From: Busch (Arbitrator) <busch@arbitrationlondon.com>
Sent: 02 May 2018 02:08
To: Laytime Doctors | London
Subject: Re: Can we Consider Possibility of Laytime Commencement BEFORE vessel has arrived at port / tendered NOR - LMAA says Yes

Further to my mail a minute ago - sorry typo :

Laytime commences either 17:00 h on 11 June or 07:00 h on 12 June.
As 07:00 h on the next day is later, that is when laytime commences.

Kind regards
Wolfgang Busch

On 01/05/2018 15:53, Laytime Doctors | London wrote:

London Maritime Arbitration Association under President Mr. Ian Gaunt, is making a complete mockery of Principles of shipping Law laid down by English Courts,

I have studied maritime business with Maritime Law from Plymouth University and have highest regards for English Law.

Can you please pass on the below message to the regulatory authorities / courts in England to take cognizance of this matter.

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Question of Law :

- ❖ Can we consider possibility of laytime commencement before vessel has arrived at port - LMAA says Yes.
- ❖ Can we consider possibility of Laytime Commencement before vessel has tendered Notice of Readiness - LMAA Says Yes
- ❖ Does supremacy have to be given to natural and ordinary meaning when Interpreting contracts - LMAA says No
  (Sidelining Supreme Courts Decision in Arnold V Britton (2015) UKSC 36)

The facts of the case in brief is as follows (For full details including Aribtration awards/ charter party terms / sof please visit http://www.unusualarbitrationawards.com/index.html)

1. The shipowners DM Shipping and charterers KVG Global, agreed for carriage of palm oil on a standard printed vegoil voy cp - See RL 2 / RL 3 submitted by claimants in link charter party terms / Exhibits here http://www.unusualarbitrationawards.com/Charter-Party-with-Exhibits-placed-before-tribunal.pdf

In addition to standard printed veg oil terms, the cp had additional pages containing Rider clauses, and Rider clause 2 provided Interalia, (see page 4 of judgement M T Caribbean Orchid here http://www.unusualarbitrationawards.com/Judgement-M-T-Caribbean.pdf)

Rider Clause 2: Total time to be reversible, including the allowable six (6) hours after notice of readiness tendered for all ports. This applies even when vessel is on demurrage. ***Six (6) hours' notice of readiness at load and dischargeport(s) to be given by Master to shippers/receivers as soon as the vessel has arrived and is in every respect ready to load or discharge the cargo(es). Laytime to commence at 7:00 AM or upon expiry of 6 hours' notice which occurs later.***

2. The vessel arrived at Discharge port Kandla at 11 Am on 11th June 2017 and tendered NOR . Six hours from NOR expired at 1700 Hrs on 11th June and 7 Am expired on the next day on 12th june 2017. Giving natural meaning to the words, laytime should have commenced from 7 am from 12th June, however arbitrator Mr. Lambros Hillas held that laytime commenced from expiry of six hours on the same day of vessel arrival i.e. 1700 Hrs on 11th June, it being later than 7 am of same day, even though the vessel was in high seas and had not arrived at outer anchoarge of discharge port Kandla at 7 AM of 11th June.

The LMAA arbitrator Mr. Lambros Hillas, see para 18 , page 7 of judgment stated" --- *On my reading of clause 2,the parties agreed that laytime is to commence either at 07:00 hours AM or six hours after NoR is tendered on the same day, whichever is later"*

Please see Para 11 & 22 at Page 7 -8 of Judgement here http://www.unusualarbitrationawards.com/Judgement-M-T-Caribbean.pdf

3. We find arbitrators consideration of 7 am being of same day of vessel arrival i.e. on 11th June as one of the possible options of laytime commencement, to be completely faulty and against English Law because one of the rules for commencement of Laytime is that vessel must have arrived at load / discharge port. How can possibility of commencement of laytime at 7 am of the day of vessel arrival be considered when she was in high seas and had not even arrived at port / its outer anchorage and tendered NOR.
Further Rider clause 2 does not say anything about 7 am being that of same day of vessel arrival, On the contrary it makes it clear that :

a) notice of readiness has be served upon arrival of vessel **and thereafter**

b) laytime to either start from expiry of six hours from nor time or 7 am whichever is later once the vessel had arrived. It asks to consider 7 am after NOR time and since 7 am falling after NOR is only of 12th June, laytime should have commence from 12th June.

