

[Title]

Responsibility for Loading and Discharge

[Deciding Court]

Tokyo District Court

[Date of Decision]

3 June 1980

[Case No.]

Case No. 1114 (wa) of 1977

[Case Name]

Claim for Damages for Delayed Departure of Vessel

[Source]

Hanrei Jiho No. 987: 108

[Party Names]

Plaintiff X Showa Shipping Co., Ltd.

Vs.

Defendant Y Tomen Corporation

[Summary of Facts]

Trading Company, Y (the charterer), entered into a charter contract with Shipping Company, X (the carrier), with respect to the vessel in this case, which was for the transportation of steel plate that Y was exporting to Iran. In the charter contract, X and Y initially entered into a 'berth terms' agreement, comprising terms regarding the burden of the costs of loading and discharge within the vessel ('stevedorage'), in which the owner of the vessel, X, was responsible for these expenses. Subsequently, however, they agreed to change the terms to F.I.S. ('Free In and Stowed'), and as a result, the cargo on the vessel was loaded and stowed at the risk and expense of the charterer, Y. It was confirmed immediately after the completion of the stowing operations, however, that the shipped goods that were to be divided into consignments for three consignees were stowed in a way that they were intermingled ('lot mix'), due to errors by Y in the stowing procedure. It should be noted that conditions at Bandar-e Shah-pur Port, which was the discharge port under the contract described above, meant that the departure of vessels was delayed, usually by as long as several months, due to the inadequacy of the port facilities. However, vessels that arranged a DD ('Direct Discharge, Direct Delivery') on land, namely, delivery of cargo on to a truck, trailer or barge directly from the vessel, received priority in receiving a berth for discharge. Consequently, with respect to the relevant charter contract as well, after various developments, including X demanding indemnification (US\$2,800 per day) in the case of delayed departure due to an inability to arrange a DD due to the mixed stowing, on 29 March 1976, a clause stipulating a requirement that a DD be arranged at the discharge port was added to the chartered vessel confirmation document ('Fixture Note'), and an addendum was exchanged, in which Y confirmed that the consignee would arrange a DD as soon as the vessel arrived at the port. Nevertheless, due to a delay in the arrangement of a DD, the vessel was compelled to stay at port

for approximately 80 days after it arrived on 10 April 1976 till it reached shore at 1914 hours on 29 June 1976. X initially filed a claim against Y for damages due to the lengthy delay in the departure of the vessel on the sole ground of default under contractual obligations. X opted to amend its claim on the 7th day of oral argument, however, and added a new alternative claim on the ground of statutory liability in accordance with the right to claim remuneration provided for in Article 752(2) in the *Commercial Code*.

[Summary of Decision]

“In a contract for carriage by sea, the carrier is responsible, in the absence of special agreement, only for duties ‘starting at the side of a vessel and ending at the side of the vessel’ (‘from alongside to alongside’), namely, from the time it receives the cargo at the side of the vessel at the place of loading until it delivers the cargo at the side of the vessel at the place of discharge, unless there is a special agreement with regard to the places of receipt and delivery of the cargo. It is understood that it is the responsibility of the party who contracted to receive services from the carrier to transport the cargo to the side of the vessel at the place of loading, and to receive the cargo at the side of the vessel at the place of discharge. Although, in actual shipping practice, it is usually not the party who contracted to receive services from the carrier who receives the cargo at the side of the vessel at the place of discharge, but a third party who acts as the cargo consignee. In that case, the arrangement between the parties to a contract for carriage by sea is that the consignee acts to receive substitute performance for the party who contracted to receive services from the carrier.

It follows that the work of loading and discharge is shared in accordance with the areas of responsibility described above, and, in principle, the carrier is responsible for the work of loading and discharge within the vessel at both the places of loading and discharge, and the party who contracts to receive services from the carrier is responsible for the work of loading and discharge on land. Even if the discharging work on land at the place of discharge is carried out by a consignee, this does not mean that the party who contracted to receive services from the carrier is relieved of liability.

Turning to the case before us, according to the facts that were not disputed by the parties, an arrangement for a ‘DD’ meant preparations on land that would be necessary to discharge the cargo on to a truck, trailer or barge directly from the vessel. That would be an obvious prerequisite for the discharging work to be carried out on land, and form a part of the discharging work to be carried out on land described above.

It followed that, in the relevant charter contract, in which there was no special provision with regard to the place of delivery of the cargo, the arrangement of the ‘DD’ belonged to the area of responsibility borne by Y, the party who contracted to receive services from the carrier. According to the established facts, X and Y agreed for the consignee to arrange for a ‘DD.’ Accordingly, it can be said that due to the above agreement, Y, rather than X, bore the responsibility of having the consignee arrange a ‘DD’. It follows that Y cannot be relieved of liability with respect to the non-performance of the special agreement on the part of the consignee, an agent, with regard to arranging the ‘DD,’ unless the non-performance was due to *force majeure*.”

“In this case, Y came to know the due date of 10 April 1976 through X’s notice prior to the due date. Moreover, the due date actually arrived as notified on that day. It should therefore be concluded that Y fell into delayed departure as of 11 April 1976, after the passing of the due date.”

“According to the established facts, if Y had arranged a ‘DD’ as agreed, the vessel would have been given a priority in receiving a berth for unloading, and could have reached shore by 23 April 1976, at the latest.”

“It followed that, of the days of delayed departure between the day that the vessel was first delayed, which was 11 April 1976, and 1914 hours on 29 June 1976, the period of delay after 24 April 1976 was caused by Y’s delay in performing the special agreement regarding the ‘DD’.”

“Even if the new grounds for the claim were examined and allowed this finding does not exceed the limit described above, and there is no need to rule on the new grounds for the claim.”