

Shipping Delay Claims Guide

Carrier Duties, Precedents, and Arguments for Your Claim



A TranSolutions Inc. Publication

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How to Establish A Delay Case

Freight Claims in Plain English explains that a delay case is not generally established using carrier schedules. Instead, it is established using “reasonable dispatch”. In the common event that the carrier does not publish its schedules to the public, “reasonable dispatch” is established by comparing the typical time taken for a delivery of the same shipment, travelling the same route. The key in proving a delay case is to prove that the time taken for delivery was not reasonable.

This ebook will help you to understand carrier’s duties as well as precedents that can help you to build a case to recoup your damages due to delays. We’ve also referenced court cases that you can refer to when making your arguments.

1. Duty to Inform

If your carrier knows that a delay is likely to occur but they do not inform you of this, they will be liable for damages caused by the delay. This is regardless of why the shipment was delayed, even if it was not due to the carrier’s negligence. (See *Atchison, T. & SF Ry. Co. v. Jarboe Livestock Com'n Co.*, 159 F. 2d 527 - Circuit Court of Appeals, 10th Circuit 1947).

2. Knowledge of Impact of Late Delivery

In cases where a carrier accepted a shipment with the knowledge that a late delivery would cause special damages, some courts have held the carrier liable for those damages.

In *LE Whitlock Truck Service, Inc. v. Regal Drilling Co.*, 333 F. 2d 488 - Court of Appeals, 10th Circuit 1964, the carrier was found to be liable for special damages even though their knowledge of the damages was implied. In this case, Regal

Drilling Co. was suing LE Whitlock Truck Service for repair costs and lost profits after the carrier damaged their oil rig.

The court awarded Regal Drilling Co. the special damages of lost profits based on the fact that the carrier specialized in transportation for the oil industry and knew that Regal Drilling Co. only had one drill – therefore, they would have understood that profits would be lost due to the damaged drill.

→ Tip: If there would be consequences to you if your shipment was delivered late, state this on the bill of lading.

3. “Reasonable Dispatch” Depends on the Type of Freight

For example, food, perishable goods, and animals generally need to be transported more quickly than non-perishable goods. Carriers are expected to give greater care to perishable goods than to non-perishables.

Freight Claims in Plain English makes an interesting point about this: “What might be a reasonable delay in the transportation of one type of commodity may be an unreasonable delay under the same facts regarding a different type of commodity.” See *Johnson v. Missouri Pacific R. Co.*, 249 S.W. 658, 211 Mo. App. 564 (1923).

4. Reasonable Dispatch – Throughout The Journey

In the case of *Turner’s Farms, Inc. v. Maine Central R.R. Co.*, 486 F.Supp. 694 (me. 1980), the total time that the carrier took to make the delivery was found to be within reasonable dispatch. However, one segment of the journey took an unreasonable amount of time due to the carrier’s negligence – a fact that won the case for the shipper.

In this case, the carrier, Maine Central, was delivering a shipment of chicken feed to Turner's Farms. Turner's Farms contacted the carrier part-way through the shipment to inform him that he needed the chicken feed before the holiday weekend, or else he would need to make other arrangements. If the chickens did not have the feed in time, they would not have enough to eat and they would stop producing eggs. The carrier informed him that the feed would arrive before the weekend. However, due to a mix-up, a leg of the journey which should have taken a few hours instead took 3 days.

The court deemed that although the entire journey was delivered in a reasonable time period, that particular segment of the journey was not timely, and they awarded Turner's Farms the damages for the decrease in egg production caused by the late feed delivery.

5. Mechanical Problems Are Not *Your* Problem

The courts have held that a carrier's mechanical problems are not an acceptable excuse for a delayed shipment.

Even if the carrier had the equipment inspected, without offering full details of the inspection, the carrier can still be held negligent. *Leo Lococo's & Sons v. Louisville & N.R. Co.*, 82 S.W.2d 332 (Ct.App. Ky. 1935)

In another instance, the carrier argued that they were using a new vehicle and could not foresee mechanical problems. The court rejected this argument. *United Transport Systems v. PIE Import Export*, 889 F. Supp. 94 - Dist. Court, SD New York 1995.

6. Don't Feel Limited By a Grace Period

If the carrier has published schedules showing their transit times, this can be used to establish a case for a delay claim. With this in mind, some carriers have been known to include a "grace period" in their tariffs to reduce delay claims.

However, the courts have found these grace periods to be inconsistent with Section 20(11) of the Interstate Commerce Act:

"* * * no contract, receipt, rule, regulation, or other limitation of any character whatsoever shall exempt such common carrier, railroad, or transportation company from the liability imposed." *Peter Condakes Co., Inc. v. Southern Pacific Co.*, 512 F.2d 1141 (7th Cir. 1975).

Therefore, grace periods are not valid in the eyes of the law.

→ Tip: If you've suffered losses due to a delay, don't let a "grace period" stop you from taking further action.

Next Steps

This should give you a better understanding of filing delay claims and some information that will help you to build a case for your own delay claim case.

When a carrier rejects your claim, simply presenting your argument, and supporting it with a reference to a court case, may be enough to convince them to pay your claim. However, not everyone has the time to develop legal arguments for every denied claim.

That's why TranSolutions offers a Freight Claim Post-Audit service to help you recover denied claims. TranSolutions' claim experts will look for precedents and legal arguments to convince carriers to pay the claims that they previously denied. After presenting their case to carriers, TranSolutions sends you a check for the recovered claims.

This service works on a commission model – so you don't pay unless TranSolutions recovers claims for you. For more information, visit <http://www.transolutionsinc.com/blog/post-audit-freight-claim-service/>.