4. **When the same question was independently put before Honourable Mr. John Schofield (Author of Laytime & Demurrage and Full Time Member at LMAA) - he arrived at the correct / sensible decision i.e. that laytime commenced at 7 AM on 12th June i.e. the next day of vessel arrival. Please see Mr. John Schofields opinion in the link here** http://www.unusualarbitrationawards.com/Opinion-of-John-Schofield-on-Rider-Clause.pdf
5. Further the arbitrators finding in para 19, page 7 of judgment that "… *the cause of delay between the Vessel's arrival in port and at berth was due to "berth allocation by the port authorities" or "waiting for pilot" lacks at least factual merit. Both statements of fact are silent …*",
is a blatant lie, because one of the document placed before the tribunal by claimant shipowners themselves represented by Regency Legal (i.e. RL 12, duly signed by master, see Charter party with exhibits at http://www.unusualarbitrationawards.com/Charter-Party-with-Exhibits-placed-before-tribunal.pdf **)** clearly states vessel was awaiting suitable tide / pilot .

Additionally in page no 2 /RL 9, in file Charter Party and exhibits at http://www.unusualarbitrationawards.com/Charter-Party-with-Exhibits-placed-before-tribunal.pdf , under masters remark it is stated that vessel arrived and berthed as per availbility of tide / berth/ pilot.

6. The arbitrator was additionally of the opinion that, rider clause 3(a) i.e."***Time shall not count as laytime or if on demurrage as demurrage time when used For and on an inward passage moving from anchorage, including awaiting tugs, pilots, tide, daylight or any other reason whatsoever beyond charterers control",***

was to apply when the vessel was moving from anchorage to berth and did not apply to awaiting like / delays encountered on arrival at port. (see serial 20, page 7 of Judgement at http://www.unusualarbitrationawards.com/Judgement-M-T-Caribbean.pdf)

We find this strange considering rider clause 3 (a), clearly excepts from laytime, delays like situation i.e. due to tide / pilot / or any cause whatsover beyond charterers control and is not talking about only movement.

7. The arbitrator further goes on to say, even if Exception clause in rider clause 3(a) was to have general application, delays due to congestion could not be excepted from Laytime as there was a breach of reachable on arrival provision / principle laid down in The Laura Prima case (see page 7,8 of judgement)

It would appear that this observation, has ignored the words of Lord Roskill in The "Laura Prima" [1982] i.e. : *"'Reachable on arrival' is a well-known phrase and means precisely what it says. If a berth cannot be reached on arrival, the warranty is broken* ***unless there is some relevant protecting exception****…."*

It also contradicts all the other arbitration awards which we have seen over recent years where arbitrators have accepted that the "Laura Prima" referred specifically to the application of the last sentence of clause 6 of Asbatankvoy.

In the facts of this case, **rider clause 3 a** clearly acted as relevant protecting exception clause for breach of reachable on arrival warranty, and clearly provided that charterer could except waiting like situations due to awaiting pilot, tide, tugs or any cause whatsoever beyond charterers control from Laytime or time on demurrage.

Reference was given to the arbitrator of a identical case in LMLN Judgement 303 – 15 June 1991, in which LMAA held laura prima did not apply and there was no breach of reachable on arrival provision and the charterer could except waiting like situation from Laytime by virtue of a rider clause, which provided delays like situation to be excepted from Laytime.

The rider clause in M T Caribbean (like in LMLN 303/ 15 June 91) provided for waiting like situations to be excepted from laytime on arrival, despite of breach of reachable arrival, and as such we do not understand why same approach as in LMLN Judgement 303 - 15 June 1991, was not followed.

The facts of LMLN Judgement 303 – 15 June 1991 (see page 112-113 in Commencement of Laytime by Donald Davies), is as follows;
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The vessel was delayed by bad weather after arrival at the loading port. Clause 6 of the Tanker Motor Vessel Voyage form charter provided that the ship was to load . . . at a place or at a dock or alongside lighters reachable on her arrival, whichshall be indicated by charterers . . . and by clause 7 the laytime was to commence from the time the vessel is ready to receive . . . her cargo, the Captain giving six hours' notice to the charterers' agents, berth or no berth .

Rider Clause / Typewritten clause 28 read: Any time used in waiting for daylight, normal tide conditions, bad weather or port services such as pilotage and towage shall not count as laytime at ports of loading and discharging.

