

A Snapshot Guide to Laytime & Demurrage

LMAA Awards
1980-2023

2nd Edition

PROKOPIOS KRIKRIS

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2nd Edition, LMAA Awards (1980-2023)

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[-A tribute to Maritime Arbitrators-Prokopios Krikris - Charter Party Disputes](#)

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Important Note

I started preparing this guidebook during my practice handling laytime and demurrage disputes and for convenience in finding quickly some previous LMAA awards dealing with commonly disputed laytime & demurrage issues. However, arbitration awards are not precedents; readers must also consider relevant authorities.

The guidebook refers mainly to LMAA awards published in *Lloyd's Maritime Law Newsletter* (LMLN) and some published in *Jus Mundi*, approximately 300 Awards in total. This is a “snapshot” guide; readers should consider the entire award summary to understand the parties' position and the tribunal's decision.

This guidebook is intended to be used at the user's risk.

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About The Author

Prokopios Krikris, BA, MSc (Maritime Studies), LL.M (Maritime Law), PGc (Contract and Tort Law), Dip. (Maritime Arbitration), FCI Arb (UK)

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- Diverse experience in operations, post-fixture, chartering, claims negotiation, and maritime arbitration, specialising in charter party disputes.
- Educated in Contract & Tort law, Maritime law and Maritime Arbitration.
- Fellow of the Chartered Institute of Arbitrators, LMAA Supporting Member, and Member of the Baltic Exchange.

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Abbreviations

ARB:	London Arbitration.
BL:	Bill of Lading.
COP:	Custom of the port.
CP:	Charterparty.
CQD:	Customary quick despatch.
DP:	Discharging port.
EOSP:	End of sea passage.
FM:	Force Majeure.
LOI:	Letter of indemnity.
LOP:	Letter of protest.
LP:	Loading port.
LT:	Laytime.
NOR:	Notice of readiness.
NTC:	Not to count, as laytime or time on demurrage as the case may be.
SOF:	Statement of facts.
STS:	Ship to Ship operation.
TC:	To count, as laytime or time on demurrage as the case may be.
TT:	Turn time.
USC:	Unless sooner commence.
WIBON:	Whether in berth or not.
WIPON:	Whether in port or not.

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PART A: BULK CARRIERS

LAYTIME & DEMURRAGE- DETENTION CLAIM

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The Process¹ of Laytime & Demurrage- Detention claim

1. The Charterparty².
2. Statement of Facts³.
3. The Preparatory Stage⁴.
4. When Time⁵ Starts.
5. When Time⁶ Ends.
6. Exceptions & Interruptions.
7. Calculate⁷ Demurrage or Despatch.
8. Damages for detention⁸.
9. Supporting documents & Time Bar⁹.
10. Claim collection & Dispute resolution¹⁰.

¹ This is based on laytime software and on extensive practical experience. The stages [3-6] may follow a different order; either using the excel worksheet as laytime calculator or in case of using any other laytime software. When an excel worksheet is used, for accuracy purposes, the number format (decimal places) must be considered in line with the Owners or the Charterers' number format used. The SOF can be reviewed before the CP- especially in less complex calculations or issues involved.

² Apart from the Charterparty, there are additional agreements reached after the formation of it e.g. addendum; vessel's nomination; laycan extension or earlier acceptance of the vessel; additional ports of loading or discharging; etc.

³ There are instances that two or more SOF may be prepared and presented by different agents.

⁴ Information about the proper quantities e.g. BL or BL plus dead-freight; Laytime type e.g. reversible, total days, non- reversible ; Load & Disport rate e.g. fixed or calculable rate per hatch per hold, etc.; demurrage & despatch rate; despatch type e.g. all time saved, working time saved, free despatch, etc.

⁵ Normally the word "time" refers to laytime. But herein, for simplicity, it refers to laytime or time on demurrage e.g. the ship arrives at the 2nd port and is already on demurrage.

⁶ Either as laytime or time on demurrage e.g. express terms may provide time on demurrage to end when documents are on board or when fumigation completed, etc.

⁷ Auto calculation produced by the software basis the data imported by the user.

⁸ For easy reference, the decisions included in the stages 4 & 5 after laytime or time on demurrage ends.

⁹ Most cases involve tanker charterparties and included only in the tanker section.

¹⁰ The claim collection and dispute process are not discussed herein.

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1. The Charterparty

The starting point is the contract. Tribunals strive to give effect to the parties' bargain.

Therefore, in the first instance this guidebook refers to previous awards dealing with issues of construction or interpretation.

Addendum

1. Arb 5/93: detention claim; whether the addendum voidable- duress.
2. Arb 16/18: damages claim; addendum includes 'always accessible' that considered.
3. Arb 17/04: bad weather periods counted; addendum prevailed over CP terms.
4. Arb 24/92: whether reversible laytime to apply; addendum was considered.
5. Arb 6/15: whether payment of freight or demurrage; addendum was considered.
6. Arb 19/89: lightening required, damages claim advanced, addendum was considered.
7. Arb 15/91: vessel's delayed arrival prolongs loading time, addendum was considered.
8. Arb 3/21: Addendum considered for reversible laytime between two ports, shifting time and time bar point.
9. Arb 3/21: bunker deviation costs, where the parties had expressly agreed to compensation payable by way of an Addendum there was no scope for a further implied term by way of a collateral agreement or variation of the charter or as a claim for restitution.

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1.1 Special agreement

10. Arb 3/92: vessel to load additional cargo; whether two NOR; reversible laytime(Lt).
11. Arb 6/12: option to discharge at 2nd port; no interruptions apply-on demurrage.
12. Arb 12/15: intermediate voyage; laycan extension; demurrage claim succeeded.
13. Arb 22/03: stop discharge- lien; the parties' previous course of dealings considered.
14. Arb 24/95: substitute port nominated- oral voyage orders given; when Lt stops.
15. Arb 1/10: substitute port nominated; when Lt starts; non-reversible.
16. Arb 11/08: variation of CP; ordered to another load port; dead-freight claim
17. Arb 14/19: change rotation of disports delaying release of BL; Owners' issue, NTC.
18. Arb 18/17: change of ports- waiting orders; quantum meruit & damages claimed.
19. Arb 7/17: instructed to call Intermediate port; quantum meruit & demurrage claimed.
20. Arb 20/82: agreement to extend Lt or demurrage to 3rd port till pilot off.
21. Arb 10/99: lightening- damages for detention; discharging rate agreed.
22. Arb 11/92: lien-pending freight payment; damages or Lt to apply was considered.
23. Arb 12/90: drop anchor pending disport declaration; quantum meruit argued.
24. Arb 18/17: waiting off port pending instruction to call another port; quantum meruit.
25. Arb 2/12: no agreement when vessel arrived prior laycan; disputed despatch.
26. Arb 6/08: damaged cargo- Owners given LOI not to clause BL; delay disport.
27. Arb 21/00: vessel to call a 3rd port- shifting time; when demurrage ends.
28. Arb 14/22: vessel was fixed to call one berth; charterers order the ship to a second berth. Owners allowed this extra service under conditions i.e. against payment of shifting time/costs, extra insurance premium, bunker costs for shifting etc. Charterers said the agreement was unforceable (made under duress). Owners claimed the

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bunkers consumed during delay by agreement pursuant to an implied contract for a quantum meruit. Charterers' time-bar defence failed by considering the special agreement.

1.2 The ejusdem generis rule

29. Arb 2/94: whether shore breakdowns were beyond charterers' control.

30. Arb 5/94: stevedores stopped work; construction of Force Majeure (FM)- exceptions clause.

31. Arb 1/12: 'beyond charterers' control'; whether it includes congestion.

32. Arb 21/19: FM- hurricane; construction of exceptions clause.

1.3 Contra proferentem

33. Arb 2/94: any other cause beyond control; exceptions against the party relying on it.

34. Arb 23/04: construction of normal winter conditions; whether excluded periods.

35. Arb 7/97: "Saturday afternoon"; ambiguity to be resolved against the charterers.

1.4 Specific vs general terms

36. Arb 2/94: 'beyond control'; specific terms prevail over general terms.

37. Arb 13/1: ice clause incorporated in CP; whether independent from Lt clause.

38. Arb 18/95: NOR clause interpretation; initial words prevail over later words.

39. Arb 14/95: when Lt commences; the Lt clause prevailed over the NOR clause.

40. Arb 19/07: delay in berthing- time lost provision & NOR clause; NOR prevail.

41. HK Arb 1/14: which law applies; specific over general; typed over printed.

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42. Arb 15/21: inconsistent terms incorporated by reference; the charter terms prevails in NOR validity.

1.5 Reconcile terms

43. Arb 1/12: if liner terms or Lt to apply; conflict recap & proforma- recap prevails.

44. Arb 8/14: excepted periods; inconsistent Lt and NOR clause- the latter prevailed.

45. Arb 11/06: printed vs typed clauses; later provisions vs earlier provisions, ambiguity.

46. Arb 1/00: inconsistent paras in Lt clause; when Lt stops before a holiday.

47. Arb 2/95: negotiations & base charter considered for weather exceptions to apply.

48. Arb 6/91: whether weekday exception; inconsistent NOR & Lt clause.

49. Arb 7/97: inconsistencies in the weekend exception clause.

50. Arb 8/95: when Lt commences; terms reconciled regarding NOR & Lt issue.

51. Arb 9/96: whether NOR is valid; terms reconciled re NOR & Lt.

52. Arb 13/17: whether time counted on weekend; contract as a whole.

53. Arb 16/80: whether shifting time to count; contract as a whole.

54. Arb 21/87: inconsistent time for NOR tendering and how Lt applies.

55. Arb 3/17: 'custom of the port'; demurrage rate basis BENDS so demurrage applied.

56. Arb 6/04: crane clause; when last words read with previous words then no time lost.

57. Arb 7/04: holds rejection; separate clauses for NOR & Lt applied.

58. Arb 14/19: NOR requirements for validity; recap prevailed over the proforma.

59. Arb 19/07: whether NOR valid; contract viewed as a whole.

60. Arb 20/18: whether NOR valid - when freight due; contract as a whole.

61. Arb 27/91: CP silent- then shifting & NOR clause reconciled; shifting NTC.

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1.6 Amendments

1.6.1 *Logically amend*

62.Arb 1/12: liner terms; meaning of main terms & logically amend in recap.

63.Arb 2/20: jurisdiction clause; meaning of main terms- logically amend in recap.

1.6.2 *Deleted terms*

64.Arb 7/07: deleted words should be considered with cautious.

65.Arb 8/14: deleted words considered for damages claim- lien exercised.

66.Arb 15/92: deleted terms considered; no turn time for 2nd port- two ports is one.

67.Arb 18/95: deleted terms considered for NOR & Lt issue.

68.Arb 14/15: deleted terms considered for responsibility of stowage- delays.

1.6.3 *Added terms*

69.Arb 1/97: typescript words considered to determine when Lt commences.

70.Arb 17/97: typescript words considered for NOR issue.

71.Arb 11/95: beyond control exception; typewritten words in clause assisted Owners.

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1.7 Superfluous

72.Arb 13/1: ice clause; presumption against surplusage is not a strong one.

1.8 Incorporated terms

73.Arb11/06: whether Lt terms incorporated into BL. Claim against receivers.

74.Arb 14/15: damages claim; executed charter incorporated into recap.

75.Arb 12/00: general ice clause incorporated in CP.

76.Arb 15/21: Recap incorporated berth operators' terms that conflicted with the primary agreement; the conflicting terms had to give way to those in the primary agreement.

1.9 Implied terms & obligations

77.2/01: liner out terms; whether implied duty not to hinder operation.

78.5/82: discharge suspended; whether implied duty to act reasonably & co-operate.

79.8/07: whether implied duty of co-operation- not hinder ops.

80.8/08: whether implied duty of co-operation- timely accept NOR.

81.20/92: whether obligation to act with reasonable diligence and discharge cargo.

82.16/03: whether implication of 'working' hatch in the clause- rejected.

83.17/95: whether implied obligation to nominate ports in GEO rotation- rejected.

84.21/05: whether implied duty to load with reasonable despatch- rejected.

85.9/96: whether implied duty parties to accept NOR promptly.

86.15/80: whether implied owners to be indemnified for delays in cargo re-stowage.

87.30/92: whether implied vessel to provide hatches of particular size- rejected.

88.Arb 1/00: whether implied charterer's absolute obligation to provide cargo.

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89. Arb 14/07: whether cargo type implied in 'loading port' clause -rejected.
90. Arb 14/86: whether implied a party to accept NOR within reasonable time- rejected.
91. Arb 17/92: whether implied Charterers to timely arrange holds inspection.
92. Arb 18/92: whether implied washing of holds to be carried out effectively.
93. Arb 23/92: whether implied to use reasonable despatch when holds- rejected.
94. Arb 2/91: whether implied Charterers would not detain or allow detention of ship.
95. Arb 3/79: whether implied reasonable diligence in performing the loading operation.
96. Arb 10/99: whether implied term that 3 WWD for lightering.
97. Arb 18/07: 1. whether implied to arrange ship's departure within a reasonable time.
98. Arb 18/07: 2. whether implication by custom- not proved.
99. Arb 19/80: whether parties to act with reasonable diligence in carrying out their part.
100. Arb 12/80: whether implied term to remit timely funds to agents- rejected.
101. Arb 8/07: whether duty to co-operate when measuring each bundle-avoid delay.
102. Arb 6/12: whether terms implied in construction of Lt clause-rejected.
103. Arb 3/21: Implied term, collateral agreement, variation by conduct or restitution rejected in a claim for bunker deviation costs.
104. Arb 14/21: the owners' claim as quantum meruit (implied contract for reasonable remuneration to be paid) for the waiting time off-berth failed. The charterers were entitled to use the whole of the agreed laytime.
105. Arb 20/21: variation, estoppel, unjust enrichment and waiver arguments rejected.
106. Arb 19/22: Owners relied on an implied term that if the vessel was not able to enter the loadport because no berth was available, and the anchorage at CJK was congested, the vessel could tender notice of readiness at a location equidistant or

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nearer to the loadport than the CJK anchorage. The implied term contradicted the express term.

1.10 Extrinsic evidence

- 107. Arb 13/17: Voylayrules 1993: are only guidelines- not having the force of law.
- 108. Arb 6/08: reversible: Voylayrules 1993 reflect the common law position.
- 109. Arb 15/84: “per available workable hatch” Lt definitions¹¹ had no relevance.
- 110. Arb 23/04: define ‘weather working day’; Lt rules not expressly incorporated.
- 111. Arb 10/83: CP silent on Lt; fixture negotiations considered.
- 112. Arb 14/15: dunnage issue: exchanges leading up to clean fixture considered.
- 113. Arb 11/97: ‘reachable on arrival’ clause; Voylayrules 93 considered.

1.11 Rectification

- 114. Arb 13/95: rectification of WWD provision failed.
- 115. Arb 10/96 (Tanker): to amend ETA date of vessel’s readiness allowed.
- 116. 2011(Jus Mundi): ambiguous force majeure clause needed re-drafting.

“CLAUSE 45 (FORCE MAJEURE) Charterers shall not be liable, if force majeure including acts of god, war, hostilities revolution, insurrection, acts of public enemy, sabotage, fires, floods, earth quakes, storms, landslides, bore tides, explosions, strikes, embargoes, blockage, direct and proven cause and delay in loading or discharging including unavailability of cargo, whether in whole or part”.

