

Carta No. 0180-2021-APMTC

Callao, March 26th, 2021

Sirs

W.E COX LLC.
2785 Route 115
Suite 201
Effort, PA 18330

Attention: Claudette Moore
Claims Specialist
Subject: Resolution No. 01
Case File: **APMTC/CL/0035-2021**
Claim Matter: Cargo Damage Claim

APM TERMINALS CALLAO S.A., ("APMTC") with Taxpayer Registration No. 20543083888, with registered office at Av. Contralmirante Raygada No. 111, Callao, by virtue of the fact that **W.E COX LLC.** ("W.E COX" or the "Claimant") has filed its claim in the term established in article 2.3, you have complied with submitting the requirements established in article 2.4 of the APMTC User Claims Attention and Solution Regulation (the "Regulation"), we proceed to state the following:

I. BACKGROUND

1.1. On February 1st 2021, W.E COX filed a claim via email to the APMTC Claims Department, for the alleged damage to the Wheel Loader Tires, model 950GC, Serie No. M5K04939, Bill of Lading #: EUKOSHPU1680459A, during discharge operation of the vessel THEBEN in the Callao Multipurpose Terminal.

II. ANALYSIS

From the review of the claim filed by W.E COX, it is noted that its object refers to the APMTC liability regarding the alleged damage to the tires of a Wheel Loader during unloading operations at the port terminal.

In order to resolve the aforementioned claim, it is necessary to:

- i) Determine if the Claimant has reliably credited the damage to the unit that is the subject of the claim, and that it is due to the breach of an obligation of APMTC or its partial, late or defective performance.
- ii) Analyse the evidence of the Claimant.
- iii) Verify the application of the Operations Regulations at the time the events occurred.

2.1 Of the reliable accreditations of the damages alleged by the Claimant:

In order to determine whether APMTC is responsible for the damages alleged by the Claimant, it is necessary to refer to the provisions of article 1321 of the Civil Code, which states the following:

"Article 1321.-Compensation for fraud, slight and inexcusable fault

Anyone who does not perform their obligations due to fraud, inexcusable fault or slight fault is subject to compensation for damages.

The compensation for the non-performance of the obligation or for its partial, late or defective fulfillment, includes both the consequential damage and the loss of profit, insofar as they are an immediate and direct consequence of such non-performance.

If the non-performance or partial, late or defective breach of the obligation is due to slight fault, the compensation is limited to the damage that could be foreseen at the time it was contracted".

-The underline is ours-

As it can be seen, the article in question regulates civil liability for non-performance of obligations. By virtue of this, if within the framework of a mandatory relationship, one of the parties complies partially, late or defectively, so that damage is caused to the other, then the latter is obliged to compensate them.

For its part, in relation to the determination of the proof of damages, article 1331 ° of the Civil Code states the following:

"Article 1331.- The proof of damages and their amount also corresponds to the injured party due to the non-performance of the obligation or due to its partial, late or defective fulfillment."

-The underline is ours-

Thus, for APMTC to be liable for the damage alleged by the Claimant, it must necessarily prove the existence of the alleged damage and that it originated as a result of the breach of an obligation of APMTC or its partial, late or partial fulfillment or defective.

2.2 Regarding the evidence submitted by the claimant.

W.E COX would pretend to prove the responsibility of APMTC in the supposed damages to the wheel loader with the following documents: i) Invoice for the replacement of the wheel loader tire, ii) Bill of Lading, iii) Service Report made by Caterpillar.

2.2.1 Regarding the invoice for the replacement of the wheel loader tire.

In this regard, the said invoice only proves the purchase of a replacement tire for the equipment, however, there is no evidence of the alleged damages, much less that these had occurred during the unloading operations or the stay of the merchandise in the port terminal of Callao, neither an APMTC liability in the matter.

2.2.2 Regarding the Bill of lading.

Regarding the B/L offered by W.E COX as evidence, we must point out that this is a document of maritime transport used in the framework of a contract for the transport of goods on a ship in order to establish the rules of the contractual relationship between the shipper, the consignee of the cargo and the carrier, for the transfer from one point of origin to another of destination.

It is clear that the B/L is a maritime transport document that certifies the receipt of goods on board for their transfer. However, it does not certify that the claimed damage occurred during the unloading operation or during its stay at the port terminal.

2.2.3 Regarding the Service Report.

Regarding the service report, we must point out that said document is a technical review of the supposedly damaged unit, however it does not prove that the damage occurred during the unloading operation or stay in the port terminal, neither an APMTC liability.

