

1981 June 25

[DEMETRIADES, J.]

GEORGHIOS K. SERAPHIM,

*Plaintiff,*

v.

1. SVENSKA ORIENT LINIEN,
2. THE SHIP "VIDALAND",

*Defendants,*

(Admiralty Action No. 183/76).

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*Admiralty—Carriage of goods by sea—Claim for damages caused to goods during the voyage—Damage to cheese because of failure to keep it under cooling conditions—Carriers liable.*

By means of a bill of lading dated November 26, 1975 the first defendants, as owners of defendant 2 ship, agreed to carry on board defendant 2 ship 277 cartons of Danish cheese from Aarhus to Limassol and to deliver same to the plaintiff as owner and recipient of the said consignment in good order and condition. Two days after the arrival of the cargo it was found out that it was unfit for human consumption as it was badly decomposed and grossly infected; and as a result it was destroyed. In an action by the plaintiff for damages caused to his goods during the voyage the Court having accepted evidence adduced by the plaintiff, which was to the effect that the cheese should be kept under a temperature of between 2–4<sup>0</sup>C which is the cooling temperature; and having, also, relied on the master's certificate regarding the temperature maintained during the trip:

*Held*, that in the light of the evidence of P.W.2, who is an independent witness, and the master's certificate, this Court has come to the conclusion that the cheese was damaged as a result of the negligence of the defendants, this being their failure to keep the cheese under cooling conditions; and that, therefore, the defendants are liable to compensate the plaintiff for his

loss; accordingly there will be judgment in favour of the plaintiff for C£334.500 mils with costs.

*Judgment for plaintiff for C£334.500 mils with costs.*

5 **Admiralty action.**

Admiralty action for damages for breach of contract and/or breach of duty and/or negligence in respect of damage caused, during the voyage, to plaintiff's goods shipped on board the ship "Vidaland".

10 C. *Erotocritou*, for the plaintiff.

C. *HadjiIoannou*, for the defendants.

*Cur. adv. vult.*

DEMETRIADES J. read the following judgment. This is an action by which the plaintiff claims damages for breach of  
15 contract and/or breach of duty and/or negligence of the first defendants, their servants or agents in respect of damage caused, during the voyage, to his goods, which were shipped on board the ship "VIDALAND" under bill of lading No. 12 dated 26th November, 1975, for carriage from Aarhus to Limassol,  
20 legal interest and costs. The plaintiff is a merchant carrying on his business at Larnaca.

The first defendants, who are the owners of the ship, the second defendant, by a bill of lading No. 12, dated the 26th  
25 November, 1975, signed by them or on their behalf, agreed to carry on board their said ship two pallets containing 277 cartons of Danish cheese from Aarhus to Limassol and to deliver same to the plaintiff as owner and recipient of the said consignment of goods in good order and condition.

The ship left Aarhus on the 26th November, 1975, and arrived  
30 at Limassol Port on the 9th January, 1976, though in the covering letter of the manufacturers of the cheese, who were also the shippers, accompanying the shipping documents of the consignment of the goods, it is stated that the vessel was to arrive on December 10th, 1975. This letter was produced by consent  
35 and is *exhibit* No. 2. On the same day of the arrival of the ship, the plaintiff's cargo was unloaded, it was put on a lorry and was transported to Alps Cold Stores at Larnaca and stored in a room under cooling temperature.

Two days later, the plaintiff, on information received, visited the Cold Stores and noticed bad smell coming out of packs containing "Danbo" cheese. He immediately informed the Health Inspector of Larnaca Mr. Pavlos Ioannou, who is P.W.3 in these proceedings, and who is a graduate of the Sanitary School of Cyprus and the School of Public Health of the American University of Beirut with 25 years experience in his post, to inspect the cheese; his evidence is that on arriving at the Cold Store he, also, noticed bad smell. He opened packages of "Danbo" cheese and he found that their contents gave the bad smell. As his opinion was that the cheese was unfit for human consumption, he took samples which he sent to the Government Laboratory for examination and told the plaintiff not to place the cheese on the market. On the 10th March, 1976, the Senior Analyst of the Government Laboratory informed him in writing that all the samples were found to be unfit for human consumption as they were badly decomposed and grossly infected. As a result, the cheese was destroyed by the importer in his presence. The letter of the Government Analyst was produced and is *exhibit* No. 9.