¹¹ Charterparty Laytime Definitions 1980

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Held, that the clause was very badly drafted, in a sense that there were missing words, which the parties must have intended to have included had they put their mind to it. There were also grammatical errors. While keeping in mind the intention of the parties and taking into account the surrounding circumstances, the clause would need to be redrafted by adding the missing words, as shown in brackets below to give meaning to the clause in the English language and to give effect to the intention of the parties:

“Charterers shall not be liable, if [a] force majeure [event], including acts of god, war, hostilities revolution, insurrection, acts of public enemy, sabotage, fires, floods, earth quakes, storms, landslides, bore tides, explosions, strikes, embargoes, blockage, [is the] direct and proven cause [of] . and-delay in loading or discharging including unavailability of cargo, whether in whole or [in] part”.

The interpretation of the clause is restricted to the words used as force majeure events, because the word what so ever was not used in the clause. Being an exception clause, any ambiguity in the language of the clause would be interpreted against the party in whose favour the clause was intended¹².

¹² Sole Arbitrator.

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2. Statement of Facts (SOF)

117. Arb (1981) 32 LMLN 3: the SOF indicated various interruptions due to bad weather and “stormy weather”. The log extract prevailed as evidence. SOF entries as “rough weather at roads”¹³ were too general and resulted to varied interpretation.
118. Arb 22/95: Lt Interruptions due to ship’s cranes breakdowns. Charterers adduced in evidence the SOF and stevedores’ worksheets that suggested there was loss of time; as the gang was not used in another hold. The relevant clause referred to “loading” time and not to discharging time. Thus, charterers had to establish a breach of charter and that restricted charterers’ case as there were no contemporaneous documents & protests to support it. No deductions were allowed from Lt.
119. Arb 12/97: the dispute concerned a short period of alleged rain time. Each party relied on a different SOF with inconsistent entries. Charterers’ document showed rain but owners did not. The tribunal preferred owners’ document as the remark in the charterers’ document was in manuscript and could have been added later. The handwritten type was also different from that in other manuscript entries.
120. Arb 15/97: whether holiday to count. The master signed the SOF that mentioned Saturday as a holiday. While the statement of facts signed by or no behalf of the ship was given considerable weight in relation to a fact that the ship would subsequently dispute e.g. crane breakdown or rain; but this was unhelpful to determine issues as whether a day is a holiday.

¹³ Same references still appear in ‘modern’ SOF and cause debate among the parties.

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121. Arb 16/97: Should laytime count during periods of breeze or winds while the ship waits her turn to berth? Charterers bear the burden of proof and have failed to adduce evidence from other ships working alongside them to discharge their burden.
122. Arb 10/99: the SOF was silent regarding a period in which charterers alleged the owners refused to discharge the cargo. The SOF simply referred to barges not being available, and the tribunal found that charterers had failed to prove any fault on the part of the vessel.
123. Arb 15/99: owners have not considered periods of alleged bad weather into their calculations. Owners relied upon a weather report from the Turkish Meteorological Agency of the whole region. Charterers relied on the SOF from the port that included local weather conditions and signed by the master. The tribunal considered the SOF more reliable and found in favor of charterers.
124. Arb 1/00: charterers said that owners relied on an SOF that was not authentic or reliable since their agent has not been given an opportunity to make remarks. However, the SOF signed by the receivers, the owners and their agents. Held that the SOF was a contemporary document, signed by three parties on the spot, and was evidence that could not be ignored.
125. Arb 21/00: It was not clear if rain would suspend operation if there was cargo available. The SOF recorded short periods of rain. This was unhelpful to determine whether or not the loading suspended. Other times, the SOF recorded 'no cargo operation'. The majority decided that if cargo operation had been suspended due to rain, the SOF would simply mention this. The dissenting arbitrator took the view

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that references to rain were enough- viewing also that the master had not protested or claused such references; therefore placing the burden upon Owners to disprove this.

126. Arb 13/02: the dispute concerned the time spent opening and closing hatches. The parties disputed the period of delay. The SOF was silent on this point. There were no interruptions for rain or any indication of the number of hatch closures that might have affected the laytime. The tribunal held that it was in charterers' interests to ensure that appropriate entries were made in the SOF in order to rely upon them. The tribunal did not consider it appropriate to work on theoretical delay into the laytime based on hypothesis. The award was recently considered for a similar point in *Singapore Arb 2/18*.

127. Arb 9/03: stevedores suspended work due to bomb explosion at a near discharge port, which was argued to be a strike. The Charterers relied on the SOF stating a Lagos bomb blast which disrupted port activities from 1655 on Sunday 27 January, continuing by way of "labour unrest" through to 2400 on Thursday 31 January. However, these remarks were not sufficient or clear to determine the issue.

128. Arb 6/04: charterers sought to discount time for periods of rain and wind, while loading stopped. Owners disputed that and suggested that the true reason of delay was the lack of rail wagons. The evidence was insufficient to prove the owners' assertion. The Master reported that there was intense and continuous rain most of the period. The SOF contained various references to loading being stopped for weather reasons and endorsed by the master only to record that operation continued. On the evidence, the tribunal found in favor of the charterers.

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129. Arb 20/04: Delay leaving loading port; whether shut out cargo. Charterers said that they had not prevented her sailing. The owners relied on the SOF saying "DUE TO SHORTAGE OF SPACE ... AWAITING W.F.P. DECISION TO SAIL THE SHIP WITH 10 722 T O65 ONLY INSTEAD OF 11,100 T"- this was insufficient to prove that the charterers delayed the ship's departure. The SOF entry was also challenged earlier by the charterers.
130. Arb 23/04: whether the ship would have continued discharging during periods of adverse weather. The SOF showed that discharge continued during some periods of precipitation- as recorded by the Met station. The SOF showed that the Met station recorded periods of snow while the vessel was waiting to berth; but the SOF from another ship showed that discharging continued during the periods in question. Therefore, on the balance of probabilities, had the subject vessel been in berth, discharge would have continued during the periods in question and therefore Lt should count.
131. Arb 11/06: receivers counterclaim for damaged cargo. The SOF was endorsed. Owners failed to prove that the words the receivers relied were written after the document signed, but these words were inserted after other words surrounded them, which raised doubts. Master said no such words existed when he signed the SOF; and it is inherently unlikely that any ship's master would sign the SOF containing such a remark unless the position was clear beyond peradventure.
132. Arb 1/09: the SOF contained only one reference to crane problems during the loading period; namely: "*DEC 02 FRI ... 1200 REPAIRING ON SHIP'S CRANE*

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NO. 4 FINISHED.” There was no suggestion in the SOF that any time was lost because not all the vessel’s cranes could work.

133. Arb 9/11: the parties disputed periods of bad weather (Typhoon). Owners provided a weather report obtained from the meteorological office for the nearest port showing no severe weather. The tribunal held that in the absence of any contractual provision to the contrary, it is always open to the parties to prove that an entry in the SOF was incorrect. Still, a signed SOF by the master might be the most persuasive evidence. The tribunal had to decide between the SOF and the Meteorological office report- as evidence of the weather. And found against the Charterers because (i) the SOF referred to the “influence” of Typhoon- not that there was a typhoon during that period that affected the operation; (ii) no expert’s opinion on the weather record provided by the charterers; and (iii) no evidence provided to show that operation suspended to the other ship’s alongside. Albeit the weather report was for a nearby port this was sufficient. Charterers failed to discharge their burden.
134. Arb 15/13¹⁴: charterers contended that the master signed inconsistent reports and lost their right to maximize demurrage under the sub CP. On the evidence, the tribunal rejected the charterers’ submissions and found in favour of the owners. However, the master owes a duty of care to ensure accurate information in the SOF.

¹⁴ This was a case that arose under an amended NYPE CP and Charterers put their case as breach of clause 8 i.e. orders relating to employment; an order to check any statement of facts before signing (See *Carver on Charterparties*, 2nd Ed. para 7-179). A similar issue discussed more recently in London Arbitration 6/17.

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135. Arb 8/14: owners instructed the master to wait off port limits pending freight payment. NOR tendered on 9 September while the vessel waited off port. The SOF showed that the NOR was given on 17 September, and the Charterers argued that this binds the owners. This was rejected- absent also any contractual provision or estoppel.
136. Arb 8/16: (i) rain periods: two different SOF presented; from the master and from the agent, and showed inconsistent rain periods. Owners adduced evidence from the local chamber of commerce; although Owners admitted it does not reflect the precise rain periods, it was consistent with the vessel's records. The tribunal preferred the masters' report.
- (ii) Crane breakdowns: Charterers deducted time due to time lost because of crane breakdowns. The SOF did not record any breakdowns but periods when no gangs were assigned to hatch 1" due to no available crane to work". As a crane served hatch no 2 there was no lost time.
137. Arb 25/16: charterers deducted periods of bad weather while the ship was waiting her turn to berth. The SOF did not state that bad weather existed. The SOF signed by the master and the local agent. The tribunal disallowed the bad weather deductions. Further, the charterers tried to exclude a period when 'no work' carried out. The SOF did not explain why there was no work and no evidence presented to show that work was interrupted by the vessel's fault. Basis the contract terms and the limited evidence, the tribunal disallowed any interruptions.
138. Arb 13/17: the SOF was signed by the master without evidence to suggest that it was incorrect. Charterers said certain periods of drizzle or light rain should not

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count; but such periods did not affect the operation. The burden of proof was upon charterers to show it and charterers failed to adduce evidence to discharge their burden. Charterers presented weather reports of the area but as the tribunal found it was well-known that rainfall could be limited to very specific areas, which was not assisting Charterers. Further, the SOF was signed by the Charterers' agent without demur; and it seemed to the tribunal to provide the best evidence of the weather conditions.

139. Arb 12/19: charterers relied on a force majeure provision to suspend time while the ship was waiting at the anchorage. The tribunal said there were several reasons why the ship was not called forward any earlier. There was nothing in the SOF to show that the vessel would have shifted to the loading place earlier than she did. The absence of causal connection was fatal to the Charterers' case. On a separate dispute, the tribunal considered what was recorded in the SOF and the master's comments on it to determine if the issue falls under the weather working day interruption. On the evidence, time counted during the alleged periods of bad weather.
140. Arb 22/19: the master tendered NOR while fumigation was in progress and the NOR was considered invalid. The agent said in the SOF that 10 days was sufficient time to conduct an effective fumigation at that time of the year; while the master added a note that it normally took five days. The burden rested with the owners to adduce evidence to support their contention about the duration of the fumigation and if the congestion or the fumigation delayed the ship.

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141. M.V. “MP PANAMAX 2” [2020] 3 CMCLR 48 (CMAC)¹⁵: The parties disagreed on the source of evidence to calculate Lt due to the inconsistencies between the various documents. Respondents argued that the SOF was inconsistent with the log book and the daily loading reports of the Captain; so the SOF is not a suitable basis of any calculation. It was held that:

- 1) The SOF should be considered the preliminary proof of lay time and demurrage calculation, unless other evidence is strong enough to repudiate it.
- 2) The SOF, as the document concluded by the three parties, should be the main evidence to calculate demurrage unless there was other evidence strong enough to repudiate the whole or part of it.

142. The claim submissions contained two documents:(1)headed Statement of Facts, which was not signed by the receivers, and (2) headed Time Sheet, which had all the information expected of a statement of facts and was signed on behalf of the receivers. The tribunal was, therefore, prepared to accept the signed document as the statement of facts for the purposes of the time bar.

143. 2019 (Jus Mundi): Charterers denied the demurrage claim and argued that the NOR tendered at Damietta was not valid since the vessel arrived with three holds that were not available. In support of their case, the charterers relied on the statement of facts. According to the statement of facts, “AS PER MATER’S (sic) INSTRUCTION ONLY 3 HOLDS ARE ALLOWED TO USE DURING LOADING”.

¹⁵ This is not a decision of a London Tribunal but simply referred as it appears to reflect the common law position. See *The Newforest* [2008] 1 Lloyd's Rep. 504; *The Khian Captain* [1985] 2 Lloyd's Rep. 212.

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The master endorsed the statement of facts with a remark that his LOP was considered part of the SOF. The totality of the evidence showed that the five holds into which the master had advised that he was going to load the cargo were ready when the notice of readiness was tendered. Even if the statement of facts was correct that only three holds at one time were to be used during loading, that would not render the notice of readiness invalid¹⁶.

¹⁶ Sole Arbitrator.

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3. The Preparatory Stage

3.1 Calculation per hatches or per holds

- 144. Arb 3/99: Lt basis four hatches; simultaneously loaded part cargo; method of calculation.
- 145. Arb 16/03: '150 mt per hatch per WWD'; three hatches- method of calculation.
- 146. Arb 30/92: loading rate basis two hatches; twin hatches- method of calculation.
- 147. Arb 8/96: 5 out of 6 hatches available; no breach; no time prorating.
- 148. Arb 24/84: 4 gangs used; meaning of '150 mt per hook' = 600 mt per day.
- 149. Arb 6/08: inefficient derrick; calculation per holds- artificial assessment rejected.
- 150. Arb 8/16: 3 hatches for loading; calculation basis opened hatches- pro rating.
- 151. Arb 15/84: 1 hatch & 2 gangs; the 'workable hatch' defined.
- 152. Arb 25/16: less hatches used; method of calculation- no prorating.
- 153. Arb 30/92: less gangs; 500 mts per hatch =1000mts per two hatches.

3.2 CQD- Liner¹⁷-COP

- 154. Arb 2/01: liner out; implied duty to discharge fast - reasonable despatch argued.
- 155. Arb 1/12: liner out: awaiting trucks- detention applied.
- 156. Arb 3/17: COP relates to operation not to other delays; damages awarded.
- 157. Arb 10/99: CQD; lightering operations cause delay; damages claimed.

¹⁷ Owners' alternative arguments are: i) laytime applies and not Liner terms- viewing the contract as a whole; (ii) quantum meruit- for all delays; iii) implied duty to co-operate; and iv) mixed points of principle & authority- the latter would likely involve re-writing the contract for the parties.

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3.3 Quantities

158. Arb 4/06: separate calculations basis BL and deafreight quantities.

3.4 Reversible & Non- Reversible

159. Arb 7/97: two disports; different rates agreed- reversible.

160. Arb 6/08: reversibility is in Charterers' option.

161. Arb 3/92: part cargo; extra cargo ordered for loading- one Lt.

162. Arb 8/08: part cargo; disport reversible unless otherwise stated.

163. Arb 15/ 92: two ports; one calculation- but excluding shifting.

164. Arb 24/92: two cargoes; different rates agreed- aggregate the periods.

165. Arb 9/11: separate ports; single rate- single Lt unless otherwise agreed.

166. Arb 27/17: non- reversible between load & disport; averaging rejected.

167. Arb 1/10: substitute port agreed; two disports -non-reversible.

168. Arb 3/21: the vessel was ordered to discharge in a 2nd port by way of addendum stating "Demurrage at [first and second discharge ports] will count until vessel sails from [those ports]. That was held to provide for a single demurrage calculation for the first two ports.