2.3 Regarding the application of the APMTC Operations Regulation in mobile cargo discharge operations.

In order to refute what is alleged by the Claimant, regarding the damages claimed in point 1.1 of this Resolution, it corresponds to refer to the provisions of literal iv) of art. 120 of the Operations Regulations - version 5 ("REOP"), in force at the time of the events, which provides the following:

"A) Cargo Damage

i. Before the occurrence of Damage to the Cargo during the loading or unloading operations, the officer in charge of the operations of the ship in accordance with the provisions of article 24, must communicate within a period of eight (8) hours after the incident to the Shift Manager or APMTC ship supervisor or send an email with information (images or videos taken by persons duly authorized by APMTC for this purpose) according to the following:

For containers

- apmtcopssenioplanner@apmterminals.com

- apmtcopsplanning1@apmterminals.com
- apmtcopsshiftmanager@apmterminals.com

For general cargo

- apmtcgplanners@apmterminals.com
- apmtcopsshiftmanager@apmterminals.com

The Damage Report will be delivered within the same period. In case the representative does not comply with communicating the aforementioned incident within the indicated period, APMTC will declare any claim on the subject unfounded. "

Likewise, for rolling load unloading operations, said article states the following:

"iv. For the particular case of damage to rolling cargo, APMTC may subcontract an unloading inspector in order to identify the arrival conditions in which the vehicles arrive at the Port Terminal. APMTC will not recognize responsibility in those cases in which the report issued by said company indicates that the damage or lack is of origin. In contrast, APMTC will recognize responsibility in those cases in which the report issued by said company indicates that the damage has been generated during unloading operations or at the Port Terminal facilities by APMTC personnel.

*Likewise, APMTC will recognize responsibility in those cases in which the auto report records some damage not contemplated in the report indicated in the previous paragraph. In case, **before leaving the facilities of the Port Terminal, the driver of the vehicle identifies any damage not contemplated in the auto report, he must request its inclusion in the aforementioned document, for which the signature of an APMTC representative must be consigned. If said damage is not recorded in the auto report, it will not be recognized by APMTC.***

-The emphasis and underline are ours-

In application of the procedure described in the APMTC Operations Regulations and as indicated in previous paragraphs, the company CONTROLES SUPERVISIONES MARÍTIMAS PORTUARIAS JFL S.A.C. ("CONSUMARPORT"), who in their PCTC Final Download Report: "THEBEN" CALLAO -PERU; they reported that no damage was included to the unit that are the subject of this claim.

Likewise, according to the autoreport issued to the unit that is the subject of the claim, does not register any damage, without prejudice to this, the representative of the consignee before cargo withdrawn, upon noticing any damage, was able to register it in the aforementioned document but did not do

so. It is understood that the cargo was retired from the port terminal in good condition.

Therefore, it corresponds to declare unfounded the claim presented by W.E COX for the alleged damages to the to the Wheel Loader Tires, model 950GC, Serie No. M5K04939, Bill of Lading EUKOSHPU1680459A, during discharge operation of the vessel THEBEN in the Callao Multipurpose Terminal.

Notwithstanding this, in the event that the Claimant considers that this Resolution violates, ignores or injures a legitimate right or interest, it may file against it the challenging means described in Chapter III, numerals 3.1.1 and 3.1.2 of the Regulation of Attention and Solution of Claims of APMTTC Users¹.

III. RESOLUTION

Due to the foregoing, the claim request submitted by **W.E. COX LCC** for the file No. APMTTC/CL/0060-2021 is declared **UNFOUNDED**.



Deepak Nandwani
Customer Experience Manager
APM Terminals Callao S.A.

¹ **APMTTC Claims Regulation**

"3.1.1 Appeal for Reconsideration

Against the resolution issued by APM TERMINALS CALLAO S.A. The appeal for reconsideration proceeds within a period of fifteen (15) days after notification of the resolution. The support of this requirement will be done with the presentation of new evidence. This remedy is optional so its not filing does not prevent the filing of the appeal. APM TERMINALS CALLAO S.A. It will be pronounced within twenty (20) days following its admission for processing. After this period has expired, and if there is no resolution act, the positive administrative silence will be applied.

3.1.2 Appeal

Against the resolution issued by APM TERMINALS CALLAO S.A., the filing of an appeal proceeds. The appeal must be filed with APM TERMINALS CALLAO S.A. within a period of fifteen (15) days after notification of the resolution. Any of the parties to the procedure may file when the challenge is based on a different interpretation of the evidence produced or when it is a matter of pure law, or is based on a nullity; or in those cases where negative administrative silence is appropriate; or when having a new test, the appeal for reconsideration is not chosen. "