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22 JAN 1921

CROWN  
AGENTS

DAMAGE OF CEMENT

1921

LOADRIDEON "ANGLO EGYPTIAN"

21st JANUARY

Last previous Paper:

The carrier with Ministry of Shipping respecting claim for £261.13.9 and states facts of case. Encloses copy of Arbitrator's award. Amount was refunded to E.A. from Marine Insurance Fund as an act of grace. Asks if in circles C.O. will press their claim against M/S.

General Dept

Have you any lists of any other cases in which the M/S Shipping have, or to find that commercial freight rates have not changed, disclaimed responsibility for damage to cargo shipped in a requisitioned vessel?

Wed. 22.1.21.

to Customs Dept

No. We have no note of anything in Genl. Dept which would help with this.

Jan 25/21

Copy all to M. D. - say that the M. D. concurs in the view of the G. D. that the acceptance of special note of

freight cannot be held to absolve the Ministry for liability say in future that

Copy M/D on 31/1  
Copy above case to 21/1  
Copy comes from 8 March to 2/1

Next subsequent Paper.

15391

10404 Wk 54133-24 Gb  
111177 22646-32

100 28000 9 30 W & S Ltd.  
00000 10200

that further copies may be  
given to the matter

608. 25. 1. 21  
atm

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E.A.P. 5347



ALL COMMUNICATIONS  
TO BE ADDRESSED TO THE  
CROWN AGENTS FOR THE COLONIES  
THE ABOVE REFERENCE AND THE  
DATE OF THIS LETTER BEING QUOTED.

TELEGRAMS "CROWN LONDON"  
TELEPHONE 7750 VICTORIA

C.O  
3630  
REC'D  
Per 22 JAN

66  
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4, MILLBANK  
WESTMINSTER  
LONDON, S.W. 1.

21st January, 1921

Sir,

I have the honour to enclose, for the information of the Secretary of State, a copy of correspondence which has ensued between ourselves and the Ministry of Shipping regarding a claim amounting to £481.13.9d. in respect of cement damaged whilst being loaded on to the transport "Anglo Egyptian" in May, 1917. The facts of this case are as follows.

The steamer was requisitioned at short notice by the British Government and shortly afterwards a consignment of cement for the Government of the (then) East Africa Protectorate was loaded into her. On the following morning it was found that there was a quantity of water in the hold and it was at once necessary to discharge the cement, when 833 casks were found so damaged by water as to render the cement useless.

The Ministry of Shipping held that the owners were responsible for the unseaworthy state of the vessel but the owners contended that there was no agreement to that effect, and alternatively, that they had no time to survey the vessel before she was requisitioned and cargo put on board. The question of responsibility, was referred to arbitration, and I enclose a copy of the Arbitrator's award of the 9th March last from which it will be seen, that the Owner's case was upheld.

On this award being communicated to us, as will be seen from the correspondence, we requested the Ministry of Shipping to settle our claim for the damage, but that

Under Secretary of State,  
Colonial Office.

Department/

Department declines to admit it, contending that as commercial rates of freight were not charged to the Colonial Government in respect of shipments made by Government transports no claim can be recognized in respect of loss. We cannot see any justification for this view. The cement was under the instructions of the Shipping Controller and was placed on board a vessel which proved to be unseaworthy. It is quite clear, we think, that the responsibility for this negligence lay either with the Ministry of Shipping or with the shipowners, and, the arbitrator in the case having decided in favour of the shipowners, the Ministry must be held responsible. The rate of freight charged appears to us quite irrelevant to the question whether we are entitled to compensation for the damage occasioned to the cement through the act of negligence.

Although the loss is not one which could be recovered under an ordinary marine insurance policy, the amount was refunded to the Government of East Africa as an act of grace from the Marine Insurance Fund so that the matter now lies between the Ministry of Shipping and ourselves. As it would appear that we can not proceed profitably further in the matter I have to enquire if the Secretary of State will press the claim against the Ministry.

I have the honour to be,

Sir,

Your obedient servant,

*W. S. Dalrymple*

for Crown Agents.

12th April, 1920

S.S. "Anglo Egyptian"

Sir,

I have to acknowledge the receipt of your letter No. 298/21 of the 31st March addressed to our Shipping Office, and enclosing a copy of the Arbitrator's Award in respect of the liability for the 833 casks cement damaged by water on the 19th April, 1917.

We note that the Arbitrator has found in favour of the Owners of the steamer, and we accordingly have to request that a remittance for the amount of our claim, viz. £481.12. 6, may be sent to us by the Ministry at an early date.

I am etc.

(Sgd) W.L. Patten

for Crown Agents.

Ministry of Shipping to Crown Agents

298/21

Ministry of Shipping,  
14th April, 1920

S.S. "Anglo Egyptian"

Gentlemen,

I am directed by the Shipping Controller to acknowledge your letter of the 12th instant, and to say that, as the Arbitrator found in favour of the ship, no amount appears to be due to you in respect of the damage to the cement in this case.

