

Circular Ref: 2019/0012

Date: 30 July 2019

常见的租约争议

在近期伦敦仲裁案14/19中，船舶以修改后的Norgrain格式出租，2月27日的租船确认电子邮件证明所执行的航次是从美国萨凡纳运输优质大豆到西班牙的Huelva，摩洛哥的Casablanca和阿尔及利亚的Oran。

有关租约条款如下：

21. LAYTIME TO COMMENCE AT LOAD PORT AND FIRST DISPORT AS PER GENCON 94

08:00/14:00. AT 2ND AND 3RD DISCHARGE PORT LAYTIME TO COUNT UPON VESSEL'S ARRIVAL W/W/W/W

OWNS WARRANT THAT VSL'S HOLDS ARE GRAIN CLEAN – IF VSL FAILS TO PASS INSPECTION A NEW NOR WILL BE TENDER UPON VSL'S PASS THE NEW SURVEY.

23. DEMURRAGE USD6,750 ...

24. FREIGHT WILL BE PAID 100% WITHIN 3 BANKING DAYS AFTER SIGNING RELEASING NON-NEGOTIABLE COPY OF B/L MARKED 'FREIGHT PREPAID' AND ORIGINAL B/L WILL BE RELEASED WHEN OWNS BANK CONFIRMS PAYMENT RECEIVED.

29. ANY NORMAL OWNERS/CREW MATTERS (SUCH AS MEDICAL/ REPATRIATION/PROVISIONS/WATER/CASH TO MASTER/REPAIRS/BUNKERS/ SECURITY CHARGES/ALL HUSBANDRY ITEMS ETC) WHICH TO BE FULLY FOR OWNERS ACCOUNT AND COVERED BY OWNERS ...

31. IF THE ORIGINAL BILL(S) OF LADING CANNOT BE PRESENTED AT DISCHARGE PORT(S), OWNERS/MASTER AGREE TO ALLOW THE CARGO TO BE DISCHARGED & RELEASED WITHOUT PRESENTATION OF ORIGINAL BILL(S) OF LADING AGAINST CHARTERERS ISSUING A LETTER OF

INDEMNITY WITHOUT REQUIRING A BANK GUARANTEE OR BANK ENDORSEMENT, ON THE FOLLOWING BASIS:...

(E) SHOULD DISCHARGE OF CARGO BE DELAYED DUE TO CHARTERERS' FAILURE TO STRICTLY COMPLY WITH ALL THE TERMS OF THIS CLAUSE, THEN SUCH DELAY SHALL BE ENTIRELY FOR CHARTERERS' TIME AND ACCOUNT AND LAYTIME SHALL NOT COUNT DURING THE ENTIRE PERIOD OF THE DELAY.

61. AT LOADING PORT THE B/L QUANTITY AND AT THE DISCHARGE PORT THE OUTTURN QUANTITIES ARE TO BE DETERMINED AS PER CUSTOM OF PORT. AT LOADING PORT AND ALL 3 DISCHARGING PORTS, OWNERS TO ARRANGE TO HAVE DRAFT SURVEYS CONDUCTED TO ASCERTAIN QUANTITY OF CARGO LOADED RESPECTIVELY QUANTITY OF CARGO DISCHARGED AT EACH PORT.

IF ANY/ALL CARGO RECEIVERS PRESENT A CLAIM FOR SHORTAGE OF CARGO AT ANY/ALL DISCHARGE PORTS, THE OWNERS ONLY TO BE RESPONSIBLE FOR THAT PORTION OF THE CARGO SHORTAGE CLAIM THAT IS BASED UPON THE OUTTURN DRAFT SURVEY QUANTITY AT THE PORT(S) IN QUESTION. THE AMOUNT OF THE CLAIM THAT IS IN EXCESS OF THE OUTTURN FIGURE AS ASCERTAINED BY THE DRAFT SURVEY AND THE FIGURE AS DETERMINED BY THE CUSTOM OF THE PORT SHALL BE FOR CHARTERERS ACCOUNT AND SHALL BE SETTLED DIRECTLY BETWEEN CHARTERERS AND THE CARGO RECEIVER IN QUESTION.

