



DALC.DPWC.153.2023

Callao, 5 de junio de 2023

Señora

PAOLA HUALLPACUNA ARCE

Apoderada

TERMINALES PORTUARIOS PERUANOS S.A.C.

Av. Antonio Miroquesada N° 425 (Edificio Prisma Business Tower), Oficina 1210, Magdalena del Mar Presente. –

Referencia:

Expediente N° 033-2023-RCL/DPWC

De nuestra consideración:

Por la presente damos respuesta al reclamo de fecha 19 de mayo de 2023, mediante el cual en su calidad de agente marítimo de la línea naviera X-PRESS FEEDERS nos reclaman el pago por concepto de reparación del daño ocasionado a la nave VARAMO detallado en el *Stevedore Damage Report* (SDR) N° 003/2023, según indican, debido a que estos daños habrían sido ocasionados por **DP WORLD CALLAO S.R.L.** (en adelante, **DPWC**).

Al respecto, señalan que el 16 de abril de 2023 a las 17:42 horas la nave VARAMO resultó dañada como consecuencia de una mala maniobra de los estibadores de **DPWC** durante las operaciones de descarga y que el SDR N° 003/2023 contiene los siguientes detalles del daño: "En la bodega de carga de la bahía 22, operación de carga, la unidad refrigerada 1x40'/ esparcidor de pórtico se atascó en las guías de la celda debido al mal manejo del operador del pórtico. Las guías de celda de la fila 08, nivel 10 sufrieron graves daños. (In bay 22 cargo hold, loading operation, 1x40 reefer unit/ gantry spreader got stuck on the cell guides due mishandling of gantry operator. cell guides on row 08 tier 10 were heavily damaged). Observaciones: bahía 22, fila 08 no se puede cargar/ 1x40' unidades refrigeradas vacías no se pueden descargar debido a guías de celdas dañadas. (Remarks: bay 22 row 08 cannot be loaded / 1x40 empty reefer unit cannot be discharge due damaged cell guides)."

Sostienen que la causa que generó los daños en la nave VARAMO fue una mala maniobra de los operadores de la grúa pórtico que colocaron en una posición incorrecta un contenedor durante la carga (no alineado) lo que ocasionó que este se atascará en la guía celda, tal como se evidencia de las fotografías obrantes en el SDR N° 003/2023.

Asimismo, indican que el 18 de abril de 2023 se llevó a cabo la inspección de la nave VARAMO a cargo de la empresa Inspecciones Nuevo Mundo S.A.C. nominados por **TERMINALES PORTUARIOS PERUANOS S.A.C.** (en adelante, TPP) y en representación de la línea naviera X-PRESS FEEDERS, quienes emitieron el documento *Survey Report*, el cual indica que la guía celda vertical en posición BAROTI 220810 se encuentra oxidada con cortes y abolladuras de 1x0.30 metros y que los daños en las guías de celda verticales fueron causadas por un manejo inadecuado del operador pórtico durante las operaciones de carga y descarga en el Puerto del Callao.

Luego del análisis efectuado, hemos determinado que su reclamo es INFUNDADO por las siguientes razones