I am etc.

(Sgd) T.J. Barnes

Crown Agents to Ministry of Shipping

4th May, 1920

S.S. "Anglo Egyptian"

Sir,

I have to acknowledge the receipt of your letter No. 298/21 of the 14th April and to point out that the arbitrator

found

12th April, 1920

S.S. "Anglo Egyptian"

Sir,

I have to acknowledge the receipt of your letter No. 298/21 of the 31st March addressed to our Shipping Office, and enclosing a copy of the Arbitrator's Award in respect of the liability for the 833 casks cement damaged by water on the 19th April, 1917.

We note that the Arbitrator has found in favour of the Owners of the steamer, and we accordingly have to request that a remittance for the amount of our claim, viz. 2481.13. 0, may be sent to us by the Ministry at an early date.

I am etc,

(Sgd) W.L. Paton

for Crown Agents.

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Ministry of Shipping to Crown Agents

Ministry of Shipping,  
14th April, 1920

298/21

S.S. "Anglo Egyptian"

Gentlemen,

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I am etc.

(Sgd) T.J. Barnes

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Crown Agents to Ministry of Shipping

4th May, 1920

S.S. "Anglo Egyptian"

Sir,

I have to acknowledge the receipt of your letter No. 298/21 of the 14th April and to point out that the arbitrator

found/

found that you had no claim against the shipowners, but that finding does not affect our claim against you,

2. It is common ground that the cement was accepted by the Ministry for shipment to East Africa and that it was damaged after such acceptances.

3. The damage occurred owing to the un-seaworthy condition of the steamer and risks on an unseaworthy vessel are not capable of being covered by insurance. As, therefore, the cement was placed on board a vessel which was not warranted seaworthy, and the Colonial Government are unable to make any claim against the Underwriters owing to the vessel's unseaworthiness, it is clear that the liability for the loss of or damage to the cement must be borne by the Shipping Controller.

4. I have accordingly to request that the Shipping Controller will give the matter further consideration with a view to meeting the claim put forward by us on behalf of the East African Government

(Sgd) W.L. Paton  
for Crown Agents.

Crown Agents to Ministry of Shipping

Ministry of Shipping,

298/21:

7th May, 1920

s.s. "Anglo Egyptian"

Gentlemen,

With reference to your letter of the 4th instant, I am directed by the Shipping Controller to state that before he can further consider your claim against this Department, he must see the bill of lading under which the cement in question was carried. If you will forward this as soon as possible your claim will be dealt with.

(Sgd) T.J. Barnes.

Crown Agents to Ministry of Shipping

11th May, 1920

s.s. "Anglo Egyptian"

Sir,

With reference to your letter of the 4th instant, I am directed by the Shipping Controller to state that before he can further consider your claim against this Department, he must see the bill of lading under which the cement in question was carried. If you will forward this as soon as possible your claim will be dealt with.

7th May, I have to point out that bills of lading were not issued in respect of stores shipped by Government transports. The only documents we have are lists of stores signed by the masters of the various steamers or by their deputies.

We enclose for the information of the Shipping Controller a copy of the receipted list of some of the stores, including the cement in question, shipped by the s.s. "Anglo Egyptian". The original of this document was, of course, sent to the consignee to enable him to obtain possession of the stores.

(Sgd) W.L. Paton

for Crown Agents.

Crown Agents to Ministry of SHIPPING

8th July, 1920

sir,

With further reference to our letter of the 11th May we have to remind you that we have not yet received the remittance in settlement of our claim for 2481.13.9d. in respect of 833 casks cement damaged by water per s.s. "Anglo Egyptian" in April, 1917. In this connection, would mention that in response to our telephonic enquiry of the 18th June, Mr. Barnes stated that our claim had then been passed to the accountant for payment.

(Sgd) J. Blackwood

for Crown Agents.

Ministry of Shipping to Crown Agents

45854/20

16th July, 1920

s.s. "Anglo Egyptian"

Gentlemen,

I am directed by the Shipping Controller to refer to your letter of the 8th instant, and in reply thereto, to point out that the freight charged in this case was that applicable/



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We enclose for the information of the Shipping Controller a copy of the receipted list of some of the stores, including the cement in question, shipped by the s.s. "Anglo Egyptian". The original of this document was, of course, sent to the consignee to enable him to obtain possession of the stores.

(Sgd) W.L. Paton

for Crown Agents.

Crown Agents to Ministry of Shipping

8th July 1920

sir,

With further reference to our letter of the 11th May we have to remind you that we have not yet received the remittance in settlement of our claim for £481.13.9d. in respect of 833 casks cement damaged by water per s.s. "Anglo Egyptian" in April, 1917. In this connection I would mention that in response to our telephonic enquiry of the 18th June, Mr. Barnes stated that our claim had then been passed to the accountant for payment.

