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**LAYTIME AND DEMURRAGE**

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**CHARTERERS' OBLIGATION TO PROVIDE CARGO**

- The obligation is absolute
- “Best endeavours” to provide cargo is not enough
- Charterers cannot delegate this obligation to anyone else
  - Not to shippers
  - Not to ship owners
- Commercial allocation of risk

**CHARTERERS' OBLIGATION TO PROVIDE CARGO**

- Distinguish from the obligation to load within laydays
- Exceptions apply to the duty to *load* cargo, NOT to the duty to *provide* cargo
- Breach of this duty before laytime commences = damages for detention, NOT demurrage
- Advice: for any delay more than two days, clarify *at the time*, who is paying
- Example: 21 day delay at Illichevsk

**EXCEPTIONS TO THE CHARTERERS' OBLIGATION TO PROVIDE CARGO**

- “*force Majeure*” does not exist under English Law unless there is a provision in the Charterparty
- Exception 1: Frustration of the Charterparty might exist if the cargo becomes illegal after the Charterparty is concluded
  - Example: Ukrainian export licenses?
- Exception 2: Express exceptions
  - “strikes”, “ice”, “causes beyond the charterers control” only apply to obligation to load, unless expressly stated
  - “bringing the cargo to the loading port”

**COMMENCEMENT OF LAYTIME**

- When does the laytime clock start ticking?
- Arrival
- Readiness
- Validly tendered NOR

### **COMMENCEMENT OF LAYTIME ARRIVAL**

- Sea passage must have ended: when?
- Port or Berth Charterparty?
- “Illichevsk, one safe berth” or “one safe berth, Illichevsk”
- Berth is where cargo operations can take place
- Where are the port limits?
- Customary waiting place for the port, and in the port
- At the disposal of the Charterers

### **COMMENCEMENT OF LAYTIME READINESS**

- Ready in all respects to load or discharge
- Actually ready, not “will soon be ready”
- Cargo gear, cranes, cleanliness, cargo space accessible, no pests, no fumigation required
- Legally ready: free pratique and other formalities

### **COMMENCEMENT OF LAYTIME VALIDLY TENDERED NOR**

- If the vessel is not “arrived” or “ready” and the NOR is tendered, it will be INVALID.
- The consequence of an invalid NOR is that laytime will not commence until:
- The commencement of cargo operations, in the absence of any rejection of the NOR by Charterers: Charterers will be seen to “waive” their reliance on the invalid NOR
- The Charterers “accept” the NOR, even if it has been invalidly tendered: If Charterers accept the NOR and later discover the NOR is invalid they may not be able to cancel this acceptance

### **COMMENCEMENT OF LAYTIME PRACTICAL ADVICE**

- For Charterers:
- If there is any doubt about the validity of the NOR, do not accept the NOR and expressly reject the NOR
- For Owners:
- Press the Master to ensure the NOR is served at the right place and at the right time
- The NOR should be served to Charterers and any agents details which are known
- Serve subsequent NOR's without prejudice to earlier notices
- Upon arrival at the pilot station
- Upon arrival at any anchorage
- Upon arrival at the berth
- If several charterers, upon commencement of discharge for each parcel of cargo under each charter at the berth

### **LAYTIME EXCEPTIONS**

- “weather permitting”, “weather working day”: must prohibit work, not just delay the speed of work
- “Sundays and holidays excepted”: Holiday is determined by the local custom practice of the port.
- “Unless used, in which case time actually used to count”:
- Exceptions only apply to Laytime. They do not apply to demurrage thus “once on demurrage, always on demurrage”

### **DEMURRAGE**

An predetermined rate of damages for detaining the vessel which the Charterers are liable as a result of their breach of the laytime provisions.

*“If the charterer has agreed to load or unload within a fixed period of time...he is answerable for the non-performance of that engagement, whatever the nature of the impediments, unless they are covered by exceptions in the charterparty or arise through the fault of the shipowner or those for whom he is responsible” - Lord Finlay (William Alexander v. Akt Hansa) 1920*

### **DEMURRAGE**

Express exceptions:

- any exception to demurrage continuing to accrue must be specifically and clearly worded to apply to demurrage.
- Generally worded exceptions to laytime will not apply.

Delay caused by the Shipowner:

- Have Charterers been deprived of their use of the ship?
- Was the Shipowner using the ship for his own purposes?

## **DEMURRAGE**

### ***7 Demurrage***

*Ten running days on demurrage at the rate stated in Box 18 per day or pro rata for any part of a day, payable day by day, to be allowed Merchants altogether at ports of loading and discharging*

*(Gencon Charterparty 1976)*

Demurrage is “payable day by day”

Demurrage is payable against the Shipowners invoice

The Shipowners may exercise a lien on the cargo during discharge for demurrage past due