



6th LAWASIA International Moot

FURTHER CORRECTIONS AND CLARIFICATIONS TO THE MOOT PROBLEM



FURTHER CORRECTIONS & CLARIFICATIONS

CORRECTIONS

1. At page 5, No. 3 should be read as “Does the arbitral tribunal have the authority to impose sanctions in the form of a fine on RFE for failing to appear at the initial hearing and/or for not providing adequate notice that it would not appear? If the arbitral tribunal concludes that it does have such authority, another hearing will be scheduled to determine what sanction, if any, would be appropriate under the circumstances”.
2. At page 5, No. 6 should be read as “Did either party have a legal obligation (a) to take reasonable measures to protect the bananas from further spoilage after the Pinafore docked at the Port of Astoria and/or (b) to attempt to sell the bananas – or as many of them as possible – as soon as practicable after the Pinafore docked?”

CLARIFICATIONS

1. Who were named as the shipper and consignee on the Bill of Lading?
Reply: “Rolga Farmer’s Exchange” [RFE] was listed as the “Shipper (Origin)” and “Astoria Produce Co.” [AP] as the “Consignee (Destination).”
2. Was there any discussion or agreement between the parties as to seller’s responsibility for arranging the carriage by ship or selecting the carrier?
Reply: No, however it is customary in the trade for the seller to make arrangements for shipping produce and for selecting the carrier.
3. Did AP give any Special Instructions to RFE?
Reply: No, the “Special Instructions” box on the Bill of Lading included only the statement reproduced on page 2 (last sentence) of the Problem. It was RFE’s standard practice to include such a provision on all Bills of Lading involving the shipment of bananas.

4. Did the Bill of Sale specify the date the cargo of bananas was to arrive in Astoria?
Reply: No delivery date was listed on the Bill of Sale or on the Bill of Lading.

5. On what date did Mr. Vogel sign and return the Bill of Sale to Respondent?
Reply: On August 4, 2010

6. Was there any provision in the Bill of Sale which prohibits the buyer from rejecting the goods?
Reply: No, nor was there a provision allowing it to do so.

7. What percentage of the bananas was loaded in the number #2 hold?
Reply: Approximately 60% was stored in Hold #2 and the remainder of the shipment in Hold #1

8. Did RFE make payment for the contract of carriage with M/S PINAFORE?
Reply: No, the Bill of lading contained the notation: "Freight: Collect." It is not known whether AP paid the freight for the shipment.

9. The Problem states: "You are obviously in a better position to *insure* proper handling and storage of the bananas." [Exhibit #1, p. 7 – emphasis added] Was the correct or intended word "ensure" rather than "insure?"
Reply: The actual word Mr. Vogel used in the email was "insure," but it is possible that he may have meant "ensure."

10. The Moot Problem indicates that the PINAFORE arrived at Astoria City on November 24th but the Claimant said it arrived at November 25th (its November 26th email stated "the bananas arrived yesterday." Which date is the correct arrival date?
Reply: The PINAFORE reached the Port of Astoria City at approximately 2200 on November 24 but it did not dock until the next morning.

11. Are the UNIDROIT Principles applied to contracts in Rolga as part of their domestic law?

Reply: Yes, when the contract is wholly domestic (i.e., when both parties are Rolgan domiciliaries and the contract was executed in and was to be performed in Rolga).

12. Issue No. 4 states that "the parties advised the tribunal that it is REF's position to apply general principles of international law i.e. UNIDROIT to be applicable..." Did both parties so advise the tribunal or was it only RFE?

Reply: Both parties understood that this was *RFE's position*.

13. Did Astoria declare the reservation of Article 1 (1) (b) of CISG when it ratified?

Reply: No.

14. The Moot Problem indicates that the precise amount of damages should not be discussed on the October hearing, but may the parties attempt to estimate the amount of damages?

Reply: No, not at this time. The question to be decided at this hearing is whether RFE should be held financially responsible for the condition of the bananas when they arrived at the Port in Astoria City. At this time, Astoria Produce is only seeking a full refund of its purchase price [see p. 3, last paragraph]. While it is possible that AP might, at a later time, seek additional damages (e.g., freight and/or compensatory damage) such claims are not before the tribunal at this time.

15. What was the total purchase price of bananas and what was the expected mark-up when they were sold to grocery stores in Astoria?

Reply: The purchase price was US\$750,000 paid by Letter of Credit. The expected mark-up was about 80% (i.e., AP expected to be able to sell the bananas in Astoria for between \$1,250,000 and \$1,500,000).

16. Could any or all of the bananas have been sold after the Pinafore docked at the Port of Astoria and if so, what would the sale have netted the owner?

Reply: The bananas would have to be sorted by quality and buyers found for the ones that were ripe or ripening. [Those which were still green could have been sold to grocery stores,] During the discussions between Dr. Bartolo and Mr. Vogel on November 26, 2010, John Sparrow opined that he doubted that Astoria Produce would net more than \$250,000 for the bananas in the condition he observed.

17. Did the Claimant request or suggest that the Tribunal sanction the Respondent?

Reply: No, the Presiding Arbitrator raised the question of the Tribunal's authority to impose sanctions on his own initiative.

18. Did the Claimant request that the tribunal appoint the second arbitrator and/or the Presiding Arbitrator after the expiration of the 30 day period that Respondent was given to select its "party appointed" arbitrator?

Reply: Neither the Claimant nor its party-appointed arbitrator requested the Director of the Kuala Lumpur Regional Center to appoint the other arbitrators.

Thursday, 14 July 2011