Time counts, but in which time zone?

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In maritime contracts, to determine the method of calculating time limit, it is helpful to understand the cases that deal with the computation of 'days'. In the absence of a contrary or an express stipulation, the following general rules have been established for computing 'days' under charterparties. A 'day' means a calendar day, which is a clear day from 00:00 hours to 24:00 hours (*Cartwright v MacCormack* [1962] 2 Lloyd's Rep 328, [1963] 1 WLR 18). If an act is required to be completed within a certain number of days from an event, generally, the day of the event itself is excluded from the computation of the period (*Lester v Garland* (1808) 15 Ves Jr 248, page 257; see also *Matthew v Sedman* [2021] UKSC 19). A person obliged to do an act (e.g. the payment of hire) by a certain date has until midnight of that date to do it. (*Afovos Shipping CO SA v R Pagnan and Elli (The "Afovos")* [1983] 1 Lloyd's Rep 335, [1983] 1 WLR 195).

When the event that commenced the period occurs in one place and the action required within that period is performed in another place, both of which have different time zones, *Euronav NV v Repsol Trading SA (The "Maria")* [2021] EWHC 2565 (Comm); [2022] 1 Lloyd's Rep 247 suggests that the time will be reckoned by reference to the time zone of the place where the event occurred. The "Maria" was chartered on a voyage charter and completed the discharge of the cargo at Long Beach, California, at 21:54 hours local time (Pacific Standard Time (PST)) on 24 December 2020. The charterers operated from Spain and the owners from Belgium, both of which shared the time zone of Central European Time (CET), which is PST + 9. The charterparty was governed by English law and was subject to the exclusive jurisdiction of the English High Court, where the time zone was Greenwich Mean Time (GMT), which is PST + 8. The cargo discharge operations were completed at 06:54 hours on 25 December 2020 (CET), and the

corresponding time in GMT was 05:54 hours on 25 December 2020. The charterparty required the owners to notify the charterers of any demurrage claim 'within 30 days after completion of discharge'. The owners notified the charterers of a demurrage claim of USD487,183.12 at 12:42 hours CET on 24 January 2021 (which in PST was 03:42 hours on 24 January 2021 and, in GMT, 02:42 hours on 24 January 2021).

The charterers contended that the notification was out of time, applying PST to both the discharge and the notification. It was argued by the charterers that, applying PST, the discharge was completed on 24 December 2020, so "day one" of the 30-day-period was 25 December 2020, and "day 30" was 23 January 2020 PST ending at midnight, hence the notification came in late, on 24 January, 2020 in PST. The owners contended that CET must be applied to both the discharge and the notification, because it was the time zone having the closest and most real connection to the contract, as the place of the recipient of the notification (i.e. charterers) was within CET. The owners alternatively contended that the applicable time zone was GMT, as the charterparty had an English law and jurisdiction clause. The owners' case was that the discharge was completed on 25 December 2020 at 06:54 hours CET (or 05:54 hours GMT), so "day one" of the 30-day-period was 26 December 2020, and "day 30" was 24 January 2020 CET (or GMT) ending at midnight. Accordingly, the owners argued that the notification given on 24 January 2020 at 12:42 hours CET (or 11:42 hours GMT) was in time.

The judge, Mr. Justice Henshaw, rejected the contentions of the owners and agreed with those of the charterers. He held that a single time zone was to apply to both the discharge and the notification, and that the applicable time zone was PST, which was the local time zone of the place of discharge. Accordingly, the cargo discharge was concluded on 24 December 2020 PST, so "day one" of the time limit period was 25 December 2020 PST, and "day 30" was 23 December 2020 PST, ending at midnight. The notification that came in on 24 December 2020 at 03:42 hours PST was out of time, and the claim was struck out under CPR 3.4.

In so holding, the judge did not disagree with the view of Professor D. Rhidian

Thomas expressed in the article titled, 'Time Charterparty Hire: Contractual Remedies for Default' published in Legal Issues Relating to Time Charterparties in 2008. However, he considered that the article was not relevant to the case in front of him. In the article, Professor Thomas, discussing "anti-technicality" clauses, suggests that the grace period required by the clause (before an owner may withdraw his ship from the time charter service because of the charterer's default in paying the hire) must be computed by reference to a single time zone that has the closest and most real connection. Professor Thomas considered that the time zone having such a connection was that of the bank that is to receive the payment.

Professor Thomas also commented that a grace period of three days, in the context of an "anti-technicality" clause, meant 72 consecutive hours commencing from the time of communication of the notice to the charterers. However, such a view was not relevant to the case before the judge. He did not find it to be relevant to consider whether the position could be different if the period is much shorter, such as two or three days (see Megaw LJ's speech in *Carapanayoti & Co Ltd v Comptoir Commercial Andre & Cie SA* [1972] 1 Lloyd's Rep 139).

The judge also identified an exception to the principle of applying the same time zone to both the beginning and the end of the period. That was when the time changed by daylight saving time adjustment. The judge considered that if the discharge was completed in the UK when the time zone was GMT, and the notification was given when the time zone was GMT + 1, then the owner would be out of time if the notification was given, for instance, at 00:30 on "day 31" in the time zone of GMT + 1, even though it would have been 23:30 hours on "day 30", had the daylight saving time adjustment not occurred.

The judge commented that the time of discharge would be ascertained in the same way for other purposes, such as determining the commencement of the one-year time limit in Art 6 of the Hague-Visby Rules.

It is, therefore, suggested that there is no reason why the same principles should not apply to the computation of the one-year time limit in Art. III r. 6 of the Hague or

Hague-Visby Rules. So, for example, if the cargo was delivered on 10 January 2023, the first day, or "day one" of the one-year-period, will be 11 January 2023 and the 365th day (which would be the last day of the one-year-period) would be 10 January 2024. The cargo claimant may bring an action until midnight of 10 January 2024. So, if the cargo owner took the delivery of cargo in Singapore (GMT + 8) and wanted to bring an action against a shipowner in England (GMT), he would have to do so before 16:00 hours GMT on 10 January 2024.

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