

THE YORK-ANTWERP RULES 2016 – LAW AND PRACTICE FROM MASTER’S POINT OF VIEW

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Abstract The York-Antwerp Rules are part of international maritime law, which form the basis for average adjustments throughout the world. The law of general average is a legal principle of maritime law according to which all parties in a sea venture proportionally share any losses resulting from a voluntary sacrifice of part of the ship or cargo to save the whole in an emergency. For example these rules are applied, when the crew throws some cargo overboard to lighten the ship in a storm. The basic rule to be applied in all cases is that there is a general average act when, and only when, any extraordinary sacrifice or expenditure is intentionally and reasonably made or incurred for the common safety for the purpose of preserving from peril the property involved in a common maritime adventure. The Law of General Average has been expressed since 1890 as York-Antwerp Rules, which have been internationally reformed several times. Following four years of consultation and an extensive review by a CMI International Working Group (“IWG”), the CMI Assembly at its conference in New York adopted the YAR 2016 in early May 2016. The shipping community, including the ship owners and marine insurance companies, has accepted the new rules worldwide. The author of this article was one of the members in the international working group, which consisted of 12 experts in general average adjustments. The decisions in GA situation need to be taken fast. Many of them need to be made by the master without time for consultancy with the ship owner and the cargo owners. This article explains the new rules from the master’s point of view. Despite advances in maritime transport technology, general average continues to come into play constantly and masters need to be able to act in emergencies and understand the principles and practice of the rules, which form the basis for their actions.

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Introduction

The Rules on general average base in the fact that, during a voyage, the ship, cargo and freight form part of a common venture. The rules on general average have developed over time from simple principles into complex rules, which nowadays need to be adjusted in modern situations.

The basic rule is however still very much the same as the rules in Rhodian law some 900 BC. For a long time this has been expressed in York-Antwerp Rules as rule A:

Rule A

“1. There is a general average act when, and only when, any extraordinary sacrifice or expenditure is intentionally and reasonably made or incurred for the common safety for the purpose of preserving from peril the property involved in a common maritime adventure.”
(International)

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History and origins of general average

The Rhodian law (ca. 900 BC) decrees that “if in order to lighten a ship merchandise has been thrown overboard, that which has been given for all should be replaced by the contribution of all”. This short sentence contains both the principle and example of the peculiar communism to which seafaring men are brought in extremities. (Reeder, 2013) This has been a universal

rule since antiquities among seafaring men, no matter to what country they belonged, being founded upon the necessities of their position (S., 1957).

The Romans were great improvers of other people's inventions. They received and used the best parts of law from the countries they conquered. The Emperor Antoninus said: *"Let it be judged by the Rhodian law which deals with nautical matters, so far as that is directly contrary to our own law. For I am lord of the whole world, but the law is lord of the seas."* (Reeder, 2013)

The Roman law sources had a significant influence on the development of general average in medieval times as the reception of Roman law had influence in most medieval marine legal collections of maritime legislation (S., 1957). Principles of general average survived through medieval times in these collections and when different legal systems started to develop into collections of national legislation the Roman law still had influence. However, English law and continental legal systems started to develop in different directions in many ways. This also affected the rules on general average. This became crucial for the international trade and when vessels started to be bigger and bigger and values of ship and cargo expanded in the middle of 1800 century it was clear that uniformity was needed. The York-Antwerp Rules were formed after two conferences, first York Rules in York and then after conference in Antwerp, they became known as York Antwerp Rules.

These rules have Unique position in maritime law (-Brautaset, 2017). The first version dated from 1877. There have been revisions in 1890, 1924, 1950, 1974, 1994, 2004 and now 2016, when new York-Antwerp Rules 2016 were finally adopted by Comité Maritime International in New York. Comité Maritime International is a private organization and therefore the rules are not a convention. They are incorporated into bills of lading and charterparties and they therefore are a part of practically every maritime contract relating carriage of goods by sea. In some countries, like Scandinavian countries, they are also incorporated into legislation. Therefore they are applicable even though they for some reason would not be incorporated into contract of affreightment (-Brautaset, 2017).

