

Defence Guides

Detention in a nutshell

Introduction

If a vessel is delayed or detained because of a breach by the charterers, the owners should have a claim in damages for the time lost. A claim in damages for detention can arise:

- before the vessel is in position to tender a notice of readiness ("NOR"); or
- after the end of laytime, demurrage or on completion of cargo operations.

Can an owner or disponent owner claim damages against charterers for delays suffered before the vessel is in position to tender an NOR?

General

In a voyage charterparty scenario, demurrage will usually compensate an owner for any delay. However, before demurrage can accrue, an NOR must be tendered so that laytime can commence. If the vessel is delayed before the NOR is tendered then the owner may have a claim for damages for detention.

If not expressly stated in the charterparty, it would be an implied term that the charterers will do whatever is reasonable to enable the ship to reach the place at which she becomes an arrived ship so that the Master may tender an NOR.

Charterers' failure to provide cargo

If the charterers fail to provide cargo and the vessel is delayed, the owners may have a claim in damages for detention. For example, if under a berth charter, a vessel was denied access to the berth because the charterers did not have a full cargo available for loading, charterers

would be liable for detention (*Owners of Panaghis Vergottis v William Cory & Sons* (1926) 25 Ll L Rep 64; *Samuel Crawford Hogarth and others v Cory Brothers & Co Ltd* (1926) 25 Ll L Rep 464).

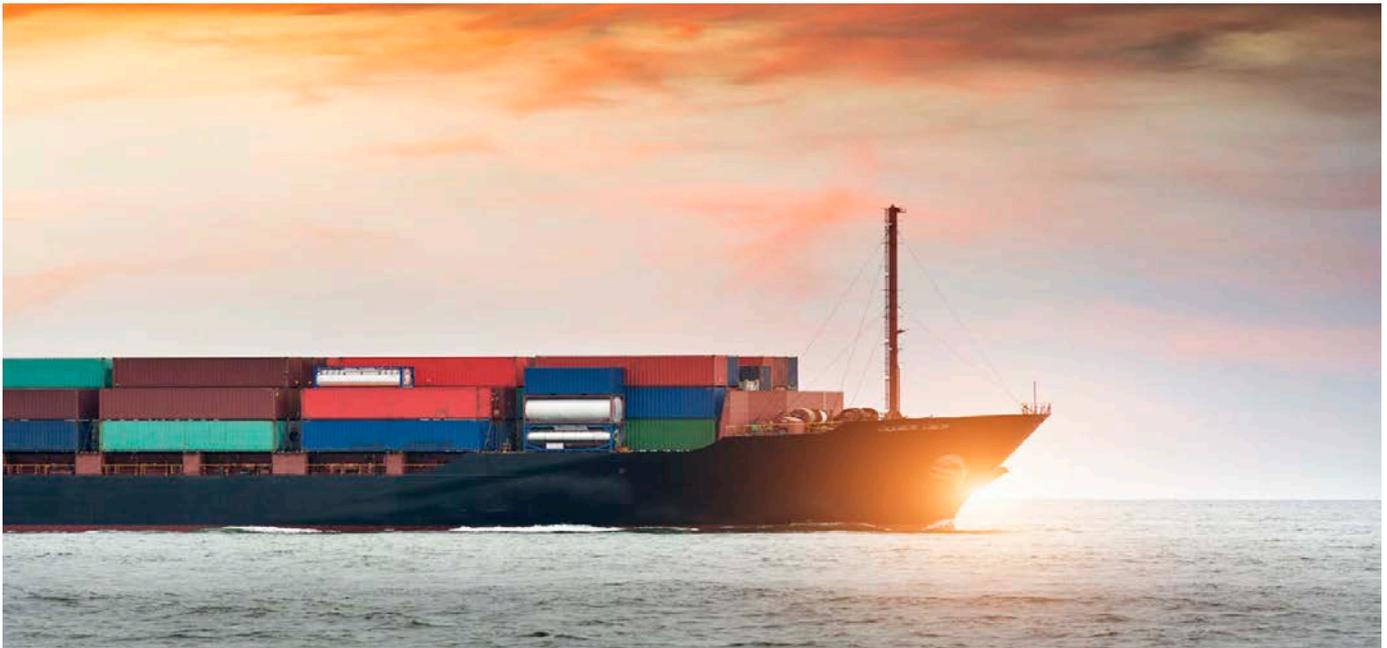
Charterers' failure to organise pre-loading procedures

Other examples of damages for detention can be found in the cases of *The Boral Gas* and *The Mass Glory*. In *The Boral Gas*, the vessel loaded anhydrous ammonia. The shippers were to supply ammonia for the purging and pre-cooling of the cargo. The NOR could only be tendered after purging and pre-cooling was done. There was a delay in supplying the ammonia due to a mistake by the charterers, which meant that the owners could not tender an NOR. The court held that the owners were entitled to claim damages for the delay to the vessel (*The Boral Gas* [1988] 1 Lloyd's Rep 342).

In *The Mass Glory*, the charterers ordered the vessel not to proceed to the berth due to issues with the cargo documents. As a result, an NOR could not be tendered and laytime could not start to run. The charterers were found to be liable for damages for the delay to the vessel (*The Mass Glory* [2002] 2 Lloyd's Rep 244).

Charterers' failure to nominate a port within sufficient time

Delays can also arise in a charter with multiple discharge ports where the charterers do not nominate a subsequent discharge port within sufficient time. In *The Timna*, a ship chartered to carry grain to multiple discharge ports did not receive instructions for the second discharge port after unloading at the first discharge port. The vessel tendered a notice of readiness at a further discharge port upriver and claimed for both demurrage and detention.



