Hague Rules - Dangerous Cargo

The case of the "Giannis NK" was reported in "Sea Venture" Vol s 16 and 17. The House of Lords' decision is now summarised in this article.

The background to the case is that the vessel loaded a cargo of wheat pellets in two holds for carriage from West Africa to San Juan, Puerto Rico. A cargo of ground nut extractions was subsequently loaded in a separate hold at Dakar for delivery to Rio Haina, in the Dominican Republic. After discharging part of the wheat cargo at San Juan, the ship sailed to Rio Haina to discharge the ground nut extractions. However, on discovering infestation by khapra beetle, the cargo was refused entry into Rio Haina. Fumigation attempts were unsuccessful. Although there was no danger of the insects spreading from the ground nut extract to the remaining wheat cargoes, the authorities refused further entry into San Juan. After several weeks of delay, there was no alternative but to dump both the ground nut extract and wheat pellets at sea.

The contract of carriage was governed by Hague Rules. The carrier sued the shippers of the cargo claiming damages for the delay and various expenses. The carriers' arguments were based on Article IV rule 6 of Hague Rules and allegations that the shippers had breached their common law duty with regard to goods of a dangerous character.

Article IV rule 6 of the Hague Rules provides:

"Goods of an inflammable, explosive or dangerous nature to the shipment whereof the carrier, Master or agent of the carrier has not consented with knowledge of their nature and character, may at any time before discharge be landed at any place, or destroyed or rendered innocuous by the carrier without compensation and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment..."

The common law position dates back to the 1856 decision of Brass v Maitland. In that case it was held that the meaning of "dangerous goods" can extend to goods which expose the vessel or cargo to the risk of detention and delay, not just physical danger. The shipper did not have to be aware of a potential danger to be liable.

Cargo interests argued that the ground nut cargo did not fall within the definition of "inflammable, explosive or dangerous" as it was not likely to cause direct damage to the vessel or other cargoes by its own inherent characteristics. There was no actual damage to the ship or the wheat cargo.

The shippers relied on Article IV rule 3 which provides:

"The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault or neglect of the shipper, his agents or his servants"

The House of Lords upheld the decisions of the High Court and the Court of Appeal and rejected the shippers' arguments. Despite the fact that neither the ship nor the wheat cargo had been damaged by the ground nut pellets, the House of Lords agreed with the carriers that there had been indirect damage in that the dumping of the wheat cargo was a natural consequence of shipping the infested ground nut cargo. In reaching this decision, the House of Lords broadened the meaning of the word "dangerous" under article IV Rule 6 so that it can now extend beyond actual physical damage to ship or cargo and include consequences such as delay. It was decided that the fact that the shippers were ignorant of the contamination could not absolve them from liability under Article IV rule 6.

The shippers tried to argue that as the Hague Rules was an international convention, the House of Lords should take note of some US decisions apparently supporting the link between Article IV rule 6 and Article IV rule 3. However, the House of Lords decided that the US cases had not, in fact, explored the relationship between these two articles. The House of Lords concluded that if a link between the two articles had been intended, it would have been made clear in the convention.

The House of Lords ruled that Article IV rule 6 was a free-standing provision imposing strict liability on the shippers and rejected the shippers' argument that Article IV rule 6 was subject to Article IV rule 3.

The shippers' common law liability under Brass v Maitland was also confirmed and the decision makes it makes clear that the liability of a shipper under the common law and the Hague Rules is the same in these circumstances.

In this case, the infestation with khapra beetle was not apparent at the start of the voyage but, nevertheless, still managed to cause significant problems for which the shippers were held liable. This illustrates how wide-ranging the definition of "dangerous" has become. Members should ensure that cargoes shipped comply with any conventions or regulations in the ports of loading, destination and transit and should also be aware of incidents which show a trend of problems with particular cargoes.