3.5 Weather working days

169. Arb 2/95: total days vs total WWD; latter prevailed.

170. Arb 5/12: the WWD & how it applies to the 'Always accessible' considered.

171. Arb 6/12: the meaning of "all time" or "without interruption" in clause.

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- 172. Arb 13/95: the WWD is one of 24 hours not working hours.
- 173. Arb 14/15: the WWD vs WWD 24hours- proportion applied.
- 174. Arb 25/16: discussion on port working hours; WWD 24 hours.
- 175. Arb 7/04: the 'non weather working days' argument considered.
- 176. Arb 12/19: the WWD discussed; difference between interruptions & exceptions.

3.6 Part cargo

- 177. Arb 3/93: over-stowage of cargo caused delay- Lt calculation.
- 178. Arb 14/82: over-stowage caused delay- Lt calculation.
- 179. Arb 3/97: prorated Lt disallowed; prorated delays applied.
- 180. Arb 9/99: no demurrage accrues when other cargo loaded.
- 181. Arb 8/08: two parcels and two ports- reversible Lt.
- 182. Arb 17/97: NOR issues; various cargoes- method of calculation.
- 183. Arb 20/14: "last in, first out" provision; separate NOR & Lt considered.
- 184. Arb 8/96: cargo in one hold and less hatches offered- no breach.

3.7 Other

- 185. Arb 12/98: despatch basis time saved¹⁸ exceptions applied, allowed.

¹⁸ The despatch basis time saved is not usually found in practice. The parties relied on: *Mawson Steamship Co v Beyer* (1913) 19 Com Cas 59 ; *The Themistocles* (1948) 82 Lloyd's Rep 232; 'Schofield on Laytime' (3rd edition) at pages 359/360.

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4. When Time Starts

4.1 Port or Berth CP

- 186. Arb 1/09: '1 sbp Zhenjiang, China'; Port CP.
- 187. Arb 1/12: '1 gsb Gdansk/1 gsb Luanda.'; Berth CP.
- 188. Arb 13/1: '1/1 gsb aa Port Rostov BB.'; Berth CP.
- 189. Arb 21/05: '1 cement berth at Port of Mylaki'; Berth CP.
- 190. Arb 23/07: '1 sbp Zhenjiang, China /1 sbp Vitoria, Brazil'; considered viewing the contract as a whole.
- 191. Arb 6/04: 'Charterers' designated safe berth Novorossisk'; Berth CP.
- 192. Arb 8/03: 'One good and safe berth always afloat Setubal'; Berth CP.
- 193. Arb 14/07: '1 sb or Anchorage Port Kelang.'; Berth CP.
- 194. Arb 15/01: 'One safe ice-free port. one or two safe berths "; Port CP.
- 195. Arb 17/97: '1 Safe Berth" [named port].'; Berth CP.
- 196. Arb 27/91: 'named port .. "at one-two berths"; Norgrain cl.17 suggests Berth CP.

4.2 Arrived Ship

- 197. Arb 17/97: whether ship is at charterers disposal; NOR considered valid at berth
- 198. Arb 5/85: waiting convoy- WIPON; not an arrived ship or at usual waiting place.
- 199. Arb 8/03: not at the immediate disposition- WIPON; NOR invalid at pilot station.
- 200. Arb 13/1: Kerch Strait- Ice clause; not at the closest position- invalid NOR.
- 201. Arb 1/12: whether NOR at berth; WIPON/WIBON considered.
- 202. Arb 15/21: NOR valid at SW pass; vessel off port but was at the nearest point.

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- 203. Arb 16/18: Yemen- inspection by Coalition forces; valid NOR at outer anchorage.
- 204. Arb 23/07: Yangtze river; valid NOR at the end sea pilotage stage.
- 205. Arb 18/80: Brest- low tides prevent berthing; vessel not at Charterers disposition.
- 206. Arb 5/15: Necochea- NOR at berth; weather prevents berthing-Owners' risk.
- 207. Arb 8/05: Paranagua outer anchorage; entered the berthing queue- arrived ship.
- 208. Arb 12/19: Miss River- NOR at SW pass instead Point Celeste; invalid NOR.
- 209. Arb 14/07: vessel diverted when off port- no NOR tendered; NOR valid at berth.
- 210. Arb 15/01: port charter- Novorossisk Pilot Station; NOR valid.
- 211. Arb 18/17: Matanzas/ Venezuela- NOR tendered at buoy; invalid NOR.
- 212. Arb 20/18: Izmir Bay/ Turkey; drifting 38nm- outside territorial waters; invalid.
- 213. Arb 21/05: Mylaki- NOR tendered 15' before anchored; invalid NOR.
- 214. Arb 22/19: Brazil- NOR tendered while underway 15' before anchor; invalid NOR
- 215. 2022(Jus Mundi): NOR at the end of sea passage before anchors or berths was premature and invalid (Two LMAA Arbitrators).

4.3 Usual waiting place

- 216. Arb 5/90: Haldia- NOR at Sandheads; evidence considered; NOR valid.
- 217. Arb 11/95: Rosario- NOR at Zona Comun anchorage; arrived ship.
- 218. Arb 4/14: Matadi- 75 miles away; it does not satisfy the 'Lord Reid's test'.
- 219. Arb 5/15: Necochea- WIPON & WIBON considered; NOR invalid.
- 220. Arb 5/15: Necochea- repairs at 'any usual waiting place' includes lay-by berth.
- 221. Arb 17/17: Iskenderun off port- cargo sale issues; NOR outside port was invalid.
- 222. Arb 6/04: Novorossisk off port limits found not the usual waiting place.

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- 223. Arb 6/04: Masan- a place ordered by terminal is 'customary' even off port.
- 224. Arb 12/19: Kavkaz- awaiting "permission to proceed to a designated loading area"; NOR valid.
- 225. Arb 16/04: Lagos- 'customary waiting place' is wider than customary anchorage.
- 226. Arb 16/04: Lagos- NOR tendered at FWB not at roads; invalid NOR.
- 227. Arb 16/18: Yemen- coalition forces¹⁹; NOR at the outer anchorage considered.
- 228. Arb 15/21: NOR tendered at Southwest Pass was given prematurely because that was not the closest available anchorage to the berth there(The Agamemnon). The tribunal distinguished this case and upheld the owners' claim. NOR was valid when tendered at SW pass as the nearest available anchorage when she arrived.
- 229. Arb 19/22: NOR tendered at Shanghai Shipyard, but load port was further up the Yangtze River, due to congestion (as alleged) or no customary waiting place known for this port. Owners failed on that point.

4.4 Evidence used

- 230. Arb 4/14 (FOB sale): whether an arrived ship; the guide to port entry considered.
- 231. Arb 16/04: anchorages for Banjul described in the port guide.
- 232. Arb 16/04: Lagos- Africa Pilot (1982 edition); whether port control exercised authority.
- 233. Arb 19/10(tanker): Admiralty Guide to Port Entry and port authority administration.
- 234. Arb 18/05: Guayaquil port, Fairplay Ports Guide 2001-2002 referred.

¹⁹ In view of the delays to comply with the requirements of any prior-inspection before entering or after departing from these ports, the parties usually include specific terms to allocate clearly the risk of delay on the vessel's arrival and departure.

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4.5 Always accessible

235. Arb 11/97: the provision does not cover departure delays.
236. Arb 3/17: berthing priority given to other ship- charterers in breach.
237. Arb 5/12: discusses the relationship with the exception clauses.
238. Arb 3/06: insufficient draft; breach of always accessible- Lt or damages.
239. Arb 16/18: Yemen; discusses “always afloat always accessible to vessel’s draft”.
240. Arb 8/92: tide & delay; a ‘reachable on arrival’ provision might assist Owners.
241. 2011 (Jus Mundi): Owners’ demurrage calculations rely on the provisions of Clause 6 of the Asbatankvoy charterparty. Charterers argued that delays had occurred in getting the vessel to the berth over which they had no control. Therefore laytime should not start until the vessel was all fast at the load port, and should continue until the time that the hoses were disconnected. These delays were due to tidal restrictions or obtaining Free Pratique. Owners said they were not entitled to rely on Clause 6 because Charterers breached the reachable arrival provision. The tribunal agreed with the owners that delays were caused by congestion. Also, charterers were in breach of their obligation under Clause 9 of the Asbatankvoy charterparty, that the berth should be “reachable on.. arrival”²⁰.

4.5.1 Obstructions

242. Arb 16/04: restriction on night movements or port orders as a comment.
243. Arb 13/1: ice clause considered, delays in ice navigation, Lt issues.

²⁰ Two Arbitrators.

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- 244. Arb 5/12: waiting convoy- ice breakers; always accessible,-detention failed.
- 245. Arb 1/91: congestion at river port; 'waiting for berth' clause considered.
- 246. Arb 5/85: waiting for naval convoy- navigational hazards; NOR invalid.
- 247. Arb 5/85: a mishap blocking of Suez Canal is a navigational impediment. This was a comment in the decision to explain his conclusion.
- 248. Arb 16/18: Yemen- coalition forces; waiting approval to proceed to berth.
- 249. Arb 18/80: low tide-, delay in berthing; this is Owners' risk.

4.6 Readiness

4.6.1 Vessel's issues

- 250. Arb 1/12: part cargo on board- not physically ready; NOR invalid.
- 251. Arb 20/14: Part cargo- physically & legally ready; rules for NOR discussed.
- 252. Arb 8/14: port issues not prevent NOR tendering. Readiness concerns the ship itself and not the port.
- 253. Arb 1/91: USDA & NCB –ballasting; waiting for berth time counted.
- 254. Arb 19/07: prohibition in Libyan port; physically & legally ready; NOR invalid.
- 255. Arb 4/05: vessel arrested at New Orleans but no delay in berthing; NOR valid.
- 256. Arb 15/01: Novorossisk- waiting Original BL for cargo formalities; NOR valid.
- 257. Arb 7/02: BL not availed upon arrival & LOI not given; not a vessel's issue.
- 258. Arb 7/01: unpaid port dues delay vessels' berthing; NOR valid.
- 259. Arb 14/05: various Deficiencies- whether physically & legally ready; NOR valid.
- 260. Arb 5/15: hull steel damage- no repairs allowed at berth; NOR invalid.

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- 261. Arb 7/04: holds rejected- good faith when giving NOR argued; NOR valid.
- 262. Arb 8/05: missing anchors- no 2nd NOR given; initial NOR invalid.
- 263. Arb 11/03: BL were unavailable- vessel stayed outside the port; NOR invalid.
- 264. Arb 12/19: Kavkaz- holds rejection; initial NOR is valid.
- 265. Arb 13/19: Miss River- holds rejection; invalid NOR.
- 266. Arb 14/07: unseaworthy- holds condition & holes in pontoons; invalid NOR.
- 267. Arb 16/19: lost anchor- delay in navigation; this does not invalidate NOR.
- 268. Arb 17/92: holds rejection- no evidence of being washed down; NOR valid.
- 269. Arb 17/97: subsequent shifting between berths cannot invalidate initial NOR.
- 270. Arb 18/92: holds clean and ready was a condition precedent; invalid NOR.
- 271. Arb 22/19: holds rejection; infestation- fumigation required; invalid NOR.
- 272. Arb 23/92: holds rejection- not “clean or odour free”; invalid NOR.
- 273. Arb 21/03: BL-LOI issues; BL release was not condition to tender NOR.
- 274. Arb 21/16: holds rejection by USDA & NCB- berthing delay; re-tender NOR.
- 275. Arb 17/21: the ship had the required mooring ropes as per Class- Physically ready.
- 276. Arb 15//21: vessel tendered NOR at southwest pass, alleging not being the closest anchorage. Delay to obtain hold pass certificate (2nd NOR). There was no requirement to pass holds inspection.
- 277. Arb 6/23: engine damages on her voyage, by the time she arrived her issues ceased to exist and NOR was validly tendered.
- 278. 2019 (Jus Mundi): The totality of the evidence showed that the five holds into which the master had advised that he was going to load the cargo were ready when

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the notice of readiness was tendered. The notice of readiness was, therefore, valid to trigger the running of laytime²¹.

4.6.2 Formalities- Certificates

- 279. Arb 3/83: custom inward entry is a mere formality; NOR valid.
- 280. Arb 1/00: free pratique is a condition precedent; NOR invalid.
- 281. Arb 11/00: free pratique- invalid vaccination certs & quarantine; NOR invalid.
- 282. Arb 11/93: free pratique and customs clearance not a condition; NOR valid.
- 283. Arb 11/08: free pratique was a condition precedent.
- 284. Arb 18/95: free pratique was a condition precedent; NOR invalid.
- 285. Arb 21/05: free pratique is not a mere formality- SARS and flu-epidemics.
- 286. Arb 5/81: The authorities' inspection for only 40' was a mere formality; NOR was valid.
- 287. Arb 9/96: free pratique & congestion; not a condition precedent.
- 288. Arb 4/90: basis express terms formalities are a condition; NOR invalid.
- 289. Arb 8/14: WIPON & free pratique requirements but estoppel considered.
- 290. Arb 11/08: free pratique is a condition precedent; NOR invalid.
- 291. Arb 11/08: Owners to prove the ship was in free pratique- as argued.
- 292. Arb 11/95: NOR to be accompanied by 'pass' from relevant bodies; NOR invalid.
- 293. Arb 13/19: NOR to be accompanied by 'pass' from USDA/ NCB; NOR invalid.
- 294. Arb 14/19: NOR tendered but later conducted holds survey; initial NOR valid.
- 295. Arb 14/86: holds certificate & free pratique are conditions; invalid NOR.

²¹ Sole Arbitrator.

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- 296. Arb 14/96: The stowage plan was not required for readiness.
- 297. Arb 15/87: requisite to have inspectors' pass; invalid NOR.
- 298. Arb 15/21: no requirement to have a certificate of holds inspection. NOR valid.

4.7 Whether NOR tendered-accepted-rejected

4.7.1 NOR form

- 299. Arb 1/12: no particular form required for NOR.
- 300. Arb 15/01: the notice of arrival fulfilled the functions of NOR.
- 301. Arb 7/85: notice by cable and subsequent delay considered.
- 302. Arb 6/04: inmarsat electronic satisfies the wording "by cable" in NOR clause.
- 303. Arb 30/22: tender of the NOR by email was permissible under the charter that NOR "by letter, telegraph, wireless or telephone".

4.7.2 Acceptance

- 304. Arb 1/12: NOR was not given to receivers or charterers; found irrelevant.
- 305. Arb 8/08: there is an Implied duty to accept NOR promptly.
- 306. Arb 8/08: no requirement to tender NOR; vessel arrived 2nd port on demurrage.
- 307. Arb 9/96: NOR should be promptly accepted by relevant parties.
- 308. Arb 20/92: delayed acceptance of NOR; no damages awarded- Lt apply.
- 309. Arb 18/95: deleted words considered; NOR acceptance not required.
- 310. Arb 6/04: CP silent; valid acceptance by charterers' loadport agents.
- 311. Arb 10/19: Sales contract; no agents properly appointed; hence, it was not accepted.

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- 312. Arb 13/19: An invalid NOR passed by agents to the terminal was deemed accepted.
- 313. Arb 14/86: Within a reasonable time to accept NOR, it was rejected.
- 314. Arb 31/92: 6 days to accept NOR- valid once tendered.
- 315. Arb 15/21: there was no requirement in the contract that NOR to be accepted by the charterers or their agents.

