

FREIGHT FOR THE CARRIAGE OF GOODS BY SEA

Aygun Ganbarova

*Baku State University, II year LLM degree student in
Maritime and Energy law*

KEY WORDS:

Freight, payment of freight, dead freight, back freight, paid in advance, paid on delivery.

ABSTRACT:

The most commonly used way for cargo transportation is by sea. The main reason for this is the fact that vessels with marine vehicles are able to ship a large amount of cargo and transport costs are fewer than those of other vehicles. The manner of implementation of this process depends on the parties' consent. Adjustment of freight issue has great importance in any legislative act related to carriage of goods by sea. I think that this issue must be kept in the center of attention from the point of resolving of possible disputes.

AÇAR SÖZLƏR:

Fraxt, fraxtın ödənilməsi, ölü fraxt, geri göndərmə fraxtı, fraxtın əvvəlcədən ödənilməsi, çatdırılma anında ödəmə.

XÜLASƏ:

Yük daşınmasında ən çox istifadə edilən yol dəniz yoludur. Bunun əsas səbəbi dəniz nəqliyyat vasitəsi olan gəmilərin bir dəfəyə yüksək miqdarda yük götürə bilməsi və daşıma xərclərinin digər nəqliyyat vasitələri ilə müqayisədə dəfələrlə az olmasıdır. Bu prosesin həyata keçirilməsi qaydası tərəflərin razılığından aslıdır. Dənizlə malların daşınması ilə əlaqədar olan istənilən qanunvericilik aktında fraxta dair məsələnin tənzimlənməsinin böyük əhəmiyyəti var. Hesab edirəm ki, yarana biləcək mübahisələrin həll edilməsi baxımından bu məsələ diqqət mərkəzində saxlanılmalıdır.

КЛЮЧЕВЫЕ СЛОВА:

Фрахт, оплата по фрахту, мертвый фрахт, возврат фрахта, предоплаченный фрахт, оплата за немедленную доставку.

АННОТАЦИЯ:

Самый распространенный способ перевозки грузов - по морю. Основной причиной этого является тот факт, что суда с офшорными транспортными средствами могут перевозить большое количество груза, а транспортные расходы меньше, чем у других транспортных средств. Процедура осуществления этого процесса основана на согласии сторон. Любой законодательный акт, касающийся перевозки грузов по морю, имеет большое значение в регулировании вопроса о фрахциях. Я думаю, что этот вопрос должен быть в центре внимания для разрешения споров, которые могут возникнуть.

INTRODUCTION:

First and foremost, we have to determine what is freight and who must pay the freight. Freight can be understood both narrow and wide sense. The widest sense this notion is generally used for the fee payable to a carrier/ shipowner, whether payable by the consignee, shipper, sender or charterer. In the other words, freight is money which paid for the transportation of goods (under a contract of carriage, bill of lading or under a voyage Charter-party). In its narrow sense freight is transportation cost. Our topic is related to payment of freight due to contract of carriage of goods. So, we can easily say that payment of freight under a voyage Charter-party is not concern to us as payment of freight under contract of carriage.

Let's start to give notion of contract of carriage. Because this issues (contract of carriage) are closely related to each other. If we look at the notion of contract of carriage by sea we see that this means any contract

the carrier undertakes against payment of freight to carry goods by sea from one part to another, however a contract which comprise carriage by sea and also carriage by some other means is deemed to be a contract of carriage by sea for the purposes of this Convention (Hamburg Rules) only in so far as it relates to the carriage by sea [11, p 24]. This notion is also given in our legislation. Article 87.1 of The Merchant Shipping Code of Republic of Azerbaijan reflects that carriage of cargo by sea contract is any contract under which a carrier is obliged to transport the cargo (provided or to be provided by the shipper) to the destination port and deliver it to the person authorized to accept the cargo (hereinafter referred to as a consignee) and payment of the transportation costs (freight) will be borne by the shipper or consignee [1, p 28]. Freight is also closely related to charter-party issues. Both time charter and bareboat charter the payment of freight is directly referred to a person who he/she is a charter hire. Thus legal problems related to freight is part of the interrelation between sale's law and the law of carriage [12, p 1]. But, as above mentioned we are mainly interested in paying of freight for carriage of goods.

Firstly, we should note that to pay freight is essential matter for carriage of goods. This means that, payment of the freight is one of the fundamental provisions in a contract of carriage. As we know that shipper or consignor has several main obligations. Payment of the freight is also one of the main obligation of consignee due to clause of different literature and legal acts. Failure to fulfill this obligation will result in a liability issue for shipper. For these reasons that seem mostly to be historical, special principles apply to freight payments, in particular the rules as to set-off where there is damage to, or short delivery of, the good. It is difficult to justify the special treatment given to freight, in anything other than historical terms [10, p 102]. In some circumstance freight may be paid by consignee, but as we know that freight is mainly paid by the shipper in a good manner. There is a provision in common law and due to provision the carrier has a lien on the goods for unpaid freight. So, no doubt that shipper should pay the freight agreed upon. The carrier has a lien on the cargo for unpaid freight and it is completely right.