Norgrain pro-forma provides:

9(B) Once the Bills of Lading have been signed and Charterers call for surrender of Original Bills of Lading against freight payment (see Clause 57) it will be incumbent upon the Owners' or their Agents to comply immediately with such call for release during office hours, Monday to Fridays inclusive.

该船于3月11日在美国的萨凡纳完成装货。在装货港的相关货物数据如下所示：

- 基于铁路车辆和卡车称重的重量证书，装载的货物量为19,068.556吨。3月11日，代表船长按此数据签署了提单。
- 3月12日，在该船从萨凡纳开航离港后，船长签发抗议信，阐明根据该船在开航前的水尺测量，船上的总货物量为18,653吨，比提单货量少414.68吨。抗议信列明三个卸货港每个将要卸货货物的水尺测量数据，显示与提单对比差异的数据各为：Huelva货物190.39吨，Oran货物42.33吨，Casablanca货物181.964。

船东委任的检验人员就抗议信确定了以下问题：

- 水尺计量的潜在问题；
- 未在船上申报全部燃油；
- 船上的计算机有明显故障；
- 泊位的水深；
- 笔误。

船东与承租人之间存在着各种争议：

1. 即使在支付运费之后，提单仍延迟发放。
2. 在Casablanca等待几天后，承租人同意支付额外费用以换取更换卸货港顺序。
3. 收货人提出货物短缺索赔及与此有关的争议。
4. 承租人声称萨凡纳的代理人向他们收取的港口安保费用为4,360美元。
5. 承租人声称由他们在萨凡纳指示的检验员提出的索赔为17,624.72美元，以调查岸上和货物数据之间的差异。
6. 船东反诉的滞期费为40,720.32美元。

仲裁庭主张如下：

1. 驳回船东提交的意见，如果原始提单无法在卸货港出示，第 31 条并未规定承租人有义务提供保函。相反，第 31 条规定出租人有义务接受由承租人签署的保函，如果承租人提供，则不需要任何银行再签名。
2. 仲裁庭对第 61 条进行了分析，其中明确设想按港口惯例和水尺测量确定货量的两个数字可能不同，但这绝不会成为船东延迟发单的原因。在此基础上，船东违反合同，推迟了不可转让提单的发放。在没有发放提单的情况下，船东并没有赢得等在 Casablanca 的时间损失，但承租人同意支付额外费用以更改卸货港的轮换，这费用应该是承租人按双方自由协议约定支付的。
3. 合同第 61 条没有要求对两端的水尺测量进行比较，而是要求在提单数字和卸货水尺测量之间进行比较。因此，承租人有权在此基础上追偿，或者如果与收货人的结算有短量损失。
4. 根据合同第 29 条，船东负责安保费用，并且除了本条款中“正常”一词，找不到其他限制船东安保费用的证据。
5. 仲裁庭认为承租人委托他们自己的检验员进行调查是合情合理的，尤其是因为第 61 条卸货水尺测量数据的至关重要性。但是仲裁庭不给予检验员差旅费，因为承租人可以请用当地的检验人员。
6. 根据第 61 条的解释，在 Casablanca 的等待时间对船东不利。水尺测量的时间损失对承租人不不利，因为他们有责任证明自己是否扣租，是否在条款中写清责任。

ALCO 抗辩险部门(FDD department)给 Andrew Liu 客户如下建议:

- 对于此类常见争议,运营团队应始终保持适当的记录,因为这些记录可以作为您案件的良好证据。
- ALCO 抗辩险部门全天候提供涉及证据的服务。这项服务仅适用于 ALCO 客户。
- 重要的是不应盲目签发抗议信,而它被作为例行事项呈现在本案中。

以上由 Andrew Liu & Co., Ltd 编译,应以英文为准!

信息来源: Andrew Liu & Co., Ltd www.andrewliu.com.hk