4.7.3 Office hours

- 316. Arb 15/80: whether within Ordinary hours; Saturday not within office hours.
- 317. Arb 13/02: Bimco 'holiday calendar'; "working hours" are not "office hours".
- 318. Arb 12/01: "next regular working period" 3 pm vs following day; former prevail.
- 319. Arb 8/81: NOR on Sat, 'ordinary office hours' discussed; NOR valid.
- 320. Arb 11/08: NOR outside permitted hours delay only its effect; it is not invalid.
- 321. Arb 12/15: NOR outside office hours is valid next working day.
- 322. Arb 16/18: NOR outside office hours is valid next working day.
- 323. Arb 21/05: NOR is valid only during office hours.
- 324. Arb 23/07: NOR on the excluded period is valid on the next working day.
- 325. Arb 17/92: NOR outside office hours is valid the next working day.
- 326. Arb 18/05: NOR on holiday is valid the next working day.

4.7.4 2nd port

- 327. Arb 11/95: no NOR required at 2nd port.
- 328. Arb 9/11: no NOR at 2nd port; reversible Lt & vessel on demurrage.

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- 329. Arb 3/92: part cargo-no 2nd NOR required. NOR practices discussed.
- 330. Arb 6/12: special agreement; time starts on pilot station.
- 331. Arb 1/10: substitute port- agreement on when Lt starts; non-reversible.
- 332. Arb 8/08: when vessel arrived was on demurrage; no Lt applies.

4.7.5 Waiver & Estoppel

- 333. Arb 8/05: vessel started unloading; waiver applied.
- 334. Arb 11/08: free pratique requirement not waived by acceptance of invalid NOR.
- 335. Arb 8/14: charterers estopped from rejecting NOR.
- 336. Arb 21/05: NOR accepted with subjects; no waiver.
- 337. Arb 9/11: charterers' waiver argument rejected.
- 338. Arb 18/95: NOR accepted before free pratique obtained; no waiver.
- 339. Arb 6/04: NOR agreed by Charterers when sent off port limits; waiver
- 340. Arb 6/90: subsequent conduct considered- agent's silence; waiver.
- 341. Arb 8/92: agents considered the NOR as "received/accepted"; waiver.
- 342. Arb 10/19: whether proper agent appointed; no ingredients of waiver.
- 343. Arb 11/95: NOR accepted basis 'without prejudice'; no estoppel.
- 344. Arb 13/19: NOR not 'accepted or rejected'; silence & subsequent conduct; waiver.
- 345. Arb 15/87: NOR accepted albeit not accompanied by inspector pass; no waiver.

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4.7.6 NOR before laycan²²

- 346. Arb 10/83: valid NOR and laytime starts on 0800 1st day of laycan.
- 347. Arb 1/97: Lt commences upon loading; prior time used to count considered.
- 348. Arb 2/12: loading completed before laydays; the despatch calculation disputed.
- 349. Arb 5/12: It takes effect 0800hrs on 1st layday.
- 350. Arb 6/04: valid unless otherwise agreed; Lt starts 0800hrs 1st layday.

4.7.7 Turn Time

- 351. Arb 15/92: two ports were considered the same; no turn time for the 2nd port.
- 352. Arb 12/01: 'next regular working period' 1300hrs applied.
- 353. Arb 13/17: the meaning of actual time used to count considered.
- 354. Arb 14/15: the CP was silent; normally Lt starts with cargo ops.
- 355. Arb 14/95: the Lt starts upon loading when 12hrs turn time or USC in CP.
- 356. Arb 16/92: loading and top-up were separate operations; turn time applied.
- 357. Arb 8/92: the discharging started earlier; turn time applied.
- 358. Arb 11/95: when no NOR validly tendered the Lt starts upon loading.
- 359. Arb 14/86: when no NOR re-tendered the Lt starts upon loading.
- 360. Arb 22/19: holds rejected and accepted; It starts upon loading.

²² In practice, the shipper may accept the ship earlier for loading. Then the parties reach an agreement and draw an addendum that contains the terms, including a relevant provision for the Laytime e.g. half time to count till the 1st day of laycan.

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4.8 Laytime or Damages²³

4.8.1 Delay prior loading

- 361. Arb 1/91: congestion- waiting for berth; holds inspection & ballasting issues.
- 362. Arb 13/1: waiting ice breakers & navigation to berth; partially counted.
- 363. Arb 4/05: congestion; arrest was a temporary problem- no delay caused.
- 364. Arb 4/90: congestion- waiting 60 nm away while pending formalities; NOR invalid.
- 365. Arb 5/12: waiting convoy- ice breakers; always accessible; detention failed.
- 366. Arb 5/15: non-available cargo- agent's message & SOF considered; damages.
- 367. Arb 6/04: Black sea- issue with purchasers; no obligation to have cargo.
- 368. Arb 7/82: holds rejected by USDA- delay in berthing; TC.
- 369. Arb 11/00: waiting for free pratique provides no damages claim.
- 370. Arb 13 /19: hurricane affects ops; Lt applied- NTC.
- 371. Arb 21/05: berth given to competing ship ahead; No damages- Lt applied.
- 372. Arb 23/92: holds rejection; Charterers successfully claimed damages.
- 373. Arb 14/15: issues with stowage & dunnaging; damages for detention failed.
- 374. Arb 12/80: delayed payment of port charges- vessel lost berth; no breach.
- 375. Arb 15/91: delayed arrival prolonged loading; improper ETA alleged.
- 376. 2017 (Jus Mundi): the Vessel was detained at the Loadport during its second call, as a result of the Charterers' failure to provide cargo, giving rise to demurrage²⁴.

²³ As Owners' claim or Charterers' cross-claim i.e. usually as defence to Owners' demurrage claim.

²⁴ Sole Arbitrator, Respondents did not participate in the proceedings.

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4.8.2 *Delay prior discharging*

- 377. Arb 9/96: congestion- free pratique delayed; time lost clause applied.
- 378. Arb 3/06: insufficient draft; always accessible- Lt or damages.
- 379. Arb 20/92: delayed acceptance of NOR- sale of cargo issues; Lt apply.
- 380. Arb 11/92: lien- 'all waiting time' discussed; claim for detention.
- 381. Arb 17/17: change of ports- cargo sale issues; detention calculation.
- 382. Arb 13/87: lien- vessel anchored off Port Said; damages claim.
- 383. Arb 3/84: time lost waiting for berth; exceptions apply unless clearly worded.
- 384. Arb 5/12: lien not permitted caused delay prior discharging; damages claim failed.
- 385. Arb 5/88: vessel was ordered to wait outside territorial waters; Lt applied.
- 386. Arb 9/11: delay in berthing due to typhoon; Lt applied.
- 387. Arb 14/05: congestion- the 'time lost clause' considered; Lt applied.
- 388. Arb 18/80: low tide- delay in berthing; Owners' risk no damages.
- 389. Arb 3/17: strike- priority given to other ship; always accessible; damages.
- 390. Arb 3/93: over-stowage of part cargo; time lost waiting counted.
- 391. Arb 7/01: unpaid port dues delayed berthing; Charterers' claim for damages.
- 392. Arb 8/03: waiting pilot for berthing- 'time lost waiting clause'; Lt applied.
- 393. Arb 8/05: anchor issues & delay; NTC till operation commenced.
- 394. Arb 8/14: Lien- waiting off port; TC & Detention considered.
- 395. Arb 11/03: BL were unavailable- vessel waiting off port; detention failed.
- 396. Arb 12/15: delayed arrival affects berthing schedule; Lt applied.
- 397. Arb 14/19: change rotation of disports- Owners' issue; Lt applied.
- 398. Arb 15/01: Novo- awaiting paperwork re cargo; no damages only Lt.

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- 399. Arb 16/04: waiting off Lagos- Congestion or cargo issues?; no damages.
- 400. Arb 18/17: waiting orders re possible change of port; damages.
- 401. Arb 20/14: fault causing consequential delay for part cargo; Lt applied.
- 402. Arb 20/18: lien exercised- vessel was drifting; demurrage claimed.
- 403. Arb 20/18: fumigation and delay prior discharge; demurrage claimed.
- 404. Arb 10/99: port draft restrictions- lightering required; damages claimed.
- 405. Arb 12/05: delay for fumigation prior discharging; Lt applied.
- 406. Arb 21/92: lien- BL issues caused delay; demurrage recovered.
- 407. Arb 23/04: BL not reached the port- delay in berthing; Lt applied
- 408. Arb 21/95: Time spent obtaining port clearance; Lt applied.
- 409. Arb 17/21: Stoppage and lien for unpaid sums in international waters, demurrage applied as per CP.
- 410. Arb 14/21: delay in berthing “sampling is allowed, berthing/discharging is prohibited”. Owners claimed a reasonable remuneration, as the demurrage rate and bunker costs. Tribunal rejected the owners’ submissions. The demurrage rate was a pre-estimate of damages for detention, including bunker costs.
- 411. Arb 21/21: Owners claimed quantum meruit demurrage for delays at the port.
- 412. Arb 31/22: delay pending authorization for cargo samples and analysis. Owners argued it was a charterers’ fault in not giving instructions to take samples. The Owners detention claim failed. However, time lost on arrival was by the charterers to authorities / arrange for samples to be taken, a problem caused by lack of payment for the cargo. Laytime run continuously without interruptions.

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413. 2017 (Jus Mundi): the freight remained unpaid, and the ship spent a period drifting pending the final disport declaration. The voyage continued after charterers provided a letter of guarantee. Damages for detention were agreed upon for the time spent drifting²⁵.
414. 2012(Jus Mundi): owners exercised lien for freight, demurrage and damages. Whilst Owners' right to lien the cargo for demurrage was not operative, they undoubtedly possessed an accrued right to lien the cargo for both freight and also for their "claims for damages" ; *"Lien Clause: The Owners shall have a lien on the cargo and on all sub-freights payable in respect of the cargo, for freight, deadfreight, demurrage, claims for damages and for all other amounts due under this Charter Party including costs of recovering same"*²⁶.
415. 2011(Jus Mundi): When the vessel arrived at the discharging port, neither the freight nor the loading port demurrage had been paid. Consequently, the Owners gave notice and exercised a lien over the cargo on board pursuant to their rights under the charter party. Any delay during discharge was entirely due to the Charterers' failure to pay the freight per the terms of the Charter Party. Thus, the Charterers were liable for any such delay²⁷.

²⁵ Sole Arbitrator

²⁶ Sole Arbitrator

²⁷ Sole Arbitrator

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5. When Time Ends

5.1 Loading or Discharging port

- 416. Arb 4/06: ended with loading; then separate claim for damages.
- 417. HK Arb 1/14²⁸: ended when loading ceased; then damages.
- 418. Arb 6/08: normally Lt or time on demurrage ends with loading.
- 419. Arb 13/17: with physical ops- draft survey and docs NTC; damages failed.
- 420. Arb 27/17: upon completion of discharge; then damages.
- 421. Arb 22/19: 1. when cargo is in position to be safely carried, including re-stowing.
- 422. Arb 22/19: 2. demurrage runs during the final draft survey.
- 423. HK Arb 1/14: when discharge operations ceased.
- 424. Arb 6/92: Lt clock ceased at completion of loading; then damages.
- 425. Arb 7/17: disport demurrage ends with cargo operation; then damages.
- 426. Arb 11/98: with loading- draft survey is not part of the loading.
- 427. Arb 13/17: demurrage ends with loading even if clause states Lt.
- 428. Arb 16/89: ends with loading; waiting for docs is not part of operation.
- 429. Arb 18/05: 1.Yuzhny; ended when papers placed on board-as Lt
- 430. Arb 18/05: 2.For simplicity, accepted to extend Lt or demurrage for this delay.
- 431. Arb 33/04: 1.ends with loading- fumigation is not part of loading; then damages.
- 432. Arb 33/04: 2.discusses the purpose of the final draft survey.
- 433. Arb 9/11: upon final draft survey; vessel was on demurrage.
- 434. Arb 12/87: demurrage ends when discharge completed.
- 435. Arb 18/07: when the loading finished; then claim for detention.

²⁸ Hong Kong Arbitration decision but cited here for reference as it appears to apply the same principles adopted in London Maritime Arbitration.

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436. Arb 20/18: demurrage ends upon completion of fumigation.

5.2 Special cases

437. Arb 24/95: substitute port agreed; ends upon sending departure orders.

438. Arb 6/08: waiting to load further cargo; ends upon sending departure orders.

439. Arb 12/90: pending disport declaration; ends upon sending departure orders.

440. Arb 20/82: demurrage ends on dropping off pilot.

441. Arb 11/97: waiting high tide to depart; owners' risk and owners' time.

442. Arb 23/07: upon final draft survey.

443. Arb 6/12: additional agreement for 2nd port to end on dropping off pilot.

444. Arb 1/10: substitute disport; parties expressly agreed when time to stop.

445. 2022(Jus Mundi): Repudiation of the contract, demurrage ends when it came to an end (claimant accepted the Cancellation Message as wrongful repudiation of the Charter)²⁹.

446. 2019 (Jus Mundi): Repudiation of contract; once the Charter was terminated the right to contractual demurrage ended, losses for delay accruing after the charter terminated were not recoverable as demurrage³⁰.

447. 2017 (Jus Mundi): demurrage calculated up to the Charter's termination date³¹.

²⁹ Two arbitrators.

³⁰ Panel of three arbitrators.

³¹ Sole Arbitrator.

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5.3 Damages for detention

5.3.1 After loading

- 448. Arb 1/09: grounding- whether “always afloat”; no time lost=no damages.
- 449. Arb 6/92: final draft survey ordered by Charterers; damages awarded.
- 450. Arb 9/05: 1.Foreign materials- clausing BL & delay; damages awarded.
- 451. Arb 9/05: 2.Ukraine, consequential delay of bad weather-Owners risk.
- 452. Arb 9/99: cargo documents delay; damages claim basis demurrage rate.
- 453. Arb 5/93: delay in loading- damages claim; voidable for duress.
- 454. Arb 20/04: delay- but no evidence of Charterers’ actions; claim failed.
- 455. Arb 12/07: contamination- clausing MR/ BL; damages claim succeeded.
- 456. Arb 13/17: documentation delay; damages succeeded.
- 457. Arb 16/89: wetted cargo-clausing BL caused delay; damages succeeded.
- 458. Arb 33/04: 1.Fumigation delay- missed tide; damages only for 2 hours.
- 459. Arb 33/04: 2.Damages for detention for draft survey.
- 460. Arb 3/83: master was asked to sign BL inconsistent with CP; delays-damages.
- 461. Arb 18/07: 1.waiting cargo inspector for lack of boat at night; damages.
- 462. Arb 18/07: 2.Implied duty to ensure prompt departure.
- 463. Arb 20/04: cargo being shut out- delay; lack of evidence; damages failed.
- 464. Arb 18/22: delay for cargo documents(fumigation certificate), after allowing 3 hours reasonable time, the difference claimed as damages for detention.

