



3rd RGNUL National Negotiation
Competition,
2023

GENERAL INFORMATION QUATER- FINALS

3rd - 5th November, 2023



Justice Kuldip Prakash Bhandari
Foundation, Chandigarh



NegComp'23 Problem - 'A Wrecking Saga?' - Losses, Liabilities and Negotiations

General Information

Background of the Parties

Caribbean Pearl Harvesters Ltd. (CPH)

CPH is a fruit manufacturing company, dealing with production and manufacturing of the best tropical fruits in the sub-continent. Tropical fruits have been a part of the rural landscape of this region, with the sole purpose of providing food and nutrition. Some of the staple tropical fruits of this region include Jackfruit, Dragonfruit, Breadfruit, Mango, Mangosteen etc. The company has made a name for itself for having a highly stringent selection criterion when it comes to goods. What started as a humble fruit stall in the country of Ranidom by Ms. Anakin has expanded to a multi-million corporations and now has reigned as a top player in the market for over 40 years.

Jack Pirates Shipping Ltd. (JPS)

JPS is a shipping company, which is a relatively new entrant in the market. Mr. Gale, the founder/CEO of JPS, seeks to fuel his ambition by offering heavily discounted shipping rates and exclusive deal agreements so as to expand the company's reach in a short amount of time. Established in 2008, they have become known for their efficient freight services, cargo transportation and loading through sea-voyages.

Background of the Dispute

CPH is now planning to enter the Tudor Union fruit market, which is going to be a formidable task and on a scale larger than any of their previous operations. The Tudor Union is a union of some of the wealthiest nations in the world, and has a notoriously rigid set of rules and regulations that every imported food item must subscribe to. To complicate matters, a vast stretch of ocean separates Ranidom and Tudor Union, which makes it important that great caution is exercised so as to deliver the fruits fresh.

Despite this, CPH found a potential buyer in St. Belmond Ltd., a leading luxury hotel chain spread across Tudor Union. In recent years, the Ranidom market has become saturated with sub-par tropical fruits, leaving little demand for the high quality curated fruits of CPH. This has enticed them to penetrate the TU market despite high entry barriers. Enticed by the low rates offered by JPS, CPH entered into a contract with them on March 15th, 2023, to exclusively do their next three shipments through JPS. Pursuant to this, CPH and St. Belmond Ltd. chalked out a deal for supply of fresh and exotic fruits.

As agreed upon in the contract, 6336.150 MT of jackfruit and dragon fruit were sourced and boarded upon *Olympias*, the ship provided by JPS on September 25th, 2023. The Shippers, affiliated with JPS, presented the Master of Ship a Bill of Lading (B/L) which contained the statements “*clean on board*” under “*Shipper’s description of Goods*” and “*shipped ... in apparent good order and condition.*” Thereafter, JPS, the carrier, issued this B/L to the consignee upon the completion of the voyage.

The Vessel sailed from the loading port in Ranidom to the discharge port in Riverdale, a coastal nation in Tudor Union. Riverdale is famous for its scenic beaches which attracts millions of tourists annually, and is the locale for one of St. Belmond’s best resorts. After the goods were unloaded at Riverdale on October 7th, 2023, it was found that out of the 6336.150 MT fruits that were shipped, only 1469.23 MT was fit for consumption and the rest was soiled and damaged.

The remaining fruits were transported to the warehouse of St. Belmond Ltd. Having discovered that the quality and quantity of the goods was not meeting the terms of the contract, the legal team of St. Belmond sent a notice on October 15th, 2023 and threatened to initiate action against CPH due to partial performance of the contract. St. Belmond was caught in a fix, as a lot of their previous imports from the Ranidom sub-continent had been seized by the Department of Agriculture, Food and the Marine (DAFM) for having exceeded the maximum residue level of pesticide prescribed.

Thus, their supply had already been hampered and the current matter only exacerbated the situation at hand. Officials at DAFM had the same suspicion about goods supplied by CPH as well. CPH, in turn, sought to shift the blame on JPS saying that they did not exercise due caution in shipping goods which led to this outcome.

The Dispute

After discovering the deteriorated condition of the fruits, and being threatened by the legal suit, CPH sent a notice to JPS stating that ‘it is due to the negligence of JPS that the goods have been flagged as a unfit by St. Belmond and JPS shall take accountability and compensate for the losses incurred.’ The B/L stated that “goods were in apparent good condition and fit for the voyage.” However, the current state of affairs indicates otherwise. As per the laws governing carriage of goods by sea in Tudor Union, false statements in the B/L show negligence on the part of the carrier and indicate that due-diligence was not followed.

CPH claimed that it was the duty of the carrier to ascertain the condition of goods in the cargo before the beginning of voyage and alert the parties of any caution. However, JPS disputed that before loading of the cargo, the goods already had excessive moisture and pre-existing damage that could not have been reasonably foreseen by the Master of *Olympias*.