- 1. Al respecto, el artículo 196 del Código Procesal Civil establece que la carga de la prueba le corresponde a quien afirma los hechos que configuran su pretensión y el artículo 1331 del Código Civil señala que la prueba de los daños y perjuicios, y de su cuantía corresponde al perjudicado por la inejecución de una obligación, o por su incumplimiento parcial, tardío o defectuoso, por lo que correspondería a TERMINALES PORTUARIOS PERUANOS S.A.C. (en adelante, TPP) probar fehacientemente que los daños en la nave VARAMO detallados en el SDR N° 003/2023 se produjeron durante las operaciones de DPWC.
- 2. Para tal efecto, **TPP** presenta los siguientes medios probatorios: la copia del SDR N° 003/2023 y el *Survey Report* emitido por Inspecciones Nuevo Mundo S.A.C. Respecto al primero, contiene la descripción de los daños y fotografías tomadas con ocasión del incidente; mientras que el segundo contiene los siguientes comentarios: i) en el momento de su asistencia observaron que <u>las guías de celdas verticales en posición BAROTI 220810 estaban oxidadas con cortes y abolladuras de 1 x 0.30 metros¹; ii) los daños en las guías de celdas verticales (posición 220810) fueron causados por el manejo inadecuado del operador de grúa pórtico de **DPWC** durante las operaciones de carga/descarga en el puerto del Callao; y, ii) que el contenedor TEMU9196543 quedó atascado en la posición 220810 por el mal ajuste en las guías de la celda el 16 de abril de 2023 a las 17:30 horas hasta las 21:30 horas.</u>
- 3. Sobre el particular, el incidente detallado en el SDR N° 003/2023 ocurrió el 16 de abril de 2023 en el puerto del Callao y conforme al principio de inmediatez que rige a la inspección de los siniestros, la inspección conjunta de los daños a cargo de personal especializado en seguros debió realizarse en el lugar y en la fecha de ocurrencia de los hechos; sin embargo, afectando el derecho de defensa de **DPWC**, la inspección solicitada por **TPP** recién se efectúo el 18 de abril de 2023 (es decir, dos días después del incidente) y en un puerto distinto: el Puerto de Paita, donde para poder participar tuvimos que hacer grandes esfuerzos nominando Surveyors de la zona.
- 4. Asimismo, debemos precisar que la inspección a la nave VARAMO realizada por la empresa Inspecciones Nuevo Mundo S.A.C. tuvo como objeto verificar la existencia de los daños y constituye una investigación forense ya que se trata de la reconstrucción de hechos que sucedieron en el pasado, esto es, de manera previa a la inspección, por lo que su análisis debería sustentarse en evidencias reales y concretas de cómo sucedieron tales hechos.
- 5. Sin embargo, observamos que los inspectores de Inspecciones Nuevo Mundo S.A.C. han planteado conclusiones en el *Survey Report* sobre algo que no han visto y lo más grave aún que no presentan evidencias que sustenten sus afirmaciones, restándole por tanto objetividad y fiabilidad a su informe de inspección, siendo que la única información que han recolectado para llegar a tales conclusiones ha sido la declaración del capitán de la nave VARAMO.
- 6. Por tanto, el Survey Report emitido por Inspecciones Nuevo Mundo S.A.C. no constituye un medio probatorio que acredite fehaciente ni técnicamente las causas que han generado los daños en las guías celdas de la nave VARAMO ya que sin mayores sustentos y/o evidencias, y sobre la base únicamente de las declaraciones de parte del capitán de la nave VARAMO, han concluido que los daños se habrían producido por el manejo inadecuado del operador de grúa pórtico de **DPWC** durante las operaciones de carga/descarga en el puerto del Callao, sin especificar cual habría sido el tipo de maniobra que se hizo y como este tipo de maniobra pudo haber generado el referido daño.
- 7. Además, es importante hacer notar que el *Survey Report* de Inspecciones Nuevo Mundo S.A.C. reconoció la existencia de oxidación en las guías celdas, lo cual sí es un factor determinante en la ocurrencia del daño, toda vez que ese estado de corrosión debilitó la estructura de la nave, generando las condiciones para la ocurrencia del incidente bajo análisis.



¹ El resaltado y subrayado es nuestro.



