

1979 August 22

[A. LOIZOU, J.]

ZANTE LINES S.A.,

Plaintiffs,

v.

THE CYPRUS CEMENT CO. LTD.,

Defendants.

(Admiralty Action No. 130/78).

Admiralty—Shipping—Charterparty—Demurrage—When does it become payable—Mode of calculation—Lay days—Reservations by persons required to sign statement of facts and time sheet at discharging port—Effect—Statement of facts and time sheet, signed under the charter party, duly presented to the charterers within the agreed time—Demurrage payable.

By a uniform general charter dated 17th November, 1977, signed at Limassol, the defendant company chartered from the plaintiff company the motor vessel "CHRISTOS" to load 2,000 metric tons of bagged cement at Limassol port and to carry same to Tartous in Syria and there deliver this cargo, at a freight of U.S. dollars 5,000 per metric ton F105, prepaid upon signing Bills of Lading. Clause 18\* of the Charter Party, so far as relevant, provided as follows:

" Demurrage: At the rate of U.S. Dollars 0.40 (forty cents) per metric ton per day or prorata on all working time lost calculated on total quantity of cement shipped.

A. Any demurrage at loading port to be paid by charterers together with the freight statement against presentation of time sheet by Agents based on statement of facts signed by Master or Agents and shippers.

C. Any demurrage at discharging port to be paid by

\* Clause 18 is quoted in full at p. 344 post.

charterers against presentation from Owners or their Agents in Cyprus the respective time sheet, based on the statement of facts signed by Master or Agents at Tartous 'SHIPCO NAVIGATION' and AFTOMETAL branch at Tartous. Statement of facts and time sheet at discharging port duly signed as above must be presented to the Charterers within 15 days from time of discharge".

The said vessel having loaded the cargo in question at Limassol carried same to Tartous where she arrived on the 3rd December, 1977 at 22 hrs. After arrival she waited there to discharge the cargo until the 31st December, 1977 at 11.30 hrs. making a total of 25 days and 13 hours. In compliance with clause 18 above the plaintiffs duly submitted to the defendant company the statement of facts provided for thereby duly signed, along with time sheets and demanded payment of the demurrage they were entitled to. The defendants failed to meet the demand and hence this action for U.S. Dollars 17,766.65 as demurrages or damages for the said ship as per the above charter party.

In signing the statement of facts, referred to in paragraph C of clause 18, AFTOMETAL recorded at the back thereof certain reservations.

*Held*, (1) that the evidence adduced by plaintiffs has remained uncontradicted on all points and all allegations of fact necessary for the establishment of their case have been proved; that demurrage becomes payable when the lay days allowed for loading or unloading have expired (see Scrutton on Charterparties, 18th ed. p. 306); that the demurrage has been calculated and the amount claimed is the correct one as per the terms of the charterparty; that the reservations of AFTOMETAL have not been substantiated by any evidence and this Court has not been able to find any authority that their presence there changes the character of the statement of facts and renders same as not amounting to a compliance to clause 18; that the demurrage in question is due and payable by the owners as the time sheet referred to in clause 18C signed by the persons which were required to sign it under this clause has been duly presented to the charterers within the agreed time; and that, accordingly, judgment will be

given for the plaintiffs for the equivalent in Cyprus money of U.S. dollars 17,766.65 plus legal interest and costs.

*Judgment for U.S. dollars 17,766.65  
with legal interest and costs.*

5 **Admiralty Action.**

Admiralty action for demurrage amounting to the equivalent in Cyprus money of U.S. \$17,766.65 arising out of the delay in unloading the vessel "Christos" at Tartous port in Syria.

*L. Papaphilippou*, for the plaintiffs.

10 *M. Papas* for *G. Cacoyannis*, for the defendants.

*Cur. adv. vult.*

A. LOIZOU J. read the following judgment. The claim of the plaintiff company against the defendant company is the equivalent in Cyprus money of U.S. \$17,766.65 as demurrage or  
15 damages for the ship "CHRISTOS" as per the charterparty dated 17.11.1977, interest at 9% p.a. from the filing of this action, and costs.

The facts of the case as established from the admissions in the pleadings and the evidence, documentary and oral, adduced,  
20 are as follows:—

By a Uniform General Charter dated 17th November, 1977, signed at Limassol (*exhibit 1*), the defendant company chartered from the plaintiff company the motor vessel "CHRISTOS" to load about 2,000 metric tons of bagged cement at Limassol Port  
25 and to carry same to Tartous in Syria and there deliver this cargo, the freight being U.S. \$5,000.—per metric ton FIOS, prepaid upon signing Bills of Lading. The charterparty further provided, *inter alia*, by clause 6 thereof that discharging time was to "commence at 1 p.m. if notice of readiness to discharge is  
30 given before noon and at 8 a.m. next working day if notice given during office hours after noon". It also provided by clause 17 that the cargo was to be discharged by receivers' stevedores, free of any risk and expense to the vessel, at the rate of 150 metric tons per workable hatch per weather working day of  
35 24 consecutive hours FHEX, even if used. Time from noon Thursday till 08.00 on Saturday shall not count, nor between 5 p.m. on the last working day preceding a legal, local or customary holiday till 08.00 hrs. on the first working day thereafter

even if used. Time of loading and discharging not to be reversible.