Although the demurrage claim failed, the court found that that owners were entitled to damages for the delay. The court held that in circumstances where the charterers had failed to nominate a discharge port, they would be prima facie liable for damages for detention (*The Timna* [1971] 2 Lloyd's Rep 91).

Can an owner or disponent owner claim damages against charterers for delays suffered after the end of laytime, demurrage or cargo operations?

General

The principle of making a claim in detention where the delay occurs after the end of laytime, demurrage or cargo operations is similar to a claim in detention for delays which occur before the notice of readiness is tendered. A claim for detention can be made if owners can show that the delay arises out of the breach or fault of the charterers.

Not all delays lead to a valid claim in detention

Again, an important factor for owners to prove is that there was a fault or breach, in the absence of which the claim for detention would fail. For example, in a case where delays arose because a railway company engaged by receivers to transport cargo was operating at an over capacity, it was held that there was no default on the receivers and that the delay was reasonably foreseeable given the circumstances of the port at that point in time

(*Lyle Shipping Co Ltd v Corporation of Cardiff* (1900) 5 CC 397 (CA)).

Likewise, in a case where there were delays caused by a new law requiring charterers to apply for an export licence, the court dismissed owners' claim for detention even though the licence was obtained 15 days after loading was completed because the charterers and their agents proved that they had utilised their best efforts to procure the licence without any delay (*Owners of the Spanish Steamship Sebastian v Sociedad Altos Hornos de Vizcaya* (1919) 1 Ll L Rep 500).

The recurring question which should determine whether a claim in detention will succeed is whether charterers have taken all reasonable steps to enable the ship to sail as soon as possible. The court is likely to look at whether charterers have exercised reasonable diligence but will not impose a high standard upon charterers (*The Atlantic Sunbeam* [1973] 1 Lloyd's Rep 482).

When does laytime or demurrage end? When does detention start?

One potential problem faced by owners is that it may be difficult to determine when demurrage ends and when detention starts because it is difficult to determine precisely when cargo operations end. Cargo operations are only completed (and demurrage will only end) when the cargo is placed on a vessel such that the vessel can proceed on her voyage in safety (*The Argobec* (1948) 82

Ll. L. Rep 223). Therefore, time taken for securing and bagging the cargo, even if done outside of the berth, would still be part of cargo operations and may be counted as demurrage, but other operations which do not relate to safety, e.g. fumigation or draft surveys to calculate the quantity of cargo, would not be part of cargo operations and delays caused may result in a claim for damages for detention. For example, in London Arbitration 33/04, fumigation which took place two hours after the completion of loading was held to be detention. Similarly, in London Arbitration 6/92, delays for a draft survey to calculate the quantity of cargo which was carried out after the completion of loading was held to be detention and damages for such delays were borne by charterers.

Can an owner or disponent owner claim damages against charterers where there has been an agreement regarding delays suffered?

There may be instances where both owners and charterers agree to delay the voyage. The dispute that typically ensues is the determination of the rate of compensation payable to owners.

In *The Saronikos* [1986] 2 Lloyd's Rep 277, there was an agreement between owners and charterers to wait outside the discharge port for about nine days in order to resolve

problems over the sale of the cargo. The demurrage rate was less than the running costs of the vessel and if the vessel had not been delayed, the vessel could have completed her discharge before laytime expired. Under such circumstances, the court held that owners were entitled to their running costs, extra bunker costs and the profit margin owners would have received, were owners able to have traded the vessel at that time.

Owners may therefore be entitled to a higher compensation than the demurrage rate if the running costs of the vessel during the delay are higher than the demurrage rate and if the delay occurs outside of laytime or the running time of demurrage.

Is the calculation of the rate of detention different from that of demurrage?

Detention is classified as unliquidated damages and one of the main issues faced in a detention claim is calculating the quantum of the claim. It is common for parties to agree that damages for detention be calculated at the demurrage rate. However, this will not always be the case and there will be instances where the owner is able to show that his loss is greater than the agreed demurrage rate. A good example would be the case of *The Saronikos* which was discussed in the preceding section.



Can damages for detention be claimed in addition to demurrage?

As the saying “once on demurrage always on demurrage” goes, demurrage continues to be payable until the cargo operations are completed and is not replaced by damages at large. Hence detention cannot be claimed when demurrage is being incurred. For example, in a situation where a disponent owner’s demurrage rates are only half of the charter rates which he has to pay to the headowner, any delays would result in the disponent owner suffering a loss because the demurrage earned would not be enough to bear the full charter rates. Unfortunately, the disponent owner is unable to claim additional damages in detention against his charterer because the demurrage incurred is a form of liquidated damages which is meant to be his relief for any delays.

Can an owner or disponent owner exercise a lien for detention?

A clause entitling owners to exercise a lien for demurrage would not extend to a claim for detention (*Clink v Radford & Co* [1891] 1 QB 625) unless the charterparty expressly states that the owners are entitled to exercise a lien for damages due to detention.

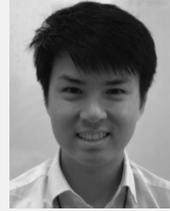
Conclusion

In conclusion, owners’ claim for detention is very much dependent on the facts of the case. However, a useful indicator as to whether a claim for detention exists is to identify the potential fault or breach by charterers. Where this fault or breach is the cause of the delay suffered by owners, a claim for detention may arise. However, owners should note that a claim in damages for detention is unlikely to succeed where the delay occurs during the running of laytime or demurrage – see paragraph 6) above.

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