



► **LEGAL COSTS COVER (LCC) -
LAYTIME AND DEMURRAGE**



LAYTIME AND DEMURRAGE

Laytime and demurrage are two of the most fundamental principles applicable to voyage charterparties. This guide will set out a basic summary of what they are and how they operate in practice.

Whilst the position can vary from jurisdiction to jurisdiction, the following principles govern the construction of the relevant incorporation clauses under English law and are set out below for guidance purposes only.

What is Laytime?

Put simply, laytime is the amount of time allowed for loading and discharging of cargo during a voyage charterparty.

However, this means not only placing cargo in the vessel but also the stowage/securing/ other cargo operations to ensure safety. In the absence of express provision, it does not matter whether the charterparty requires the charterer or the owner to perform those tasks. *“Loading is not complete until the cargo is so placed in the ship that the ship can proceed on her voyage in safety”¹.*

The Commencement of Laytime

Laytime commences after the tendering of a Notice of Readiness (NOR). This is a notification that both (i) the vessel has arrived at the agreed place; and (ii) it is ready to load or discharge (physically and legally).

In *“The Tres Flores”*² the Court of Appeal held that in order to give a valid notice of readiness a ship must be ready to obey the charterer’s instructions for loading whenever they should be given. In this case there were pests

in the holds, making the ship unready to receive the chartered cargo until fumigation had been completed, the notice of readiness was invalid.

Readiness is a preliminary existing fact which must exist before notice of readiness can be given.

The vessel must not only be physically ready to load or discharge, as required, when the notice of readiness is given but also legally ready. The normal requirements, for which express provision is commonly made in charterparties, concern customs clearance or entry, immigration and police approval and health or free pratique.

However, the invalidity of an NOR can prevent the commencement of laytime. In *“The Mexico I”* where notice was given before the ship was ready to discharge, it was held that the notice was invalid and did not become valid when the ship became ready. If the vessel is accepted as ready to load or discharge and loading or discharge commences without any rejection or reservation, then the NOR is to be considered valid.

The tendering of the NOR can be modified by the following common clauses:

- *“Time actually used before commencement of laytime shall count”*: where work is carried out before the laytime begins the time used will count.
- *“Time lost in waiting for berth to count as loading or discharging time”*: places the
- risk of congestion upon the charterer,

¹ (Argonaut Navigation Co. v. Ministry of Food (The Argobec) (1948) 82 Ll. L. Rep. 223;

see also Svenssons Travaraktiebolag v. Cliffe Steamship Co. [1932] 1 K.B. 490.)

² Compania De Naviera Nedelka S.A. v. Tradax International SA [1973] 2 Lloyd’s Rep 247

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whether the charter is a port or a berth charter.

- “*Whether in berth or not.*”: justifies the giving of NOR before the vessel berths, as long as she is within the port (berth charterparties).
- “*Whether in port or not.*”: justifies the giving of NOR outside port limits, so long as the ship is at a usual waiting area for the port.

How long is allowed for Laytime?

This is agreed between the parties at the time of forming the contract. The actual words used to describe laytime are vitally important.

The norm is for laytime to either be expressed as a period of days, or alternatively as a load/discharge rate. Common additional modifiers are:

- “*Running days*”—runs continuously during both day and night and irrespective of normal working hours - will depend upon conditions prevailing at the ports of loading and discharging, as appropriate;
- “*Weather working days*” or “*weather permitted*”—if a day is not a “weather working day” the laytime period is automatically extended. The meaning of the word “weather” is to be determined as a question of fact. What might constitute bad weather for one vessel will not necessarily be the same for another, even if in the same port/ at the same time;
- “*Sundays and holidays excepted*” or “*SHEX*”—Whether a day is a holiday is a

question of fact. A holiday can be decided by local authorities and it might apply to the port or local area.

The above form part of the definition of laytime and are known as “*interruptions*” to laytime; these are distinct from “*exceptions*” which are discussed below. Where an interruption applies laytime is automatically extended.

Where no laytime is agreed, in “*The Spiros C*” it was held that discharge would take place within a reasonable time (reasonable time does not mean normal or average time but will depend on the circumstances existing at the time of loading or discharge). The charterer is not to be responsible for delays caused due to reasons beyond their control, which they are unable to prevent by reasonable endeavours.

Exceptions to Laytime

Exceptions are specifically provided for events, which absolve the charterer of liability for exceeding the permitted laytime on their occurrence. Two such examples are the General Strike Clause and the General Ice Clause found in Bimco’s GENCON.

