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Serious Irregularity in Arbitration – A Cautionary Tale from the High Court: Mare Nova Incorporated v Zhangjiagang Jiushun Ship Engineering Co Ltd [2025] EWHC 223 (Comm) (10 February 2025)

Mare Nova Incorporated v Zhangjiagang Jiushun Ship Engineering Co Ltd [2025] EWHC 223 (Comm)

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Key Words:

Arbitration Act 1996, Section 68 (Serious Irregularity), Section 69 (Appeal on Point of Law), Procedural Fairness, Opportunity to Present Case, Discharge of Liability, Construction of Contractual Terms, General Conditions, Breach of Contract, Guarantee (Clause 2.10), Substantial Injustice, Remission to Tribunal, Clear and Express Words, Presumption against Abandoning Remedies, Bailee Liability

Summary

Mare Nova Incorporated (claimant) challenged an arbitration award under ss.68 and 69 of the Arbitration Act 1996 [1]. The dispute with Zhangjiagang Jiushun Ship Engineering Co., Ltd (defendant) concerned vessel damage during repairs [p1, 2, 7]. The arbitrator dismissed the claimant's damages claim, holding liability was discharged when the vessel left the shipyard under Cl.2.1 and 6.3 [10,11], but awarded a sum under a six-month guarantee [12]. The High Court allowed the s.68 challenge due to serious irregularity, as discharge of liability was not raised during arbitration, denying the claimant an opportunity to address it [15, 16]. The s.69 appeal was dismissed, but the court found the arbitrator's interpretation of liability discharge incorrect [21, 22, 30-31]. The award was remitted to the Tribunal [30-33].

Key Themes:

1. ***Serious Irregularity in Arbitration Proceedings:*** *Tribunals must ensure procedural fairness under s.33 of the Arbitration Act 1996. Failure to raise the issue of liability discharge amounted to serious irregularity under s.68(2)(a) [14, 16].*
2. ***Construction of Contractual Terms and Discharge of Liability:*** *The judgment analyses the interpretation of Cl.2.1 and 6.3 of the General Conditions, focusing on the principle that clear words are required to rebut the presumption that parties do not intend to abandon their rights and remedies for breach of contract [23].*
3. ***The Scope of Guarantee Clauses:*** *The arbitrator distinguished between general liability*

discharge and ongoing liability under Cl.2.10 [12].

4. ***The Interplay of ss.68 and 69:*** *The claimant pursued both a serious irregularity challenge and a legal appeal. The s.68 challenge succeeded; the s.69 appeal was dismissed, though the court found the arbitrator's interpretation incorrect [1-2, 21,23].*

Background

Mare Nova Incorporated owned the vessel [6]. In March 2021, the vessel underwent repairs at the defendant's shipyard in China under a contract incorporating Evalend Shipping Co S.A.'s General Conditions [6]. Work on the intermediate shaft bearing was signed off on 30 March 2021, and payment was made [6]. The vessel departed on 31 March 2021, but within hours, a burning smell indicated misalignment damage
[6]. The claimant incurred losses [6]. Arbitration was commenced, though the defendant disputed the jurisdiction [7]. The Commercial Court appointed an arbitrator
[7]. The claimant sought damages for breach of contract, negligence, and under a six-month guarantee [8]. The arbitrator found the misalignment breached Cl.2.1, 2.2, and
2.3 [11] but dismissed the damages claim, concluding liability was discharged upon the vessel's departure under Cl.2.1 and 6.3 [10-11]. The claimant was awarded US$298,651 under Cl.2.10 [12-13].

