SEMAPHORE

Newsletter of the Maritime Law

Association of Australia and New Zealand

Cocoa Shipment Highlights Carrier Liability Question

Assumption everything that happens to cargo between the point when it is packed to the point it is unpacked falls within the responsibility of the carrier has been challenged in a case highlighted by the TT Club.

The reality is this will depend on the precise terms of the contract of carriage for any period when international carriage regimes do not specifically apply, the club observes in the decision in litigation between *JB COCOA & Others v SAFMARINE*.

The facts of the case are that a shipper consigned a cargo of cocoa beans on a containership from Nigeria to Tanjung Pelapas (Malaysia). Due to disputes between the buyers and the sellers, the cargo remained in the containers at a storage facility for around ten weeks after discharge, before being collected and destuffed.

On destuffing the cargo was found to be suffering from condensation and mould damage. The shipper claimed that the carrier had breached its duty under Hague Rules by failing to take reasonable care of the cargo until delivery. The carrier defended on the grounds that the damage was caused by inherent vice, and alternatively that its responsibility to care for the cargo ended upon discharge from the ship.

The judgment established that it was agreed that the cargo was stuffed into the containers in good condition, and that the unventilated containers were properly lined and prepared for a voyage passing through variable weather conditions.

The Court found on the facts, after taking expert evidence, that the damage to the cargo was caused by it remaining in the containers for a prolonged period after discharge from the ship. Therefore, if the carrier was responsible for the cargo between discharge and delivery, then it would be liable because, by neglecting to open the container doors to provide ventilation, it failed to take reasonable care.

Precedent indicated that the burden of proof is on the carrier in such circumstances.

However, following *Fimbank PLC v KCH Shipping*, the Court was guided by the contract of carriage as reflected in the terms of the bill of lading, which stated that:the carrier's liability for loss or damage occurring between accepting the cargo at the port of loading and tendering it for delivery at the port of discharge was determined by the Hague Rules.

The carrier therefore had no liability for loss or damage arising after the cargo was tendered for delivery.

As a result, the Court agreed with the carrier that its period of responsibility ended on discharge, and it was therefore not liable.

The TT Club says this case confirms the decision in *Fimbank* that discharge is not the same as delivery and that the Hague Rules (and Hague-Visby Rules, which are identical in this respect) govern the carrier's liability only between the point of loading and the point of discharge, with any liability for matters occurring before or after those points being a matter of contract.

March 2024