MARITIME DISPUTES NEWSLETTER – JULY 2020: ARBITRATION AWARDS

24 JULY 2020 • ARTICLE

SCROLL DOWN FOR A SELECTION OF RECENT DECISIONS BY LMAA TRIBUNALS, PUBLISHED IN ASSOCIATION WITH THE LLOYD'S MARITIME LAW NEWSLETTER:

Claims under indemnity provision were not time barred (London Arbitration 01/20)

An LMAA tribunal has found that owners' claims against charterers for a contractual indemnity in relation to shortage claims brought by cargo receivers in a foreign court were not time barred. Declining to follow Bosma v Larsen (1966), the majority considered that time for limitation purposes started to run when the owners paid the cargo claimants in light of the final foreign judgment. Since the claim had been issued within six years of that date, it was not time barred. However, the dissenting arbitrator considered that Bosma was not distinguishable and that the relevant cause of action arose when cargo had been discharged short, 11 years before the indemnity claim had been issued and well out of time under the usual six year limitation period.

Meaning of to be amended as per "main terms" in fixture recap email (London Arbitration 02/20)

Noting that there is no established meaning of the phrase "main terms", an LMAA tribunal has held that the proper approach to words in a fixture recap email such as "OWISE AS CLEAN GENCON 94 CP … TO BE AMENDED/ALTERED AS PER ABOVE MAIN TERMS AGREED" was not to take the Gencon 94 form and see if any provisions in it could be described as "main" and then to ignore such provisions if not covered specifically in the fixture recap email. Instead, it was necessary to take a clean Gencon 94 form and write into it what "main terms" had been agreed.

Notification requirement in time bar provision did not require specific reference to that provision (London Arbitration 03/20)

An LMAA tribunal has found that a notification made under a time bar provision in the Inter-Club NYPE Agreement 2011 did not require the notifier to refer to the Agreement, either expressly or impliedly. The clause only required "written notification of the Cargo Claim" to be given, and was not in itself the claim for recovery. A failure to include details of the contract of carriage, nature of the claim and the amount claimed, so far as possible to do so, was a breach of contract, giving rise to a right to damages if any loss could be established, but it did not invalidate the notice. Accordingly the charterer was not precluded from bringing a claim for an indemnity against owners in respect of a cargo claim intimated by the shipper.

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