

New case law: Time bar under DHAB 2007

On May 11, 2018, the Danish Maritime and Commercial Court issued a judgment in a case between a large wind turbine manufacturer and a stevedore company, who had unloaded and stacked two wind turbine wings at the port terminal in Esbjerg in October 2012. During the stevedore's handling of the wings, a violent wind caused them to topple over, and the resulting damage rendered them a total loss.

The stevedore's handling of the operation had been booked by a freight forwarding company. There was no written agreement between the stevedore and the wind turbine manufacturer, who had only entered into agreements directly with each other on a few previous occasions. However, during the proceedings the court was informed that the wind turbine manufacturer had contacted the stevedore to inform them about the number of wings and the time of delivery. As the wind turbine manufacturer subsequently delivered the wings on the stevedore's terminal area, the Maritime and Commercial Court concluded that the manufacturer had accepted an offer from the stevedore to handle the unloading and stacking of the wind turbine wings, thus creating a contract between the parties.

The question was then whether the General Conditions of Danish Port Companies (DHAB 2007) were incorporated into the contract between the wind turbine manufacturer and the stevedore, even though no written contract had been entered into. The Maritime and Commercial Court found that DHAB 2007 was so widely used for stevedore assignments in Danish ports that the wind turbine manufacturer as a professional should know that the conditions would also be applicable to tasks such as the operations carried out by the stevedore in this case. The Maritime and Commercial Court noted that DHAB 2007 would be deemed to apply under such circumstances, unless otherwise explicitly agreed.

Accordingly, the wind turbine manufacturer's claim for compensation was time barred under the short limitation period of 10 months under DHAB 2007.



ULLA FABRICIUS
ATTORNEY AT LAW,
PARTNER

(+45) 77 40 10 12
UF@NJORDLAW.COM