

MFB Defeat Demurrage Time Bar on Behalf of Ship Owners

2021 has got off to a good start, at least so far as MFB and their clients are concerned, in the first reported arbitration decision of the year. In London Arbitration decision 01/21, Owners were required to submit their demurrage claim to Charterers within 90 days of final discharge, “together with all supporting documents”.

The phrase “all supporting documents” was defined in the charter as including, amongst other things, “Owner’s Invoice” and a “Laytime & Demurrage Calculation”.

Among the documents that Owners submitted to Charterers was an “Owner’s Time Sheet” including a laytime and demurrage calculation. It was not disputed that this satisfied the requirement of providing a calculation. However, Owners did not provide a separate “Owner’s Invoice”. Charterers argued that the claim was time-barred. The “Owner’s Time Sheet” did, however, include the demurrage figure sought and Owners argued that it represented an invoice, as well as a calculation, for this purpose.

A line of well-known cases on the subject, including *The Amelie Essberger*, *Obo Venture* and *Eagle Valencia*, have confirmed the requirement for strict compliance when specific supporting documents are required to be submitted in support of a demurrage claim.

However, in this arbitration Owners successfully relied upon the lesser-known decision in *Lia Oil SA v ERG Petroli SpA*. In that case, Mr Justice Flaux found that a laytime and demurrage calculation, which had also included the USD demurrage figure sought, performed a dual function as both a calculation and an invoice. He found that:

“As a matter of language and business common sense, all that is required [of an invoice] is a document setting out the sum which is due, which this page [laytime calculation] does”.

Though the Tribunal in London Arbitration 01/21 was unsure whether Mr Justice’s above finding was one of law or fact, they were prepared to follow it and determined that Owners, by submitting their laytime and demurrage calculation, including the USD figure claimed, within 90 days, had satisfied the obligation to provide an Owner’s Invoice under the relevant clause. Accordingly, Owner’s claim for demurrage was not time-barred.

In an area that can seem to rely upon overly technical interpretations, the tribunal’s decision represents a welcome dose of common sense. However, the decision is of somewhat limited scope and MFB’s general advice to clients remains that, to the extent that a demurrage provision calls for specific documents to be provided in support of a claim, such express requirements should be as closely followed as possible. Nevertheless, where similar facts arise, this line of reasoning could represent a potential lifeline for claimant Owners.

MFB are regularly instructed to advise on the application of such time-bar provisions, and demurrage in general. Should this article raise any points which you would like to discuss further, please contact Nick Wilson, James Burrows or your regular MFB contact.