

ASPARAGUS ATROPHY

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FACTS

Consignment: 500 boxes of asparagus harvested in Ica, Peru, wrapped in mesh known as malla raschel

Carrier service booked: “temperature controlled” perishable goods service guaranteeing carriage between 2°C and 8°C with the exception of exposure to ambient temperatures during “warehouse and ramp handling”

Routing: Lima -> Quito -> Miami -> Amsterdam and subsequent trucking to London Heathrow

Exposure: Due to nature of routing and time of year, the consignment was exposed to unavoidable high temperatures for approximately 7 hours on the ground in Lima, Quito and Miami

The Problem: the consignment was delivered to consignee in London in state of decomposition, having been accepted by carrier’s agents in Lima without comment as to its condition



LAW

“Carrier is liable for damage sustained in the event of the destruction, loss, or damage to, cargo upon condition that the event which caused the damage took place during the carriage by air.”

Article 18(1) MC99

“Carrier is not liable if...it proves that the destruction, or loss of, or damage to, the cargo resulted from one or more of the following:

- (a) inherent defect, quality or vice of that cargo;
- (b) defective packing of that cargo performed by a person other than the carrier or its servants or agents;...”

Article 18(2)

Meaning of “event” under Article 18(1) only considered by Court once previously in *Winchester Fruit Ltd v American Airlines Inc* [2002]

ARGUMENTS

Claim

Claimant alleged liability under Article 18(1) of the Convention for lost sales on rotten asparagus on basis that the consignment had sustained damage from exposure to high ambient temperatures during the “carriage by air”.

Defence

Carrier defended the claim on the basis that:

1. exposure to high ambient temperatures was not in itself an “event” for the purpose of Article 18(1); and in the alternative
2. Article 18(2) defences of inherent vice and defective packaging should apply to exonerate the carrier of liability





JUDGMENT

Court disagreed with *Winchester Fruit v American Airlines*

An event must:

1. cause the damage sustained by cargo and be external to the damage; and
 2. need not be “unusual” or “unexpected”
- On **facts**: Court interpreted “warehouse and ramp handling” literally. Consequently, the carrier’s exposure of the consignment to high ambient temperatures for extended periods of time = breach of contracted terms
 - On **inherent vice**: Court rejected defence as the goods were properly packed, accepted at origin without comment on condition, and evidence points to damage occurring because of breach of contracted terms
 - On **defective packing**: Court rejected defence as malla raschel is commonly applied to the subject goods, carrier failed to provide evidence of inappropriate application, and packaging not rejected on receipt

Conclusion

Court held that these extended periods caused the damage on balance of probabilities and amounted to **multiple events** under Article 18(1) for which the carrier was **liable**



TAKEAWAYS

Problem 1: Court will interpret contractual ambiguity or silence in favour of the claimant if damage occurs during carriage by air

Solution: Contractual Wording must be clear and comprehensive to prevent “no-fault” liability

Problem 2: Defence of Inherent Vice is difficult to argue where the carrier accepts goods without objection at origin and later delivers them in a defective state

Problem 3: Defence of Defective Packaging equally difficult as consignees have often removed packaging before carrier can conduct its own survey on damaged goods

Solution: Carriers and Ground handlers should, where possible, accurately check and record the condition of goods and packaging on receipt at origin. Such records will facilitate resolution of later disputes