The damage was not limited to the goods alone; it has extended to the monetary loss faced by both the companies. JPS has suffered a loss of approximately \$6340,000 due to the spoiled goods while CPH has an unclaimed freight amount of \$ 457,600, the advance of \$ 114,400 set aside, since JPS has refused to pay the remaining claims for freight after the huge loss.

What initially began as a contractual agreement aiming to mutually enhance the business of both parties has now turned into a challenging scenario, characterized by an escalating burden of losses and liabilities. While the consequences of being sued by the hotel chain for delivering damaged goods is a threat to CPH, JPS equally understands the consequences a legal suit can lead to owing to loss of reputation and future business concerns.

The Agenda

Owing to the quantitative nature of the damage, and the loss both companies have suffered in terms of opportunities and reputation, Mr. Gale has come forward with a request of resolving these disputes through negotiation. Both the parties have come to an agreement with the dispute resolution process and aim to resolve and limit the losses suffered. CPH & JPS have decided to negotiate their disputes between 3rd -5th November, 2023. The negotiation will revolve around the following issues:

- a. **Liability & Quantum of Compensation:** CPH claims that they are owed compensation to the damages suffered due to the negligence of JPS, while JPS only wishes to compensate the damage caused due to their negligence, which, according to them, is negligible.
- b. **Claim for Freight:** CPH has not stated that they will not pay the freight unless the damage is compensated while JPS is apprehensive that the freight will not be paid even if some of the damage is compensated.
- c. **Future Business Relations:** The parties entered into a contract for three consignments. Olympias only completed one voyage out of the three. The dispute has strained the relations that the parties had built, and the negotiation will only be a driving factor on whether those consignments will be completed by JPS or the company will opt for the exit clause.
- d. **Contractual Interpretation:** Considering the present scenario, the contractual clauses in the initial contract need an amendment if the parties choose to continue with it.

JPS will be the Requesting Party represented by Mr. Gale and his counsel, while CPH will be the Responding Party having Ms. Anakin and her counsel as representative.

Additional Materials:

- a. Addendum to the Contract of Carriage of Goods by Sea between Caribbean Pearl Harvesters Limited & Jack Pirates Shipping Limited.
- b. The Tudor Union Carriage of Goods by Sea Act.

Annexure - A

Addendum to the Contract of Carriage of Goods by Sea

Between

Caribbean Pearl Harvesters Limited

&

Jack Pirates Shipping Limited

1. The voyage shall be governed by the 'Carriage of Goods by Sea Act, Tudor Union' (Annexure - B).
2. In the event of contract of carriage, Jack Pirates Shipping Limited shall be the 'carrier', and shall be entitled to all the duties and benefits of a carrier and shall also be liable for the responsibilities of a carrier. These rights and duties shall be governed by the Tudor Union COGSA.
3. Caribbean Pearl Harvesters Limited shall pay an advance claim of freight, and the remaining amount shall be paid after the cargo has been loaded at the port of Riverdale.

The contract between the parties is for three consignments, the details and nature of which shall be decided upon later.

4. The exit Clause can only be exercised after all the amounts between the parties have been settled.
5. In case of a dispute, the principle of party autonomy shall come into effect and the parties shall choose their own dispute resolution method.

Annexure - B

Carriage of Goods by Sea Act, The Tudor Union

1. Short Title & Extent-

(1) The following act shall be called The Tudor Union Carriage of Goods by Sea Act.

(2) It shall extend to the whole of the Tudor Union.

Provided that if any parties imply the applicability of the Act to their carriage of goods by sea, the Act shall be applicable to it regardless of the jurisdiction.

2. Application of Rules. —Subject to the provisions of this Act, the rules set out in the Schedule (hereinafter referred to as “the Rules”) shall have effect in relation to and in connection with the carriage of goods by sea in ships carrying goods from any port in Tudor Union to any other port whether in or outside [Tudor Union].

3. Liabilities - Under every contract of carriage of goods by sea the carrier, in relation to the loading, handling, stowage, carriage, custody, care, and discharge of such goods, shall be subject to the responsibilities and liabilities, and entitled to the rights and immunities hereinafter set forth.

(1) The carrier shall be bound, before and at the beginning of the voyage, to exercise due diligence to — (a) make the ship seaworthy: (b) properly man, equip, and supply the ship: (c) make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.

(2) After receiving the goods into his charge, the carrier, or the master or agent of the carrier, shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things

(a) The leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage.

(b) Either the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper.

(c) The apparent order and condition of the goods.

Provided that no carrier, master or agent of the carrier, shall be bound to state or show in the bill of lading any marks, number, quantity, or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking.

- 4. Rights and Immunities** - Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped and supplied, and to make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation.