

THE SPECTRE OF PORT DUES ON NIGERIAN SHIPPING – ITS GENESIS AND IMPLICATIONS.

The Nigerian Ports Plc (NP Plc)'s power to charge Port and Harbour dues resides in the enabling law known as the Nigerian Ports Decree No. 74 1993.

Under Section 58 of the Decree, NP. Plc is given the power to make regulations for the levying and imposition of Port and Harbour dues on vessels coming into Nigerian Ports. Although the power has existed and has been exercised for many years now, in recent times the rate of accrual of Port dues has become the cause for much consternation amongst ship owners and charterers coming to Nigerian Ports.

The current marked increase in the volume of maritime litigation (involving a high incidence of claims against owners) has been attributed to several factors, such as:

- Greater awareness of the subject (fostered by the increase in shipping practice);
- The relative ease with which the arrest procedure can be effected; and

- The fact that many dry cargo vessels currently plying the Nigerian trade route are unseaworthy.

The deluge of claims is no less compounded by the delay that often attends the disposal or settlement of maritime disputes. Undue diffidence on the part of counsel and litigants respectively, conspire to delay the release of ships under court arrest with devastating multiplier effects have forced a re-appraisal by owners of the level of shipping activity on the Nigerian route.

Computation Of The Rates

By virtue of the Dues and Rates Regulation 1993, the NP Plc can levy at any of its designated ports within the federation (under the authority of the Port Manager in the particular port) Berthage and Anchorage dues upon a vessel which in the opinion of the Port Manager is 'lying idle' within the Port

Berthage dues are levied on dry cargo vessels.

The levy on Dry cargo vessels presently stands at: -

- 0.77c per GRT for the 1st 10 days
- 1.22c per GRT for the next 7 days
- 1.66c per GRT for the next 7 days
- 2.65c per GRT for the next 7 days and thereafter in periods of 7 days or part.

On the other hand, Tankers have a lower rate of levy, being 50% of the dry cargo vessel levy.

Anchorage dues are levied on both dry and wet cargo vessels at the rate of 0.56c per ton of the GRT of the vessel.

Anomalies

The following anomalies have arisen:-

- The exact meaning of the expression 'lying idle' N.B. Although the general view is and has been that the expression contemplates a vessel, which remains at the berth after loading or discharge through the fault of the owner or person in charge of it. The authorities have however not proffered any consistent explanation for this expression when confronted.

- The fact that the levy of Berthage dues in practice continues to be applied even when the vessel is no longer at berth but at anchorage.
- The very high rate of dues, which are yielded when the figures are, computed result from a N1 - \$1 conversion of the dues. Given the recent depreciation of the Naira to its current level of \$1 – N82, one must question whether the current level of dues represents a true value of services provided by the Port.

The lack of clarification of the above through administrative and judicial pronouncements has stemmed from the many years where shipping litigation and resultant delays were minimal. The quantum of port dues was therefore never significant enough to impede the clearance of vessels.

Current Position

PRACTICAL

The present position is that Port dues are at an all time high and can, when allowed to accrue for more than a month, reach hundreds of thousands of U.S Dollars making Nigerian Ports arguably the most expensive (to be 'lying idle' at) in the

whole world new Ports. More often than not, the settlement of the charge is effected by the ship's agent and negotiation eventually ensues with an appropriate figure being agreed and paid. This, in practice gives rise to a great deal of graft which has increased in recent times and the owner finds himself in the unsatisfactory position of not being able to obtain an accurate disbursement account of his alleged bill.

LEGAL

In 1993, the Admiralty Jurisdiction Procedure Rules were promulgated by the Chief Judge of the Federal High Court, pursuant to powers conferred on him by virtue of Admiralty Jurisdiction Act of 1991. These rules provide that a vessel shall not attract port dues or other harbour charges whilst it is under judicial arrest. Clearly the *raison d'être* behind it is that vessel owners should not be penalized by the Ports due to the vicissitudes of litigation. It likewise encourages the Ports to mitigate their loss by taking the vessel out of the berth and into the midstream where it would not deprive the NP Plc of earning revenue from vessels coming in to discharge cargo at the Port.

This provision clearly cuts across the general power of the Ports to levy charges on vessels deemed as 'lying idle' where they are detained under court process. No doubt, the Ports

are aware of this, but have nevertheless continued to levy the dues and insist upon their payment. Where an owner has resolved to confront the Ports, the course adopted has been to bring contempt proceedings against the Port Manager in question and thereby compel him to obey the court order to release the vessel unconditionally. Because of the attendant delays in prosecuting contempt proceedings, the traditional stance adopted by owners has been to eschew confrontation with the authorities and adopt the settlement route, whereby a reduction is negotiated with the Port.

To date, there has been no pronouncement of the appellate courts on the authority of the Port to levy dues based on the regulations; in the light of the Admiralty Jurisdiction Rules. The present unsatisfactory situation, has led to a recent challenge to the NP Plc power. The court of first instance ruled in NP Plc's favour but the matter is now on appeal. For now, it is at best a mot point ass to which way the appellate courts will lean.

The question that the appellate court will have to decide is which regulation has supremacy. Factors such as date of promulgation, supremacy of statute over regulations and other

canons of construction will doubtless be called in aid and while this test case awaits, the moral for the prudent owner is to settle issues of security promptly by posting a P & I Club or Bank guarantee. This will ensure that the vessel sails out of jurisdiction without delay before counsel on opposite sides become embroiled in legal arguments over the merits/demerits of the claim and the adequacy of security posted.

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