

Shipping Judgment: Damages Claim For Cargo Shipped From Chinese Ports To Zayed

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In addition to that, the judgment considers the issues related to the interruption of time limitation of cargo claims.

Court of first Instance

The Plaintiff filed a court case before Abu Dhabi Court of First Instance against the Carrier (First Defendant) and the two ship agents (Second and Third Defendants) asking the appointment of an expert to assess the damages sustained by him as a result of the late de-stuffing of the Cargo at the Discharging Port for the purpose of delivery. The alleged damages comprise of containers demurrage and storage fees, freight surcharges and loss of profit due to market prices fall down in addition to cost and interest.

The Plaintiff is a receiver of four consignment of Cargo shipped in containers on board the carrier's vessels from China to Zayed port (Discharging Port) under four bills of lading as full container load (FCL). The bills of lading were issued marked as such and the agreed terms of shipment were containers yard (CY) / container freight station (CFS).

The Plaintiff argued that he contracted with the First Defendant to ship the Cargo from China to the Discharging Port in four consignments as aforementioned in order to be delivered after de-stuffing. After the Containers were discharged, the Plaintiff repeatedly asked the Defendants to deliver the Cargo in accordance with the contract but they did not comply until February 2009 which caused the above claimed damages.

The expert concluded that the First Defendant is liable to compensate the Plaintiff for the loss of profit and demurrage paid to the First Defendant.

After the expert submitted his report to the court, the Plaintiff amended his claim and asked the court to order the First Defendant together with the Second and Third Defendants to jointly pay the Plaintiff the compensation amount quantified by the expert in his report.

The First Defendant argued before the court that based on Article 484 of the Civil Transaction Law No. 5 of 1985 as amended (CTL) the claim is time barred because of the lapse of one year from the cargo delivery date without the Plaintiff taking any judicial procedures to clearly claim the alleged damages. He further argued that filing a case for the appointment of expert is not considered to be a judicial procedure for the purpose of claiming specific amount and that it is merely an action to verify a situation which may not interrupt the one year time bar.

The court of first Instance found that the case is time barred because the main claim for damages was filed before the court after the lapse of one year and two months of the date of cargo delivery. The court pointed out that despite the fact that the claim for the appointment of an expert was filed before the elapse of time bar, such action does not interrupt the time bar because it does not fall within the meaning of the judicial procedures that interrupt the time bar as drawn by Article 484 of the CTL. Accordingly the case was dismissed.

It should be noted that the court considered the date of amending the case of appointing an expert in

order to include the demand for awarding damages as the date on which the main claim for damages was filed (judicial procedures for the purpose of claiming specific amount). Nevertheless, the case of appointing an expert was filed before the elapse of the time bar.

Court of appeal

The Plaintiff filed an appeal before Abu Dhabi Court of Appeal against the same Defendants on the following basis:

1. The court of first instance judgment had wrongfully applied the law as follows:-
 - The Plaintiff complied with the route drawn by the law by first resorting to the Conciliation Committees of the Court of First Instance before the lapse of the time bar pursuant to Federal Law No. 26 of 1999 in relation to Conciliation Committees as amended. This procedure must be followed whether the case is an appointment of expert or main claim of specific amount of money (Substantive Claim). Therefore, the time bar was interrupted.
 - Filing the appointment of expert case during the time limitation of one year is considered to be a judicial procedure for the purpose of interrupting the time bar. On the other hand the appointment of expert case is treated by the court as Substantive Claim since the court examines the case and all documents produced to the court.
 - Recording the case with the court is considered as an interrupting procedure of the time bar.
2. The judgment was not issued on the basis of enough reasoning.

The court issued a preliminary judgment appointing another expert to examine the claim and the documents and to visit the Discharging Port authorities in order to find out whether the Defendants were late in delivering the Cargo and the exact quantum of damages sustained by the Plaintiff.

When the case was handed over to the expert the First Defendant raised the following points:

1. The Discharging Port was facing congestion problem and the Port could not immediately de-stuff the containers.
2. Number of containers arrived the Discharging Port on board one of the vessels owned by the First Defendant were discharged at the CY and they were de-stuffed at the CFS. Although, cargoes were not cleared by the Plaintiff in spite of repeated requests to do so which added to the already existing space problem at the port.
3. When the rest of the containers arrived on board another vessel owned by the First Defendant, the port authorities alternatively advised that consignee provide an undertaking to the port to clear the cargo within 4 days of de-stuffing. In such case, once the undertaking is given, the Port will immediately shift the containers from the CY to the CFS in order to de-stuff them.
4. At the same time the Defendants asked the Plaintiff to surrender the original bills of lading and collect the delivery orders. Neither did the Plaintiff give the undertaking nor did he surrender the bills of lading. The Plaintiff insisted that he will not surrender the bills of lading nor give the letter of undertaking and emphasized that the cargo must be de-stuffed and stored at the CFS as they are allowed storage tolerance of specific number of days, which they wanted to use. The Defendants explained to him that this would be impossible in the current circumstances.
5. After a few months the Plaintiff finally gave the undertaking to the port and surrendered the original bills of lading. Consequently, the rest of the containers were de-stuffed by the port within the next few days.
6. As a result of the Plaintiff's non-cooperative behavior demurrage charges were imposed on the containers and de-stuffing of the containers was delayed. Although, the First Defendant offered a considerable discount on the demurrage.

In this regard it is worth noting that in the normal circumstances in container operations where there is no

congestion, the responsibilities of various parties involved are:

1. The Carrier is responsible to transport the cargo from the port of loading to the port of discharge.
2. The Carrier's agents are responsible at the port of discharge to:
 - Declare the containers as CFS to the port.
 - Issue the delivery order to the consignee against presentation of the original bills of lading.
3. Port's responsibility is to:
 - Shift the containers to the CFS.
 - Arrange de-stuffing of the containers.
 - Arrange delivery of the cargo to the consignee in partial or in full against processed customs document.
3. Consignee's responsibility is to:
 - Surrender the original Bills of lading to the Carrier's agent & collect delivery order from him.
 - Process the customs document (Bill of Entry) at the customs office and then approach the port with the processed documents for cargo delivery partially or in total.

The Expert submitted his report to the court concluding that the First Defendant did not perform his obligation in the proper manner by delaying the cargo delivery. Accordingly, the Defendants were liable to compensate the Plaintiff for the surcharges imposed on all the receivers in the GCC countries ports including the Plaintiff for congestion problems in addition to demurrage and the storage fees. Concerning the loss of profit incurred due to the late delivery, the expert found that this a commercial risk which must be undertaken and expected by the traders.

The court of appeal found that the delay was caused by:

- The congestion at the Discharging Port;
- The wrongful act on part of the Plaintiff by not taking delivery of the cargo de-stuffed from the first number of containers discharged and by not surrendering the bills of lading and providing the letter of undertaking as requested.

The court concluded that, had the Plaintiff taken delivery of the First Number of containers he would have had his full containers gradually de-stuffed and cargo received in a short period of time. Concerning the storage fees, the bills of lading clearly state that the receiver is responsible for storage and handling fees and thus the Defendants may not be held responsible for the same.

Accordingly, the court of appeal held that:

- The Case was not time barred because the case was filed before the Conciliation Committee during the prescribed time limitation period (1 year from the delivery date).
- The Defendants are not responsible for the delay and the damages claimed and thus the case is dismissed.

The case was further appealed to the Cassation Court of Abu Dhabi which in turn upheld the Court of Appeal judgment.