

Circular Ref: 2019/0007

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Laytime issue - Delay at the discharge port and Customs Officials

In the recent case of *Sucden Middle-East v Yagci Denizcilik ve Ticaret Ltd Sirketi (The "Muammer Yagci")* - QBD (Comm Ct) (Robin Knowles J) [2018] EWHC 3873 (Comm) - 2 November 2018, issues arose as to the correct laytime and any exceptions to it.

The vessel was chartered pursuant to the Sugar Charter Party 1999 form. Clause 28 had a side heading: "Strikes and Force Majeure," and provided:

In the event that whilst at or off the loading place or discharging place the loading and/or discharging of the vessel is prevented or delayed by any of the following occurrences: strikes, riots, civil commotions, lockouts of men, accidents and/or breakdowns on railways, stoppages on railway and/or river and/or canal by ice or frost, mechanical breakdowns at mechanical loading plants, government interferences [emphasis added], vessel being inoperative or rendered inoperative due to the terms and conditions of employment of the Officers and Crew, time so lost shall not count as laytime or time on demurrage or detention [emphasis added]...

A delay to discharging the cargo of four and a half months ensued due to false important documents present to the Custom's officials, who responded by seizing the cargo under powers given to them under customs laws and regulations.

By a partial final award dated 23 March 2018, arbitrators concluded that the time so lost was not caused by 'government interference' within the meaning of clause 28. The charterers appealed to the High Court under section 69 of the *Arbitration Act 1996* on the following question of law:

Where a cargo is seized by the local customs authorities at the discharge port causing a delay to discharge, is the time so lost caused by 'government interferences' within the meaning of clause 28 of the Sugar Charter Party 1999 form?

The Owners argued that it was necessary for the Court to determine on the application of the Charterers, whether such can be really considered as government interference, when it was routine for such as agency to interference in cases of false documents so presented.

The Court held that the ordinary meaning of the word “interference” was apt to include an intervention in that specific form, ie by way of seizure. That action on the part of local Customs Authority was, in the context, the action of government through its appropriate arm or agency. However, the Court had to analyse a bit further whether such interference was just ‘ordinary’ interference as in the case the property rights were invaded. The Court decided that the interference in such a case is far from ordinary and therefore, the Charterers’ appeal was allowed.

ALCO’s FDD department’s advice to the clients of Andrew Liu is as follows:

- a) It is important to take the advice of client-friendly FDD department advice before embarking on costly litigation and arbitration. Many clients have benefited by including FDD department as a secondary consultant to keep a check on various aspects of litigation or arbitration. Such services are cost-effective, even where the lawyers are appointed by the Clubs.
- b) Such cases revolve around on e-mail correspondence, investigation at ports and so forth. Collation of evidence is an important element when one party decided to embark on the path of litigation.

Source of Information: Andrew Liu & Co., Ltd www.andrewliu.com.hk