

JUS5401

Part I

The Norwegian liner carrier NorShip AS had entered into a contract for carriage of four containers with frozen fish from Ålesund, Norway, to Alicante, Spain, with the Norwegian sender FishExport AS. Norwegian law was agreed to apply. FishExport had in turn entered into a sales agreement for the fish, under a CIF contract, with the Spanish buyer Iberia S.A.

The four containers were loaded onboard Norship's ship, m/v Even, at Ålesund (also other containers were loaded, not belonging to FishExport). The master issued bills of lading stating i.a.: "Duly loaded onboard four containers, each said to contain 1.000 boxes of frozen cod. Any dispute to be resolved in Norway pursuant to Norwegian law."

The bills of lading were subsequently transferred from FishExport to Iberia, against Iberia's payment of the purchase price.

There were strong winds when the ship was about to depart from Ålesund. The master had, before departure, considered whether to order tug assistance in order to be safely pulled off the quay in the strong winds, but decided against it, also for costs reasons. This decision not to use tugs turned out to be unfortunate, and the master later admitted it was a misjudgment amounting to negligence. What happened was:

After initially managing to pull the ship off quay by use of the ship's thrusters (side propellers), gusts of winds blew the ship back towards the quay in an area where there was protruding onshore gear (cranes). When being pushed towards this area, some of the containers on deck were hit by the protruding land gear (cranes). This caused one of FishExport's containers to be pushed off the ship and dropped into the sea. The other three containers were damaged: the electric cable system supplying power to the cooling engines of the containers, was torn off.

It took some hours to repair the electric supply system, whereupon the voyage was performed without further difficulty. (The container lost into the sea was retrieved some days later but its content had to be destructed.)

When opening the three containers at Alicante, Iberia discovered that the fish was reduced in quality due to the interrupted cooling of the containers at Ålesund, which had caused the fish temporarily to melt. The fish had to be sold on a sub-quality market at half price. The market price per box in sound condition would have been NOK 1.000. Iberia claimed damages for losses consisting in the reduced sales proceeds for the fish received, plus the content of the lost container.

Moreover, the sub-quality fish affected Iberia's reputation as a retailer, and led to a long term supply contract with a luxury restaurant chain being cancelled, causing a future net loss of income of NOK 2 mill. (the amount of loss and cause of such cancellation was not in dispute).

Iberia claimed damages against NorShip for its losses. NorShip denied liability and stated that in any event it would be entitled to limitation of liability and would not be liable for consequential losses in terms of the cancelled supply contract.

(1SDR=10 NOK)

Q1: Is NorShip liable and if so in what amount?

Part II

The facts are as in Part I apart from the following:

The master did order tug assistance before departure and a tug, m/v Petter, came to assist and did pull the m/v Even off quay. But after being pulled off the quay, gusts of strong winds caused the towing line of m/v Petter to break. M/v Even, now being on its own, had the strong winds blow the ship back towards the quay in an area where there was protruding onshore gear (cranes) – and with the exact same outcome as that described in Part I.

The owner of the m/v Petter, NorTug AS, later admitted that the towing line used was decayed, and that a fresh towing line would have withstood the pulling forces encountered at Ålesund. The decayed towing line had been onboard the tug for some months. NorTug admitted that not to have onboard a fresh towing line constituted negligence.

Iberia claimed damaged as in Part I against NorShip. Norship denied liability, as in Part I.

Q2: Is NorShip liable and if so in what amount?

Part III

The facts are as in Part II. In addition to claiming damages against NorShip, Iberia also claimed damages (those in Part I and II) against NorTug. NorTug admitted negligence (as stated in Part II) but denied liability.

Q3: Is NorTug liable and if so in what amount?

Part IV

The agreed freight under the contract of carriage between NorShip and NorExport (see Part I) was in the amount of NOK 500.000, and was stated to be due and payable upon delivery of the goods at Alicante. Upon discharge NorShip claimed the full freight, however, NorExport claimed entitlement to reduction in freight based on the incident of the lost and damaged fish. NorShip denied such entitlement.

Q4: Is NorExport entitled to reduction in freight and if so in what amount?