



Cargo Claims: The Carrier's Burden

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In *Volcafe v CSAV* [2018] UKSC 61 the Supreme Court overturned the decision of the Court of Appeal on the burden of proof in relation to the inherent vice defence in the Hague Rules. This decision has provided clarity on the burden of proof in actions against a shipowner for loss of or damage to cargo and will be of importance to all those involved in the carriage of goods by sea.

In upholding the appeal, the Supreme Court has held that, as a bailee, a carrier will be liable for loss or damage during the voyage unless it is able to prove that on the balance of probabilities the loss or damage was not caused by any breach of its Article III.2 cargo care duties, or that one of the defences in Article IV.2 applies. In order to rely on one of the Article IV.2 defences, the carrier must also prove that the loss or damage was not caused by its own negligence or breach of Article III.2. Therefore, for any cargo claim, the carrier has the burden to prove that the loss or damage was not caused by the carrier's negligence.



The Court of Appeal decision was discussed in detail in [a previous article](#).

Facts

By way of a recap, the claims were for condensation damage to nine consignments of bagged coffee beans carried in containers from Columbia to various disports in Northern Europe. The claimant cargo interests alleged that the carrier had failed to take reasonable care of the cargo and was in breach of its obligation to carefully load, handle, stow, carry, keep, care for and discharge.

Pursuant to the terms of carriage, the carrier's stevedores were responsible for preparing the containers and stuffing the bags into them at the loadport. Two firms of stevedores were employed to perform this task.

The coffee was stowed in unventilated containers. Coffee is a hygroscopic cargo that is likely to emit moisture during the carriage. The containers were lined with kraft paper to mitigate the effect of condensation on the walls and roof of the container and to protect the cargo from water damage. This was a common commercial practice. The cargo claimants argued the carrier had failed to apply sufficient paper to the walls of the container and that the stowage was causative of the damage.

Previous Decisions

At first instance the carrier was held liable for the cargo damage. This was on the basis that once the cargo claimants had established damage this gave rise to an inference that the damage was caused by the carrier's breach of its obligations under Article IV.2 (m). The burden of proof shifted to the carrier and the Court determined the carrier could not demonstrate that it had complied with Article III.2 of the Hague Rules as it could not evidence that the containers had been carried "in accordance with a sound system".

As discussed in the previous article, the Court of Appeal allowed the appeal after a careful review of the authorities. The key points were the expert evidence that the damage to the cargo was due to condensation and that the coffee beans themselves were the source of that condensation; this was an Article IV.2 (n) defence. Once this was established, the legal burden shifted to the cargo claimant who was required to evidence negligence on the part of the carrier, but had failed to do so. The result of this being that the claim against the carrier failed.

Supreme Court Decision

The Supreme Court's decision was unanimous. In reaching this decision, the starting point was to consider the nature of the contract for carriage of goods by sea. The contract of carriage is a contract of bailment, and the carrier is therefore a bailee. As a bailee, the carrier:

1. has a duty to take reasonable care of the goods; and
2. has the legal burden of proving the absence of negligence.

In rejecting the carrier's argument that the positive obligations of cargo care were inconsistent with the common law bailment principles, the Court held that the Hague Rules were not exhaustive. Where those Rules are silent, English common law applies.

As the carrier bears the legal burden of proof, it must establish that the loss or damage was not caused by any breach of Article III.2, or that one of the defences in Article IV.2 applies.

The Supreme Court went on to consider the relevant provisions of the Hague Rules. It was considered that the burden of proof arises in two stages:

Article III.2

Article III.2 imposes on the carrier a general duty to take reasonable care of the cargo during carriage. However, Article III Rule 2 is expressly subject to Article IV and a number of the exceptions in Article IV cover negligent acts or omissions of the carrier which would otherwise constitute breaches of Article III.2 (for example Article IV.1 and Article IV.2(a)). It is common ground that the carrier has the burden of proving facts which bring him within an exception in Article IV. It was considered that it would be "incoherent for the law to impose the burden of proving the same fact on the carrier for the purposes of article IV but on the cargo owner for the purposes of article III.2". Therefore where cargo is loaded in apparent good order and condition and is found damaged on discharge, the carrier bears the burden of proving that that was not due to its breach of the obligation in Article III Rule 2 to take reasonable care.

In reaching this decision, the Supreme Court considered dicta in a number of other cases notably *Albacora v Westcott & Laurence* and *The Bunga Seroja* and concluded that "so far as they suggest that the cargo owner has the legal burden of proving a breach of article III.2, they are mistaken."

Article IV.2(m)

It is well established that the carrier bears the burden of bringing himself within any of the exceptions in Article IV.2.

A key decision relied on by the carriers was *The Glendarroch* (a pre-Hague Rules case), in which the Court of Appeal held that the burden of

proving that an excepted peril had been occasioned by the carrier's negligence lay on the cargo owner. The Supreme Court declined to follow this decision and held that there was no general principle that a cargo claimant bears the burden of proving negligence.

In addition, some useful guidance was given on the meaning of "inherent vice". To establish a defence on this basis the carrier would have to prove they provided the required degree of care, or that even had they done so the damage could not have been prevented. If there was some foreseeable inherent characteristic of the cargo, and the carrier could have taken precautions to prevent damage caused by that characteristic, this was not damage due to inherent vice.

At first instance the Judge's finding of fact had been that the evidence of the steps taken by the carrier were inconclusive. This finding of fact could not be displaced by the Court of Appeal. Therefore, the carrier had not proved that they had taken reasonable care of the cargo, or that the damage that had occurred could not have been prevented.

Comment

This decision is of great importance to both carriers and cargo owners and provides welcome clarity on the burden of proof for cargo claims. Whilst the Supreme Court's decision was in relation to the inherent vice defence, it has wide reaching implications as it would be equally applicable to all of the other exceptions in Article IV(2). In addition to this, when a carrier is pleading a defence, an emphasis on how well the cargo was carried and cared for will likely be required in order to prove an absence of negligence.



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