According to the evidence of the plaintiff and the invoice of the manufacturers, the value of the cheese so destroyed amounts to C£334.500 mils, including customs duty and costs.

The plaintiff, apart from informing the Health Inspector of Larnaca about the damage to his cheese, notified also the Lloyd's Agents in Cyprus who sent their surveyor Mr. Stavros Kirlappos, who visited the Alps Cold Stores on the 12th January, 1976, and surveyed a quantity of 50 cartons of "Danbo" cheese. Mr. Kirlappos, who is P.W.4, said that when he arrived at the Stores, he noticed some open cartons out of which a bad smell was coming. He then opened all 50 cartons and noticed that the same bad smell was coming out of all of them. This witness issued a survey report to that effect, on the 24th March, 1976, which is *exhibit* No. 10.

Before the consignment of cheese was unloaded at Limassol Port on the 9th January, 1976, it was inspected by the District Veterinary Officer of Limassol Mr. George Papadopoulos, P.W.2, who, after an at random examination which he carried out, was satisfied that the cheese was suitable for human consumption. Mr. Papadopoulos said that before he inspected the

cargo he had to satisfy himself, from a number of documents, and, in particular, documents verifying that the products were under control from the exporting country, like, for instance, the veterinary certificate, that there were no animal diseases coming to the island. Mr. Papadopoulos could not tell the Court what type of cheese he inspected from the consignment of the plaintiff, as the inspection he carried out was an at random one. He further said that on occasions, it happens that a few days after a consignment of food is unloaded, to have complaints that they are not in good condition and fit for human consumption.

The defence in cross-examination suggested to Mr. Papadopoulos that the cause of the deterioration of the cheese was the result of the changes in the temperatures it underwent, i.e. coming out of the cold stores where temperature was 2-4°C and remaining for about 4 to 5 hours on the quay where temperature was approximately 15°C. His opinion, and he was definite about it, was that in January this particular type of cheese can be kept in the open for between 24 to 48 hours without possibility of deterioration; that it was possible for the cheese to be affected if it was kept in a cold store with Minus 18°C temperature for a month and then left for five hours at 15°C and for two days at 0°C. This particular type of cheese, the witness said, should be kept under a temperature of between 2-4°C which is the cooling temperature. He excluded the possibility that the cheese would be affected if it was stored at its normal temperature of about 2-4°C for one month, then for 5 to 6 hours under a temperature of 15°C and then for two days under 0°C.

P.W.3 Pavlos Ioannou, the Health Inspector of Larnaca, said that when he visited the Alps Cold Stores, he checked the temperature of the room in which the cheese was kept and found it to be between 2-5°C.

The defendants deny liability for the damage to the cheese and in support of their case they called Claudius Iliambas, D.W.1, the Shipping Manager of Scandinavian Near East Agency (Cyprus) Ltd., who said that he personally attended to the discharge of the cargo of the plaintiff. His version is that this particular cargo was stored in a cooling compartment of the ship No. 5C2, together with all other cooling cargo. This,

the witness said, is kept usually under a temperature from 1–6°C, but the vessels usually maintain a temperature of 2–4°C and that was the temperature that the vessel was maintaining when he went on board her. Whilst he was on board, the vessel's temperature was constantly maintained at 2–3°C. 5

A copy of the Master's certificate regarding the temperature maintained during the trip from Denmark to Limassol, dated 8th January, 1976, *exhibit* No. 8, was produced by consent. This document, however, states that the temperature was "properly" kept continuously at Minus 18°C. This is, also, 10 the case of the defendants, as it appears in para 4(C) of the Answer.

In view of this, I am not prepared to accept the evidence of Mr. Illambas who did not impress me as telling the truth and whose evidence as to the temperature under which the cheese was kept during the trip from Denmark is only guesswork and assumptions. 15

In the light of the evidence of P.W.2, who is an independent witness, and the master's certificate, I have come to the conclusion that the cheese was damaged as a result of the negligence of the defendants, this being the failure of the defendants to keep the cheese under cooling conditions. Therefore, I find that the defendants are liable to compensate the plaintiff for his loss. 20

In the result, there will be judgment in favour of the plaintiff for C£334.500 mils, with costs. 25

*Judgment for plaintiff in the sum of C£334.500 mils with costs.*