

Claim No: 421247

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA**

Cite as: GTL Transportation Inc. v. Alliance World Transport Inc., 2013 NSSM 58

BETWEEN:

GTL TRANSPORTATION INC.

Claimant

- and -

ALLIANCE WORLD TRANSPORT INC.

Defendant

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**REASONS FOR DECISION**

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**BEFORE**

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on December 17, 2013

Decision rendered on December 19, 2013

**APPEARANCES**

For the Claimant

Marie Brewer, Manager and Chris Blondin, Director of Operations

For the Defendant

Hayley Warner, General Manager and Donald LeBlanc, President

**BY THE COURT:**

[1] The Claimant is a transport company. One of its clients was the Defendant, which is a freight forwarding company.

[2] On October 17, 2013, the Claimant was engaged to pick up an empty shipping container from the Halifax container port, and drive it to Souris, Prince Edward Island, to be loaded with a food cargo (potatoes, I believe) and driven back to Halifax to be loaded on a ship. The Prince Edward Island company, AgraWest Foods, is a client of the Defendant.

[3] All parties agree that it is the responsibility of the transport company to make sure that the container is suitable for the intended use. These containers belong to the shipping company, and some are in better shape than others. In the case of a container that will be used to ship food, it needs to be extra clean and uncontaminated by anything that could harm the cargo.

[4] The Claimant's employees (driver and dispatcher) made an assessment that the container was fine, and in particular that it had no offending odour that might have presented a concern.

[5] The container was driven to AgraWest in Prince Edward Island. Upon arrival, employees of AgraWest there reported a diesel smell coming from the container, and they rejected it. They refused offers to try to clean out the container by various means. The container had to be driven back to Halifax empty. The Defendant arranged for a different company to deliver a container on very short notice.

[6] The Claimant sues for the cost of transporting the container to and from Halifax to Prince Edward Island. The amount claimed is \$1,054.00.

[7] The Defendant has refused to pay. This is not something that its client would cover, because of its position that the container was unsuitable.

[8] Both parties filed signed statements from the actual individuals who had been inside the container and who had an opinion about its odour.

[9] Unfortunately, there was not a single person in court who had first-hand knowledge of this matter. I appreciate that in a case involving approximately \$1,000.00, it would make little economic sense to bring witnesses from far and wide in order to hear their very brief testimony. Even so, where there is an issue of credibility it is very difficult to make such an assessment on the basis of written statements.

[10] Having said that, this case is less about credibility than it might appear. I am prepared to accept that the Claimant's employees believed the container was fine. I am also prepared to accept, in the absence of any logical reason why they might arbitrarily reject a container, that the Prince Edward Island customer believed in good faith that the container smelled of diesel and that it was risky to have placed its cargo therein.

[11] The issue comes down to this: who bears the risk that a container might be rejected? The transporter or the freight forwarder?

[12] All of these companies are part of a commercial chain. Each link has a role to play. The shipping company supplies a container. The grower (or manufacturer) needs a container. The freight forwarder acts as a broker, essentially, putting a transport company into the mix, to move the container from the shipper to the grower and back to the shipper.

[13] The freight forwarder is the only party that never touches or sees the container.

[14] The transport company is the one that has the greatest degree of control. It has the opportunity to inspect the container and accept or reject it. By transporting the container, it is also in a position where it could theoretically be the source of the contamination - such as by some sort of fuel leak getting into the previously clean container.

[15] I am of the view that, in this set of commercial realities, the implied understanding must be that the transport company bears the risk that the container may be unacceptable, unless it can prove in a convincing fashion that the rejection by the customer was arbitrary and unfounded, in which case some recourse against that customer might enter into the picture.

[16] I do not believe that the Claimant here has been able to make out such a case. At best it could produce witnesses who would say that they did not smell anything while the container was still in Halifax. Their senses of smell would not be the only or final word on the subject. Furthermore, the diesel could have entered the container on route.

[17] In the result, the Claimant has not made out a case to hold the Defendant responsible for this unfortunate waste of a trip to Prince Edward Island, and the claim must be dismissed.

**Eric K. Slone, Adjudicator**