SHIPPING & TRANSPORT - DENMARK

Maritime and Commercial Court finds that stevedore contract exists despite lack of written instructions

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Facts

In 2015 and 2016 the Maritime and Commercial Court and the High Court decided a case concerning whether a logistic services provider (B) was liable to a manufacturer of wind turbine equipment (V) for damage to blades stored at a port terminal operated by J in Esbjerg, Denmark. The blades were damaged due to insufficient protection against wind at the terminal.

The judgments considered whether:

- the manufacturer, as alleged by V, had contracted the terminal storage to B, who, in turn, had sub-contracted the storage to J; or
- as alleged by B, the contract between the parties could not be deemed to comprise the terminal storage (for further information please see "Contract on terms of loading not inclusive of damage caused during unloading").

J intervened in the proceedings and pleaded in support of V that a contract for storage had been entered into between V and B. J further submitted that B had sub-contracted the storage to the terminal. In this respect, J pleaded that there was no evidence proving "that a contract should have been entered into directly between V and J".

Both court instances decided that the contract between V and B should be interpreted to mean that it comprised no storage of blades at the terminal in Esbjerg to the effect that B could not be considered responsible for the damage to the blades that had occurred while they were in the care and custody of J.

On 10 May 2017 V instigated fresh court proceedings before the Maritime and Commercial Court against J for damage to the blades. With specific reference to the previous court decisions, V submitted that J's general conditions for stevedore services (the Danish Port and Stevedore Businesses General Conditions 2017 (DHAB 2017)) were not applicable to the work that J performed because – in accordance with the position taken by J in the previous court cases – no contract could be deemed to have been entered into between V and J to the effect that no standard terms and conditions had been agreed. In response, J submitted that, on the basis of the judgments rendered in 2015 and 2016, it should be considered to have had the blades in its custody at the terminal pursuant to an implied agreement with V regardless of the fact that no written instructions had been issued. J further submitted that it had performed all work pursuant to the DHAB 2017 conditions, which should be "broadly accepted as the contractual terms governing all stevedore-work performed in al Danish ports". Further, J argued that the claim should have become time-barred with reference to Section 30(1) of the DHAB 2017, which stipulates that all claims are time-barred 10 months from the date on which damage was discovered.

Decision

The court decided that a contract should be deemed to have come into existence between V and J for storage of the blades at the terminal stating that:

> *The court finds that it must be assumed that the blades were delivered to J's terminal at the port. As stevedore work, including unloading, stacking and storage of the blades at the port, as, previously found by the court [in the rulings from 2015 and 2016], were not comprised by contracts between B and V or between B and J, the blade manufacturer, V, must, due to the actual approach taken by it, be deemed to have accepted that J performed these task for V.*

The court further found that the DHAB 2007 was applicable and determined J's responsibility irrespective of the fact that no reference had been made to its conditions:

> *The expert judge is of the firm opinion that DHAB 2007 is so commonly applied in connection with the performance of stevedore work in Danish ports that V, as a professional business with its own transport department and as buyer of many stevedore services, must have understood that DHAB 2007 were applicable to all stevedore work undertaken by J.*

Comment

It follows from the judgment that a contract for the performance of stevedore work, including storage, can be deemed to exist irrespective of the fact that:

- no written instructions or booking from a principal has been issued or received; and
- the DHAB 2007 conditions can be applied under such circumstances regardless of the fact that the parties made no reference to them.

As a rule, it is a prerequisite under Danish law for the application of well-known standard terms and conditions (eg, the NSAB 2015 Convention on the Contract for the International Carriage of Goods by Road) that a reference must be made to any such terms in the agreement between the parties. The decision may have been influenced by the fact that:

- J referred to the DHAB 2017 conditions in relation to B, which J believed to be its contractual partner; and
- to some extent V did not clarify that V was a contractual party to the effect that J had no opportunity to refer to the conditions.

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