

Claims Procedures

Basic requirements

In order to submit and administer a claim either yourself or on your behalf, the following mandatory information is required. Some of the information may be available on file but in order to prevent confusion and misunderstandings, the following needs to be supplied in writing, either by letter, fax or e-mail by the claimant within 14 days from date of flight:

- Air waybill number
 - Destination
 - Name of consignee
 - Invoice number
 - Copy of MAWB/HAWB (endorsed with discrepancy)
 - Flight number & date
 - Name of shipper
 - Claim amount
 - Bill of Entry / DA
 - Commercial invoice
 - Packing list
 - Discrepancy/ irregularity report by GHA
 - Written complaint from consignee
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- All claims are always subject to proof of value. In addition to the mentioned information it is imperative that documentary evidence in the form of a Suppliers Invoice, stipulating the cost price of the goods, loss adjuster's report, and destruction certificate be submitted in substantiation of the amount being claimed.
 - In order to substantiate the claim amount, have a loss adjuster assess the loss/damage and furnish a report of the findings.
 - Should the cargo have to be destroyed, please obtain a destruction certificate.
 - If the cargo can be sold at i.e. a lower price/local market in order to minimize the loss suffered, proof of such sale/recovery is to be forwarded for submission to the airline.
 - The claimant may include in the price claim amount the survey fees and destruction costs.
 - Furthermore, certain frequently claimed for items are not permitted i.e. loss of turnover, phone calls, extra transportation costs etc. These items are considered to be consequential by nature and the carrier/agent are not liable for such like items. Freight charges are deemed fully earned and Airlines in most cases refuse to consider refunds. Since they decide on their own liability, there is not much that can be done in this regard.
 - Should the carrier require a Cession of Rights, the said document will be forwarded for completion by the relevant party.

Important notice

As carriage by air is governed by the provisions of the Warsaw Convention Article 26, as amended, should your client/consignee have a claim the following procedures are to be followed as the onus is on the consignee to prove damage:

1. In the case of damage/loss, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within fourteen (14) days from the date of receipt of cargo.
2. In the case of delay and where the cargo got lost on route the complaint must be made at the latest within twenty one days (21) from the date on which the cargo has been placed at his disposal.
3. Every complaint must be made in writing upon the document of carriage (AWB) OR by separate notice in writing dispatched within the times aforesaid.
4. Receipt by the person entitled to delivery of cargo without complaint is prima facie evidence that the same have been delivered in good condition and in accordance with the document of carriage.
5. Failing complaint within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on his part.
6. The onus is therefore on "the person entitled to delivery, which is the consignee, to prove that the damage occurred whilst the goods were in the custody of the carrier.

Procedure for instituting a claim with the airline / agent

1. When notified of a potential claim/problem or made aware of it, a pro-forma claim to be submitted
2. Submit / fax a pro-forma claim within the aforesaid times which consists of
 - a. Covering fax stating a pro-forma claim being lodged against AWB nr.
 - b. Attach hereto a copy of the relevant AWB
3. Depending on the basis of the claim, request the relevant documentation from the shipper and consignee in order to submit a price claim to the relevant carrier
 - a. Once the relevant documentation has been obtained, submit a set of it to the airline
 - b. Keep a copy of the documentation on your own file

Basis of claims

The majority of claims can be contributed to the following reasons:

- Quality deterioration of product i.e. overheated or too cold (frozen)
- Damage to cargo - broken boxes etc.
- Cargo short landed - missing presumed stolen cargo
- Delay - flight or truck
- Cancellation of flight
- Offloads
- Documentation lost / misplaced
- Truck accidents
- Cargo not sent / returned to either agent or shipper
- Pallet / cargo substitution

Invariably when a claim is submitted with a carrier, it is lodged in lieu of mishandling of the cargo. Mishandling covers a broad spectrum and gives the claimant some room to manoeuvre without getting too specific. In other words, it allows one to fight the claim on more than one level and from more than one angle.

There are a number of things and scenarios one has to keep in mind when a claim has been lodged i.e.

- Damaged cargo & deteriorated product
 1. What happened to the cargo?
 - a) Was it sold to salvage costs, or
 - b) Was it destroyed as it was either not fit for human consumption, or it had possibly been contaminated or it completely unusable
 2. Depending on the answer from 1, you will need either
 - a) Copy of the survey report
 - b) Copies of the salvage invoices
 - Reflecting amount product sold for
 - How much of the product was sold / salvaged
 - To whom had it been sold
 - c) Destruction certificate
 3. Consignee or handling agent to
 - a) note discrepancy immediately
 - b) to take photos of cargo
 - c) to note temperature on arrival
 4. The above will assist in trying to prove when & who is responsible for the damage / loss

