

## **LAY TIME**

The time during which a ship is lying, for the purpose of loading or discharging is Laytime, as distinct from moving with the object of carrying her cargo from one place to another.

"There must be a stipulation as to the time to be occupied in the loading and in the unloading of the cargo. There must be a time, either expressly stipulated, or implied. If it is not expressly stipulated, then it is a reasonable time which is implied by the law; but either the law or the parties fix a time. Now, when they do fix a time, how do they fix it Why, they allow a certain number of days, during which, although the ship is at the disposal of the charterer to load or to unload the cargo, he does not pay for the use of the ship. That is the meaning of 'lay days.'

It is the duty of the shipowners to make their ship available to the charterers at the agreed place; it is the duty of the charterers to make the cargo available and to bring it to the ship. The charterers' duty may be expressed in terms of time, in that the charterparty states how long shall be allotted for this purpose or provides a method by which the time may be calculated; alternatively the charterers must bring or take the cargo within a reasonable time. Where that time, which is called the "lay time", is exceeded, the charterers may be called upon under the charterparty to pay liquidated damages known as demurrage. In the absence of any provision for demurrage they become liable to pay damages for detention. Where the work is completed within the lay time the shipowners may be called upon under the charterparty to pay dispatch money.

The total time allowed for the lay days is the result of an assessment by the parties of the characteristics of the cargo, the ship and the loading and discharging facilities of the ports. The rate allowed for demurrage usually

bears some relation to the amount which the ship can earn. On one view, both freight and demurrage can be regarded as payments for the detention of the ship. The detention for the anticipated period of the voyage is recompensed by freight. The sum agreed for freight in a charter covers the use of the ship for an agreed time for loading and discharging, known as the lay days, and for the voyage.

The lay time provision contained in a charterparty, or, in some cases, in a bill of lading, is usually in the form of an undertaking by the charterers for the benefit of the shipowners. It limits the time allowed to the charterers for the performance of their share of the loading or discharging, by providing a fixed period or a method of calculating the time, or alternatively by allowing a reasonable time. For any time beyond that period the charterers are liable in demurrage, and this liability is absolute unless the delay arises through the fault of the shipowners or is covered by an exception in the charterparty or arises because working the ship becomes illegal by the law of the place of performance.

It is possible, though unusual, for circumstances to arise in which the undertaking is regarded as having been given for the benefit of the charterers. In *Dabell v. Watts, Ward & Co.* there was such a situation. The charterparty, for the carriage of timber from Quebec to London, stated: "Cargo to be furnished and received by ship at port of loading as fast as vessel can receive in ordinary working hours, and to be received from alongside ship at port of discharge as customary as fast as steamer can deliver in ordinary working hours, Sundays always excepted, loading or discharging. Not less than 100 standards a day loading or discharging and ten days on demurrage over and above the said laying days at £70 per day." By custom of the port of London the ship had to engage stevedores, but the men struck. The charterers claimed damages for delay in the delivery of the cargo and for detention of barges. The shipowners contended that on the true construction of the charterparty the lay days were fixed, and that there was an absolute obligation

on the charterers to take delivery of at least 100 standards a day. Wills J. held that the clause was a provision in favour of charterers, and that its effect was to oblige the ship to deliver not less than 100 standards a day; the interests of the shipowners were protected by the terms imposing on the charterers a duty to receive as fast as the ship could deliver. In the Court of Appeal, dismissing the shipowners' appeal, Lindley L.J. is reported as follows:

"... he agreed with Mr. Justice Wills in thinking that the provision as to the 100 standards a day was inserted for the protection of the charterers, and that, according to the true interpretation of these words, the shipowners were bound to discharge the cargo at least at that rate."

The charterers are entitled to use the whole of the lay time for loading or discharging. They are therefore not in breach of contract if, notwithstanding that they could work the ship faster, they keep the ship for the whole of the lay time. Even if the ship is not being worked, she must remain at the loading port throughout the lay time unless the charterers have refused to provide a cargo. Their refusal constitutes a final breach which the shipowners may accept as a repudiation of the contract.

