

FINES FOR LATE DELIVERIES OR MISSED APPOINTMENTS

By George Carl Pezold
Executive Director, T&LC

Recent articles in the trade press have described “fines” that are levied by major grocers on refrigerated carriers transporting perishables for late deliveries and missed delivery appointments. Among the retailers that have been named are three major grocery chains, Kroger, Safeway and Wal-Mart. While it is well known that delay (and temperature abuse) can cause or contribute to spoilage or shortened shelf life, the carriers complain that often these penalties are unfair because they fail to recognize the problems that carriers run into with severe weather, bad roads, congestion and hours of service limitations.

Apparently these penalties take different forms. In some situations the fines (or “chargebacks”) are directed to the seller or supplier and in others they are levied on the carrier or even the truck driver. In one case it was said that “Drivers won’t unload the trailer until the late fee is paid. For carriers and drivers, it’s a bad situation.” Often the “chargeback” takes the form of a deduction (weeks later from the seller’s invoice for the shipment).

The question is whether the retailer or buyer has the right to pursue the carrier, or its seller or supplier, for these penalties or chargebacks.

So, what are the “legal” issues? It would seem that this hinges on the contractual relationships between the parties.

1. The shipper/seller arranges for the transportation, has a contract with the carrier and pays the freight.
2. The consignee/buyer arranges for the transportation, has a contract with the carrier and pays the freight.
3. The buyer and seller have a contract that requires the seller to comply with its delivery requirements.
4. There are no formal contracts between any of these parties (e.g. transportation was arranged by a broker or some other third party).

In Number 1, does the shipper/seller have a transportation contract with its carrier that provides that the carrier must comply with seller’s dispatch instructions as to appointments and delivery windows? Does it allow the shipper/seller to pass along to its carrier any charges for late deliveries, missed appointments or chargebacks that it receives from its customer?

In Number 2, does the consignee/buyer have a transportation contract with its carrier that provides that the carrier must comply with consignee/buyer’s dispatch instructions as to appointments and delivery windows? Does it allow the consignee/ buyer to levy fines or to charge penalties to its carrier for late deliveries or missed appointments?

In Number 3, does the “contract of sale” between the buyer and seller require the seller to comply with the buyer’s instructions or requirements for specific delivery times and/or deliveries by appointment, and for penalties or chargebacks for failure to do so?

And, then there is Number 4, where the question is whether there is any contractual basis for these charges.

Whether or not there is a legal basis for these “fines”, this is a very controversial subject. Hopefully, the involved parties will recognize these issues, sit across the table from one another, and come up with more reasonable solutions. Unfortunately, whether these practices are “right or wrong”, this may be one of these “thousand-pound Gorilla” situations where both the carriers, that are caught in between, and the shippers/sellers, may just have to live with the fact that these big retailers have enough “clout” to do what they please.