Sugar rush

Court of Appeal applies strict approach to laytime provisions in case following destruction of conveyor belt in fire.

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E.D. & F. Man Sugar Ltd v. Unicargo Transportgesellschaft mbH (Ladytramp) [2013] EWCA Civ 1449

The case note below reviews the recent English Court of Appeal decision arising out of a fire at a Brazilian sugar terminal.

The British and Irish Legal Information Institute ***website*** has a copy of the transcript.

E.D. & F. Man hired the vessel 'LADYTRAMP' from Unicargo on the Sugar Charter Party 1999 form to carry bulk sugar from Brazil to the Black Sea. Charterers ordered the vessel to load a cargo of sugar at Paranagua in Brazil. However, loading was delayed by a fire. The owners claimed demurrage. The charterers relied upon clause 28 of the Charterparty, which said that time lost due to *"mechanical breakdowns"* was not to count.

The dispute was referred to arbitration in London. The tribunal found that the fire had *"destroyed"* the conveyor belt.

The charterers argued that time had been lost due to *"mechanical breakdown"*. They argued that it was enough that the machinery at the terminal had ceased to operate because of the fire. The owners, on the other hand, argued that the words required a breakdown as the result of (or in the nature of) a mechanical fault.

The tribunal found for the owners, and the charterers appealed to the Commercial Court. The judge agreed with the tribunal:

"It is not enough that the mechanical loading plant in question simply no longer functions, or malfunctions (irrespective of the cause of the malfunction). The nature of the malfunction must be mechanical in the sense that it is the mechanism of the mechanical loading plant which ceases to function."

The charterers again appealed, this time to the Court of Appeal.

The Decision of the Court of Appeal

A unanimous Court of Appeal dismissed the charterers' appeal. It considered that the *nature* of the breakdown was key:

"Complete destruction of part of a facility is not only something more than a breakdown, it is plainly something different in kind from a mechanical breakdown, although equally plainly a mechanical breakdown might lead to complete destruction of all or part of a mechanical loading plant, whether through fire or through some other mechanism" (at [14]).

Interestingly, by the time the case reached the Court of Appeal, there was new evidence that the fire had itself been caused by a mechanical breakdown in the conveyor system. The Court of Appeal refused to allow the charterers to rely on it. The charterers had had their chance to adduce evidence, and it was too late to try again.

Comment

- Careful attention must be paid to the precise wording of charterparty provisions in relation to laytime relating to when time runs and when it does not run.
- This case is a good example of the importance of investigating the facts as soon and as carefully as possible. If the new evidence that the fire had been caused by mechanical breakdown was correct, and if it had been available at the arbitration, the charterers might have succeeded. However, as they did not provide the evidence in time, they lost. In case of a potential dispute, spending time and money investigating the full facts at the outset may save money in the long run.
- There was a significant fire at Copersucar's Terminal in Santos, Brazil on 18 October 2013. Any party bringing or resisting claims for demurrage in relation to that fire should pay heed to this case.