The decision of the High Court in *Petersen v. Dunn & Co* has been cited as an authority for the proposition that the charterers are not in breach of the charterparty if they retain the ship for the whole of the lay time, even though they could work the ship faster. In the reports of the case itself the proposition was not so stated, but it seems that the judge must have considered it to be correct.

A ship had been chartered to carry coal from Ardrossan, the charterparty providing for loading "in the customary manner, say, in twelve colliery working days. She was "to be loaded according to the custom of the port"; "strikes and lock-outs of pitmen and others" were excepted perils. The charterparty further provided: "It is understood that vessel is to be loaded at once, and lay days to count when vessel ready and notice given." A strike

occurred seven colliery days after notice of readiness. The coal was not loaded (the loading taking two days) until the expiry of the 12 colliery working days. The shipowners argued that the ship could and should have been "loaded at once," and that the charterers, having waited for several days without loading till the strike broke out, were liable for demurrage. The charterers said that there were no working days between the outbreak of the strike and the day on which coal was first sent down to Ardrossan, just before loading began. The High Court held that the charterers were not liable, the loading having been completed within the permitted lay days. "if the cargo was ready the ship might have been loaded in two days. The charterparty allowed twelve days for the loading, and the plaintiff in effect says that it only allowed seven.

A question thus arises as to whether this decision is an authority for the proposition that the charterers are entitled to keep the ship for the whole lay days though they could have loaded in less time.

The charterers are not bound either to work, or to maintain an average loading or discharging rate, on each of the lay days allowed, and are not liable for demurrage or damages for any wasted time, provided that the lay time has not expired and the work has not been completed.

" .. where the charterers have been guilty of a breach causing delay, they are entitled to apply their lay time so as to diminish or extinguish any claim for the delay, leaving the shipowners to claim for demurrage at the agreed rate for any extra delay over and above the lay time. The reason is because they have bought their lay time and paid for it in the freight, and are entitled to use it in the way which suits them best, and in particular to use it so as to wipe out or lessen any delay for which they would otherwise be responsible."

If they complete the work within the lay time, they will be rewarded under the dispatch provision, if there is one in the charterparty; if they fail to do so, they must compensate the shipowners.

Lay time can only be occupied by the charterers if it is being employed for loading or discharging, or if some loading or discharging remains to be done. When loading has ended, the charterers must release the ship and present the bills of lading for signature within a reasonable time. This duty arises whether or not lay time has ended. Charterers who are in breach of this duty are liable not for demurrage at the charterparty rate but for damages for detention of the ship, because demurrage is due only where the ship is detained for the purpose of working her. The measure of damages is the amount which the parties can reasonably be presumed to have had in mind when they concluded the charterparty. This will usually be the amount which the ship can earn per day in that area or in areas reasonably accessible at that time, less any amounts saved by the detention. As with other breaches of contract, this prima facie rule as to damages does not apply where the parties had in contemplation at the time of the conclusion of the charterparty some special measure of damages, if that measure formed the basis of their contract. .

However expeditious the charterers are, they may therefore be liable for wrongful detention of the ship if she is not released when loading or discharging has finished; if accounts have to be settled, bills of lading signed, or some other task completed, a reasonable additional time is allowed for completion of such work.

In *Nolisement (Owners) v. Bunge & Born* a charterparty for the carriage of grain from the River Plate provided for loading at the rate of a certain number of tons per day "otherwise demurrage shall be paid by the charterers." The master was "to sign bills of lading in the form indorsed hereon at any rate of freight that the charterers or their agents require." The ship loaded in 8 days, 19 days before expiry of the lay days. Bills of lading and orders as to the port

of discharge were not forthcoming until three days after loading ended, as the charterers had not decided upon a discharging port. It was agreed that the charterers had a right to keep the ship for 24 hours after completion to settle accounts. The shipowners claimed damages for detention for the two extra days. The Court of Appeal held that the charterers were not entitled to detain the ship further, although lay time had not expired. They were obliged to present bills of lading for signature within a reasonable time, which had been agreed to be 24 hours; thereafter they were in breach of contract. But they were entitled to dispatch money for the 19 days saved, which included the two days for which they had to pay damages.