Rider Clause / Typewritten clause 46 incorporated an addition to printed clause 9 reading: "Neither owners nor charterers shall be responsible if, in the event of strikes of workmen, lock-out, riots or floods or any accident or cause beyond the control of either party, loading or unloading of the vessel is delayed, prevented or interrupted. In such circumstances, laytime will not commence, or if commenced, will not continue until the cause of the interruption or delay is removed"

The shipowners contended that the charterers were in breach of their obligation under clause 6 and were accordingly not entitled to rely on either clause 28 or clause 46. The charterers said that the present case was not like *The Laura Prima* [1982] 1 Lloyd' s Rep. 1, which was concerned with the effect, if any, to be given to the exception in the last sentence of clause 6 in the charter there under consideration, an exception which did not appear in the present case. Based on the decision in *The Delian Spirit* [1979] 2 Lloyd' s Rep. 179 the charterers contended that even when in breach of their reachable on arrival obligation, in computing damages they were entitled to the whole of the available laytime, including any exceptions.

*Held , that the charterers' argument was correct. The charterers were entitled to the benefit of the bad weather exception in clause 28 (****or, if necessary, the general exceptions in clause 46) and were accordingly entitled to succeed on that issue.***

https://books.google.co.in/books?id=tnFGPVrJP3gC&pg=PA115&lpg=PA115&dq=LMLN+Judgement+303+reachable+on+arrival&source=bl&ots=dNB0-ma433&sig=P_RDz2CkSE76RzVT2IsAKJhZSk4&hl=en&sa=X&ved=0ahUKEwja0fWQ3N3aAhXEOo8KHXv8DqUQ6AEIPDAC#v=onepage&q=LMLN%20Judgement%20303%20r

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8. The M T Carribean case was decided under LMAA small claim procedure which apparently cannot be appealed and the entire demurrage claim for about USD 27,000 succeeded in shipowners favour despite of it being blatantly against English Law.

9. Counsel for the charterers had already got to know during the course of proceedings (before the award was given by LMAA) that it was not going to be Fair. Please see the trailing correspondence between LMAA arbitrator - Mr. Lambros Hillas, Regency legal representing shipowners and charterers representative laytime doctors.

10. Ever since charterers legal counsel in an earlier case i.e. M T Ariana (which luckily was fought under Normal LMAA Procedure and could be appealed), filed a complaint against false statement made by tribunal comprising of Ms. Clare Ambrose and Mrs Daniella Horton, LMAA under current president Mr. Ian Gaunt became vindictive and punishing in its attitude towards charterers KVG Global.

11. I will in due course be couriering submissions of both owners and charterers KVG Global Ltd, in case of M T ariana and M T Caribbean, to all the leading maritime lawyers in the world to judge for themselves, fairness of LMAA. In case you find their judgement faulty, please share it with the Honourable Judges / regulatory authorities in England to let them know how they are making a mockery of English Law and principles of law laid down by Honourable English Courts.

12. LMAA small claim procedure is highly prone to misuse since it does not allow appeal. Secondly the procedure itself is unfair in the sense that parties do not get equal opportunities to present their case. Eg. The claimant files a claim submission, defence submits their reply and then claimant gives a counter, after which the arbitrator gives a decision. The procedure allows claimants to put in their side of case two times (in the form of claim submission and then counter to defence's reply), whereas defence is allowed to make a submission / reply only once.

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Laytime Doctors is a claims consultancy company having utmost respect for English Law. We will keep you updated on latest developments in Law from London Maritime Arbitration Association.

Thanks 'n' Regards
LAYTIME DOCTORS|LONDON

Om Namah Shivay | Om Kreem Kalikayai Namah
Haray Krsna Haray Krsna Krsna Krsna Haray Haray |

From: Laytime Doctors | London [mailto:laytime@laytimedoctors.com]
Sent: 27 March 2018 11:16
To: mail@regentlegal.com; 'Lambros Hilas' <Lambros.Hilas@vicsteam.co.uk>
Cc: hirendasan@gmail.com; 'kumar' <anilsingh4672@gmail.com>
Subject: Re: MT "CARIBBEAN ORCHID" - C/P dated 12.05.17

Both of you may plan and do what you like in the name justice.

I don't wish to recieve any communication except the judgement.

Thanks 'n' Regards
LAYTIME DOCTORS|LONDON

Om Namah Shivay | Om Kreem Kalikayai Namah
Haray Krsna Haray Krsna Krsna Krsna Haray Haray |