Legal Issues and Analysis

The claimant raised two primary legal challenges to the arbitration award:

1. **Section 68 Challenge (Serious Irregularity):** The claimant argued that dismissal of the damages claim based on Cl.6.3 constituted a serious irregularity under s.68(2)(a) [1, 2, 11-15]. Since discharge of liability was never raised during arbitration, the claimant was deprived of the opportunity to present its case [11, 15-16]. Judge Keyser KC agreed, finding substantial injustice due to the claimant's lost chance to contest the liability discharge [16-19].
2. **Section 69 Appeal (Point of Law):** The claimant appealed on the legal question of whether Cl.2.1 and 6.3 discharged liability for breach of contract upon thevessel's departure [1, 2, 14, 17, 20-21]. HHJ Pelling KC granted permission to appeal, considering the Tribunal's decision "obviously wrong" [21]. Judge Keyser KC dismissed the appeal, despite agreeing that the arbitrator's interpretation was "clearly wrong in law" [17, 22, 30-31], as the discharge issue was not determined in arbitration, failing s.69(3)(b) [21]. The judgment emphasised that clear words are required to exclude liability [23] and analysed Cl.6.3 within the "Insurance and Liability" section, concluding it applied to bailee liability, not breach of contract [27-29]. Key precedents cited included Modern Engineering (Bristol) Ltd v Gilbert-Ash (Northern) Ltd [1974] AC 689 and Triple Point Technology, Inc v PTT Public Company Ltd [2021] UKSC 29, [2021] AC 1148 [23, 29].

Conclusion

The High Court allowed the s.68 challenge due to procedural unfairness, as the Tribunal determined liability discharge without the claimant's input [15-16, 18-19, 30-33]. The s.69 appeal was dismissed because the Tribunal had not been asked to determine this legal issue [21, 23]. The award was remitted to the Tribunal [18-19, 32-33].

Key Takeaway:

Arbitrators must ensure procedural fairness, allowing parties to address all issues [14, 16]. Tribunals must ensure all parties can respond to issues affecting their case [18(1)(a), 26]. A decision based on an unargued point constitutes serious irregularity, warranting challenge and remission [14-16, 20(2),

27, 32-33]. Contractual clauses limiting liability must be clear and express [23], as courts presume against abandoning legal rights unless unequivocally stated [23, 29].

Parting Thoughts

And so, with a judicial flick of the wrist and a healthy dose of exasperated clarity, the High Court reminded arbitrators everywhere of one basic principle: if you're going to decide a case on a point, at least have the courtesy to let the parties know it's a point. Mare Nova v Jiushun is a masterclass in procedural fairness and contractual construction, wrapped in the polite frustration of a judge correcting a Tribunal that wandered off the legal piste and into the forest of unargued assumptions.

The Tribunal, without prompting from either party—and in the noble tradition of solving problems no one has raised—decided that liability for a botched shaft alignment vanished the moment the ship sailed. Like magic. Except legal liability is not Tinkerbell: it doesn't disappear if no one claps. The High Court, with a raised eyebrow and a vintage citation from Lord Diplock, took this opportunity to reinforce the obvious: parties do not lightly abandon their rights, and when they do, it requires clear and express language, not the interpretive equivalent of reading tea leaves.

Judge Keyser KC's decision serves as a sharp lesson: invoking procedural fairness isn't just for dramatic effect in textbooks. Tribunals are not crossword solvers uncovering hidden clues in the contract; they are bound—irritatingly—to the parties' submissions. Deprive a claimant of the chance to argue a central issue, and you'll find your award in the recycling bin of judicial reconsideration.

The message is crisp, stern, and undeniable: don't improvise. Tribunals are not there to be clever; they're there to be fair. And in arbitration, as in mechanics, a failure to follow the manual leads to costly breakdowns—of both bearings and justice.

#Arbitration #EWHC #CommercialCourt #SeriousIrregularity #Section68 #Section69 #ArbitrationAct1996 #ProceduralFairness #OpportunityToPresentCase #DischargeOfLiability #ContractLaw #ConstructionOfContract #ShipRepairContract #Guarantee #SubstantialInjustice #Remission #ClearWords #PresumptionAgainstAbandoningRemedies #EvalendConditions #MareNova #ZhangjiagangJiushun

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