

Arbitration Disputes at the LMAA



by Arthur A. NITSEVYCH



by Nikolay V. MELNYKOV

The London Maritime Arbitrators Association (LMAA) is, as its name implies, an association of maritime arbitrators practicing in London. It exists to promote and support maritime arbitration. About 90% of goods are moved by sea today. Obviously, the number of disputes in this sphere is big. LMAA is considered a world-wide leader in commercial maritime dispute resolution.

LMAA was founded in 1960, but its roots and traditions go back more than 300 years. It arose out of an informal approach by ship-brokers in London to settling their clients' disputes without recourse to the courts.

Apart from appointing an arbitrator in circumstances in which the parties cannot agree upon the appointment of an arbitrator, the LMAA does not administer arbitrations conducted by its members or under its rules. In those arbitrations in which the LMAA appoints an arbitrator, its role is concluded with its appointment. In other arbitrations, the association does not get involved at all. This contrasts with the approach of other arbitral institutions which administer arbitrations and charge for this service. This is an important distinction and one which is often not understood.

The LMAA does not seek to train or educate arbitrators: its full members are considered capable of acting as arbitrators when they are admitted to membership. It usually has between 30 and 50 full members. In order to maintain the fullest possible links with the users of London



maritime arbitration and their representatives, it also maintains a category of Supporting Membership usually of some 700 or more individuals.

Arbitration

Obviously, LMAA members conduct maritime arbitrations. These cover all types of shipping disputes which are subject to an arbitration agreement. Such an agreement is usually to be found in a contract agreed before the dispute has arisen, but occasionally it may be found in an *ad hoc* agreement made after a dispute has arisen. Typically

such disputes arise under charter parties, bills of lading, ship-building contracts, and sale and purchase contracts, but there are many other types of dispute which LMAA arbitrators handle. Examples are disputes involving contracts for the sale of goods, claims for brokerage commission, and so on. Where shipping is involved, LMAA has the expertise to deal with any disputes which can arise.

Is an oral hearing necessary?

The majority of arbitration cases do not require an oral hea-

Arthur A. Nitsevych
is a partner with International
Law Offices (Interlegal)

Nikolay V. Melnykov
is a partner with International
Law Offices (Interlegal)

ring and are determined on the basis of written submissions only. Oral hearings are costly and usually only necessary where very substantial sums are in dispute or where there are important conflicts as to the evidence of the parties that require the attendance and questioning of witnesses before the tribunal.

Either party may apply for an oral hearing but the arbitrators have the discretion to decide whether an oral hearing is necessary or not. Usually, where an oral hearing takes place it is necessary to instruct London solicitors and counsel to conduct the hearing. Thus, although a party may like the idea of an oral hearing they must be careful to calculate the cost of asking for one in the majority of cases.

An obvious advantage of an arbitration decided on documents only (apart from the lower cost) is that it allows a case to be handled by lawyers, or a party, who may not be in London, or even in England. Parties often like to use lawyers or consultants who they know well, who speak their language and who may be not as expensive as some London lawyers. This is something that the LMAA is happy to accommodate and encourage as far as possible.

Representation

Many parties conduct cases themselves. Some use claims agents, others use P&I Clubs. Many do, of course, use in-house lawyers. LMAA arbitrators are entirely accustomed to dealing with parties who are not represented by English lawyers and there is no detriment to parties who fall into this category. The reasonable charges of representatives of a party who is successful in arbitration will normally be recoverable, whether that representative is a lawyer or not or is English or not, provided that the party is liable for and has paid the charges in question.

Terms

One of the most important functions of the LMAA is to publish terms under which its members (and other arbitrators) conduct maritime arbitrations or mediations. The LMAA recognizes that there is a range of disputes of differing importance to the parties. The range is usually (but not always) determined by the amount of money at stake. To respond to this reality, the LMAA publishes different sets of terms and the parties are free to choose the terms which are proportionate to their disputes. They can choose anything from a thorough but more expensive service, or a quick but cheaper service.

The thorough but more expensive service comes in the form of the LMAA Terms (2006). They are designed to be used in substantial cases, and make detailed procedural provisions for the conduct of arbitration.

The quick but cheaper service comes in the form of the LMAA Small Claims Procedure 2006. They are designed to be used in cases where the sums at stake are USD 50,000 or less, but the financial limit is for the parties to agree. In some cases, the parties will agree to a higher or no limit. However, a higher or no limit at all is not always a good idea because the terms are not really suitable for a complicated or difficult case.

The LMAA has identified the need to increase the range of its terms in order to give the parties a wider degree of choice in the method of arbitration (particularly its cost) which they consider to be appropriate for the determination of their disputes. So, recently a new set of terms was accepted which provides a procedure which falls somewhere between the LMAA Terms and the Small Claims Procedure. The new terms, called LMAA Intermediate Claims Procedure (2009), are intended to deal with disputes where the claim falls between USD 50,000 and about USD 400,000.

Are arbitrators' fees payable in advance?

Only an appointment fee is payable at the outset. However, arbitrators may ask for interim payments as work progresses on a case. Further, when an oral hearing is fixed, booking fees will become payable.

Are arbitrators bound to follow the law?

LMAA arbitrators always do their best to do so. However, the law is not always clear. In such cases arbitrators have to do their best to decide what the law is.

Time bar

The LMAA terms do not impose any time bar on the commencement of arbitration proceedings. Time bars are to be found either in express terms of the contract or in general English contract law.

Statistics

LMAA arbitrators conduct by far the greatest number of shipping related cases in England. For example, in 2006, full members received about 2,500 appointments and made about 450 awards. This compares well with English specialist shipping courts. In 2006, 1005 claims were brought in the Commercial Court and 128 claims were brought in the Admiralty Court. Though it is hard to say as other arbitral institutions don't publish statistics, it seems that the LMAA conducts more shipping arbitrations than all of the other arbitral institutions in the world, certainly more than any other single institution. And the LMAA may be considered a very useful platform for solving commercial disputes with the participation of Ukrainian entities, especially those which would like to engage Ukrainian consultants speaking their language who are not as pricey as London lawyers.

Arbitration is
EXPENSIVE
because
of the WAY
in which it
has been
CONDUCTED
by PARTIES