken into account.
 - If the cargo was completely destroyed, the total loss as per the destruction report with the original invoice stating the value of the produce.
 - Depending on what the damage was, the following documents are needed to claim for damaged and deteriorated cargo:
 - Copy of the surveyors report;
 - Copies of the salvage invoices, indicating the amount the product was sold for, how much of the product was sold and to whom it was sold.
 - Destruction certificate.
- Limits of liability:
 - The carrier's liability is limited by reference to the weight of the lost, damages or delayed consignment.
 - The different conventions have different limits of liability. The most common one used is the SDR – Special Drawing Rights per kilogram. This SDR is calculated on the International Monetary Fund's conversion rates.
- Consequential damages:
 - Damage and loss that is too remote is not in principal recoverable from the carrier.

➤ **Cargo short landed – presumed missing / stolen**

- A loss occurs when the whole or part of a shipment does not reach its destination and the carrier is unable to find it.
 - Under article 13 of the Warsaw and Montreal Convention the carrier is liable for loss of cargo.
 - The following needs to be supplied by the consignee or handling agent:
 - Formal notice to the carrier stating the cargo is fully or partially missing
 - Endorsed AWB with the discrepancy clearly marked on it
 - Copy of the endorsed AWB to be furnished to the shipper as well.
 - Notification of the amount that will be claimed, example the credit note to the consignee.

➤ **Flight cancellation, offloads and delays**

- When a flight is cancelled and the cargo is offloaded one should look at the following possible reasons for the cancellation and subsequent offload.

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- The following might have occurred:
 - Weather conditions forced the aircraft to be cancelled.
 - Weight restrictions forced the cargo to be offloaded
 - The aircraft went technical
- If the aircraft was cancelled due to weather conditions and weight restrictions, then one has no claim against the airline.
- If the aircraft went technical, then one can try to prove that the ultimate cause of the delay was due to poor maintenance on the part of the carrier prior to take-off and further that the carrier should have done everything possible to try to avoid this type of delay/problem.
- What is the position when the cargo was offloaded:
 - If the carrier booked the cargo on the next flight and kept the cargo as specified on the AWB and the cargo was delivered in a satisfactory condition, then no claim irrespective of the change in price on the market between the actual date of arrival and intended time of arrival can be claimed.
 - If the cargo arrived in a bad condition then the procedure to follow is the same as for damaged and deteriorated products.
- **Lost documentation or misplaced documentation:**
 - A claim may be instituted against an airline for the delay it caused by losing or misplacing the documentation.
- **Truck accidents, pallet / cargo substitution & cargo not sent / returned**
 - These types of claims are not governed by the Warsaw Convention as amended at The Hague or any other conventions. One will have to look at the contract between the parties to the contract.
 - When cargo is substituted, one will have to look and make a judgement call on the merits of each matter with regards to the damaged that was apparent.
 - Cargo not sent or returned will have to be considered on its own merits with regards to the damage that was caused.
- **Force Majeure:**
 - This can be described as an “Act of God”.
 - This is something that is not foreseeable by any person and no reasonable person would have expected that such an event would have taken place.
 - One cannot claim for *Force Majeure*

General extracts from the conventions:

The Warsaw Convention:

Article 11:

- (1) The air consignment note is prima facie evidence of the conclusion of the contract, of the receipt of the goods and the conditions of carriage
- (2) The statement in the air consignment note relating to the weight, dimensions and packing of the goods, as well as those relating to the number of packages, are prima facie evidence of the facts stated; those relating to the quantity, volume and condition of the goods do not constitute evidence against the carrier except so far as they both have been, and are stated in the air consignment note to have been, checked by him in the presence of the consignor, or relate to the apparent condition of the goods

This is the clean signature that the airlines quote when they decline a claim based on the claimant signed for the cargo stating no defect or damage.

Article 18:

- (1) The carrier is liable for damage sustained in the event of the destruction or loss or of damage to, any registered luggage or any goods, if the occurrence which caused the damage so sustained took place during the carriage by air.
- (2) The carriage by air within the meaning of the preceding paragraph comprises the period during which the luggage or goods are in charge of the carrier, whether in an aerodrome or on board an aircraft, or in the case of landing outside an aerodrome, in any place whatsoever.
- (3) The period of carriage by air does not extend to any carriage by land, by sea or by river performed outside an aerodrome. If, however, such carriage takes place in the performance of a contract for carriage by air, for the

purpose of loading, delivery or transshipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air.

Article 19:

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, luggage or goods

Article 20:

- (1) The carrier is not liable if he proves that he and his agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to make such measures.
- (2) In the carriage of goods and luggage the carrier is not liable if he proves that the damage was occasioned by negligent pilotage or negligence in the handling of the aircraft or in navigation and that, in all other respects, he and his agents have taken all necessary measures to avoid the damage.

Article 26:

- (1) Receipt by a person entitled to delivery of luggage or goods without complaint is prima facie evidence that the same have been delivered in good condition and in accordance with the document of carriage.
- (2) In the case of damage, the person entitled to delivery must complain to the carrier forthwith after discovery of the damage, and at the latest, within three days from date of receipt in the case of luggage and seven days from the date of receipt in the case of goods. In the case of delay the complaint must be made at the latest within fourteen days from the date on which the luggage or goods have been placed at his disposal.
- (3) Every complaint must be made in writing upon the document of carriage or by separate notice in writing despatched within the times aforesaid.
- (4) Failing complaint within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on his part.

Airline general conditions of carriage that is commonly used / quoted

1. Shipments in course of carriage, which states:
 - “Carrier reserves the right without notice, to cancel, terminate, divert, postpone, delay or advance any flight or the further carriage of any cargo, or to proceed with any flight without all or any part of the cargo, if it considers that it would be advisable to do so because of any fact beyond its control or not reasonably to be foreseen, anticipated, or predicted at the time the cargo was accepted; or if it considers that any other circumstances so requires”.
 - “In the event any flight is so cancelled, diverted, postponed, delayed, advanced or is terminated at a place other than the place of destination or in the event the carriage of any shipment is so cancelled, diverted, postponed, delayed, advanced or terminated, carrier shall not be under any liability with respect thereto. In the event the carriage of the shipment or any part thereof is so terminated, delivery thereof by carrier to any transfer agent for transfer or delivery or the placing of such shipment in storage shall be deemed complete delivery under the contract of carriage, and carrier shall be without any further liability with respect thereto, except to give notice of the disposition of the shipment to the shipper or to the consignee, at the address stated in the air waybill or shipment record. Carrier may, but shall not be obliged to, forward the shipment for carriage by any other route or forward the shipment as agent for the shipper or the consignee, for onward carriage by any transportation service on behalf of the shipper or the consignee. The cost of doing so attaches to the cargo.”
2. Carrier’s right to inspection:
 - “Carrier reserves the right to examine the packaging and contents of all shipments and to enquire into the correctness or sufficiency of information or documents tendered in respect of any shipment, but carrier shall be under no obligation to do so.”

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