

Premature or invalid NOR

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Contract of affreightment often expressly provides for compliance with some specific conditions for notice of readiness to be valid. It can be required, for example, that the vessel must be entered in the customs' house before notice was given¹ or free pratique² has to be obtained or that the notice to be given within stipulated time window³. In such cases the commencement of laytime begins only when the event stipulated in the charter occurs, the giving of the requisite valid notice and its validity depends on the conditions stipulated in the charterparty for its giving being met⁴.

Alternatively, the parties are free to contract out any specific or standard requirements which, if not met, would have made notice of readiness invalid⁵. The purpose of such fine-tuning is to relocate between the parties liabilities for delays in port, but extensive litigation on this subject demonstrate all the numerous problems of achieving an unambiguous result.

Premature NOR Remains Invalid

As general rule all modern charterparty forms, no matter a port or a berth one, allow tender of notice of readiness once the vessel has arrived at the port. From this point there are several ways of allocation of risks for delay, three most common mentioned below:

1. In case of berth charter laytime starts to accrue if delay in getting into berth is caused by congestion, but NOR becomes valid only if retendered when alongside, ready for cargo operations and all additional requirements (if any) has been met;
2. In case of port charter vessel tenders valid NOR on arrival at the port (anchorage) but laytime is interrupted for any delays caused by weather or navigational reasons;
3. Special provisions in a berth charter may permit a notice sent from anchorage or waiting place to remain valid even if no any other notice was tendered when the vessel got into the berth.

Most dry-cargo forms adopt a variant of the first method, and most modern tanker forms the second⁶.

1. In the first scenario a notice given when the vessel was not alongside the berth, i.e. was not an 'arrived' ship is an inchoate notice⁷, which is an invalid one. There is, however, no breach of charter if the vessel gives notice of readiness prematurely, such notice is simply ineffective to start laytime running⁸. If the owner further fails to tender another notice of readiness when the vessel eventually

¹ *Surrey Shipping Co Ltd v Compagnie Continentale (France) SA, (The Shackelford)* [1978] 2 Lloyd's Rep 154, CA

² Non-compliance with such conditions like custom clearance or obtaining of 'free pratique' does invalidate notice of readiness only when charterparty expressly stipulates so - the need for free pratique will not, at common law, prevent a notice of readiness from being given, see *The Delian Spirit* [1972] 1 QB 103, at p.115.

³ *Galaxy Energy International Ltd v Novorossiysk Shipping Co, (The Petr Schmidt)* [1998] 2 Lloyd's Rep 1, CA

⁴ Per Thomas J in *TA Shipping Ltd v Comet Shipping Ltd (The Agamemnon)* [1998] 1 Lloyd's Rep 675 at pp 680

⁵ Per Colman J. in *The Jay Ganesh* [1994] 2 Lloyd's Rep 358 at p.362 referring to *Tres Flores, The (C.A.)* [1973] 2 Lloyd's Rep. 247; [1974] 1 Q.B. 264

⁶ See P.Todd, Recent developments on commencement of laytime. JBL 2002

⁷ Concept of 'inchoate notice' was advanced by Diplock J in *The Massalia*, [1960] 2 Lloyd's Rep. 352, at p.358, with an assumption that it automatically take effect as soon as the condition as to readiness was fulfilled.

⁸ Per Moore-Bick J in *Triton Navigation Ltd v VITOL SA (The Nikmary)* [2003] EWHC 46 (Comm) at para 42, affirmed in the Court of Appeal [2003] EWCA Civ 1715 per Mance LJ at para 29.

meets all necessary requirements and becomes in all respects ready for cargo operations, then such notice remains invalid and does not automatically take effect⁹. Accordingly, unless something happened after inchoate notice has been sent to make the laytime start, it never starts at all¹⁰. This 'something' is in practice the commencement of loading or discharging by the charterer or receiver without rejection of or reservation regarding the NOR, happening of which events was held in *The Happy Day*, [2002] 2 Lloyd's Rep 487 to invoke the doctrine of waiver¹¹:

Laytime can commence under a voyage charter-party requiring service of a notice of readiness when no valid notice of readiness has been served in circumstances where (a) a notice of readiness valid in form is served upon the charterers or receivers as required under the charter-party prior to the arrival of the vessel; (b) the vessel thereafter arrives and is, or is accepted to be, ready to discharge to the knowledge of the charterers; (c) discharge thereafter commences to the order of the charterers or receivers without either having given any intimation of rejection or reservation in respect of the notice of readiness previously served or any indication that further notice of readiness is required before laytime commences.

When invalid NOR accepted by the shippers/receivers and terminal, the charterers were held to impliedly authorise the shippers/receivers and terminal to waive any defect in the NOR, because as matter of commercial practicality, such an intended recipient of the NOR must have implied authority to waive a condition as to the commencement of laytime¹². If the notice of readiness was accepted with ignorance of what the effect would be under the charter the charterers could not take advantage of that ignorance since it was for them to impart to the shippers or the receivers as much information as was necessary for them to have when a notice was tendered¹³.

Read this article in full here:

http://www.lawandsea.net/CP_Voy/Charterparty_Voyage_NOR2_invalid.html

⁹ Per Mustill LJ in *Transgrain Shipping BV v Global Transporte Oceanico SA, (The Mexico I)* [1990] 1 Lloyd's Rep 507 at p.512, *TA Shipping Ltd v Comet Shipping Ltd, (The Agamemnon)* [1998] 1 Lloyd's Rep 675 per Thomas J. at p.680

¹⁰ *Ibid* p.510

¹¹ *Glencore Grain Ltd v Flacker Shipping Ltd, (The Happy Day)* [2002] 2 Lloyd's Rep 487 per Potter LJ at p. 509. Mustill LJ in *The Mexico I* [1990] 1 Lloyd's Rep. 507 at p.510, doubted existence of the necessary elements of a waiver in the bare fact that a discharge was carried out, on the grounds of decision in *Pteroti Compania Naviera S.A. v. National Coal Board*, [1958] 1 Lloyd's Rep. 245; [1958] 1 Q.B. 469, but Potter LJ addressed these doubts specifically at para 71: "In my view the circumstances of the case and the demands of commercial good sense are such that the Court should be reluctant to apply or adopt doubts expressed in obiter dicta (even from so distinguished a source as Lord Justice Mustill) so as to arrive at a result whereby..."

¹² *Ocean Pride Maritime Ltd v Qingdao Ocean Shipping Company (The Northgate)* [2007] EWHC 2796 per Siberry J at para 108.

¹³ *The Shackelford* [1978] 2 Lloyd's Rep. 154 by Sir David Cairns at p.160, *Ocean Pride Maritime Ltd v Qingdao Ocean Shipping Company (The Northgate)* [2007] EWHC 2796 per Siberry J at para 108.