During the lay time, provided that work has not been completed, they can load or not; but if work has been completed they must release the ship even if lay time has not ended.

After loading or discharging has finished, the charterers are not liable for any delay unless it arises from some fault on their part. A delay in naming a discharging port with a consequent delay in issuing the bills of lading, may be attributable to the charterers. But delays resulting from failure by the shipowners to secure clearances, or from ice, or even from a breach of contract by the charterers if the shipowners could have avoided the consequences, have all been held to fall upon the shipowners.

In *Jamieson & Co. v. Lawrie* a ship loaded at Cronstadt. After the ship was ready to sail bad weather delayed her and she was frozen up for six months. The House of Lords, sitting as an appeal court from a Scottish court, held that the shipowners could recover demurrage up to the moment at which the ship was ready to sail, but neither demurrage nor damages for detention for any time thereafter.

In *Pringle v. Molleu* a ship loading a general cargo at Odessa in December was frozen in and unable to leave for London until the end of February. The shipowners claimed demurrage for the 10 days fixed by the charterparty and

damages for detention for the rest of the delay. The charterers denied liability for any part of the delay caused by ice after loading had ended. The shipowners argued that the general rule of law was that detention was to be paid by the charterers and that the authorities showed that they were not excused from the performance of their covenant by an unavoidable detention. It was held that the shipowners must fail. The court is reported as saying: "The detention by the ice was not occasioned by any fault of the defendant. In order to render him liable, the detention must have been for the purpose of loading."

Where the charterers delay the ship after the end of loading or discharging, and by doing so are in breach of contract, the shipowners are not entitled to demurrage or detention damages if they could have avoided the delay. The payment of harbour dues, for example, even where there is some doubt as to whether the shipowners are liable for them, should be made by them if this will reduce the delay.

In *Moller v. Jecks* a ship carried timber from Finland to Lowestoft. After the cargo had been discharged, and the freight paid to the master, the charterers objected to paying harbour dues payable for landing the cargo. The master could have paid them and departed but instead he refused. As a result, the ship was detained. The shipowners' claim for demurrage was rejected. Willes J. said:

"The master might and ought to have paid those charges and sailed out of the harbour, resorting to his remedy against the merchant afterwards. A man has no right to aggravate damages against another by the course of proceeding adopted by the plaintiff here."

Time ceases to count against the charterers when the ship is no longer detained by the physical problems involved in loading and discharging, and is ready to leave, subject to clearances and other obstacles not the responsibility of the charterers.

The duties of the charterers, so far as they relate to the task of loading, are often said, incorrectly, to come to an end as the cargo passed across the ship's rail.

It is true that in *Harris v. Best, Ryley & Co* Lord Esher M.R. said: "By universal practice the shipper has to bring the cargo alongside so as to enable the shipowner to load the ship within the time stipulated by the charterparty, and to lift that cargo to the rail of the ship. It is then the duty of the shipowner to be ready to take such cargo on board and to stow it in the vessel.". Loading was a joint operation; it was "a joint act of the shipper or charterer and of the shipowner, neither of them is to do it alone, but it is to be the joint act of both. What is the obligation of each of them in that matter? Each is to do his own part of the work, and to do whatever is reasonable to enable the other to do his part.". "The shipowner has performed the principal part of his obligation when he has put the goods over the rail of his ship; but I think he must do something more - he must put the goods in such a position that the consignee can take delivery of them. He must put them so far over the side as that the consignee can begin to act upon them; but the moment the goods are put within the reach of the consignee he must take his part in the operation."

The ship's rail is often mentioned in connection with the question of responsibility for the care of the cargo. The Carriage of Goods by Sea Act 1924 states in its Schedule: 'Carriage of goods' covers the period from the time when the goods are loaded on to the time they are discharged from the ship."