

## Insight Article

# The date of the bill of lading

The correct dating of the bill of lading is a matter of great importance. It is material in the context of the contract of carriage, the contract of sale and the documentary credit transaction if payment of the cargo is arranged through a letter of credit.

Under the contract of carriage the shipper is entitled to demand that the bill of lading be dated correctly. If the Master or another agent of the carrier negligently misdates the bill, the carrier as principal is liable in damages if the shipper has suffered a loss as a result of the misdating. There is an implied obligation to exercise due care in the dating of the bill.

May also be relevant to the contract of sale. In most international sale contracts the tender of a wrongly dated bill of lading qualifies as breach of a condition and entitles the buyer to reject the bill and to treat the contract of sale as repudiated.

Where payment of the cargo is arranged through a letter of credit, the credit often states a date for shipment of the goods, so that the date of the bill of lading is also relevant. A person who deliberately backdates a bill of lading in order to bring it within the shipment time in the credit acts fraudulently.

Published 06 October 2009

## "Shipped"<sup>1</sup> and "Received for Shipment" Bills of Lading

Depending on the time when the carrier takes over the goods, a bill of lading may be a "shipped" or a "received for shipment" bill. The practical difference between the two forms is considerable. Where the carrier issues a "shipped" bill, he acknowledges that the goods are loaded on board ship. Where he issues a "received for shipment" bill, he confirms only that the goods are delivered into his custody; in this case the goods might be stored in a depot or warehouse under his control, or even at the quayside. Therefore the "shipped" bill is more valuable to a shipper than the "received for shipment" bill, because it confirms that the shipment has taken place. A container bill of lading issued upon receipt of the cargo by the carrier at a loading depot is normally a "received for shipment" bill of lading. The correct date of a "received for shipment" bill is the date when the goods are taken into the charge of the carrier. The correct date of a "shipped" bill, on the other hand, is the date when the goods are actually loaded on board. Where the loading extends over several days, the bill should be dated when the loading is completed. <sup>2</sup>

"Received" bill turned into "shipped" bill

Under the Hague, Hague-Visby and Hamburg Rules the shipper is entitled to demand from the carrier the issue of a bill of lading after the goods have been received into his charge. Article III (3) of the Hague and Hague-Visby Rules provides: "3. 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." Article 14.1 of the Hamburg Rules reads: "1. When the carrier or the actual carrier takes the goods in his charge, the carrier must, on demand of the shipper, issue to the shipper a bill of lading." At this time the carrier is only obliged to issue a "received for shipment" bill, showing that he has received the goods into his charge. However, after the goods are loaded the shipper may demand the issue of a "shipped" bill. The Hague, Hague-Visby and Hamburg Rules also provide that where a bill of lading has been previously issued, e.g., a "received for shipment" bill, the carrier may notate the document at the port of shipment with the name of the ship upon which the goods are shipped and the date of shipment, stating that the goods are now on board, and when so notated the document shall have the same functions as a "shipped" bill. Article III (7) of the Hague-Visby Rules reads: "7. After the goods are loaded the bill of lading to be issued by the carrier, master, or agent of the carrier, to the shipper shall, if the shipper so demands, be a "shipped" bill of lading, provided that if the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the "shipped" bill of lading, but at the option of the carrier such document of title may be noted at the port of shipment by the carrier, master, or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, and when so noted, if it shows the particulars mentioned in paragraph 3 of Article III, shall for the purpose of this article be deemed to constitute a "shipped" bill of lading." 3 Article 15.2 of the Hamburg Rules contains a similar provision: "2. After the goods have been loaded on board, if the shipper so demands, the carrier must issue to the shipper a shipped bill of lading which, in addition to the particulars required under para 1 of this Article, must state that the goods are on board a named ship or ships, and the date or dates of loading. If the carrier has previously issued to the shipper a bill of lading or other document of title with respect to any of such goods, on request of the carrier, the shipper must surrender such document in exchange for a shipped bill of lading. The carrier may amend any previously issued document in order to meet the shipper's demand for a shipped bill of lading if, as amended, such document includes all the information required to be contained in a shipped bill of lading." Where payment of the cargo is arranged through a letter of credit, the terms of the credit may provide that the bills of lading to be tendered have to be "clean, on board, to order and blank endorsed". A "received for shipment" bill does not satisfy these terms because it is not an "on board" bill, but the International Chamber of Commerce's Uniform Customs and Practice for Documentary Credits(UCP), like the Hague, Hague-Visby and Hamburg Rules, equate a "received" bill which has been duly notated to a "shipped" bill. The UCP 500 provide in Article 23(a) (ii): "Loading on board or shipment on a named vessel may be indicated by pre-printed wording on the bill of lading that the goods have been loaded on board a named vessel or shipped on a named vessel, in which case the date of issuance of the bill of lading will be deemed to be the date of loading on board and the date of shipment. In all other cases loading on board a named vessel must be evidenced by a notation on the bill of lading which gives the date on which the goods have been loaded on board, in which case the date of the on board notation will be deemed to be the date of shipment." Accordingly, in cases where a "received for shipment" bill is notated "shipped", the date of shipment of the goods being acknowledged in the document is that of the notation, and not the original date, which simply indicates the time of the

receipt of the goods by the carrier and not the time when they are actually loaded on board.

#### Ante-dated and post-dated bills of lading and P&I cover

Rule 34 of Gard's 1998 Statutes and Rules reads, inter alia: "1. The Association shall cover the following liabilities when and to the extent that they relate to cargo: provided that the cover does not include: viii) liabilities, costs and expenses arising out of the issue of an ante-dated or post-dated Bill of Lading, waybill or other document containing or evidencing the contract of carriage, that is to say a Bill of Lading, waybill or other document recording the loading or shipment or receipt for shipment on a date prior or subsequent to the date on which the cargo was in fact loaded, shipped or received as the case may be." Post-dated bills of lading are not as common as ante-dated bills but in either case the Association does not cover liability arising out of the issue of such bills of lading. It should be noted that the exclusion applies to ante or post-dating of both, "shipped" and "received for shipment" bills. Members should also be aware that cover is excluded in these cases even if the bill of lading was issued by the Member's agent without the Member's knowledge of its incorrect dating. Since there are occasions when Members are unable to avoid liabilities or costs due to the issue of ante-dated, or occasionally post-dated bills of lading (for example due to errors by agents or masters and officers), the Association's Extended Cargo Cover and Comprehensive Carriers' Liability Cover are able to provide protection. There is, however, an exclusion for wilful misconduct as expressed in the Association's Rule 72, incorporated in the terms of cover.

#### Footnotes

- A "shipped" bill of lading is also referred to as an "on board" bill.
- *Oetker v IFA (The Almak)* (1985) 1 Lloyd's Rep. 557.
- Article III (7) of the Hague Rules contains a very similar provision, the only material difference being the omission of the words "if it shows the particulars mentioned in paragraph 3 of Article III".