Exceptions clauses are interpreted strictly against the party for whose benefit they are included.

Laytime does not run during periods of delay due to the fault of the owner; it is not necessary for the charterer to show that the fault is actionable. However, any time is not interrupted by the valid exercise of a lien.

What is Demurrage?

“*A liability for demurrage is a liability for*

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liquidated damages for breach of contract. The breach of contract is the failure to discharge (or load) within the permitted laytime. The obligation has two different aspects: the first is the obligation to discharge and the second is to do so within the limited time. There is no breach before that limited time has expired. Once the limited time has been exceeded there is a continuing breach for which the liability in liquidated damages (that is to say demurrage) continues to accrue minute by minute as the failure to complete discharge continues”³.

Even when a charterparty does specifically refer to delays due “charterer’s fault” (to trigger liability for demurrage), it seems that the mere fact of the laytime being exceeded is sufficient to bring the charterer in breach of the contract.

Generally speaking, the charterer is the party responsible for the payment of demurrage. However, in *Porteus v. Watney*⁴ the bill of lading holders were held liable for demurrage as the charterparty was incorporated in the bills of lading and did not specify the charterer as the party responsible.

Once on Demurrage always on Demurrage?

This is a common maxim applied to demurrage. Essentially, it means that once a vessel has exhausted the time allowed for laytime and goes on to demurrage, it will remain on demurrage until loading has completed, even where subsequent delays would not usually count towards laytime. However, it is worth noting that the parties may have specifically agreed to apply the Laytime exceptions to Demurrage.

Obligations on the Owner

The Owner should not prevent or delay cargo operations in terms of depriving the use of the vessel or access to cargo. The onus is on the owner to prove that no delay resulted from his action.

Further, whilst there is uncertainty, it seems that the Owner has no general duty to mitigate, but they may have a duty to show that they have exercised reasonable efforts to ensure that the period of delay is not prolonged, i.e. exercise of lien and acceptance of security.

Damages for detention

Demurrage is the liability in liquidated damages for the detention of the ship. Some charterparties, such as the Gencon, expressly provide a period during which the damages for delay in loading or discharging are liquidated at the demurrage rate as stipulated in the contract. Once that period has passed, the owner is entitled not to demurrage but to damages for detention at large. In the absence of a stipulation limiting the time on demurrage, questions of frustration and repudiation would have to be answered, demurrage at the agreed rate to accrue continuously until the completion of the functions that would have stopped laytime running. In *The Eternal Bliss*, the Court of Appeal held that parties have to consider exactly what damages/losses they want demurrage to cover, as under standard demurrage clauses and absent an independent breach of the voyage charterparty, the damages for delay are

³ Islamic Republic of Iran Shipping Lines v. Ierax Shipping Co. [1991] 1 Lloyd’s Rep. 81, at p. 87.

⁴ (1878) 3 Q.B.D. 227 and 534.

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limited to the amount stated in the demurrage clause. As per the Court of Appeal's conclusion *"the charterer is not liable to pay damages in addition to demurrage for its breach of contract in not completing discharge within the permitted laytime."*⁵

Demurrage Time Bars

The default position is that a claim for demurrage is subject to the general contract time bar of six years from the date of breach of contract.

However, charterparties often contain a *"Demurrage Time Bar Clause"* which provides that *"all supporting documents"* must be provided with a short time frame, often a number of days. Failure to comply with this will mean that a claim for demurrage is time barred.

What documents are required will depend on the wording of the clause. However, generally it will require the provision of all documents that would allow the charterer to assess the claim and includes bills of lading⁶, the NOR, time logs, pumping logs any letters of protest.

Where specific documents are referenced in the clause, they must be provided within the time frame unless they do not exist or were impossible to obtain, whether relevant or not⁷.

Conclusion

As can be understood from the above, while laytime and demurrage are very common concepts in voyage chartering, there are a large number of pit falls that must be avoided. We therefore recommend, if a dispute arises that you speak with your Club LCC contact as soon as possible to ensure your position is protected.

For further information please visit:
www.shipownersclub.com/lcc

If you have any further questions about LCC, please contact the LCC Managers.

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⁵ [2020] EWHC 2373 (Comm)

⁶ TRICON ENERGY LTD v MTM TRADING LLC (THE "MTM HONG KONG")

[2020] EWHC 700 (Comm)

⁷ "Amalie Essberger" Tankreederei GmbH & Co KG v Marubeni Corporation

[2019] EWHC 3402 (Comm)

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