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5.3.2 After Discharging

- 465. Arb 7/17: call a port for Indian formalities; quantum meruit and detention.
- 466. Arb 15/80: re-stowage delayed departure- strike; damages applied.
- 467. Arb 4/06: delay for clearances for Owners' account.
- 468. Arb 2/91: injunction to cargo- detention of ship; charterers matter.
- 469. Arb 13/01: arrest due to cargo claim, damages claim.
- 470. Arb 18/10: detention due to arrest-cargo claim, both liable-time apportioned.
- 471. Arb 11/06: BL issues and delays, damages for detention succeeded.
- 472. Arb 8/14: delay before discharging, Lien, damages succeeded.
- 473. Arb 21/05: competing vessel berthed, delays, damages claim failed.
- 474. Arb 20/92: delay to accept the NOR, damages claim.
- 475. Arb 27/17: cargo shortage, detention, damages claim advanced.
- 476. Arb 12/87: Agents/ consignees delay departure, damages failed.
- 477. 2018(Jus Mundi): Draft restrictions prevented the Vessel from sailing on completion of discharging. Clause 16 covered time lost due to impediments beyond the owners' control preventing the vessel from departing. Delay in sailing was such an impediment and damages for detention were payable³².

³² Sole Arbitrator

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6. Exceptions and Interruptions

6.1 Burden of Proof

- 478. Arb 9/03: on charterers to show why labor refused to work; strike argued.
- 479. Arb 3/84: on owners for construction of 'any time lost waiting for berth' clause.
- 480. Arb 21/19: on charterers to bring themselves within the weather exceptions.
- 481. Arb 8/16: on charterers to support rain in inconsistent SOF.
- 482. Arb 9/11: on charterers to rely on weather exception.
- 483. Arb 13/17: on charterers to rely on weather exception.
- 484. Arb 14/05: on charterers to show loss due to deficiencies-technical issues.
- 485. Arb 16/80: on charterers to get within the exception- shifting time.
- 486. Arb 6/04: on charterers to rely on holiday exception.
- 487. Arb 7/00: on owners to rely on cl.2 Gencon exceptions; contamination.
- 488. Arb 14/19: on charterers to prove draft survey as exception.
- 489. Arb 22/19: on owners to prove fumigation took less time or re-berth delayed.
- 490. Arb 6/11: on charterers to prove shore or weather delays occurred.
- 491. Arb 10/99: on charterers to prove fault on the part of the ship.
- 492. Arb 14/15: on charterers to prove issues of vessels' cranes.
- 493. Arb 3/15: on charterers to bring themselves within the force majeure clause.
- 494. Arb 4/92: on charterers to raise at least a *prima facie* case of unseaworthiness.
- 495. Arb 5/94: on charterers to prove link between weather and the result of it.
- 496. Arb 16/15: on charterers to establish fault when there is cargo damage.
- 497. Arb 22/95: on charterers to show breach of Owners' obligations- fault.

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- 498. Arb 12/97: on charterers to prove crane b/downs vs cargo availability.
- 499. Arb 16/97: on charterers to show rain/ bad weather suspended operation.
- 500. Arb 7/17: vague and unsupported assertions will not discharge the burden.

6.2 Weather

- 501. Arb 5/94: stevedores stopped working; bees are not 'weather' - TC.
- 502. Arb (1981) 32 LMLN 3: 'rough weather'; swell is not bad weather *per se*.
- 503. Ibid: "stormy weather" considered; rain interrupted Lt while waiting at roads.
- 504. Arb 8/82: high swell analogous to storms; bad weather- Surf considered; NTC.
- 505. Arb 13/95: weather working day vs working hours considered.
- 506. Arb 1/89: currents³³causing high swell; an exceptional case.
- 507. Arb 7/92: 'bad swell'- port closure and vessel ordered to leave berth; NTC.
- 508. Arb 11/10: heavy swell- vessel leaved the berth; NTC.
- 509. Arb 21/00: rain & awaiting berth; SOF was unhelpful if ops suspended; TC.
- 510. Arb 10/02: fog prevents shifting- not operation & SOF stated 'weather delay'; TC.
- 511. Arb 6/12: Discuss how "all time" or "without interruption" is interpreted; TC.
- 512. Arb 21/19: Hurricane- not a bad weather exception but 'other reasons' exception.
- 513. Ibid: time lost due to anticipation of bad weather discussed.
- 514. Arb 8/16: rain considered as an exception; burden upon Charterers.
- 515. Arb 9/11: typhoon- delay in berthing; evidential issued considered; TC.
- 516. Arb 13/17: drizzle & light rain not affected operation; TC.

³³ This matter discussed in a Baltime form CP. No relevant award found that considered currents to be 'bad weather' in the context of a laytime clause in a voyage CP; while this matter has been decided in numerous cases in the context of a speed and consumption clause in a time charterparty.

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- 517. Arb 16/86: WWD 24 hours: rain at night; NTC.
- 518. Arb 17/04: STS & bad weather; basis addendum agreed then TC.
- 519. Arb 25/16: bad weather while waiting berthing; SOF was silent; TC.
- 520. Arb 6/04: Novorossisk; light rain & bad weather- evidential issues; NTC.
- 521. Arb 7/04: environmental reasons: winds > 3m/sec and/or 6m/sec, NTC.
- 522. Arb 12/19: 1. threat of bad weather is not bad weather; TC.
- 523. *ibid*: 2. bad weather during STS ops; WWD considered; TC.
- 524. Arb 12/19: 3. distinguishes weather exception to interruption³⁴.
- 525. Arb 13/1: Ice clause- waiting ice-breaker & navigation; partially NTC.
- 526. Arb 23/04: heating holds fall under WWD; NTC.
- 527. Arb 13/19: when Hurricane conditions had abated then TC.
- 528. Arb 16/15: stormy winds affecting pilot schedule; no time lost.
- 529. Arb 6/11: weather delays or shore delays; evidential issues considered; TC.
- 530. Arb 12/97: rain period not accepted; SOF considered.
- 531. Arb 16/97: rain periods- bad weather; lack of evidence - TC.
- 532. Arb 10/04: WWD; weather does not affect all cargoes; if it does- NTC.
- 533. 2011(Jus Mundi): charterers wrongly excluded rain periods while the ship was on demurrage³⁵.

6.3 Holidays

- 534. Arb 7/07: Holiday in Lagos; Bimco & contradicting evidence discussed; NTC.
- 535. Arb 18/87: if 'legal holiday', overtime rates; other terms considered; TC.

³⁴ This is relevant to the burden of proof.

³⁵ Two Arbitrators.

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- 536. Arb 33/04: if 'local, legal, CP holiday'; evidence considered; NTC.
- 537. Arb 8/14: Load rate SHINC vs Lt clause; later provision prevail; NTC.
- 538. Arb 8/95: 26 Dec whether a holiday rejected for NOR tendering.
- 539. Arb 13/17: whether Saturday is holiday is fact sensitive; found as working day.
- 540. Arb 8/16: whether official public holiday; evidence considered; TC.
- 541. Arb 23/87: legislative enactments; overtime not a decisive factor; NTC.
- 542. Arb 4/05: terminal elevator; Bimco calendar- official tariff- overtime; NTC.
- 543. Arb 6/04: contradicting evidence provided- Charterers failed; TC.
- 544. Arb 18/05: Based on Charterers' evidence, it was a national holiday; NTC.
- 545. Arb 15/97: 1.Saturday not holiday; Bimco calendar considered.
- 546. Arb 15/97: 2.Signed SOF stating holiday had no effect on laytime.

6.4 Weekend periods

- 547. Arb 7/97: whether Saturday noon or 1700hrs to apply; the latter prevailed.
- 548. Arb 6/91: inconsistent NOR & Lt clause; exception only to NOR.
- 549. Arb 1/00: time preceding holiday considered; Muslim countries.
- 550. Arb 2/95: whether Saturday noon or Friday 1700; Sat noon agreed.
- 551. Arb 8/80: half day used and found it was not a holiday; TC.
- 552. Arb 8/95: business hours; Saturday is normal working day.
- 553. Arb 21/87: '5.00 pm to 8.00' am as a daily exception rejected.
- 554. Arb 25/16: Saturday noon means from 1200hrs.
- 555. Arb 8/14: load Rate SHINC & Lt clause "Sat noon till Mon 8AM"; NTC.

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6.5 Force Majeure

556. Arb 5/94: stevedores stopped work due to bee swarm; not FM.
557. Arb 3/15: due to dust the authorities suspended operation; not FM.
558. Arb 16/15: the authorities ordered un-berthing; no 'restraint of princes' or FM.
559. Arb 5/16: 'governmental authorities'- Navy suspends operation; no FM.
560. Arb 2/12: no FM clause inserted in CP; Earthquake delays discussed; not FM.
561. Arb 7/04: "the restraints of rulers.." considered for weather delays; not FM.
562. Arb 12/19: closing the Kerch Strait; no causal connection; not FM.
563. Arb 13/19: hurricane damaged cargo; 'Act of God' argued; not FM.
564. Arb (1981) 32 LMLN 3: Surf or swell are part of normal business risks; not FM.
565. Arb 5/96: shippers' failure to provide cargo; FM elements discussed; not FM.
566. Arb 9/03: bomb explosion whether "an act of public enemies"; not FM- TC.
567. Arb 21/19: hurricane- anticipation of a FM event is not FM.
568. Arb 3/21: hindrance of navigation, delay in bringing cargo to the vessel, flood, not FM. Charterers failed to show that delays were unavoidable.
569. 2010(Jus Mundi): Charterers submitted no evidence to support a frustration/force majeure argument. No statements or documents emanated from the Government of Gujarat evidencing a general ban on the export of bauxite. There was nothing. If, as rumors would apparently have it, the problem lay at the Charterers' door by reason of their failure to pay necessary royalties, that would wholly negate any argument based on hesitation in concluding that the case for frustration or force majeure has not been made out and therefore fails³⁶.

³⁶ Sole Arbitrator.

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570. 2009 (Jus Mundi): The Charterers' relied on an embargo imposed by a local government, which ended the COA. Therefore, the Charterers' reliance on force majeure to bring the COA to an end appears to fail at the first hurdle since there was no applicable provision in the COA. The final paragraph of clause 20 of the COA provides as follows: *In case any acts of God, riots, civil commotions, fire or any other causes comprehend in the Force Majeure terms which may delay or prevent or provide the cargo at the port of load/discharging of the cargo, such time lost is not to count as laytime as neither Charterers nor Shipper nor Supplier nor Receivers shall be liable for any loss of demurrage unless Vessel already on demurrage. Once on demurrage always on demurrage*³⁷.

571. 2011(Jus Mundi): the unavailability of cargo was not intended to be an additional force majeure event. The alleged Government prohibition, even if proved- which is not- is not one of the force majeure events listed.³⁸

6.6 Beyond Charterers control

572. Arb 1/12: congestion is not an exception under this heading.

573. Arb 2/94: whether shore breakdowns are exceptions; partially TC.

574. Arb 23/07: shore delays are not exceptions under this heading; TC.

575. Arb 1/09: "Awaiting trucks-stevedores"; "Shortage of dock personnel"; TC.

576. Arb 11/95: 'obstructions'; 'lack of cargo'- 'lockout'; elevator problems; TC.

577. Arb 7/17: meaning "any delay whatsoever not caused by the Owner"; TC.

578. Arb 11/97: delay in sailing; whether blow of tide or bad weather beyond control.

³⁷ Sole Arbitrator

³⁸ Sole Arbitrator

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579. Arb (1981) 32 LMLN 3: swell or surf did not fall under “beyond control”; TC.

6.7 Strikes

580. Arb 5/98: requires clear wording general exceptions to apply to Lt; TC.

581. Arb 9/03: stevedores’ refusal to work found not being a strike; TC.

582. Arb 9/17: Chittagong- strike by lighter barge; Gencon clause; TC.

583. Arb 15/80: cargo re-stowage- subsequent strike-delay; damages claimed.

584. Arb 3/17: port workers stopped working; Always accessible clause; TC.

585. 2011 (Jus Mundi): At the discharge port, laytime began to run at 1400 on 4 November. A strike, of which Charterers had prior notice, started at 0800 on 6 November and ended at 0800 on 8 November. According to Owners' calculations laytime was only claimed at 50% whilst the strike continued. The vessel came on demurrage at 0130 on November 7. Although the strike ended at 0800 on 8 November, rain did not permit discharge. Owners' statement correctly shows demurrage as running during the rain period. On the other hand, charterers did not allow any time for the strike and disallowed the rain stop period on 8 November. According to Clause 16 (b), The General Strike Clause, time counts until expiration of the stipulated time allowed for discharge and thereafter at half demurrage until the strike terminates. Notwithstanding Owners' entitlement to claim in full during the laytime period, they only claimed at 50%. Once again, there were no obvious errors in the Owners' calculation, and demurrage was allowed as claimed³⁹.

³⁹ Two Arbitrators.

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6.8 Shifting

- 586. Arb 8/14: shifting time TC when the CP is silent on this point.
- 587. Arb 13/1: shifting; ice clause- waiting time for icebreakers.
- 588. Arb 8/16: WIPON clause considered; shifting NTC.
- 589. Arb 23/07: river port; shifting starts from 'moving' not from pilot on board.
- 590. Arb 16/80: shifting from anchorage to berth; WIBON clause; TC.
- 591. Arb 17/97: part cargo; actual shifting time between berths NTC.
- 592. Arb 18/17: time spent waiting for the pilot not owners' account
- 593. Arb 23/07: delay after shifting 'preparing loading' TC.
- 594. Arb 22/19: the shifting ends with all fast not 1st line ashore.
- 595. Arb 27/91: all terms considered, CP was silent; NTC.
- 596. Arb 18/05: the shifting between berths NTC.
- 597. Arb 18/05: shifting to 3rd berth not agreed in CP; TC.
- 598. Arb 18/07: Shifting off berth to allow warship to berth; damages.
- 599. Arb 18/17 & 18 / 07: discuss issues about pilot arrangements.
- 600. Arb 4/06: shifting to berth excluded even on demurrage.
- 601. Arb 5/16: shifting ordered by authorities; vessel on demurrage; TC.
- 602. Arb 16/15: involuntary shifting and other ship berthed; TC.
- 603. Arb 21/00: vessel ordered to a 3rd port; shifting to 3rd port to TC.
- 604. Arb 10/02: shifting period when on demurrage; CP refers to 'shifting time'; TC.
- 605. Arb 3/21: vessel was to discharge in one port but the charterers/ receivers ordered to discharge at a 2nd port and entered into a new agreement through an

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addendum that did not provide that demurrage continued to run between the two.

Demurrage applied for the shifting time between two ports (*The Tassos N* [1983] 1 *Lloyd's Rep* 648).

606. 2011(Jus Mundi): Whilst the shifting between anchorages continues to count as demurrage, the time spent shifting from the anchorage to the berth does not count. There was no indication in that clause that time not to count only applied to laytime and it must therefore also suspend time on demurrage.⁴⁰

6.9 Draft survey

607. Arb 9/11: final survey- cl stating 'for the account of the vsl'; NTC.

608. Arb 9/11: 2nd port on demurrage - initial and final survey; TC.

609. Arb 14/19: intermediate draft survey- CP silent or who ordered it; TC.

610. Arb 22/19: demurrage runs during final draft survey.

611. HK Arb 1/14: initial survey 'NTC as Lt'; but when on demurrage TC.

612. HK Arb 1/14: final draft survey as a damages claim.

613. Arb 6/92: final draft survey originated by Charterers; damages for detention.

614. Arb 11/98: final draft survey is not part of loading operations; NTC.

615. Arb 23/07: final draft survey NTC.

616. Arb 33/04: discusses the purpose of the Final survey; as damages.

6.10 Open hatch

617. Arb 13/02: 'time to open hatches'- SOF was silent; TC.

618. Arb 20/14: Master refused to open hatch is fault; NTC.

⁴⁰ Sole Arbitrator

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- 619. Arb 18/05: prorate time applied basis open hatches.
- 620. Arb 23/07: delay after hatch open- delay not for 'Owners'/ vsl requirements'; TC.