Time of the payment of the freight is different and it differ from contract to contract. As we know that, there are so many different legislation of the countries. Due to these diversity it is determined that "If there is

no any other agreement, the freight is paid at the time of delivery of the goods. Freight shall be paid upon reception of the goods". This frame is also reflected in Scandinavian law. Also we can say related to this issue that English law says that, unless otherwise agreed, freight is payable only upon delivery of the cargo to the merchant, provided that the cargo is not so damaged that "the nature of the thing has been altered". There is a case that if, however, payment has been made in advance, it will depend on the contractual situation whether the prepaid freight shall be considered as a loan or as a latest advance payment. There are also other cases where the earning shows itself before the payment [12, p 7]

As mentioned beforehand that the commonly accepted principle says that freight is earned after the carrier's fulfillment of his own obligations (in the other words upon delivery of cargo to the consignee), and in many situations this is also when the freight shall be paid. However, a disparity should be made between the earning of the freight and the payment thereof. Contracting parties may agree for the payment of freight in different ways. These ways may be: payment in advance, on signing bills of lading (upon delivery of the cargo to the carrier), upon perform of the bill of lading, after the cargo is given to the consignee, in arrears and etc. In some cases we see that he payment clause notes that freight shall be paid upon delivery, although in reality there is no delivery of cargo. This situation creates some difficulty in regulating of payment issues. However we can say that in such case it is really an earned freight.

Practice says that, where the bill of lading has been conserved "freight prepaid", although the freight has not been paid. That case may be depends on the situation upon loading. The consignor demands a "freight prepaid" bill of lading, since he needs such document in order to get payment under a documentary credit. This payment is important for him to be able to pay the transportation cost. Thus the carrier issues a "freight prepaid" bill of lading as requested. The shipper does not pay freight and the question will come up at the port of discharge whether the carrier may enjoy the goods as safety for the freight notwithstanding the bill of lading being noted "freight prepaid".

Article 42 of Rotterdam Rules is called as "freight prepaid". Due to this article if the contract particulars

contain the provision “freight prepaid” or a statement of the same kind of character, the carrier cannot assert against the holder or the consignee the fact that the freight has not been paid. This article does not apply if the holder or the consignee is also the shipper [6, p 28]. Briefly, it seems that under the bill of lading, implied freight to be earned on time of delivery. If there is a contract between parties this contract must specify payment in advance or an advance of freight. This factor distinguishes them from each another. At the same time, we can note that it is obvious for everybody under voyage charter-party, charter-party as well as must specify whether paid in advance or on delivery.

Another issue is about back and dead freight. Back freight: where delivery is prevented for reasons beyond carrier’s control and in this situation carrier is able to earn additional freight in reasonable actions in further transporting the cargo, for example by carrying it back to the port of loading. In these cases reasons are completely differ from each other. For example, in some cases importer, consignor or buyer refuses to admit the cargo or may be there is no one at the destination port for the acceptance of cargo.

Dead freight: should cargo fail to utilize the full amount of the vessel contracted for, the carrier is entitled to specified compensation between the amount of cargo actually loaded versus what was contracted. Freight is the recompense which the shipowner is to receive for carrying the cargo to its port of discharge [10, p 112]. In other words dead freight is the amount paid by or recoverable from a charterer of a ship for such part of the ship’s capacity as the charterer has contracted for but fails to occupy.

CONCLUSION:

There are several important components of the carriage of goods. The law which related to carriage of goods covers a variety of matters as well as the issue of freight. Shipment refers to goods being transported from place to place. Freight is the general term for goods transported from one place to another by any means and one of these ways is by sea. The law ensures everywhere to secure payment of the freight or transportation cost to a carrier who has carried the goods to their destination place.

BIBLIOGRAPHY:

1. Merchant Shipping Code Law of The Republic of Azerbaijan, Baku, 22 June 2001, № 146-IIQ
2. Modern Maritime Law and Risk Management, AlekaMandaraka-Sheppard, London
3. International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (“Hague Rules”), Brussels, 25 August 1924.
4. The Hague-Visby Rules - The Hague Rules as Amended by the Brussels Protocol, 23 February 1968.
5. United Nations Convention on The Carriage of Goods by Sea, 1978 (Hamburg Rules)
6. United Nation Convention on Contracts for International Carriage of goods Wholly or Partly by Sea (New York, 2008), (The Rotterdam Rules).
7. Shipper’s Obligations and Liabilities under the Rotterdam Rules, GCOESOFTLAW-2010-3 [February 2011] <http://www.gcoe.j.u-tokyo.ac.jp/pdf/GCOE-SOFTLAW-2010-3.pdf>
8. Baughen, S. “Obligation of the shipper to the carrier” 2008, 14 JIML, p.559
9. Stevens, F. VervoeronderCognossement, Gent, Larcier, 2001, no 242-245,p.135-137
10. Paul Todd, Principles of the carriage of goods by sea . Printed and bound in Great Britain by TJ InternationalLTD,Padstow,Cornwall. See page [360]
- 11.<https://www.steamshipmutual.com/Downloads/Publications/Cargo%20Conventions%20Book/Cargo-Conventions2014.pdf>
- 12.<http://www.scandinavianlaw.se/pdf/38-18.pdf>