Clause 18, of *exhibit 1*, reads as follows:-

“ Demurrage: At the rate of U.S. Dollars 0.40 (forty cents) per metric ton per day or prorata on all working time lost calculated on total quantity of cement shipped. 5

Despatch: Despatch money at half the demurrage rate i.e. 0.20 (twenty cents) per ton, per day or prorata at both ends on all time saved, calculated on total quantity of cement shipped. 10

Payment of demurrage and despatch money:

A. Any demurrage at loading port to be paid by charterers together with the freight statement against presentation of time sheet by Agents based on statement of facts signed by Master or Agents and shippers. 15

B. Any despatch money to be deducted from freight, based on statement of facts duly signed as above.

C. Any demurrage at discharging port to be paid by charterers against presentation from Owners or their Agents in Cyprus the respective time sheet, based on the statement of facts signed by Master or Agents at Tartous “SHIPCO NAVIGATION” and aftometal branch at Tartous. Statement of facts and time sheet at discharging port duly signed as above must be presented to the Charterers within 15 days from time of discharge. 20 25

D. Any despatch money at discharging port to be paid by Owners to the Charterers”.

As explained by Mr. Loizides, Manager of the defendant Company, Shipco Navigation, mentioned in clause 18 of *exhibit 1* hereinabove set out, is a state enterprise in Syria and is engaged in acting as agent of ships arriving in Syria ports. 30

Pursuant to the charterparty the vessel loaded at Limassol port 2,000 metric tons of bagged cement and carried same to Tartous where she arrived on the 3rd December, 1977, at 22 hrs. local time as per the Notice of Readiness dated 6.12.1977, *exhibit 3*, which reads as follows:- 35

“ This is to notify you officially that the good ship m.s. “CHRISTOS” of which I am Master, has duly arrived

at your Port this 3rd day of December, 1977, at 22.00 Hours local time, and is ready in every respect to commence discharging of 2,000 tons cement, according to conditions of Charter Party.

5 Free Pratique granted 6.12.1977 at 14.00 hours local time.

Your acknowledgment is requested on attached copies.

Yours faithfully  
(sgd) Master.

10 Notice of Readiness received and  
accepted this 7th day of December,  
1977 at 08.00 Hours local time.

Receivers—AFTOMETAL  
(sgd)".

15 As alleged in para. 5 of the petition, the contents of which  
were denied by para. 3 of the answer, the ship "CHRISTOS"  
after arrival at Tartous was waiting there to discharge the cargo  
until the 31st December, 1977, at 11.30 hrs., which makes a total  
of 25 days and 13 hrs. and the demurrage due to the plaintiff  
company has to be calculated on the basis of the said period less  
20 the time allowed for the discharge by virtue of the charterparty.  
Full particulars for the demurrage for which the defendant  
company is liable to pay are given in para. 6 of the petition  
which make a total of U.S. \$17,766.65. The contents of this  
paragraph are also denied.

25 Furthermore, the defendant company without admitting any  
liability to pay demurrage as alleged or at all and without pre-  
judice, alleged in para. 5 of their answer that the present action  
should fail as it disclosed no cause of action and/or there has  
been no compliance by the plaintiffs with the provisions of  
30 clause 18 of *exhibit 1*.

It was also alleged by the plaintiff Company that in compli-  
ance with clause 18 of *exhibit 1*, they duly submitted to the  
defendant Company by letter of their agents Lavar Shipping and  
Chartering Co. Ltd., dated the 27th January, 1977, the statement  
35 of facts provided for thereby duly signed, along with the time  
sheets, and demanded payment of the demurrage they were  
entitled to.-- These documents have been produced as *exhibits*  
6, 6A and 6B. This is denied by the defendant Company and  
they allege in para. 6 of the answer that the statement of facts  
40 referred to by the plaintiff Company in para. 7 of their petition

“was not signed by Aftometal as required by the said clause 18 or that even if it is proved that the said statement of facts bears the signature of Aftometal, still there has been no compliance with the provisions of the said clause 18 as the said statement of facts was signed by Aftometal with reservations and/or under conditions and/or under protest and/or in disagreement with the contents thereof”. They further allege that payment of demurrage, if any, to the plaintiff Company would become due only if all persons mentioned in clause 18, para. (c) signed the statement of facts unreservedly and/or in full agreement with and/or with consent to the contents thereof. 5 10

The statement of facts which has also been produced as *exhibit* 4, contains full particulars of the time of arrival, the time free pratique granted, the notice of readiness, etc., and all other necessary for the purpose particulars, including the time used with full details thereof, and is duly signed by the Master, by Shipco Navigation, and Aftometal, but the latter recorded at the back a reservation which reads as follows:- 15

