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NEWSLETTER

TRANS TRADE RK SA V SEBAT SHIPPING AND TRADING CO [2026] EWHC 950 (COMM) (28 APRIL 2026): CARGO OPERATIONS DO NOT CURE AN INVALID NOR ABSENT WAIVER

The Commercial Court has allowed a charterer's appeal on a point of law arising from an LMAA award concerning laytime and demurrage at the discharge port under a voyage charterparty incorporating the Synacomex 2000 form (Continent Grain Charterparty).

Background

- The charterers fixed M/V Sebat on 9 April 2022 to carry a bulk barley cargo (Ukrainian origin) from Constanta to Brake. The recap provided for laytime/demurrage and incorporated Synacomex 2000, including clause 11 (charterers' liberty to fumigate at their risk and expense).
- Cargo was fumigated on completion of loading at Constanta. By reason of cargo quantity, discharge laytime

was 3 days 18 hours 36 minutes.

- At Brake, the master tendered NOR at 10:00 on 10 May 2022 at the pilot station. The vessel anchored later that day and proceeded to berth on 13 May. Hatches were opened at 05:50 on 14 May, but high phosphine readings required the vessel to vacate the berth and return to anchorage. She reberthed on 27 July; discharge completed shortly before 20:00 on 30 July 2022.

The arbitration

- Owners claimed demurrage at load and discharge ports and discharge port expenses. The tribunal awarded USD 844,131.25 demurrage (USD 4,114.06 at Constanta; USD 840,017.19 at Brake) plus EUR 21,616.40 expenses.

- The tribunal held the NOR at Brake was invalid because it was tendered before the vessel became an arrived ship (before anchoring), and no further NOR was tendered. It nevertheless treated laytime as starting when cargo operations began (opening hatches at 05:50 on 14 May), describing this as "trite law."
- The tribunal rejected an indemnity claim under Synacomex 2000 clause 11 on the basis that the relevant losses were detention/delay already liquidated as demurrage.

The appeal

- The charterers sought permission to appeal under section 69 Arbitration Act 1996. Permission was granted on two questions, including: when does

laytime start to run if no valid NOR is served and there is no agreement, waiver or estoppel treating an invalid NOR as valid?

- In the interim, owners applied under section 57 Arbitration Act for clarification; the tribunal confirmed its position that, absent a valid NOR, laytime would commence on the start of cargo operations, with a footnote reference to *The Happy Day* [2002] 2 Lloyd's Rep 487.

The Commercial Court's decision

- Peter MacDonald Eggers KC (sitting as a Deputy High Court Judge) allowed the appeal.
- On a proper reading of the award, the tribunal had decided as a matter of law that, where an NOR is invalid because the ship is not yet an arrived ship, laytime nevertheless runs from commencement of cargo operations. The tribunal's analysis did not rest on waiver.

- That was an error of law. Established authority in the form of *Transgrain Shipping BV v Global Transporte Oceanico SA (The Mexico I)* [1990] 1 Lloyd's Rep 507 and *The Happy Day* confirms that without a valid NOR, laytime does not start to run. Commencement of cargo operations is not, by itself, a substitute trigger.

- If, contrary to that reading, the tribunal had relied on a concept of "deemed waiver", that too would have been wrong in law. There was no principle of deemed waiver. What was required was actual waiver and this in turn required knowledge and assent by the charterers.

Remedy

- As the facts were sufficiently determined and the legal issue was discrete, the Court varied the award rather than remitting to the tribunal. The demurrage awarded for *Brake* was removed because laytime had never started there in the absence of a valid NOR and absent proven waiver.

- The owners had not appealed or preserved any alternative indemnity route under clause 11 for remission. In those circumstances, there was no basis to revisit clause 11 and the award was simply varied to strip out the discharge port demurrage.

Key takeaways for voyage charters

- A valid NOR remains the gateway for laytime. Without it, laytime does not run. Commencement of cargo operations is not, by itself, a fallback trigger.
- Waiver can cure an invalid NOR, but only where the charterer, with knowledge of the relevant facts, clearly elects not to rely on such invalidity or makes an unequivocal representation. There is no "deemed waiver" merely from commencing cargo operations.
- Where the validity of a NOR is in doubt (e.g., tendered before the vessel is an arrived ship), owners should re tender NOR promptly upon arrival to protect their position.

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