Demurrage and Laytime - Who is Responsible for Delay?

In a recent London Arbitration Case[1], the owners claimed a balance of demurrage of US$190,379.60 due to delays caused by bad stowage and non-availability of cargo at the loading port and delays which arose by reason of re-bagging and collection of cargo at the discharge port.

Background facts

The vessel was fixed for the carriage of 6,000mt of flyash, 5% more or less in charterers’ option, stowed in jumbo bags, each weighing between 1.0 and 1.6mt. The ruling charterparty was on an amended Gencon form. The arbitrators awarded Owners with US$189,483.01 plus compound interest.

There were 4 main issues in the arbitration:

1. Whether the condition of vessel’s cargo gear resulted in a loss of efficiency and thus allowed charterers to give credit for ‘time thereby lost’ which should be excluded from laytime.
2. Whether owners or charterers were responsible for the bad stowage at the loading port which led to delays at both loading and discharge port.
3. Whether the stevedores were incompetent.
4. Whether laytime stops when cargo is not available.

However, this article will focus on the main issues in the arbitration, namely stevedore incompetence and bad stowage.

Bad stowage or stevedores’ incompetence?

In the arbitration charterers contended that by reason of the master’s interference in the loading operation by ordering the stevedores to shift and drag the jumbo bags in the holds in order to fill up the spaces difficult to access from the hatch squares, owners were responsible for stowage. Charterers also alleged that this caused delays in both loading and discharging port where damage to jumbo bags necessitated re-bagging of cargo.

In their defence charterers relied on clause 31, which provided:

“The stevedores although appointed and paid by the charterers / shippers / receivers or their agents at both ends to remain under the direction and control of the Master, who will be responsible for the proper loading, stowage, discharging and the seaworthiness of the vessel”.

In the absence of express provision, the obligation to load, stow, trim is at common law with the owners.[2]

However line 78 of the NYPE form has the effect of shifting from owners to charterers the primary responsibility for loading and stowing the cargo. [3] The master has the general right to supervise the cargo operations, if they affect the safety of the ship, but otherwise he has no duty to supervise. [4]

In an important House of Lords case[5] in relation to improper stowage charterers had contended that stowage was the master’s responsibility but the majority held that the improper stowage was charterers’ responsibility and the owners were entitled to an indemnity. In the leading judgement Lord Atkin said:

“The supervision of the stowage by the Captain is in any case a matter of course. He has in any event to protect his ship from being made unseaworthy. And in other respects no doubt he has the right to interfere if he considers that the proposed stowage is likely to impose a liability upon his owners”.

However, if there is sufficient evidence to establish that the bad stowage was caused only by the master’s orders and that their (charterers) own proposed stowage would have caused no damage there would be still room for them to escape liability.

However, ultimately, the reservations of the right of the captain to supervise - a right which would have existed even if not expressly reserved - has no effect whatsoever in relieving the charterers of their responsibility.

In the arbitration, it was held that the primary cause of the delays was stevedore incompetence. The stevedores failed to load the vessel in the most efficient way so as to use all available space.

It is common ground that when reference is made to stevedores’ incompetence this not only refers to their working capabilities but also to the equipment they use. Jumbo bags are notoriously difficult to stow in the areas outside the hatch squares. Not only did the stevedores have to minimise broken spaces, but they had to ensure an even stowage. And instead of making use of all the available space, they stowed the cargo in the hatch squares and the lower parts of the holds outside the squares.

The evidence before the tribunal indicated that the stevedores stowed the cargo in this way because they did not use forklifts whereas an experienced firm ought to have realised at the outset that the use of forklifts was essential. Lack of proper equipment is sufficient on its own to demonstrate incompetence.[6]

The delays at the load port were therefore due to stevedores’ incompetence, not the intervention of the master.

Furthermore, charterers contended that delays at the discharge port were caused by re-bagging the damaged cargo. However on completion of loading charterers had issued a letter of indemnity (LOI), indemnifying owners in respect of any liability, including damage and delay in respect of torn and damaged bags, so charterers were responsible for these delays.

Loading operation – Division of responsibility – Amount of cargo

While the charterparty will normally specify the type and amount of cargo to be provided by the charterer at the port of loading, the shipowner is not
concerned with the methods which the charterer uses to acquire the cargo. The charterer, on the other hand, is under an absolute duty to provide the cargo and it will be no excuse that he is prevented from doing so by reasons which are entirely beyond his control. The amount of cargo required to be provided by the charterer may be indicated in the charterparty in a variety of different ways. This has been interpreted by the courts as imposing a liability on the charterer to load either a full cargo or the specified maximum. It also amounts to a warranty by the shipowner that the vessel is able to carry the stipulated quantity.

In an attempt to be more precise, the obligation to load "a full and complete cargo" is often accompanied by a clause stipulating maximum and minimum quantities.

Failure of the charterer to load all the agreed cargo will inevitably result in a loss of freight for the shipowner, for which he will be able to recover damages in the form of "dead freight".

In this case a total of 5,850 jumbo bags weighing a total of 5,977 mt were loaded. The owners alleged that a full cargo had not been loaded by reason of stevedores' poor performance, whilst charterers said that there was no scope for the vessel to load the full quantity.

In any event, and even if the cargo had been slowed properly and the stevedores had been competent, the vessel would have been delayed because of non-availability of cargo. The owners, therefore, had a valid claim for deadfreight.

When demurrage ends?

The tribunal, in deciding the end of demurrage, considered a London Arbitration award[7] where the charter provided for two load ports, but no cargo was available at the first port. Laytime ceased to run when the charterers instructed the vessel to proceed to another port.

In the present case, the charterer ordered the vessel to remain at port until further cargo was available and as such laytime or time on demurrage continued to run until either the charterer ordered the vessel to proceed or abandoned the possibility of further loading.

Conclusion

The judgement in this case clearly affirms that there were contributory factors in the chain of causation which led the arbitrators to find in favour of owners.

The case addresses important issues of general application with regards to the implications of delays during a charter and the contractual obligations between the main parties in a charter and their sub-contractors.

Charterers should recognise the effect of issuing Letters of Indemnity at the load ports and ensure that a competent stevedore company will undertake the responsibility of an even stowage according to cargo specifications.

[2] The "Fikos" (1965) 1 Lloyds Rep. 9 (CA)
[3] Court Line v Canadian Transport (1940) 3 All E.R. 112
[6] The "Sineo" (1972) 1 Lloyd's Rep 201