

You may have noticed that it is rather a long time since you last received a copy of TT Talk. You are right! The reason for this is that there has been a change of Editor since Shirin Haque, who pioneered the publication, has moved on to other things. We have therefore asked David Martin-Clark to take on the job. David is well known to many of our readers, as he was formerly the leader of the TT Club's management team. He is now working as a shipping and insurance consultant, maritime arbitrator and commercial disputes mediator. We are glad to have him on board.

Paul Neagle
Chief Executive of the TT Club

In mid October, the Chairman sent a circular to all Members of the Club, in which he referred to the plan to offer insurance to all Members in the future on a fixed premium basis. This would eliminate the possibility of the Club making additional calls on its Members, although, for many years, this eventuality has been more hypothetical than real. The last time the Club actually made an additional call was in 1974, when the Club and its free reserves were a fraction of their current size. The Club has already completed all the procedural steps needed for this change in policy and is now awaiting formal approval from the insurance regulatory authorities.

Sir David Thomson
Chairman

In a November circular, the Chairman announced that the Directors of the Club, most of whom are representatives of Club Members, had agreed that, with effect from 19 October 2001, the Club should apply a general increase of 20% to all members' premiums upon renewal of their policies. Members with adverse claims records will be asked to pay an additional increase based upon their individual record. There were three main reasons for this increase; firstly, the need to maintain the financial strength of the Club after a number of years of underwriting losses; secondly, the likely rise in reinsurance costs, following the events of September 11 and thirdly, the reduced returns from the Club's investments, reflecting the current weakness in equity markets and the reductions in interest rates.

Sir David Thomson
Chairman

Clandestine Entrants into the UK

On Tuesday December 4, haulage interests - with the support of the TT Club - scored a notable success, when a Judge of the English High Court held that the system of penalties and fines imposed under the UK Immigration and Asylum Act of 1999 on hauliers found with clandestine entrants in their vehicles, infringed the European Convention on Human Rights. It was also held to be contrary to principles of European Community law. The judge said: "I am satisfied... that the penalty regime, although not intended to be a restriction upon the movement of goods or services, does in effect operate as such... and is not justified on public policy grounds because it is both disproportionate and in breach of Convention rights."

It is certain that the UK government will seek to appeal this decision. Meantime, Mike Foster, of the TT Club's London office has given this advice to Members:

"The effect of the decision is that the UK Home Office (which is responsible for internal affairs) can continue:

- to issue Penalty Notices, but not enforce them, pending the appeal;
- to deal with objections;
- to detain vehicles, and retain security which it presently holds"

He therefore recommends that Members:

- a) continue to act as though the Regulations were still in place;
- b) ensure that they have procedures in place which comply with the Home Office Code of Practice introduced by the Act;

- c) insist that their sub-contractors follow the same regime;
- d) report all incidents to the Club, so that it can help in drafting Notices of Objections.

Airfreight Claims

In order to qualify as a valid notice of claim under Article 26 of the Warsaw Convention, the 'complaint' referred to in Article 26(2) must specify the nature of the claim being made. A decision of the English Court of Appeal in the case of Western Digital Corporation v. British Airways, given in May last year, held that a complaint made to an airline that "the above consignment was received in a condition which obliges us to reserve the right to claim against you as carriers" was NOT good notice of a claim for loss of part of the consignment. As a result, the shortage claim was held time-barred under Article 26(4) of the Convention.

Whilst the court agreed that a complaint under Article 26(2) need only be in general terms, it said that "there must be, within the time stated, a complaint which must at least embrace the damage to which the subsequent action relates. In this case, such complaint as was made within the relevant time limit was specifically limited to physical damage to identified items and did not embrace the loss of such items. The letters (of complaint) indicates a problem about the condition of the identified items, not about their arrival."

For a fuller report on the case, visit the website of London lawyers, Waltons and Morse, <http://www.waltonsandmorse.com> under 'Recent Decisions'.

Second Hand Tyres to India

Beware of used tyre shipments! The UK P&I Club reports in its Loss Prevention Bulletin No. 216 that several major ocean carriers recently contracted to ship used tyres from New York to Nhava Sheva, India. All of the several hundred containers involved were shipped by one shipper to several Indian consignees. Upon arrival of the containers in India, the consignees named on the bills of lading denied all knowledge of the shipments and of the shipper, and refused to accept delivery or to pay outstanding freight.

The containers were seized by Indian Customs because the import of tyres to India requires a special permit that the shipper had not obtained. Apparently, the shipper has no permanent address, nor any assets.

As a result, the carriers have not been paid their freight, they have lost the use, at least temporarily of their containers (estimated time before their return ranging from eight to eighteen months!), they are liable for customs fines and storage costs and ultimately they must bear the costs of disposing of the tyres, for which there is, apparently, no market.

Moral of the story: in general, do not accept cargo from unknown shippers, without prior enquiry into their commercial background; in particular, exercise special caution when asked to carry used tyres from the USA to India!

Conclusion

We hope that you will have found at least some of the above items interesting. If you would like further information on any topic, or have any comments on this edition, please e-mail the Editor at: tt.talk@ttclub.com

We look forward to hearing from you.

Meanwhile, we will send you the next issue as soon as we have something to say that we think you might be interested to read! So, watch this space.

David Martin-Clark
Editor