(Sgd) J. Blackwood

for Crown Agents.

Ministry of Shipping to Crown Agents

45854/20

16th July, 1920

s.s. "Anglo Egyptian"

Gentlemen,

I am directed by the Shipping Controller to refer to your letter of the 8th instant, and in reply thereto, to point out that the freight charged in this case was that applicable/

applicable to British Government stores, and the Controller is, therefore, unable to recognise any liability for damage or deficiency in connection therewith, since such claims are not provided for in the Government rates of freight.

Had the East African Government been charged commercial rates of freight on all stores shipped by their account, the usual commercial conditions would have applied, but this was not the case.

as ato.

(Sgt) J. S. Clifford

In the matter of the Arbitration Act 1889 and in the matter of an arbitration between the Shipping Controller and Messrs Lawther Latta & Co. 72

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WHEREAS by an agreement dated 7th January 1919 between The Shipping Controller (hereinafter called The Controller) and Messrs Lawther Latta & Company as owners of the steamship Anglo Egyptian (hereinafter called the Owners) it was provided that a disputed claim by the Controller against the Owners for damage to certain cargo should be referred to me, Frank Douglas Mackinnon, one of His Majesty's counsel, as sole Arbitrator; and whereas I entered upon the said references upon the 3rd March 1920, NOW I having on that day heard the parties by their Counsel and their evidence to make and publish my award as follows :-

1. Before 16 April 1917 the Anglo Egyptian was under requisition by the Government of the Commonwealth of Australia. In this service she arrived in London early in April 1917 with cargo from Australia and Port Said. She was discharged from this service on 16th April 1917. The terms under which she was in the service of the Commonwealth Government were not in evidence before me, but from references in letters that were put in it appears that the Commonwealth Government were under some obligation as to reconditioning the ship at the conclusion of her service for it.
2. The Shipping Controller requisitioned the ship in London. No evidence was given before me as to the manner in which this requisition was intimated to her Owners. No form of charter party was sent to the Owners and no Charter Party or other contract of any kind was signed by the Owners or the Controller.
3. The steamer was in fact placed at the service of the Shipping Controller on 17th April 1917, the day following her discharge from her service for the Commonwealth. She was upon that day, and remained at all material times, in the possession/  
4 119

possession of the Owners by their Captain and crew who were in charge of the vessel.

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4. On 19 April 1917 certain bags of cement, the property of the Controller were loaded in No.1 hold. On 20th April it was found that these bags of cement had been damaged by water. The pecuniary loss of this damage amounted to £481. 13. 4.

5. The water got into No.1 hold by reason of a defect in a manhole door to a ballast tank at the bottom of the hold. The said defect in fact constituted the steamer unfit for the reception of cargo upon 19 April and if the said cargo had been loaded pursuant to some contract by which the Shipowners expressly or impliedly warranted the seaworthiness of the ship the said damage would have been caused by a breach of such warranty.

6. The Controller contended that in the circumstances above stated there was a contractual relation between himself and the Owners, and that as part of such contract the Owners impliedly warranted that the vessel was on 19 April and on 20 April 1917 seaworthy and fit for service. The Controller accordingly claimed £481. 13. 4. as damages for breach of warranty of seaworthiness. The Controller did not allege any other ground of claim against the Owners.

7. Upon the facts as I find them above I hold that the shipowners did not upon 19 April or 19 April 1917 warrant to the Controller that the vessel was seaworthy or fit for the loading of cargo upon her. I therefore award that the Controller is not entitled to recover any sum from the Owners as damaged for the breach of such a warranty.

8. I direct that the Controller shall pay the costs of this my award which I assess at the sum of twenty one and a half guineas (£22. 11. 6) and if the Owners shall in the first place pay the said sum the Controller shall repay it to them.

9. I further direct that the Controller shall pay to the Owners their costs of the reference to be taxed if not agreed.

In witness whereof I have set my hand this 9th day of March 1920

Witness            my hand

J. D. Mackinnon

Cal. 3630/21 Kunka

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DRAFT.

The Secretary  
Ministry of Shipping

31 January 1921

- Mr. Bentley 27 Jan
- Mr. Ballalra 27
- Mr. Gifford
- Mr. H. Lambert
- Mr. H. Keith
- Mr. G. Fiddes
- Mr. M. Miner

Copy to 2 Mr. Gifford & Mr. M. Miner

I am in letters to you to  
 send before the Minister  
 of Shipping the encopy of  
 a letter from the Cal  
 regarding a claim for Rs 139  
 in respect of cement damaged  
 whilst being loaded onto  
 the transport "Anglo-Indian"  
 in May 1917  
 two other concerns in

21 January

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Ch. G. G.

The fact is that the acceptance  
of a special rate of interest cannot  
be held to involve the measure  
of liability of the trust that  
further down may be given to  
the matter