Common safety and common benefit for all

The basic principle of common safety in general average has been expressed in York-Antwerp rules in rule A which was introduced in the introduction. The most significant development from the ancient and medieval times is nowadays called principle of common benefit. This principle means that expenses may include extraordinary expenses incurred for the benefit of

ship and cargo (and crew), even where this was not strictly necessary for the avoidance of danger.

Even though this principle encompasses only few special situations, it has been active source of criticism from the traditional English law which has dominated the marine insurance market. One of the most important rules considered as common benefit are the rules X and XI which where ship seeks a port of refuge. Even expenses not necessary for bringing the ship and cargo out of danger will be compensated according to these rules. Expenses like cost of unloading, handling, storing and reloading while the ship is repaired can be covered according to 2016 rules. Also wages incurred at a port of refuge can be compensated:

Rule XI – Wages and Maintenance of Crew and Other Expenses Putting in to and at a Port of Refuge, etc.

(a) Wages and maintenance of master, officers and crew reasonably incurred and fuel and stores consumed during the prolongation of the voyage occasioned by a ship entering a port or place of refuge or returning to her port or place of loading shall be allowed as general average when the expenses of entering such port or place are allowable in general average in accordance with Rule X(a). (International)

This was not the situation under 2004 rules where common benefit approach was fairly limited.

The York-Antwerp rules 1994 were more tolerant in this respect. It is necessary for the master to be aware of these differences and to know which rules he/she is working when vessel is under charter or carriage of goods contract of some other form. BIMCO has not approved the 2004 rules but informed at its websites almost immediately after the approval of 2016 rules that it will recommend their use (2016) for all shipowners.

New YAR rules which the Masters should know carefully

As BIMCO has not approved the 2004 YAR rules, the Masters should know that these Rules are not industry standard. They should be avoided as rules non acceptable for shipowners in general. They will probably fall into desuetude in the year to come. in general 1994 and 2016 rules are acceptable for the ship owners. The 1994 rules will still exist some time as the older charterparty forms have reference to those and they therefore incorporate these into contracts of affreightment. These can however be replaced by inserting a reference to 2016 rules into the carriage contract or charterparty.

One of the most important rules for the Master is Rule VI – Salvage Remuneration:

(a) Expenditure incurred by the parties to the common maritime adventure in the nature of salvage, whether under contract or otherwise, shall be allowed in general average provided that the salvage operations were carried out for the purpose of preserving from peril the property involved in the common maritime adventure and subject to the provisions of paragraphs (b), (c) and (d)

According to international convention on law of salvage the Master has an independent right to enter into reasonable salvage contracts. The most common salvage contracts (like Lloyd's Open Form of Salvage Agreement, LOF) are in general considered such contracts. In YAR 2016 and 1994 salvage forms part of general average. Terms differ, but relevance from Masters point of view has little meaning when the vessel is in danger.

For Master and specially tugmaster, the new rule Rule B is especially important:

1. There is a common maritime adventure when one or more vessels are towing or pushing another vessel or vessels, provided that they are all involved in commercial activities and not in a salvage operation.

When measures are taken to preserve the vessels and their cargoes, if any, from a common peril, these Rules shall apply.

2. If the vessels are in common peril and one is disconnected either to increase the disconnecting vessel's safety alone, or the safety of all vessels in the common maritime adventure, the disconnection will be a general average act.

3. Where vessels involved in a common maritime adventure resort to a port or place of refuge, allowances under these Rules may be made in relation to each of the vessels. Subject to the provisions of paragraphs 3 and 4 of Rule G, allowances in general average shall cease at the time that the common maritime adventure comes to an end.

This new version of Rule B clarifies the rules concerning tug and tow salvage and general average situations.

One of the most common GA situation is Rule I – Jettison of Cargo

“No jettison of cargo shall be allowed as general average, unless such cargo is carried in accordance with the recognised custom of the trade.” (International)

Expressed in rather strange way, this usually means that if carriage on deck was not allowed, then the jettison will not be compensated, otherwise it will be compensated in GA. This rule in today's world of shipping usually relates to casting or releasing containers.

