

Cheese consignment — deterioration during shipment — Partlow charts

FRED MAYER IMPORTS PTY LIMITED v OCEAN CARRIERS SHIPHOLDERS NV

Supreme Court of New South Wales, 24 February 1989

This case concerned the shipment of an FCL consignment of cheese from the United Kingdom to Australia. On reaching the consignees' premises it was found to have a very strong smell or "off-odour". The cheese in question had a very high moisture content and was a low salt cheese. It had been manufactured about twelve weeks prior to being loaded into the container.

The Partlow charts which had been recording the temperature inside the container from when it was plugged into the refrigeration system at the terminal at Felixstowe until it was unplugged at the terminal in Sydney recorded that the requisite carrying temperature (0°C to +3°C) had been maintained throughout that period. The consignees nevertheless sought to argue that the carrier had failed to comply with its responsibilities under the Hague Rules. Yeldham J held that the carrier was not in breach of any of its duties.

The carrier had asserted that if the cheese was damaged during the course of the sea carriage, it arose from an act or omission of the shipper or owner, inherent defect in quality or vice of the cheese, insufficiency of packing, or a cause arising without the actual fault or privity of the defendant.

The plaintiff relied upon the acknowledgement in the bill of lading that the goods were "in apparent good order and condition" at the time of shipment.

Yeldham J referred to the case of *Ace Imports Pty Limited v Companhia de Navegacao Lloyd Brasileiro*¹ for finding that the acknowledgement did not amount to prima facie evidence that the goods were in sound condition at the date of shipment or that they were in sufficient good order and condition to withstand the voyage in view of the terms of clause 3 of the bill of lading which provided, inter alia, that —

the acknowledgement of receipt by the carrier on the front hereof is confined to the number and apparent order and condition of the containers received and any

¹ (1987) 10 NSWLR 32.

statement on this bill of lading relating to the weight, contents, measure, description, condition or marks of the goods thereon are furnished by the shipper and are unknown to the carrier and the carrier accepts no liability in respect thereof . . .

His Honour also referred to the fact that the description of the goods on the face of the bill of lading contained the words "said to contain". His Honour referred to the cases of *Dent & ors v Glen Line Limited*² and *Mash and Murrell Limited v Joseph I Emanuel Limited*³ in support of the proposition that the plaintiff had to establish that when the cargo was received by the carrier for carriage it was in sufficiently good order and condition to withstand the voyage from Felixstowe to Sydney, a voyage which took approximately seven weeks.

The remainder of his Honour's judgment contains a description of the evidence given by the various marine surveyors and experts in cheese manufacture concerning the cause of the damage to the cheese, which had to be destroyed, on arrival.

It had been argued by one of the plaintiff's experts that the Partlow charts did not accurately record the temperatures inside the container and they had been tampered with. Yeldham J rejected this evidence as he did the evidence of the plaintiff's expert who suggested that during a short period of time prior to the loading on board of the goods the entire consignment of cheese could have reached a significantly higher temperature. The evidence of a large number of experts was to the contrary effect that it would take a number of days, if not weeks, for the temperature of the entire consignment to be affected.

This case shows the importance of the safe maintenance by carriers of Partlow charts and other records in order to disprove allegations that any harm has occurred to cargo during a voyage, and to prove affirmatively that the correct carrying temperature has been maintained at all relevant times.

² [1940] 67 LILR 72.

³ [1961] 1 WLR 862.