6.11 Other

- 621. Arb 9/11: entry formalities at berth; TC.
- 622. Arb 5/12: describes the difference between an exception and interruption.
- 623. Arb 25/16: when the SOF states to 'No work' it is ambiguous; TC.
- 624. Arb 7/04: general exceptions should be clear to apply to Lt.
- 625. Arb 11/08: charterers alleged 'lockout' of cargo at load port; this failed.
- 626. Arb 12/19: distinguish weather exception to interruption.
- 627. Arb 13/19: general exceptions should be clear as to apply to Lt or demurrage.
- 628. HK Arb 1/14: Lt is separate from demurrage; time counts.
- 629. Arb 22/19: when 'for Owners account or cost' this does not cover laytime("LT")
- 630. Arb 22/19: CP is silent on time for unlashng cargo; time counts.
- 631. Arb 27/91: when time agreed to count for other matters and not for this; it means
NTC –shifting.
- 632. Arb 27/91: clause was dealing with expenses only but the time excluded as well.
- 633. Arb 33/04: CP silent on fumigation time- not part of operation; damages.
- 634. Arb 13/1: CP silent on time waiting ice breaker; absent clear words NTC.
- 635. Arb 18/07: the clause 2 of Gencon general exceptions discussed.
- 636. Arb 5/16: cannot rely on exceptions to excuse consequences of own breach.
- 637. Arb 23/95: cargo damage; Gencon clause 2 general exceptions discussed.
- 638. Arb 25/16: absent clear wording no interruptions should stop the LT running.

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639. Arb 3/84: discusses “Any time lost in waiting for berth . . . to count in full.”

6.12 Owners breach or fault⁴¹

640. Arb 8/07: time for extra measuring of cargo, NTC (Not to Count).

641. Arb 14/96: vessel offered obstructed holds; demurrage reduced.

642. Arb 21/03: LOI- BL issues; whether unreasonable conduct; demurrage reduced.

643. Arb 18/05: master stopped loading to recalculate loading plan; NTC.

644. Arb 7/07: loading stopped due to frozen ballast; no fault and TC (Time counts).

645. Arb 4/14: operation stopped- suspected cargo contamination; no fault= TC.

646. Arb 20/14: master failed to discharge part cargo-caused delay; demurrage runs.

647. Arb 12/15: consequential delay: fault & loss should be concurrent to succeed.

648. Arb 29/84: crew matters: delayed departure LP= delay in DP; demurrage runs.

649. Arb 13/01: the damaged cargo was unrelated to fault of the ship.

650. Arb 23/07: alleged crane issues; no time was lost.

651. Arb 5/94: stevedores reasonably stopped operation; no breach.

652. Arb 6/08: alleged cargo gear defective: evidence; no proven time “thereby lost”.

653. Arb 6/08: bad stowage causing delay: failed on causation- no time lost.

654. Arb 8/16: crane breakdowns: no evidence of time lost.

655. Arb 8/96: other cargo loaded in one hold so less holds offered; no breach.

656. Arb 14/05: gyro & technical issues: no proof = no fault; TC.

657. Arb 14/05: law recognized breakdowns might occur without breach or fault.

658. Arb 14/05: fortuitous breakdown is not sufficient to stop time counting.

⁴¹ This is Charterers’ usual defence; counter-claim to Owners’ demurrage or detention claim.

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- 659. Arb 24/95: delayed departure to proceed to alternative port; NTC.
- 660. Arb 25/16: SOF stated 'no work': absent evidence of fault; TC.
- 661. Arb 1/09: ship's gear defective-low speed: evidential issues; no time lost proved.
- 662. Arb 6/04: crane 'disablement' meaning; shore cranes used- no time lost; TC.
- 663. Arb 7/01: unpaid port dues causing berthing delay-owners breach; NTC.
- 664. Arb 7/82: holds rejected by USDA- delay in berthing; TC.
- 665. Arb 8/05: speed claim- delayed berthing at DP; no defence to demurrage claim.
- 666. Arb 12/15: failing to prosecute voyage with despatch= delayed berthing; no fault.
- 667. Arb 13/02: Lagos, the unsealing survey is part of operations; no delay- no fault.
- 668. Arb 14/19: whether owners delayed to release BL promptly considered.
- 669. Arb 16/19: anchor issues- waiting time for spare parts before berthing; NTC.
- 670. Arb 17/92: holds rejection: time from rejection till acceptance NTC.
- 671. Arb 18/92: holds rejection: time from rejection till acceptance NTC.
- 672. Arb 20/14: masters' refusal to open hatch is a 'fault'- NTC.
- 673. Arb 20/18: delay after fumigation: no fault proven; demurrage uninterrupted.
- 674. Arb 22/19: slow discharge- mixing of cargo- physical barrier; partially TC.
- 675. Arb 7/17: dissatisfaction for the master not a sufficient exception i.e. 'deficiency'
- 676. Arb 10/99: SOF is silent regarding the alleged owners' refusal to discharge; TC.
- 677. Arb 11/03: Owners delaying berthing due to un-availed BL; owners' fault.
- 678. Arb 16/15: ingress of water on loading allegedly delayed discharging; TC.
- 679. Arb 1/91: retain ballast for safety reasons; inspection-deballasting; TC.
- 680. Arb 21/16: holds rejection- the consequential berthing delay rejected; TC.
- 681. Arb 4/05: 1. New Orleans; NOR under arrest lifted promptly- no delay; TC.

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682. Arb 4/05: 2. But if the arrest delayed her departure; Lt ends with loading.
683. Arb 22/95: crane issues: CP silent on Lt prorating- no breach proved; TC.
684. Arb 6/11: Canada; excessive air draft is “responsibility of the vessel”; NTC.
685. Arb 12/97: crane issues & availability of trucks- evidential matters; TC.
686. Arb 14/15: alleged ship’s crane issues- shore cranes in substitution; TC.
687. Arb 23/95: alleged cargo damage slowed operation- disallowed; TC.
688. Arb 8/08: shifted to take bunkers while waiting berthing- no delay; TC.
689. Arb 3/21: Whether masters’ refusal unreasonable conduct to load from barge amounted to “fault”; there was no fault on the part of the owners, TC.
690. Arb 3/21: Stevedores were under the control of the master so their refusal to discharge was “owners’ fault” was rejected. The vessel did not discharge as there was no vacant warehouse and vessel instructed to move to anchorage to avoid charges/ fine.
691. Arb 3/21: The authorities refused to permit the vessel to berth pending the results of sample analyses following the rejected cargo. Charterers have failed to demonstrate fault and discharge their burden. Time counted (TC).
692. Arb 20/21: Vessel dropped anchor due to bad weather for safety reasons not a fault.
693. Arb 12/22: owners refused berthing due to potential delays as the storage yard was full. The owners were not entitled to insist charterers pay extra berthing charges or no allow berthing of the ship. Owners breached their obligation to have their vessel available whether called or not to perform cargo operations (The Stolt Spur was considered)

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694. Arb 6/23: charterers have failed to identify any fault against the owners. COVID-19 contributed to delays in spares/ personnel. The parties did not refer to principles on “fault” in their submissions. Consequential loss of time was not recoverable under the doctrine of “fault”.

6.12.1 Unseaworthiness

695. Arb 4/92: engine issues- delay- infestation- fumigation; demurrage accrued.

696. Arb 16/97: master refused to load deck cargo; not a fault.

697. Arb 8/05: breach of speed warranty caused delay upon arrival; TC.

698. Arb 29/84: no Ch. Engineer- Owners breach; measure of loss-notional Lt.

699. Arb 8/05: loss of ship’s anchors; vessel is not unseaworthy.

700. Arb 2/83: ballasting caused cargo damage; Hague rules as defence discussed.

701. Arb 7/00⁴²: contamination- if cargo-worthy; evidential issues; general exceptions.

702. Arb 14/07: holes in pontoons - hatch is not watertight; unseaworthy.

703. Arb 6/23: engine damages/ repairs prolonged the voyage, causing delay after arrival to discharge the cargo. Whether the ship was seaworthy. As found the engine performed normally on departure, with her class and P&I Documentation in place.

6.12.2 Lien

704. Arb 21/92: issues with BL-not duly endorsed-whether lien exercised; TC

705. Arb 8/14: lien lawfully exercised; demurrage or damages awarded.

706. Arb 11/92: ‘all waiting time’ for payment as detention; no exceptions to apply.

⁴² A correction issued to this award that the ‘charterers’ claim for damages succeeded’. See (2000) 543 LMLN 4

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707. 2017 (Jus Mundi): the freight remained unpaid and the ship spent a period drifting pending final disport declaration. Voyage continued after charterers provided a letter of guarantee. Damages for detention agreed for the time spent drifting⁴³.
708. 2012(Jus Mundi): owners exercised lien for freight, demurrage and damages. Whilst Owners' right to lien the cargo for demurrage was not operative, they undoubtedly possessed an accrued right to lien the cargo for both freight and also for their "claims for damages" ; *"Lien Clause: The Owners shall have a lien on the cargo and on all sub-freights payable in respect of the cargo, for freight, deadfreight, demurrage, claims for damages and for all other amounts due under this Charter Party including costs of recovering same"*⁴⁴.
709. 2011(Jus Mundi): When the vessel arrived at the discharging port, neither the freight nor the loading port demurrage had been paid. Consequently, the Owners gave notice and exercised a lien over the cargo on board pursuant to their rights under the Charterparty. Any delay that occurred during discharge was entirely due to the Charterers' failure to pay the freight in accordance with the terms of the Charter Party and thus the Charterers were liable for any such delay⁴⁵.

6.13 Charterers issues

710. Arb 19/80: dispute with receivers- discharge stopped; damages claim.
711. Arb 5/82: BL & indemnity issues- master suspended ops; both parties at fault.
712. Arb 22/03: unpaid freight- lien- operation stopped; TC.

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⁴⁴ Sole Arbitrator

⁴⁵ Sole Arbitrator

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- 713. Arb 15/80: re-stowage of cargo caused departure delay; damages claimed.
- 714. Arb 20/18: customs clearance delayed; demurrage claimed.
- 715. Arb 2/91: cargo injunction- detention; damages awarded.
- 716. Arb 7/02: BL not available at port- no LOI given; damages awarded.
- 717. Arb 12/05: ineffective fumigation at LP caused extra fumigation at DP; TC.
- 718. Arb 12/87: delayed departure by receivers/ agents; no fault of Charterers.
- 719. Arb 5/16: cargo permits issue- failing to arrange discharge of cargo; TC.
- 720. Arb 21/92: BL issues- cargo docs not in order upon arrival; demurrage.
- 721. Arb 9/03: Lagos; bomb explosion- 'labour unrest'; lack of evidence; TC.
- 722. Arb 6/08: delay at disport for re-bagging & collect spilt cargo; LOI given.
- 723. Arb 3/21: time spent waiting at roads due to charterers' failure to provide signed and stamped LOI. Time counted ("TC").

6.14 Once on demurrage

6.14.1 Always on demurrage

- 724. Arb 11/08: exceptions as 'lockout' apply only to Lt not to demurrage.
- 725. Arb 20/18: fumigation and delay prior discharge; TC.
- 726. Arb 22/19: demurrage runs during final draft survey.
- 727. Arb 22/19: demurrage runs during lashing deck cargo.
- 728. HK Arb 1/14: Initial draft survey; vessel on demurrage; TC.
- 729. Arb 7/17: deficiency of master; demurrage runs absent exception.
- 730. Arb 5/16: intervention of the authorities; demurrage runs.
- 731. Arb 9/11: 2nd port on demurrage; initial and final survey; TC.

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- 732. Arb 5/16: shifting ordered by authorities; vessel on demurrage; TC.
- 733. Arb 12/97: bad weather periods; vessel on demurrage; TC.
- 734. Arb 21/00: rain periods; when on demurrage no exceptions apply; TC.
- 735. Arb 10/02: shifting period; CP excludes 'shifting time' not demurrage; TC.

6.14.2 Not Always on demurrage

- 736. Arb 4/06: shifting excluded when clause stated 'not to count'.
- 737. Arb 13/17: time for cargo docs suspended demurrage.
- 738. HK Arb 1/14: final draft survey excluded from demurrage; damages claim.
- 739. Arb 20/82: owners' matters; change of vessel's name delayed departure; NTC.
- 740. Arb 8/14: shifting anchorage –roads-inner anchorage is part of voyage; NTC.
- 741. Arb 16/15: ingress of water caused delay; if Owners' fault then NTC.

PART B: TANKERS

LAYTIME & DEMURRAGE- DETENTION CLAIM

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1. The Charterparty

1. Arb 1/17: the CP was silent on who will bear the loss of time for docs after discharge, while there was agreement for the loading. No reason to imply such provision for disport.
2. Arb 2/08: “Pier dues”: conflict between printed and typed terms. Amended printed term prevails. Latter provisions in CP prevail over former.
3. Arb 3/18: “Time bar”: no implication allowed determining a putative date of completion in case of repudiation.
4. Arb 3/96: “Jurisdiction”: meaning of ‘London for CP’; typo errors discussed- whether the base CP ‘London Form’ incorporated.
5. Arb 4/16: base rate was on Worldscale 275. Addendum considered for construing an additional freight provision when the ship called more disports.
6. Arb 18/89: “Time Bar”: the obligation to provide docs that do not exist cannot stand by implication.
7. Arb 4/98: “Time bar”: similar view endorsed as in 18/89 above.
8. Arb 6/84: “Gas Free certificate condition to laytime”: parties should carry out their obligations under the contract which overrode the terms breached.
9. Arb 7/91: printed and typewritten provisions reconciled to consider if weather exceptions apply to damages claim; breach of “reachable on arrival”.
10. Arb 9/15: “Rectification”: construction of relevant clause; brokers’ email message; *Chitty on Contracts* cited, *The Rainy Sky* applied.

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11. Arb 10/06: addendum considered to determine validity of NOR at load port and the requirements of tank readiness.
12. Arb 10/11: “Port charges”: whether separate agreement reached via exchange of emails; construction of “Amoco Claims Clause”; deletion of words; *ejusdem generis* principle. Claim was time-barred.
13. Arb 10/89: construction of clause related to ‘half-rate demurrage’. Clause read in the light of the rest of the charter and found against the Owners.
14. Arb 10/96: rectification allowed amending the ETA date 23 Nov to 20 Nov.
15. Arb 11/89: Master did not register the ship to the port authority upon arrival. The implied term that master should have called the port authorities and make actions for prompt berthing was rejected.
16. Arb 12/06: whether NOR received. Shippers’ sales terms did not form part or incorporated into the charter. The terminal is the Charterers’ agent and the NOR was properly accepted.
17. Arb 12/06: no implied warranty that the ship can load at any rate at which the cargo offered.
18. Arb 13/82: vessel unable to de-ballast due to crew negligence. Whether the Hague rules incorporated into CP. Seaworthiness & maintenance obligations considered along with relevant exceptions.
19. Arb 13/89: no agreement reached on reduction of the demurrage rate basis some causes in the relevant clause. The tribunal was unwilling to insert a figure and write the contract for the parties.

