



# Demistifying damage and demurrage claims

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Can a shipowner make a claim against a charterer for damages, in addition to a claim for demurrage? Yes, says the English Commercial Court (Andrew Baker J) in *K-Line Pte Ltd v. Priminds Shipping (HK) Co. Ltd - The "ETERNAL BLISS"* [2020] EWHC 2327 (Comm).

This recent decision relates to a question of long-standing uncertainty which has divided opinion for many years, namely whether a shipowner can claim both demurrage and damages where the only breach of contract by the charterer is the failure to load/discharge the vessel within the laytime allowed. On the one hand, it has been considered that a shipowner may recover both if it can prove a separate type of loss, that is a loss unrelated to the use of the vessel; on the other hand, it has been considered that a shipowner must prove both a separate type of loss and a separate breach of contract, that is one other than the charterer's failure to load/discharge the vessel within the laytime.

## Background facts

The *ETERNAL BLISS* (Vessel) carried a cargo of soybeans from Brazil to China on an amended Norgrain form charterparty, and was detained at the discharge port due to port congestion and lack of storage. That cargo deteriorated during that time because of the delay and not as a result of any lack of care by the Vessel's shipowner, K-Line. Claims were made by the cargo interests against K-Line, which settled them for approximately US\$1 million. K-Line then commenced arbitration proceedings against the charterer, Priminds, under the charterparty, seeking recovery by way of damages or an indemnity in respect that cost. The English Commercial Court was asked to determine as a preliminary issue,

on the basis of the following assumed facts, the following question of law (in accordance with s.45 of the English Arbitration Act 1996).

## Assumed facts

1. The Vessel was detained at the discharge port beyond the contractual laytime, due to port congestion and a lack of storage.
2. Priminds was therefore in breach of its obligation to complete discharge within the permitted laytime.
3. The condition of the cargo deteriorated as a result of the detention beyond the laytime and not due to any want of care by K-Line.
4. K-Line suffered loss and damage and incurred expense as a result of the detention beyond the laytime, including dealing with and settling the cargo claims brought by the cargo interests and insurers.
5. The loss, damage and expense suffered by K-Line were:
  - (a) Not caused by any separate breach of charterparty, other than Priminds' obligation to discharge within the contracted laytime;
  - (b) Not caused by any event which broke the chain of causation; and
  - (c) Reasonably incurred.
6. The loss, damage and expense suffered by K-Line were consequences of compliance with Priminds' orders to load, carry and discharge the cargo.

## Question of law and answer

"... are the owners (here K-Line) in principle entitled to recover from the charterers (here Priminds), in addition to

any amounts payable as demurrage, such loss/damage/expense by way of:

- (a) Damages for the charterers' breach of contract in not completing discharge within permitted laytime; and /or
- (b) An indemnity in respect of the consequences of complying with the charterers' orders to load, carry and discharge the cargo?"

The Court answered "Yes" to (a) above and "Not Answered" to (b) above, given the answer given to (a).

## Court observations on nature of demurrage

The main point of principle involved in this decision, asked the question what it is that demurrage liquidates. The Court answered this by describing that "the nature of demurrage ... serves to liquidate loss of earnings resulting from delay to the ship through failure to complete loading or discharging within the laytime allowed by the charter" [88].

The Court observed that "Agreeing a demurrage rate gives an agreed quantification of the owner's loss of use of the ship to earn freight by further employment in respect of delay to the ship after the expiry of laytime, nothing more." and further that "Where such delay occurs, the demurrage rate provided an agreed measure by which the parties are bound for the owner's claim for damages for detention, but it does not seek to measure or therefore touch any claim for different kinds of loss, whatever the basis of any such claim." [61]

## Conclusion

This is a significant decision which brings clarity to the principles engaged where a shipowner is able to claim for damages, in addition to claim for demurrage: namely in circumstances where, following a failure by the charterer to load/discharge cargo within the laytime period allowed, where the shipowner has suffered a further and separate type of loss, in addition to its loss of the vessel, it does not need to prove breach of a separate term of the charterparty in order to recover damages of that loss, in addition to demurrage.

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