- Cargo short landed – presumed missing / stolen
 1. Consignee or handling agent
 - a) to note discrepancy immediately &
 - b) advise either the carrier & shipper immediately in writing, or
 - c) endorse the AWB with discrepancy and furnish shipper with a copy of the endorsed AWB
 2. Notification of amount to be claimed for, e.g. credit note request

- Flight cancellation & offloads – cargo not sent
 1. Why was the flight cancelled?
 - a) Weather conditions
 - b) Weight restrictions
 - c) Technical
 2. Depending on the answer you get from 1, you only have recourse as follows:
 - a) None against weather conditions & weight restrictions

- b) Technical – falls under the immediate cause of delay
 - Ultimate cause of the failure can be tracked to poor maintenance prior to transportation
 - Carrier should have done everything possible to avoid it
 - 3. What happened to the cargo after the flight was cancelled or the cargo was offloaded?
 - a) Did the carrier store the cargo until the next flight?
 - b) Did the carrier take the cargo back to the shipper's agent for storage until the next flight?
 - c) Did the shipper collect the cargo?
 - 4. Depending on the answer you get from 3, you need to consider the following:
 - a) If the carrier / agent stored the cargo, did the cargo arrive at destination
 - in a satisfactory condition
 - no claim
 - in a bad condition
 - refer damaged cargo & deteriorated product scenario
 - b) If the shipper collected the cargo
 - did they store it themselves until the next flight, or
 - did they sell it to the local market & sent replacement cargo to be dispatched on the next flight
 - no claim
- Delay & documentation lost / misplaced
1. What is the reason for the delay
 - a) Technical
 - b) Weather
 - c) Lost / misplaced documentation
 2. Depending on the answer you get from 1, you have to consider
 - a) How was the cargo stored
 - b) By whom was the cargo stored
 - c) How long was the cargo delayed due to either reason
 3. Refer previous scenario & questions
 4. A claim can really not be instituted for the first two reasons but one has to look at the events after that and before the cargo is dispatched again i.e. handling & storage of the cargo
 5. A claim can be instituted when the cargo cannot be customs cleared at destination due to lost or misplaced documentation.
- Truck accidents, pallet / cargo substitution & cargo not sent / returned
1. Claims due to these reasons are not governed by The Warsaw Convention as amended at The Hague.

2. Trucking claims – one has to rely on the trucking contract and the terms thereof.
3. Cargo substitution – each instance has to be judged on its own merit
4. Cargo not sent / returned – again each instance has to be judged on its own merit

WSC Articles that is commonly used / quoted

1. Article 11 – Evidentiary Value of documentation
 - Prima facie evidence
 - The conditions mentioned
 - Weight, dimensions and packing
 - Checking cargo
 - Statements relating to condition
 - Apparent condition

2. Article 18 – Damage to baggage & cargo
 - The carrier is liable
 - Damage sustained
 - Destruction
 - Loss
 - Inherent defect
 - Inherent vice
 - Defective packaging
 - Act of war
 - In the charge of the carrier
 - Performance outside an airport
 - Transshipment

3. Article 19 – Delay
 - Damage occasioned
 - Delay
 - Non-arrival at destination

4. Article 20 – All necessary measures
 - Servants & agents
 - All necessary measures
 - Force majeure
 - Reasonable care
 - Utmost care
 - Delay

5. Article 26 – Notice of complaints

Airline general conditions of carriage that is commonly used / quoted

1. Shipments in course of carriage, which states:

- "Carrier reserves the right without notice, to cancel, terminate, divert, postpone, delay or advance any flight or the further carriage of any cargo, or to proceed with any flight without all or any part of the cargo, if it considers that it would be advisable to do so because of any fact beyond its control or not reasonably to be foreseen, anticipated, or predicted at the time the cargo was accepted; or if it considers that any other circumstances so requires".
- "In the event any flight is so cancelled, diverted, postponed, delayed, advanced or is terminated at a place other than the place of destination or in the event the carriage of any shipment is so cancelled, diverted, postponed, delayed, advanced or terminated, carrier shall not be under any liability with respect thereto. In the event the carriage of the shipment or any part thereof is so terminated, delivery thereof by carrier to any transfer agent for transfer or delivery or the placing of such shipment in storage shall be deemed complete delivery under the contract of carriage, and carrier shall be without any further liability with respect thereto, except to give notice of the disposition of the shipment to the shipper or to the consignee, at the address stated in the air waybill or shipment record. Carrier may, but shall not be obliged to, forward the shipment for carriage by any other route or forward the shipment as agent for the shipper or the consignee, for onward carriage by any transportation service on behalf of the shipper or the consignee. The cost of doing so attaches to the cargo."

2. Carrier's right to inspection:

- "Carrier reserves the right to examine the packaging and contents of all shipments and to enquire into the correctness or sufficiency of information or documents tendered in respect of any shipment, but carrier shall be under no obligation to do so."