

Deadfreight

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Introduction

Freight is primary payment obligation arising under a voyage charter which represents a fixed price for carriage of a certain quantity of particular cargo on a particular voyage.

The monetary value of freight directly depends on the quantity of the goods loaded by the charterer, and then delivered in undamaged state by the shipowner to the consignee or receiver. It follows therefore that, when the charterer, without lawful excuse, ships a quantity of goods less than that required by the charterparty¹, then the charterer is liable to the shipowner for the difference between the freight actually earned, being calculated on actually supplied quantity of goods, and the freight which would have been earned if the charterer had fulfilled his obligation to load the cargo in full. Such measure of damages claimed for breach of contract by a charterer to furnish a full cargo to a ship² is known as deadfreight.

The charterers are ultimately liable for deadfreight resulted from bad stowing, if under the charterparty they undertake the duty of stowing the cargo, notwithstanding the master's duty to supervise stowage, because as Greer J held it was not a question of whose servant the stevedore was, but who under the charterparty undertook the duty of stowing the cargo³. See also (Voyage Charterparty. Charterer's Duties: Obligation to load and later to discharge the goods)

Full cargo and full loading capacity

Dead freight means the damage caused by the failure to furnish a full cargo in accordance with the contract, not merely that caused by the ship not being in fact fully loaded. In other words deadfreight accrues only when quantity stated in contract was not supplied, which signifies a breach of contract, and not when the vessel loaded cargo as per contract but less than her full capacity.

The obligation ... to pay deadfreight is only triggered in the event that the Charterer fails to supply a full cargo. Deadfreight is traditionally described as the name given to liquidated damages claimed for a charterer's breach of contract to furnish a full cargo to a ship in accordance with the charter; ... Accordingly, where, as here, there was a tender of full

¹ Or if the goods shipped are not in accordance with the charterparty see *Young v Canning Jarrah Timber Co Ltd* (1899) 4 Com Cas 96

² *McLean v Fleming* (1871) L.R. 2 Sc. & Div. 128

³ *Brys & Gylsen v Drysdale* (1920) 4 L.L.R. 24

contractual performance by the Charterer, there can have been no failure to supply and therefore no obligation to pay deadfreight⁴.

In some instances it can happen that the vessel's full capacity is utilised but not full cargo loaded. For example in *Akties Steam v Arcos Ltd* (1933) 47 Ll L Rep 159, 18 Asp MLC 409, CA case, the cargo loaded was covered with ice and snow, so that its bulk has been increased and the quantity which the ship could carry should be accordingly reduced. It was held that the shipowner is was entitled to dead freight in respect of the reduction in her carrying capacity so caused.

Implied liberty

The owner by implication is at liberty, if acting reasonably, not only to fill up the space left vacant due to the charterer's failure to provide full cargo, but also to delay the charter voyage by the period of time reasonably and necessarily occupied in taking in that substituted cargo⁵. Basis for this implication is an assumption that the carrying out of such an action is for the benefit of the charterer, because it goes to diminish the damages that the charterer will be liable for⁶.

Deadfreight and demurrage

If the charterer is unable to load a full contracted cargo during agreed laydays then he is liable to pay damages in the nature of deadfreight as well as demurrage for delays sustained.

Read this article in full here:

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

⁴ Per Gloster J. in *AIC Ltd v Marine Pilot Ltd (The Archimidis)* [2007] EWHC 1182 (Comm)

⁵ Per MacKinnon J in *Wallems Rederij A/S v WH Muller & Co Batavia (The Storviken)* [1927] All ER Rep 369 at p.372

⁶ *Ibid*