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20. Arb 14/06: “cargo discoloration”: Charterers refused to discharge pending security. No such right existed in the CP or could be implied. It would contradict the Charterers’ express requirement to take timely delivery of cargo.
21. Arb 14/14: whether arbitration clause incorporated into the CP: signed or oral agreement is binding under English law.
22. Arb 14/85: larger ship used: how to calculate the demurrage rate. The tribunal felt unwilling to imply terms and re-write the contract for the parties. The producers’ general terms and conditions considered.
23. Arb 17/05: whether any warranty for loading rate applied; Gas Form C considered but not deemed incorporated so that Charterers can rely on it.
24. Arb 18/04: construction of exception clause: any ambiguity to be resolved against the Charterers. Implication that would result to re-write the contract rejected.
25. Arb 19/18: references to articles on website are more of a commentary on commercial chartering practice rather than assessment of the law.
26. Arb 19/98: the owners relied on implied term that they would be compensated on a *quantum meruit* for all the waiting time and allowed.
27. Arb 20/10: the charterers were under an implied obligation not to ship dangerous goods without the knowledge and consent of the owners.
28. Arb 21/07: departure delay: oral agreements between agents cannot vary the terms of the charter and impose other obligations. Should that be required then agreement from the owners should be obtained.
29. Arb 27/04: ‘Construction of early loading clause’: the presumption that the words used are surplusage is not a permissible approach.

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30. Arb 9/01: master failed to provide protest letter when less cargo loaded. It is not to be implied that any liability for dead-freight is conditional to providing letter of protest timely. The *Ionian Skipper* was considered.
31. Arb 18/91: construction of a time-bar clause. Words to be strictly construed against the party seeking to rely upon them.
32. Arb 28/92: implied term that laycan was extended basis the steaming time needed the vessel to reach the port nominated by the Charterers, while parties reached an additional agreement basis addendum, was rejected.
33. Arb 26/98: the ship was fixed for two berths. Receivers asked the ship to use a third berth. Costs and demurrage claimed. Charterers said that this was a direct agreement with receivers and no demurrage is payable by them. Charterers relied on silence as acceptance which was rejected basis the contract law principles. Any relation is contractual between the owners and the charterers; not with the receivers.
34. 4/91: This implies that the charterers warrant the berth accessible whenever the owners choose to discharge there. Different views were expressed between arbitrators.

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2. When Time Starts

35. Arb 3/18: it was rejected that tank cleaning was in progress upon tendering NOR basis the log entries; cargo record book and cleaning tank plan. The NOR was not recorded in log book but this was of no significance.
36. Arb 4/14: Congo; NOR at Banana PS (75 nm away)- then vessel arrived at Boma. Guide to port entry considered & the 'Lord Reid's test' applied; NOR invalid.
37. Arb 6/84: "Reachable on arrival"- Gas Free certificate delayed due to weather as to send a surveyor at the anchorage. Demurrage awarded for this delay.
38. Arb 6/85: berthing delay due to bad weather- obligation to procure a berth reachable on arrival still exists- The *Laura Prima* considered.
39. Arb 7/85: whether a NOR tendered by cable was 'received'. The majority found that three hours reflects an appropriate delay between sending and receiving such notices.
40. Arb 7/87: Delay in berthing due to weather and lack of tugs. Discussion on The *Laura Prima* (distinguished) & exceptions under cl 6 of ASBATANKVOY, NTC.
41. Arb 7/88: Nor tendered while cleaning cargo tanks in progress. Subsequent evidence considered; 1st NOR was invalid. No 2nd NOR tendered later but the masters' message was sufficient (acting as NOR) plus 2 hours allowance for receipt of the cables.
42. Arb 9/98: Free pratique obtained after all fast. Free pratique is only a formality; it does not nullify the NOR. The *Delian Spirit* & The *Petr Schmidt* considered.

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43. Arb 9/98: disport delay in lightering: The *Laura Prima* does not offer protection; separate laytime regime for lightering; whether estoppel by convention –conduct of parties considered.
44. Arb 10/06: pre-loading inspection showed traces of ammonia; whether it was ‘ready to load’- basis the requirements in the Addendum the NOR valid. Night time restrictions to berth considered; TC.
45. Arb 10/85: Kharg Island; NOR tendered at Sirri Island- actual shifting time NTC; waiting time at customary anchorage TC.
46. Arb 10/91: issues with the ship’s pumps prevented the discharging for about 43 hrs; Owners are in breach.
47. Arb 10/96: the vessel failed a tank inspection; required cleaning- not ready to load.
48. Arb 11/84: berthing delay due to weather; whether “reachable on arrival”; arbitrator said that it is only sensible to have a berth available so that there is no delay after the weather improved-allowing berthing.
49. Arb 11/89: master tendered NOR but he had not registered the ship to port authorities. The NOR was valid and there was no such requirement even by implication.
50. Arb 11/99: inspectors found tanks not ready; evidence considered; NOR tendered when tank washing in progress; taking on samples delayed loading- No valid NOR tendered; when time starts?- when the hoses in readiness.
51. Arb 11/99: the pump and line not flushed; NOR invalid when tendered.
52. Arb 12/06: Ras Tanura; the words ‘customary anchorage’ to be read fairly broadly; the entry buoy was the relevant place for NOR purposes. The NOR received by

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terminal being Charterers' agent. Shippers' acceptance or their terms did not form part of charter as to amend the requirements of NOR.

53. Arb 12/99: geographical rotation: nomination of load ports caused delay. The tribunal had to decide where the breach or loss lies and found on the charterers.
54. Arb 13/82: seaworthiness and Hague Rules considered. Vessel to be ready and fit for her duty, de-ballast time before loading.
55. Arb 14/14: CP refers to 6 hours turn time unless used. Time to count when hoses attached.
56. Arb 14/87: NOR given to shippers or consignees considered valid though not tendered to the "Charterer or its agent". No complaint ever raised by the charterers for the notices.
57. Arb 15/86: tanks inspected and rejected after the NOR was accepted. No waiver; Initial NOR is invalid. Lt starts upon inspection and agreement to load cargo of different specification.
58. Arb 16/05: STS Lt regime; estoppel failed; no evidence produced showing that the initial NOR transmitted- the SOF considered. The NOR was considered as given when it was received. NOR at EOSP is invalid. No valid NOR given so Lt starts with discharge.
59. Arb 17/05: NOR prematurely tendered and was not valid. Lt starts when discharge began.
60. Arb 19/04: customs clearance obtained with delay. The NOR was valid since no clearance failed thereafter.

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61. Arb 19/05: vessel was to load at two ports. Tanks inspected and found not ready at 1st port but concerned tanks that would be loaded at 2nd port. Obligation to have only those tanks ready to load at this particular port- NOR valid. Arb 27/92 followed.
62. Arb 19/10: vessel arrived at Morong PS; tendered NOR and then shifted to inner anchorage. Substantive evidence cited and showed that the NOR was invalid when tendered. No further NOR tendered so Lt starts upon operation.
63. Arb 20/98: CP clause states 'the Master ... shall give the charterer ... notice'. Albeit the notice provided to local agents and shippers those were Charterers' agents. NOR valid.
64. Arb 21/07: delay at loading port allegedly affected berthing delay at disport. This consequential delay was rejected.
65. Arb 21/07: Lagos- NOR tendered 50nm south of pilot station; bunkering conducted; vessel was outside port limits. Whether this was a customary anchorage. Discussion about practices while waiting adrift in Lagos, NOR valid.
66. Arb 26/89: Premature NOR: NOR tendered not within the commercial limits of the port. Additional NOR should have been tendered (The *Massalia* (No. 2); The *Mexico 1* considered). Considering the facts, the Charterers waived their right to fresh notice.
67. Arb 27/04: the vessel completed loading before laydays. Early loading considered. The 'benefit' of Charterers ceased upon loading completed and not at the start of laydays.
68. Arb 27/92: NOR tendered with slops retained in one cargo tank. Charterers changed their minds and instead of loading at two ports loaded at one port,

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requiring all tanks to be ready. What matters is the state of affairs at the time the NOR tendered. The initial NOR was valid (The *Tres Flores* distinguished).

69. Arb 2/90: delay in berthing due to strike (cl 8). Breach of 'reachable on arrival' proviso; but cl 8 operated to excuse Charterers to pay demurrage. The *Laura Prima* & *Johs Stove* considered.
70. Arb 11/82: delay in berthing due to lien exercised for unpaid freight. Meaning of 'breaking bulk'; Owners claimed demurrage for the delays.
71. Arb 4/93: delay in berthing due to weather. Whether breach of reachable on arrival (The *Laura Prima* considered). Ship's wind-glass motor subsequently failed which caused delay in berthing. This was a latent defect. This does not invalidate the initial NOR (The *Virginia M* distinguished). Demurrage succeeded.
72. Arb 9/90: NOR tendered while the ship acted as storage facility before proceeding to disport. The NOR was valid and no grace period 6 hours allowed.
73. Arb 4/91: rotation of disports at Owners' option, vessel arrived with increased draft. Owners claimed damages during shifting period among ports basis breach of 'reachable on arrival' provision.
74. Arb 1/90: whether the certificate of compliance was a condition precedent to NOR tendering. The NOR accepted before obtaining this certificate as required by law. Physical and legal readiness required. NOR was invalid and should have been re-tendered. The *Helle Skou* and The *Shackleford* distinguished. The alternative argument on 'reachable on arrival' failed. Time started 6 hrs later and not at all fast.
75. Arb 30/22: Charterers argued that NOR was invalid and time did not begin to run until discharge actually commenced. Held that NOR tendered by email was

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permissible under the charter that NOR “by letter, telegraph, wireless or telephone” (ASBATANKVOY).

3. The Available Laytime

3.1 General

- 76. Arb 1/17: LD/ DS rate 150mts applied on BL figure.
- 77. Arb 2/84: total laytime agreed 72 running hours.
- 78. Arb 11/99: reversible laytime.
- 79. Arb 14/14: SHINC 30 hours for loading and discharging. Method of calculation.
- 80. Arb 16/05: when no NOR tendered then Lt starts with cargo operation.

3.2 Parcel laytime

- 81. Arb 4/98: method of prorating & calculating waiting time; evidence of parcel readiness; concurrent causes of delay considered.
- 82. Arb 7/05: delay in deciding to load the additional parcel. Damages awarded.
- 83. Arb 17/05: parcel loading; delay; loading rate considered.
- 84. Arb 26/89: discussion on separate laytime per each cargo unless the parties had agreed a single laytime to be carried out. Meaning of consecutive and concurrent loading.

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3.3 Laytime ends

85. Arb 10/06: ends with hoses disconnection. Delay for cargo documents as LT or demurrage.
86. Arb 11/96: CP was silent on this point compared to other used standard charter forms. General comments on when loading completes; evidence of how lines drained are considered; till disconnection of hoses applied.
87. Arb 14/14: delay to hydrate the cargo once it was fully loaded. Ship shifted to anchorage to conduct this operation. Lt ends with surveyors' disembarkation.
88. Arb 14/93: "laytime was to count until hoses were disconnected". Delay for cargo documents. Time ends with disconnection of hoses and not later.
89. Arb 21/07: delay at loading port for cargo documents. Lt runs not till ship's sailing but till cargo documents on board

3.4 Breach of pumping warranty⁴⁶

90. Arb 10/84: "Owners warrant vessel is capable of discharging her entire cargo within 24 hours or maintaining 100 PSI at ship's rail provided shore facilities permit."- Obligations contain time or pressure element. One shore line provided and this was Charterers' responsibility. Owners succeeded.
91. Arb 19/87: "Vessel will discharge her entire cargo within 24 hours or will maintain 100lbs per square inch at ship's rail provided the shore facilities are capable or receiving same..."- Only one "8" line provided and LOP issued; burden upon Charterers to prove breach and delay; Owners succeeded.

⁴⁶ Charterers' counter-claim to Owners' demurrage claim.

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92. Arb 10/90: “vessel is capable of discharging her entire cargo within 24 hours or maintaining 100 psi at the ship’s rail, provided shore facilities are capable of receiving same.”- the “provided shore facilities are capable” considered. 10" hose offered instead of 16"; whether this establishes *prima facie* evidence or case and shifting of burden considered. Owners succeeded.
93. Arb 19/93: “vessel is capable of discharging her entire cargo within 24 hours or maintaining 100 PSI at ship’s rail provided shore facilities are capable of receiving same. Owner is requested to instruct Master to clarify by protest letter or remarks in Time Sheets, countersigned by Receivers, whenever pumping time exceeds warranted period. Failing above charterers will deduct excessive pumping time over and above warranted limit. . . “ – The wording of the clause found not being clear. Less shore lines- two pumps in one line- no protest issued. Time adjusted.
94. Arb 9/95: Counterclaim against freight for extra discharging expenses due to prolonged time to discharge- breach of warranty. Interim award for freight payment.
95. Arb 4/98: “Owners guarantee that they can discharge the cargo at half the agreed laytime, or maintain 100 psi at ship’s manifold.”- Consideration of Half the agreed laytime or 100 psi- needs records to support compliance by Owners; no pumping logs provided. Time adjusted.
96. Arb 26/98: “the ship could discharge the cargo within the agreed laytime or maintain 100 psi at ship’s manifold, providing that the shore facilities permitted..”
6" hose offered; Owners succeeded in full. As a side note, contractual relations with receivers argued unsuccessfully. Basis contract law principles the silence is not acceptance.

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97. Arb 11/99: Charterers said one pump and one line had been flushed out, The masters' refusal to flush other pumps and lines was a fault. On the evidence, only one cargo hose would be used and only one 6" line provided; 100 psi maintained. Owners succeeded.
98. Arb 14/99: 'Owners guarantee that they can discharge the cargo at half the agreed laytime or maintain 100 psa at ship's manifold.'- The use of portable pumps was beyond the Owners' control. No warranty provided; inconclusive evidence to show the rate was less than that agreed in CP, no breach. Owners succeeded.
99. Arb 21/01: "Vessel to discharge as fast as she can deliver with a minimum average rate of 150 tons per hour or maintain a backpressure of 100 psi at ship's rail provided shore facilities permit ..."- Nothing suggested that shore facilities prevented the ship. No agreed rate or pressure maintained.
For Molasses: high viscosity argued, cavitation; burden of proof when shifted and how tribunals determine such issues discussed; evidential issues-expert report. Owners failed.
100. Arb 19/04: "Discharges a full cargo ... within 24 hours or can maintain a back pressure of 100 psi at the vessel's manifold and owners guarantee such minimum performance provided shore facilities permit except stripping and crude oil washing"- Excess Stripping time considered; cargo type; experts report and opinion; no causative defect proved on the part of the ship- Owners succeeded.
101. Arb 17/05: Alleged slow loading from mother vessel; no specific rate agreed, utmost despatch obligation argued; Charterers defence failed.

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102. Arb 13/15: “Owners guarantee that at the date hereof and from the time when the obligation to proceed to the loadport(s) attaches, the vessel discharges a full cargo (whether homogeneous or multi grade) within 24 hours or can maintain a back pressure of an average of 100 PSI at the vessel’s manifold and Owners guarantee such minimum performance provided shore facilities permit.”

