

Demurrage time bar—completion of discharge and applicable time zone (Euronav NV v Repsol Trading SA)

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Commercial analysis: The crucial issue considered was whether the claimant owners' claim for demurrage from the defendant charterers was time barred under clause 15(3) of the amended Shellvoy 6 form requiring notification of the demurrage claim 'within 30 days after completion of discharge', failing which the owners' claim would be time barred. The parties disagreed on which time zone should be used to determine the date of completion of discharge under clause 15(3). Should the time zone be based on: (a) the place of discharge (California), (b) where owners/charterers were based when they sent or received the notice (Belgium/Spain), or (c) the governing law of the charterparty (England)? It was held that the date for completion of discharge was to be determined according to the applicable time zone in the place where discharge occurred. The demurrage notice was therefore served out of time and the owners' demurrage claim was time barred. The judgment also contains useful general propositions when computing contractual periods of time, which the parties agreed were not controversial, but did not determine the question of which time zone should apply when allocating an event to a particular calendar day (see paras [25] and [26] of the judgment). Written by Nikki Chu, senior associate at Stephenson Harwood LLP.

Euronav NV v Repsol Trading SA [\[2021\] EWHC 2565 \(Comm\)](#)

What are the practical implications of this case?

It was held that the relevant time zone to determine the date of completion of discharge is the place where discharge occurred. Ship owners should therefore bear the correct time zone in mind and ensure that they do not run the risk of serving a demurrage notice out of time which would bar their claim.

Mr Justice Henshaw stated at para [53] that if the owners wanted a different time zone to apply (for example, because notices might have to be served or payments made in countries west of the UK, many hours earlier than would otherwise be the case), then there needed to be an express contractual agreement to depart from the assumption that the local time zone applies.

The judgment also referred to the recent discussion of the approach to the construction of demurrage time bars in *The Amalie Essberger* [\[2019\] EWHC 3402 \(Comm\)](#) (see paras [23] and [24] of the judgment). Among the observations made was as to the purpose of a demurrage time bar, which was to allow the recipient to investigate and verify the claim soon after the relevant events. Given that the time bar provision can potentially bar the demurrage claim, the wording must be clear and if there is any ambiguity it should be construed restrictively against the charterers. However, in this case it was held that clause 15(3) was not ambiguous and there was no scope for construing it against charterers at para [60].

The case also covers the general principles applicable to the interpretation of commercial contracts at paras [20] and [21] of the judgment. Specifically, in relation to the interpretation of charterparties, Henshaw J noted the importance of certainty in such arrangements at para [22].

What was the background?

The owners applied for summary judgment of their demurrage claim or strike out of the charterers' defence. The charterers were treated as having made a mirror-image application, which meant that if the owners' application failed, the owners' claim should be struck out.

The parties entered into a voyage charterparty on an amended Shellvoy 6 form for the carriage of crude oil from Brazil to a range of ports on the US West Coast. The charterparty was governed by English law and subject to the jurisdiction of the English High Court. Clause 15(3) of the charterparty provided inter alia that the owners should notify the charterers of its demurrage claim 'within 30 days after completion of discharge', failing which the owners' claim would be time barred.

The vessel discharged and disconnected hoses at Long Beach California on 24 December 2019 at 21:54 local time, by which time it was 25 December 2019 in Europe. On 24 January 2020, the charterers received notice of the owners' demurrage claim (at 12:42 CET and therefore still on 24 January 2020 in all relevant time zones).

The issue was whether discharge of the cargo took place on 24 or 25 December 2019. The charterers submitted that the local time at the place of discharge (California) was the correct time zone and the claim was out of time on the basis that discharge took place on 24 December 2019. The owners' primary assertion was that the correct time zone was the one with the closest and most real connection with clause 15(3), namely, Europe where the owners' and the charterers administrative staff were both based, so the correct date was 25 December 2019.

What did the court decide?

It was held that the completion of discharge was to be determined according to the applicable time zone in the place where discharge occurred. The demurrage notice was served out of time and the owners' demurrage claim was time barred.

Henshaw J noted that the ordinary approach is to allocate to an event the date that was current in the place where the event occurred, and that approach has some support from the authorities and commentary mentioned at paras [30]–[35] of the judgment.

The discharge of cargo from a vessel is an event which occurs in a particular time zone. That fact will be recorded in contemporaneous documents and a contracting party would naturally expect the date stated therein to be the completion of discharge date.

The cargo discharge date is also relevant for other purposes (for example, it is generally the starting point for the running of time under the Hague-Visby Rules for cargo claims). It would be strange for the date of discharge to be dictated by the demurrage notice requirement and for the date to be different for different purposes.

Henshaw J was not persuaded by the owners' arguments which were focused on the case law in relation to the receipt of notices, which indicated that the notice should be received within working hours or by midnight on the relevant day. However, those considerations do not necessarily affect the date on which an event, which occurred some time ago in a different location, should be taken to have occurred (see para [28]).

Case details

- Court: Commercial Court, Queen's Bench Division, Business and Property Courts of England and Wales, High Court of Justice
- Judge: Mr Justice Henshaw
- Date of judgment: 24 September 2021

Nikki Chu is a senior associate at Stephenson Harwood LLP, and a member of LexisPSL's Case Analysis Expert Panel. Suitable candidates are welcome to apply to become members of the panel. Please contact caseanalysiscommissioning@lexisnexis.co.uk.

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