



# Case Analysis: Cargo Shortage Dispute Resolved as a Paper Shortage

AUTHOR / KEY CONTACT



Elisabetta Scanferla  
Solicitor

✉ [elisabetta.scanferla@LA-law.com](mailto:elisabetta.scanferla@LA-law.com)  
☎ 01202 786179

## Shortage of cargo was a “paper shortage”, not an actual shortage.

In a recent case, the Tribunal examined whether there was a cargo shortage and if there was, which party should have been responsible for it. On the facts of the case, the Tribunal found that there was a “paper shortage”, rather than an actual shortage, and awarded to the Owners 50% recovery from the Charterers, as an indemnity, on the cargo claims, according to the inter club agreement rules.

### Background facts

The vessel was chartered for a time charter trip to load a cargo of 37,200 mt of wheat at a Ukrainian port for delivery to an East African port.

The charterparty was on an amended NYPE 1946 form, which contained a clause confirming that cargo claims would be settled in accordance with the Inter Club Agreement (ICA) rules.

The Charterers ordered the master to deliver the cargo, which was commingled, to three different receivers simultaneously at the discharge port.

The master advised that he would be only able to verify the total amount discharged, not the individual amount for each of the receivers, under each bill of lading.

After completion of discharge, there was a discrepancy between the vessel’s draft survey, which recorded 37,210.772 mt as discharged, and the shore scale received from the receivers’ surveyor, which recorded 36,861.28 mt.

Disputes arose between the parties. The receivers claimed an alleged shortage of cargo. The Owners claimed a balance of hire, interest, and costs. In the end the parties agreed a settlement agreement.

## Cargo claim

The Owners sought to recover from the Charterers the settlement sum of USD 80,000, together with legal and expert costs. The Owners argued that the Charterers should bear the risk of cargo operations, under the terms of the charterparty. The Owners alleged that they would be entitled to an indemnity from the Charterers on the basis that the cargo claim arose from the operations that were the responsibility of the Charterers.

The Charterers' discharging arrangements were such that the master was not in a position to verify the quantity of cargo delivered to each individual receiver, but only the total quantity of cargo that was delivered. The Charterers were aware of a risk of shortage from the outset.

In support of their argument, the Owners relied on a surveyor report, which stated that: "it is impossible for a master to assess the cargo discharged for individual receivers as the discharge is simultaneous, whether the cargo is discharged in one or more ports".

It is possible that one receiver obtained a higher quantity of cargo than it was supposed to, leaving another receiver with a shortage. The Owners alleged that the error arose out of the neglect of the Charterers or their agents in discharging the cargo.

On the other hand, the Charterers relied on the authority of *Merit Shipping Co Inc v T K Boesen A/S* (the *Goodpal*) to argue that it was the Owners' obligation to ensure that the correct amount of cargo was delivered to the correct receiver and therefore that any claim for shortage should fall on the Owners.

## Conclusion

The Tribunal found that on the facts of the case, it seemed that on the basis of the draft survey carried out by the vessel on completion of loading, the bill of lading and the vessel's draft survey at the discharge port, the total amount of the cargo loaded was discharged.

It might have been that a shortage claim by one receiver was attributed to an over-discharge to another. However, the shortage claim of 370.20 mt was closed to the shore scale shortage of 338.71 mt. neither the Owners nor the vessel had any involvement in the shore scale calculations at the discharge port. It was accepted that it was a "paper shortage".

A paper shortage arises from inaccuracies in measurements, differing methods of measurements and or miscalculations in the quantity of cargo.

There was no evidence of over-discharge to one receiver, instead the evidence was pointing out to an overall shortage in the quantity of the cargo discharged.

The Tribunal found that the Goodpal case, which was referred to by the Charterers, was not relevant in this case because in the Goodpal case the Owners intervened in the discharge operations, which did not happen in this case.

The Tribunal awarded USD 44,462.72 to the Owners, representing 50 per cent of the cargo claim and costs and a balance of hire of USD 21,854.58.

As the Owners were only partially successful in their claim, the Tribunal awarded to them only an apportionment of recoverable costs.

## Key takeaways

- When shortage claims arise at the discharge port, it will be a matter of evidence to establish if the carrier was liable or not.
- The figure on the bill of lading may be the conclusive evidence between the carrier and the third party. The carrier must state in the bill the quantity of cargo in accordance with the information provided by the shipper. The statement is *prima facie* evidence that the carrier received that quantity.
- If there is an inter club agreement clause in the charterparty, the Owners are normally entitled to recover 50% contribution from Charterers for shortage claims.
- If the shortage was due to cargo handling, Charterers' contribution is increased to 100%.
- However, it is common to see in the bill of lading reservation as to the quantity of the cargo, when the carrier cannot know the quantity shipped, so that other evidence will have to be produced to prove any shortage.
- The carrier cannot rely on the reservation when it knows that the shipper's figure is not accurate. If the shipper's figure is so great that the bill of lading is wrong, the carrier will not be able to rely on the reservation.
- The master should not feel obliged or be pressured to sign bill of lading that are factually incorrect.
- If the carrier signed a letter of indemnity in circumstances where the bill of lading figure is clearly wrong, it will be unenforceable, under English law, on the ground of fraudulent misrepresentation. Furthermore, the carrier may lose the P&I Club's cover.

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