- 8. Respecto, al SDR N° 003/2023 se trata de un documento de parte que cuenta solo con el sello de recibido más no de conformidad por parte de **DPWC**, por lo que no pueden ser considerado como prueba irrefutable de la responsabilidad de **DPWC** en la ocurrencia de los supuestos daños, máxime si hemos dejado constancia de la preexistencia de la oxidación de la nave en el documento denominado *Vessel Safety Inspection Checklist*.
- 9. En efecto, hemos verificado que antes del inicio de operaciones de la nave VARAMO como parte del procedimiento operativo, realizamos la inspección a las condiciones de esta nave y elaboramos el documento denominado *Vessel Safety Inspection Checklist*, el cual fue debidamente firmado por el *Chief Officer* de la referida nave, en donde se dejó constancia de las malas condiciones de la nave VARAMO, en estricto, la existencia de oxidación en la estructura de esa embarcación. Adjuntamos en calidad de Anexo 1, el referido documento.
- 10. Del mismo modo, presentamos como sustento de nuestra posición el Final Report emitido por la empresa JJ PARTNERSHIP S.A.C., Port & Maritime Consulting, nominados por DPWC en representación del seguro TTCLUB, para participar de la inspección de daños a bordo de la nave VARAMO el 18 de abril de 2023 en el Puerto de Paita, el cual adjuntamos en calidad de Anexo 2.
- 11. El referido Final Report contiene las siguientes conclusiones técnicas debidamente sustentadas y fundamentadas:
 - i) Respecto a los daños en la nave VARAMO: se detectaron daños en el *bay* 22, hacia adelante, el riel guía de la celda estaba doblado alrededor de un metro de largo; bahía 22 en popa, dos guías de celda (babor y estribor) estaban abolladas; las guías de celda estaban oxidadas.
 - ii) Análisis del incidente Causa Raíz: "de acuerdo con el Vessel Safety Inspection Checklist emitido por DPWC, previo a la operación de la carga, DPWC reportó que las guías de las celdas se encontraban oxidadas en la bahía 22, es importante mencionar que DPWC no inspeccionó a fondo las guías de las celdas porque el acceso a la bahía 22 esta limitado para los estibadores. Durante su inspección detectaron que los soportes y las guías de celda estaban corroídos, en especial los soportes mostraban un alto grado de corrosión. Los soportes son una estructura que soporta las guías largas de celdas, y mantener estos para ser enderezados, si los soportes sufrieron deformaciones las guías de las celdas podrían estar desalineadas, eso podría ocasionar que los contenedores se atascaran mientras se cargan o descargan. Por tanto, concluyen que la causa del atascamiento del contenedor TEMU9196543 en la bahía 22 de la nave VARAMO fueron los daños preexistentes en soportes y guías de celdas. La corrosión de los Brackets fue de alto grado lo que demostró que los Brackets estaban en mal estado".
- 12. Por tanto, la causa del daño detallado en el SDR N° 003/2023 fue el grado de corrosión en las guías celda y soporte de la nave VARAMO que debilitó su estructura. Sobre el particular, los metales se corroen por agentes atmosféricos, sales del mar, gases o sustancias orgánicas, y cuando la estructura del metal se corroe se produce un deterioro en el cuerpo del material que hace que se degrade generando grietas, desprendimientos, etc., tal y como puede observarse en las fotografías obrantes en el *Final Report* emitido por la empresa JJ PARTNERSHIP S.A.C.
- 13. En ese sentido, el mantenimiento de la nave es una obligación de la línea naviera quien debe velar porque la misma se encuentre en óptimas condiciones para hacer frente a las operaciones de transporte y portuarias; sin embargo, TPP ha omitido pronunciarse y acreditar el cumplimiento de dicha obligación, pese a que existen pruebas contundentes de lo contrario.
- 14. En consecuencia, **TPP** no cuenta con ninguna evidencia que pruebe que **DPWC** ocasionó daños en la nave VARAMO durante sus operaciones, toda vez que los medios probatorios presentados por la reclamante muestran que los daños se tratarían de defectos de oxidación en la estructura de la nave VARAMO que obedecen más bien



a las malas condiciones de mantenimiento de esta nave. Por tanto, los medios probatorios presentados por **TPP** no acreditan nuestra responsabilidad en la producción de los daños reclamados.

Cabe señalar que en aplicación del artículo 26° del Reglamento de Atención y Solución de Reclamos de Usuarios de DP WORLD CALLAO S.R.L., el usuario podrá presentar un recurso impugnatorio ante nuestra empresa en el plazo de quince (15) días de notificada la presente. Para ello, de conformidad con lo dispuesto en la Resolución de Consejo Directivo N° 0057-2020-CD-OSITRAN ustedes pueden presentar sus recursos impugnatorios por teléfono al número 206-6500 o por correo electrónico a la dirección electrónica callao.reclamos@dpworld.com.

Adicionalmente, le informamos que conforme al artículo 20.4 de la Ley del Procedimiento Administrativo General – Ley N° 27444, para efecto de las notificaciones ustedes pueden indicar en sus recursos impugnatorios un correo electrónico y manifestar expresamente su autorización para que en lo sucesivo se realicen allí todas las notificaciones que surjan en dicho procedimiento administrativo.

Atentamente,

BRUNO CRISTOVAO FERRETTI

Apoderado



ANEXO 1



Results of testing

Proceed?

Vessel Safety Inspection Checklist

OPS-F-006

03-12 - V.02

Note: Inspection to be conducted prior to work on board and in the company of a vessel representative and along operation every shift. Copies of Inspection Checklist to be given to the Master of the Vessel or his Vessel: MV Vanavo 123.007 N
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Vessel Safety Inspection Checklist

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