

What is the timebar for outstanding hire claims?



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When does a claim made by an owner for outstanding hire become timebarred? A recent London arbitration decision has handed down some useful guidance in this area.

Introduction

Hire, unlike freight, is not sacrosanct. In certain limited situations, a charterer is entitled to make legitimate deductions from hire; for example, when it can bring itself within the relevant off-hire clause in the charterparty, or when the charterer has a claim for damages for which it is permitted to make a set-off against the hire otherwise due and payable.

As soon as a charterer has a right to make a deduction from hire, it can apply this to the next hire payment so long as the charterer deducts a *bona fide* sum that has been assessed on a reasonable basis.

However, where the owner does not agree with the deduction, when will its responding claim for the return of the outstanding hire become timebarred? This question was looked at recently in *London Arbitration 10/16*¹.

The facts

A dispute arose under a NYPE 1946 amended form time charter, which specified that hire had to be paid 15 days in advance of it falling due. The charter was subject to English law and London arbitration. The charterer paid hire until 7 January 2006, after which it withheld hire for various alleged off-hire periods and multiple other claims, including a claim for underperformance. Five more hire payments were missed before the ship was finally redelivered on 22 March 2006.

The owner commenced arbitration proceedings for the outstanding sums on 21 March 2012 (ie only one day short of the six-year anniversary of the ship's redelivery). The charterer, in reply, sought a declaration from the London tribunal appointed that the claims were already time barred. The charterer essentially argued that, under the Limitation Act 1980, there was a breach of contract on each and every occasion that hire was not paid, with a separate cause of action arising (with time starting to count) each time, so that the claims for outstanding hire were already time barred by the time proceedings were commenced on 21 March 2012. The London tribunal found in favour of the charterer on this preliminary issue.

¹ [2016] 950 LMLN 3

The award

In coming to its decision, the tribunal rejected the owner's two key arguments:

- The owner alleged that its claim was one for the final balance of hire, which was arrived at either on the date of redelivery, 22 March 2006, or just a few days later, but not before. The tribunal rejected this argument and said that an owner cannot unilaterally extend its time for commencing proceedings by, in effect, saying that its claim is one for the balance due, based on a final hire statement, rather than for the hire itself. The true claim was one for hire, which fell due on the date it was originally due to be paid under the charterparty.
- The owner argued that because the charterer withheld hire here legitimately, relying on the basis of off-hire provisions and the principle of equitable set-off, time did not start to run until the claims themselves had been determined. The owner relied upon *The Nanfri*² to support its proposition that if a charterer deducted hire in good faith that element of hire was not then immediately due for payment. To put it another way, as the charterer here was not in breach when it made such (legitimate) deduction from hire, time should not start to run straightaway.

Again, the tribunal rejected this argument. Making legitimate deductions from hire in good faith does not affect the commencement of time for the purposes of limitation. A charterer can only make legitimate deductions from hire if the hire has first fallen due for payment and this is when the owner's cause of action accrues for limitation purposes.

Appeal

The award was subsequently appealed to the English High Court, which confirmed the above decision. The court held that the fact that an arbitration tribunal may subsequently determine that a period of off-hire or set-off was not justified does not mean that the accrual of the cause of action is suspended until that determination by the tribunal is made.

Conclusion

Members should therefore always bear in mind that, in the absence of any express term in the subject charterparty, under English law at least, the timebar for unpaid hire will be six years from the date that the same hire originally fell due for payment.