The other common rule which the Master has to apply is Rule III – Extinguishing Fire on Shipboard:

“Damage done to a ship and cargo, or either of them, by water or otherwise, including damage by beaching or scuttling a burning ship, in extinguishing a fire on board the ship, shall be allowed as general average; except that no allowance shall be made for damage by smoke however caused or by heat of the fire” (International)

Decisions like this need to be done fast, often in minutes. It is important that the Master knows the financial consequences in order to feel protected by the rules and insurance cover as general average contributions are generally protected by insurance – shipowners insurance or cargo insurance. (Hudson, 2010) Wetting containers on top of the burning ones might mean precious BMW parts to be destroyed days before they should be attached to new models that customers are already awaiting. But it needs to be done in order to save the other interests – And the Master needs to make the decision.

Also stranding a ship to save vessel and cargo is a general average act according to Rule V – Voluntary Stranding:

“When a ship is intentionally run on shore for the common safety, whether or not she might have been driven on shore, the consequent loss or damage to the property involved in the common maritime adventure shall be allowed in general average.” (International)

It is fairly common after collision in a narrow fairway that the Master needs to save his/her by deciding on voluntary grounding or stranding instead of losing the vessel with its cargo. One of the consequences in these cases is also, if the vessel sinks on a fairway, that it needs a wreck removal operation which is usually extremely costly exercise paid by the P&I club. Although paid by the club, the loss record will affect the owner's premiums year to come. When beaching the vessel and cargo successfully, the cargo will contribute also to the damage caused to the vessel by stranding. (Reeder, 2013)

If the vessel is grounded, the Master is able to refloat her with own machinery, this usually saves the common adventure from costly salvage operation. The problem is that this effort can cause damage to machinery. There is a compensation scheme for this situation in YAR Rule VII – Damage to Machinery and Boilers:

“Damage caused to any machinery and boilers of a ship which is ashore and in a position of peril, in endeavouring to refloat, shall be allowed in general average when shown to have arisen from an actual intention to float the ship for the common safety at the risk of such damage; but where a ship is afloat no loss or damage caused by working the propelling machinery and boilers shall in any circumstances be allowed as general average.” (International)

It is important for the Master to have this knowledge that if he/she has actual intention to refloat the vessel, and there is damage as a consequence of this intention, the damage will be compensated as general average act by the parties to the adventure. This rule was heavily criticised by marine insurers in CMI conference in Singapore 2001 when there was clear evidence and statistics that some owners had misused the rule to. This criticism was due to some old vessels whose masters had strained the machinery when valuable cargo was onboard. The rule however remains also in the 2016 rules.

The last rule, which I will pick up from the YAR 2016 is important for the Masters to remember. This is Rule F:

“Any additional expense incurred in place of another expense which would have been allowable as general average shall be deemed to be general average and so allowed without regard to the saving, if any, to other interests, but only up to the amount of the general average expense avoided.” (International)

This rule establishes that an extra expense, which is incurred instead of another expense, which would have been allowable as general average, shall be deemed to be general average expense. In literature this is called “substituted expense” (-Brautaset, 2017). Some typical substituted expenses are: Air transport of spare parts instead of sea transport, the cargo may be forwarded to destination by other vessels, cargo may be sold and a replacement cargo purchased on completion of repairs, the vessel may be towed to destination after only minimal repairs etc. All these have a common feature. They save time and/money in relation to another expense which would have been compensated as a general average act.

Conclusions

Despite advances in maritime transport technology, general average continues to come into play constantly and masters need to be able to act in emergencies and understand the principles and practice of the rules, which form the basis for their actions. If the master make carriage contracts he/she has to know which rules the contract refers to, and under which rules he/she is transporting the cargo – and the common venture. As described above there is clear

differences in the sets of rules. The new rules are worth learning as they will form the industry standard probably the rest of the working life of those at sea or still studying at the maritime universities.

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