CHAMBRE ARBITRALE MARITIME DE PARIS

Gazette de la Chambre

Lettre d'information de la Chambre Arbitrale Maritime de Paris

Comité éditorial : Philippe Delebecque - Claude Goussot - Jean-Yves Thomas - Michel Leparquier

Editeur : Philippe Delebecque

3 issues yearly **(January - April - September)** **Supplement Issue 57- Winter 2021 - 2022**

" Dies a quo, Dies ad quem"

English abstracts of some recent awards rendered by the arbitrators of the "Chambre arbitrale maritime de Paris"

Award 1255: 2nd degree - Gencon - Cargo damaged in transit - Materiality of the damage - Volume and quality of the pollutant - Liability - Commercial seaworthiness - Absolute obligation - Inspection of cargo holds at fault - Notice of Readiness (NOR) not exclusionary - Quantum of the damage - Recoverable amounts alone as the basis for compensation.

After inspection of the cargo holds and acceptance of the NOR, the loading of a vessel chartered for voyage was interrupted further to the discovery of cargo contaminated by slivers of paint in one of the holds. Realizing that the cargo could not be salvaged at the port of arrival, the charterer informed the shipowner that it had been decided to unload the quantities already on the vessel then sell the recoverable amounts thereof (as the product destined for animal feed had been downgraded as fertilizer). Liability for the ensuring loss was attributed to the shipowner, in view of the latter having defaulted on its absolute obligation to ensure proper commercial seaworthiness and present for loading a vessel with cargo holds in a condition fit for transporting products in bulk intended for animal consumption, the latter having no right to blame the charterer for having started to load with the NOR being rejected, apart from the fact that the inspection of the holds was less than thorough (5%).

The compensation for loss of the goods after deduction of the recoverable amounts, the port costs incurred to unload the vessel, the storage costs for the polluted goods pending their sale as salvaged goods and the additional cost of transporting the goods was then established, on the understanding that, with regard to the sale as salvaged goods, the selling price must be their purchase price, not their resale value, given that a sale as salvage is a customary form of compensation and corresponds to practices that for that matter simply reflect the principle of minimization of damages, which the insurers correctly applied in the interests of the liable party.

Award 1256 : Synacomex 90 - Wheat in bulk - Missing goods - The charterer's right to bring action for breach of contract against the ship owner on the grounds of a voyage charter - Area of uncertainty regarding the draft surveys and apportionment between the parties - Loss in transit.

A dispute arose between the shipowner and the charterer of a vessel concerning the apportionment of the observed missing goods (in a cargo of wheat) by the consignees on arrival of the vessel (in Guinea).

After ascertaining its jurisdiction, the arbitral tribunal confirms the charterer's right to bring action for breach of contract against the shipowner on the grounds of the voyage charter, while recognizing its legitimate interest in bringing action as, after having tried for several weeks to resolve the problem and reach a settlement with the shipowner, it had finally decided to pay the consignee compensation in order to bring to an end to its obstructive actions (repeated seizures) that caused it a heavy loss.

The tribunal also finds that no provision of the charter party rules out the applicability of the loss in transit exception, which is therefore enforceable both on the holder of the bill of lading and on the charterer, on the understanding that for the court, even though the loss in transit is deemed a case of exception, it rather constitutes a presumption of lack of loss with reservations, it being understood that the loss is still within limits fixed by common practice (here, 1% of the total volume of the cargo).

Lastly, as regards the missing goods and the shipowner's liability, the tribunal considers that in a voyage charter the principle is that the shipowner is liable for loss and damage, but without there being any presumption of responsibility. And the arbitrators consider two factors when faced with the difficulty of explaining the missing goods.

The arbitrators therefore ruled that if the loss in transit clearly exonerates the shipowner, there is no reason to make either party bear the full risks linked to the inaccuracy of the draft surveys. In these circumstances, the Tribunal decided that an amount equivalent to 0.7% of the total cargo weight was to be borne by each party -for the margin of uncertainty of the draft surveys-, that the balance of the claim - representing approximately 1% of the total cargo weight as the loss in transit - was to be borne by the charterer and to apportion the arbitration costs equally between the parties.

Award 1257: Port handling contract - Knock by the terminal's handling gantry as it was moving from one bay to the next of the ship's monorail - Responsibilities shared out among the shipowner and the handler.

During the vessel's commercial operations, the ship used the monorail crane to unload waste from the ship into a barge moored alongside the vessel. As the terminal's handling gantry was moving from one bay to the next, it knocked the telescopic arm of the container ship's crane that was protruding over the ship's side to unload waste from the ship.

In view of:

- the "Terminal Contract" signed by the shipowner and the port operator,
- the "Vessel Safety Package" concerning safety procedures governing ships stopping off at the port terminal,
- the ship's crane operating manual
- INRS rules (national research and safety institute for the prevention of occupational accidents and diseases) and the Labour Code,

It was decided that:

- the shipowner was primarily at the root of the accident, as it had started unloading waste without so informing the handler, even though it was familiar with the unloading plan and on the basis of the aforesaid rules had a duty to ensure that the said unloading operations did not interfere with those of the terminal,
- the respective breaches of their obligations by the ship's crane operators and those of the terminal, and their dedicated teams, constituted an aggravating factor that contributed to the accident. 60% of the fault was attributed to the shipowner and 40% to the terminal.