



Time bar in Article III, Rule 6 of the Hague / Hague-Visby Rules

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Question: does the time bar in Article III Rule 6 of the Hague Rules/Hague-Visby Rules apply to claims in relation to the misdelivery of cargo AFTER discharge from a vessel?

The recent decision of the UK Supreme Court in the “GIANT ACE” (FIMBank Plc v KCH Shipping Co.Ltd [2024] UKSC 38) settles this question in the affirmative, having not been previously decided by English courts.

Facts

FIMBank as holder of bills of lading claimed against KCH Shipping (KCH), the contractual carrier, for alleged misdelivery of cargo, the bills of lading were in Congenbill form and, by way of incorporation from the charterparty, were subject to the Hague-Visby Rules (Rules), including the time bar provision in Article III Rule 6 of the Rules applying one year after delivery in respect of claims by cargo interests against carrier interests.

In March 2018 the “GIANT ACE” carried a cargo of coal from Indonesia to India where discharge into port stockpiles took place between April 2018 against letters of indemnity. FIMBank as financier of one of the purchasers of the coal took a pledge over the bills of lading and the cargo. It claimed misdelivery of the cargo pursuant to delivery orders after discharge from the stockpiles.

FIMBank commenced arbitration against KCH more than one year after delivery of the cargo and the date when the cargo should have been delivered, that being the time bar period. It contended that the time bar of one year, which applies to claims against the carrier, did not apply at all to misdelivery AFTER discharge on the wording of the Rules themselves

and clause 2(c) of the Congenbill form prevented their implication or application.

Decision

FIMBank was unsuccessful before the arbitration tribunal and in its appeal to both the English High Court ([2022] EWHC 2400 (Comm)) and the English Court of Appeal ([2023] EWCA Civ 569). The Supreme Court found that:

1. The provision Article 111 Rule 6 was intended to have wide application, noting the words “in any event”, “all liability”, claims “in respect of loss or damage” and all liability is “discharged”.
2. The provision focuses on what is to happen at and from the time of “delivery” given that delivery and discharge are different concepts and delivery may often occur after discharge.
3. The object and purpose of the time bar is to ensure finality for parties who, once the deadline has passed, know that there is no need for factual investigation and can close their accounts and books: also practical difficulties would arise if the operation of the time bar was dependent upon when discharge was completed.
4. Although the travaux do not address the issue of whether none of the Rules apply outside the period from loading until discharge, they do provide indications that the time bar was meant to be as all-embracing as possible.
5. The English authorities emphasise the wide wording of the provision, the importance of finality and the undesirability of having a split regime

of time limits: international case law does not indicate an international consensus.

6. The Rules are not only concerned with the period of responsibility during which the carrier is subject to minimum responsibilities and liabilities : the time bar in the Rules therefore can and does apply to breaches of duty by the carrier which occur after discharge but before or at the time of delivery, including misdelivery: equally it may be applied to breaches occurring before loading: in all such cases the claim must have sufficient nexus with identifiable goods carried or to be carried.
7. Clause 2(c) of the Congenbill (which relevantly states: “The Carrier shall in no case be responsible for loss or damage to cargo, howsoever arising ... after discharge from the Vessel ...”), did not have the effect of dis-applying the Rules, including the time bar, to events occurring after discharge.

Conclusion

This is an important decision of significant commercial significance, given that the applicability or otherwise of a contractual time bar is a crucial issue. It brings clarity to the situation where the discharge and the delivery of the cargo do not occur at the same time, and where the terms of the bill of lading do not provide for functions performed in the period between discharge and delivery. ▲