“RECEIVERS—AFTOMETAL

We reserve as follows: 20

Time lost due the following will not be counted and will be deducted from the time sheet—

- 1 - Opening and closing the hatches 170 minutes.
- 2 - The value of shortage and damages and all the port and customs dues are according to documents presented by the port and customs. 25
- 3 - Official holiday, and weekly 23.12.1977, Friday local holiday, 25.12.1977, Christmas holiday, 09.12.1977, Friday local holiday, 11.12.1977, New Year Arabic holiday, 16.12.1977 Friday local holiday. 30
- 4 - Time lost due rain according to certificate from Harbour Master Office.
- 5 - At date 24.12.1977 work stopped on hold No. 2 from 07.00 hrs. till up, to be reason of stiffened bags in the above hold No.2”. 35

The plaintiff Company called as a witness Mr. Christos Paraschis, its Director, who substantiated on oath every material allegation of fact necessary for the proof of the claim of the plaintiff Company. According to his testimony, the agents of

the defendant Company at Tartous were notified by telegram (*exhibit 2*) and telephone, on the 2nd and 3rd December, that the ship was expected to and in fact arrived there on the 3rd December.

5 With regard to the reservations made by Aftometal on *exhibit*  
4, this witness testified that they asked for a survey report of the  
cargo and invoked the assistance of the local Court which  
appointed a surveyor and prepared a report. He also denied  
10 that Shipco Navigation were the agents of the ship and not of the  
defendant Company. He stated that it was on the instructions  
of the defendant Company that in order to be paid they were  
asked to present the documents signed by Shipco and it was in  
compliance with term 18 of *exhibit 1* that their signature was  
15 secured on the statement of facts and the other documents. He  
agreed, however, that for the delay of the 170 minutes which was  
caused by the opening of the hatches and for the days for which  
there was no entitlement to demurrage, the necessary deductions  
in their claim were made and there does not appear to be any  
dispute about these two items. He denied, however, that there  
20 was either shortage or damage and that with regard to the  
claim of Aftometal for damage to the cargo whilst on board the  
ship there was the survey and the certificate given and after that  
report was given, Aftometal took delivery of the rest of the  
cargo. He agreed that according to the Bill of Lading, *exhibit*  
25 11, the goods were received clean on board but he also  
maintained that same were delivered in good condition. These  
allegations of Aftometal were raised in the course of the dis-  
charge of the goods and they were in existence on the 4th January  
when *exhibit 8* was sent.

30 On this point Mr. Loizides stated that when they sent *exhibit*  
8, they had not heard of any allegations from the Aftometal  
about the condition of the cargo. *Exhibit 8* which is addressed  
to the plaintiff Company through their agents in Limassol by  
the defendant Company, reads as follows:-

35 " Please note statement facts for payment demurrages  
Tartous must be presented to us latest by 15th February,  
1978, as unable to entertain any claim after 15th February,  
1978".

40 There followed an exchange of other telexes and eventually  
the case came to Court on the issues that I have already outlined.

I accept the evidence of Mr. Paraschis which has remained

uncontradicted on all points and I find that all allegations of fact necessary for the establishment of the case of the plaintiff Company have been duly proved in these proceedings. As stated in *Scrutton on Charterparties*, 18th Edition, p. 306:

“ Demurrage becomes payable when the lay-days allowed for loading or unloading have expired. Such lay-days begin when the ship arrives at the place agreed upon in the charter for the commencement of lay-days, and is there ready to proceed to her loading or discharging berth and prepared to load or discharge when she gets there. They run continuously in the absence of express agreement or custom of the port to the contrary from that date. When the lay-days have expired, demurrage in the absence of express agreement runs continuously from the end of the lay-days until the loading or discharging is completed”.

With regard to the mode of calculation of demurrage and the meaning of days, weather working days and other terms used in charterparties, no specific reference need be made, as they are not really in dispute in this case. Suffice it to say that they are duly defined in *Scrutton (supra)*, p. 310, that the demurrage has been duly calculated and the amount claimed is the correct one as per the terms of the charterparty (*exhibit 1*).

The reservations of Aftometal at the back of the statement of facts (*exhibit 4*), with the exception of those accepted by the plaintiff Company and for which allowance has been made by them as hereinabove stated, have not been substantiated by any evidence and I have not been able to find any authority that their presence there changes the character of the statement of facts and renders same as not amounting to a compliance to clause 18. In fact, they do not constitute a dispute of the statement of facts upon which the calculation of demurrage is made. The demurrage in question is due and payable by the owners as the time sheet based on the statement of facts, signed by the Master or agents at Tartous, Shipco Navigation and Aftometal Branch at Tartous, that is, the persons which were required by clause 18(c) to sign same, has been duly presented to the charterers within the agreed time.

For all the above reasons I give judgment for the plaintiff Company for the equivalent in Cyprus money of U.S. \$17,766.65, legal interest and costs.

*Judgment and order for costs as above.*