

Laytime Doctors | London

From: SCHOFIELD JOHN <johnschofield@ntlworld.com>
Sent: 11 May 2018 14:44
To: Laytime Doctors | London
Cc: LMAA; Ian Gaunt
Subject: RE: Can we Consider Possibility of Laytime Commencement BEFORE vessel has arrived at port / tendered NOR - LMAA says Yes

Thank you for this suggestion. Unfortunately procedural matters such as this are outside the scope of a book on Laytime & Demurrage. As you probably know, different laws can apply to a reference to arbitration. There is the:

substantive law applicable to substantive issues

law relating to the arbitration clause

seat of the arbitration and the lex curia

The substantive law relating to the caribbean case may not have been English law but if the parties agreed it be conducted according to the SCP, it is probable the seat of the arbitration and the lex curia/procedural law was English law and that any court, English or otherwise would respect the parties agreement that there be no appeal. If parties wish to maintain a right of appeal, they should not agree otherwise in their arbitration clause.

John Schofield

On 09 May 2018 at 17:02 Laytime Doctors | London <laytime@laytimedoctors.com> wrote:

Dear Mr. Schofield,

To my understanding It is the award decided under Small Claim Procedure AND as per English law that cannot be challenged.

M T caribbean was decided under Small Claim Procedure BUT as per UNENGLISH Law, so there must be a way to challenge.

Request you to please incorporate in your next edition how to challenge an Unenglish Award Under Small Claim Procedure. Till then I will try network with some Honourable Judges in England and try Find out a Way to get justice.

Thanks 'n' Regards

L A Y T I M E D O C T O R S | L O N D O N



Om Namah Shivay | Om Kreem Kalikayai Namah

Haray Krsna Haray Krsna Krsna Krsna Haray Haray |

From: SCHOFIELD JOHN [mailto:johnschofield@ntlworld.com]
Sent: 09 May 2018 20:53
To: Laytime Doctors | London <laytime@laytimedoctors.com>
Cc: LMAA <info@lmaa.london>; Ian Gaunt <ian.gaunt@virgin.net>
Subject: RE: Can we Consider Possibility of Laytime Commencement BEFORE vessel has arrived at port / tendered NOR - LMAA says Yes

As your message is addressed to me, I reply. I don't think the LMAA has any power to intervene as their web site makes clear. In 25 years as a full member and a supporting member before that, I have never known the LMAA to intervene in an individual case. I am sorry you have been disappointed by the outcome in this particular case, but I don't think there is anything that can be done about it. It is a downside of agreeing to follow the SCP.

Regards

John Schofield

On 09 May 2018 at 13:24 Laytime Doctors | London
<laytime@laytimedoctors.com> wrote:

Dear Mr. Schofield,

I always had immense respect for fairness of English People & London and that is why I put Laytime Doctors | London in my signature.

Mr. Lambros Hillas has greatly disillusioned me with his Unlondon Like, Unfair / Biased Behaviour, which is contrary to professional approach of English People. Apart from deliberately interpreting the contract against English Law, he also made false statements in his judgement, i.e. he said Sof at Kandla was silent about vessel awaiting pilot etc, whereas exhibit placed on record i.e. RL 9 / RL 12 clearly mentioned it.

It would be worthwhile to note that in the case of M T Lady Sina (which is with Mr. Brian Williamson currently), the charter party provided for dispute to be resolved through Singapore / Hong Kong Law at Singapore / Hong Kong (Pls see attached correspondence). It was because of my firm belief about fairness for London / Lmaa that the contract was amended for dispute to be heard at Lmaa but now I regret my decision coz Lmaa is unfairly punishing the charterers in a systematic way because I made complaint against few people.

Sir If you allow the system to be misused against one person then the system will find ways to misuse itself against others also, to its own detriment. See what is happening to Pakistan, they were initially training terrorists against outsiders / India, however now they are trying to create trouble for Pakistan itself and every now and then a Bomb Blast goes off in their own territory.

I would request LMAA to review the Judgement of M T Caribbean and conduct of Mr. Lambros Hillas, and take suitable action if they find it improper.

I will keep quiet from now till about two months, since you talk like my good old professors from Plymouth University, who were all very fair. Time has changed and so have people unfortunately. Baltic Exchange was sold out to Singapore even

though it should not have been. I do not want LMAA to be sold out but it will be if it will not give fair judgements.

To conclude Warren Buffett had this interesting thing to say about recruitment; There are three things I look for in a person; "Intelligence, energy, and integrity. And if they don't have the last one, I don't even bother with the first two.

Thanks 'n' Regards

L A Y T I M E D O C T O R S | L O N D O N



Om Namah Shivay | Om Kreem Kalikayai Namah

Haray Krsna Haray Krsna Krsna Krsna Haray Haray |

From: SCHOFIELD JOHN [<mailto:johnschofield@ntlworld.com>]
Sent: 09 May 2018 11:10
To: Laytime Doctors | London <laytime@laytimedoctors.com>
Cc: Ian Gaunt <ian.gaunt@virgin.net>; LMAA <info@lmaa.london>
Subject: Re: Can we Consider Possibility of Laytime Commencement BEFORE vessel has arrived at port / tendered NOR - LMAA says Yes

I think you misunderstand the role of the LMAA and in particular that of its President. I would invite you to look at the first of the frequently asked questions as to the role of the LMAA on their web site, which doesn't control individual arbitrations, unlike say the LCIA, nor is it responsible for decisions made by individual arbitrators and parties choosing to accept the SCP accept

to do so without a right of appeal. All arbitrators from time to time make mistakes, sometimes because we accept the view of one side, when we should have preferred the other. Every case that reaches the Supreme Court does so because the lawyers advising each side have told their clients they have a good chance of success. One of them is wrong but they are not criticised for so doing. If you take the Laura Prima case itself, to which you refer, the outcome changed as it proceeded through arbitration and then the courts.

It is unfair to blame the LMAA for the decision of any of its individual members.

Regards

John Schofield

On 09 May 2018 at 05:21 Laytime Doctors | London
<laytime@laytimedoctors.com> 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. Please visit www.unusualarbitrationawards.com

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

(Sidelineing Supreme Courts Decision in Arnold V Britton (2015) UKSC 36)

The facts of the case in brief is as follows (For full details including Arbitration 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 Inter alia, (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 discharge port(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 anchorage 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 Schofield's opinion in the link here

<http://www.unusualarbitrationawards.com/Opinion-of-John-Schofield-on-Rider-Clause.pdf>

5. Further the arbitrator's 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 documents 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 master's remark it is stated that vessel arrived and berthed as per availability 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 whatsoever 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, which shall 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_RDz2CkSE76RzVT2lsAKJhZSk4&hl=en&sa=X&ved=0ahUKEwja0fWQ3N3aAhXEOo8KHXv8DqUQ6AEIPDAC#v=onepage&q=LMLN%20Judgement%20303%20reachable%20on%20arrival&f=false

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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

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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 receive any communication except the
judgement.

Thanks 'n' Regards
LAYTIME DOCTORS|LONDON

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Haray Krsna Haray Krsna Krsna Krsna Haray Haray |



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