The pumping warranty is one of performance not capability. Not a penalty clause. The stoppages as per terminal’s request and other periods reduced the pressure; ordered COW allowance considered and the meaning of ‘shore facilities permit’, - Time adjusted accordingly along with Owners’ claim. Effect of Sealed offer in costs under LMAA SCP.

103. Arb 1/17: “Owners warrant that the vessel is capable of discharging a full homogenous cargo at its maximum permissible cargo temperature at the minimum average rate specified in Part 1 hereof, plus squeegeeing and sweeping time whenever required, or of maintaining a pressure of minimum 100 psi at the ship’s manifold, provided port facilities permit...”

Charterers counterclaimed breach of pumping warranty. Molasses temperature was critical to its fluidity. LOP & SOF as evidence considered; discussion on port facilities permit for periods the ship failed to maintain rate or pressure; time adjusted accordingly.

104. 2009 (Jus Mundi): Charterers argued that the vessel took more time to discharge two parcels of cargo by STS. As said, the STS was ordinarily faster than discharging to shore, given no pressure was required, and yet the vessel took longer to discharge a smaller amount of cargo by STS than when the vessel

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discharged at the terminal. The pumping warranty of 24 hours in clause 9 indicated how quickly the vessel could discharge at the terminal and stood no reason that the vessel should be able to discharge quicker than 24 hours by STS transfer. As this did not happen, it indicated that there must be an operational fault, and the charterers should not be liable for the demurrage claimed. The charterers adduced expert opinion evidence to support that STS operations are usually faster, and this delay was due to a vessel's fault. *Held* that although the Charterers alleged an "operational fault" by the vessel by inference from the comparative length of time the STS operation took as against the terminal discharge, they could not support this with any specific proof. The slower STS discharge was explicable by a discrepancy in the diameter of the flexible hoses and manifolds on the receiving vessels. The Charterers neither disputed this as a matter of principle nor that it had not happened in practice⁴⁷.

3.4.1 Other

105. Arb 13/89: The parties had not agreed to any reduction in the demurrage time. The tribunal was unwilling to fill in the missing items and write the contract for the parties.

106. Arb 14/85: Large vessel used to lift the cargo, how to calculate demurrage rates based on the expected loaded size or that actually used, the former prevailed. (FOB sale contract).

⁴⁷ Sole Arbitrator

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4. Exceptions and Interruptions

107. Arb 1/17: involuntary shift from berth to anchorage; TC. Shifting expenses on Owners. The *Cantiere Navale Triestina* (1925) considered.
108. Arb 2/86: SPM discharge; shifting due to bad weather- meaning of 'storm'; 'safe place' proviso argued. Deck log weather figures prevailed over those submitted by Charterers. Full demurrage rate applied for the period the ship left the SPM.
109. Arb 4/14: loading suspended to check possible contamination of cargo. This was reasonable on the evidence and no fault on the Owners or the vessel. TC (FOB)
110. Arb 4/95: line displacement ordered by SGS. Not an issue attributable to the vessel. Absent exception or breach then TC.
111. Arb 7/05: cargo contamination leads to delay and various shifts. On the evidence, Not a vessel's fault; TC.
112. Arb 7/91: bad weather delays berthing. The exceptions of bad weather apply even if this is a damages claim.
113. Arb 8/91: shifting from anchorage to loading berth was not a cause "beyond the control of either party" to rely on the exceptions. TC.
114. Arb 9/91: de-ballasting time; whether there is ground to rely on the exceptions of cl.46; demurrage reduced for this period.
115. Arb 10/06: pre-inspection showed presence of ammonia traces; delay in loading; evaluating the pre-inspection findings on traces caused delay; waiting expert findings & analysis, TC.
116. Arb 10/06: shifting to anchorage during delay in providing cargo documents after hose disconnection NTC.

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117. Arb 10/06: CP silent on shifting time back to storage tanker. All terms considered.

Time on demurrage run for final shifting back to storage tanker.

118. Arb 10/85: meaning of 'actual shifting time'; waiting time at anchor to count.

119. Arb 12/06: delay to load cargo- no warranty applied, hence rejected. Delay in discharge due to cargo temperature. SOF was silent on whether time lost on this event. TC. No express provision to cover time spent lining up or breach; TC.

120. Arb 13/85: meaning of 'used laytime'; shifting time from anchorage to berth- when on demurrage TC. The tribunal considered The *Tsukuba Maru* decision.

121. Arb 15/85: shifting time and de-ballasting while on demurrage excluded albeit the maxim "once on demurrage, always on demurrage" (FOB Sale contract)

122. Arb 14/06: cargo discolored causing delay pending security; cargo samples analyzed; evidence considered and Charterers failed to show fault or breach on Owners- TC.

123. Arb 15/82: demurrage suspended during ballasting even though the cargo had partially discharged. The tribunal gave effect to the express agreement even if same was considered to be unrealistic.

124. Arb 15/86: time spent waiting for shifting NTC as it is Owners' responsibility to arrange for pilot.

125. Arb 17/05: delay in loading STS; meaning of 'fault' as defence to demurrage claim. Delay in failing to conduct concurrent loading of parcels. No delay proved and Braefoot Bay demurrage assessment did not assist.

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126. Arb 18/04: loading arm broke down- leakage; whether interruption found in favor of Charterers. 'Half demurrage provision' considered; even if the issue arose during laytime the clause had effect- Arb 10/89 considered.
127. Arb 19/18: vessel delayed to leave load port due to engine problems which caused delay at disport. No evidence of culpable fault; fault and delay must be co-extensive. consequential delays disallowed hence TC.
128. Arb 20/10: Vessel arrested by navy while conducting STS ops. The evidence was unsatisfactory. Charterers relied on general exceptions and "restraint of princes". The delay was for Owners. For the delay to remain at intermediate port for cargo sampling an implied indemnity discussed.
129. Arb 20/97: alleged fault to provide ETA's resulted to delay at port-berthing schedule. Not an Owners' fault found.
130. Arb 23/17: the vessel arrived at berth and delayed her berthing because another ship detained there due to oil spillage- rupture of hose between the terminal and berth. 'Reachable on arrival" proviso considered; general exceptions; Force Majeure etc. The tribunal found that Charterers cannot rely on the exceptions- TC.
131. Arb 25/04: loading suspended due to cargo discoloration. Delays to discharge this small quantity before loading again; time lost for surveys etc. The question was whether this was due to Owners or Charterers' fault. Charterers failed to discharge their burden and Owners entitled to demurrage or damages. Time counted.
132. Arb 18/ 91: fog; berthing and pilotage allowances were not entitled as the ship was on demurrage.

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133. Arb 21/21: about one day due to bad weather in the Caspian Sea. For a significant proportion of that, the vessel was forced to anchor. The tribunal was satisfied that it was, and would be very wary of second-guessing any decision taken by the master relating to the safety of his vessel and cargo. The owners were not at fault.
134. Arb 14/22: special agreement to call a 2nd berth and shifting time/ costs, extra insurance and bunkers to be paid by the charterers. Charterers asserted the special agreement was made under duress. Tribunal found that the parties validly concluded a “special agreement”
135. 2009 (Jus Mundi): The charterers failed to prove a vessel’s “operational fault” to avoid liability for paying demurrage. Even if the vessel was not prosecuting the voyage with reasonable dispatch, and the vessel lost a berthing slot any delay thereby caused would be “completely unquantifiable”. The charterers cannot recover damages by refusing to pay demurrage.
136. 2011 (Jus Mundi): Owners’ demurrage calculations relies on the provisions of Clause 6 of the Asbatankvoy charterparty. Charterers argued that delays had occurred in getting the vessel to the berth over which they had no control, and therefore laytime should not start until the vessel was all fast at the load port, and should continue until the time that the hoses were disconnected. These delays were due to tidal restrictions or obtaining Free Pratique. Owners said they were not entitled to rely on Clause 6 because Charterers themselves breached the reachable arrival provision. The tribunal agreed with the owners that delays were caused by congestion. Also, charterers were in breach of their obligation under

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Clause 9 of the Asbatankvoy charter party, that the berth should be "reachable on.. arrival"⁴⁸.

5. Damages for Detention

137. Arb 1/17: delay for cargo documentation after hose disconnection, failed. If the parties wished to compensate for delay after discharge, this required relevant provision in the charter as did for the load port. No need to imply any provision.
138. Arb 2/84: delays due to pipeline disruption at loading port,;discussion about FM and frustration of the CP and damages.
139. Arb 2/86: Damages for delay in discharge failed basis breach of 'safe place' proviso.
140. Arb 7/05: delay in deciding to load additional parcel due to previous contamination. Not Owners' fault, so damages awarded basis dem rate.
141. Arb 12/91: lien for unpaid freight, vessel ordered to wait off port, lien validly exercised but damages were not proven. Since no time then no claimed damages. The *Lyle Shipping Co* (1899) & The *Chrysovalandou Dyo* (1981) considered.
142. Arb 13/99: delay in releasing BL, parcel trading, Owners found unreasonable.(NA)
143. Arb 15/86: delay in berthing due to banking problem in transmission of funds to agents. Charterers not in breach of 'reachable on arrival' proviso.
144. Arb 16/05: STS laytime regime, breach of reachable upon arrival proviso, Charterers in breach, but laytime used- The *Laura Prima* considered.

⁴⁸ Two Arbitrators.

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145. Arb 17/05: alleged delay in loading parcels, tribunal considered the authorities and rejected Charterers' position.
146. Arb 19/98: damages for detention allowed for waiting longer than 3 hours for cargo documents. Demurrage rate applied.
147. Arb 21/21: the vessel arrived OPL Baku and tendered NOR. The Owners revised their position and claimed damages for detention for the period she waited off port at Baku prior proceeding to Absheron as ordered by charterers. Charterers were in breach of "reachable on arrival provision" in clause 9.
148. Arb 14/22: delay to agree for calling a 2nd berth, when the original CP was for one berth. Owners claimed the bunkers consumed as quantum meruit. The demurrage rate agreed covered that value of bunkers.

6. Supporting documents & Time bar

149. Arb 3/18: CP repudiated- supporting docs and time bar under contract and Hague Rules considered
150. Arb 4/98: missing terminal log; the obligation to provide docs that not exist fell away by implication (Arb 18/89 applied). Time bar argument rejected.
151. Arb 10/11: port charges; whether separate agreement reached via exchange of emails; construction of "Amoco Claims Clause"; deletion of words; *ejusdem generis* principle. Claim found time-barred.
152. Arb 14/14: the Owners submitted their laytime statement along with supporting evidence -copies of the notice of readiness, time sheets and statement of facts at the load and discharge ports- so complied with 90 days time bar requirement.

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153. Arb 18/89: NOR was not provided along with supporting documents. NOR was a condition to recover demurrage. The claim for demurrage was time-barred.
154. Arb 19/18: supporting documents sent to brokers; whether charterers' agents or intermediate brokers with binding authority. Estoppel argued and discussed. Time bar succeeded
155. Arb 8/01: meaning of original documents. As found, Owners provided only copies of the said documents within the time frame; hence their claim was time- barred. The estoppel argument rejected. Textbook authority cited by Owners along with the duty of utmost good faith argued. Voyage instructions cannot vary the terms of the contract.
156. Arb 21/98: meaning of 'all the supporting documents'. NOR has no certain form; telex can amount to such notice. The *Oltenia* considered; a missing copy of signed NOR fall under the *de minimis* circumstances. Demurrage claim was validly presented.
157. Arb 11/90: no supporting documents presented timely. Owners said that agents delayed the presentation of the documents. 'Supporting docs" were the SOF and the NOR. Evidence showed that Owners did not pursue the agents for the missing docs for some considerable time. The claim was time-barred. ASBATANKVOY
158. Arb 18/91: claim submitted within the 90- day period but later Owners increased the claim. This is not a new' action' or new claim requiring any other supporting document. Estoppel by representation or forbearance considered. Demurrage claim not time-barred.

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159. Arb 25/92: the claim along with supporting documents sent to brokers. Charterers denied that the claim had been received. Meaning of 'presented' under the clause includes to be received. The *Oltenia* and The *Pera* did not assist here. The onus was upon Owners to establish proper presentation as per CP terms ensuring safe receipt of the claim. Time- barred.
160. Arb 26/92 (CP form NA): loading port notice of readiness was missing as Owners said the agents had not provided the same. The clause was imprecise on which documents should be produced. If that was important it would have been included. Not time-barred.
161. (1981) 32 LMLN 3 (Bulk Carriers): whether claim time barred. Discussion on one year time limit in cl.21, ". . . any claim must be made in writing and claimant's arbitrator appointed within one year of final discharge . . ."- No time bar. The German Civil Code applied which stated that the nomination of arbitrators interrupted the time limit.
162. Arb 8/85(CP form NA): whether the demurrage claim presented to the Charterers in writing along with documents. Communication via brokers argued that it was not a valid presentation of the claim. Held that the brokers were Charterers' brokers and had authority to receive a demurrage claim.
163. Arb 22/17: meaning of "such claim has been presented to Charterers in writing with supporting documents"; Charterers relied on The *Sabrewing*, The *Eagle Valencia*, and The *Abqaiq*. This case is different. Both NORs that were not sent concurrently with the claim have been already presented to Charterers earlier. Time- bar rejected.

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164. Arb 3/21: consideration of time bar under a special provision in a SYNACOMEX charter party. The tribunal rejected the Charterers' defence as the agreed period to produce the documents started to count upon completion of discharging at all ports, since reversible laytime applied.

165. Arb 1/21: Charterers applied for a declaration that the owners' demurrage claim was time barred and failed/ dismissed. Charterers said that owners failed to provide an invoice, a port log, discharging log and pumping log. The owners document headed "Time Sheet" included time and money claimed. Regarding the other documents, Owners said these were not mentioned in clause 24 and charterers have failed to identify any specific document that owners failed to produce. The owners submitted specific documents that functioned as port log and pressure log. The charterers' time-barred defence failed (*Lia Oil SA v ERG Petroli SpA* [2007] 2 Lloyd's Rep 509 was considered).

166. Arb 14/22: the vessel was fixed to discharge at one berth and the charterers requested to call a 2nd berth. The parties entered later into a special agreement for this extra service. Owners claimed the value of bunkers consumed whilst waiting at the port. Charterers said that this part of the claim was time barred under Clause 37 that stated:

*"CHARTERERS SHALL BE DISCHARGED AND RELEASED FROM ALL LIABILITY IN RESPECT OF **ANY CLAIM** OWNERS MAY HAVE UNDER THIS CHARTER PARTY (SUCH AS, BUT NOT LIMITED TO, CLAIMS FOR DEADFREIGHT, DEMURRAGE, SHIFTING EXPENSE OR PORT EXPENSES) UNLESS A CLAIM HAS BEEN PRESENTED TO CHARTERERS IN WRITING*

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WITH AVAILABLE SUPPORTING DOCUMENTS ... WITHIN NINETY (90) DAYS FROM COMPLETION OF DISCHARGE OF THE CARGO CONCERNED UNDER THIS CHARTER PARTY ...”

The tribunal accepted the owners’ submission that reference to “any claim”(clause 37) was for dead freight and demurrage rather than claims arising under an implied contract for delay by agreement.