

Privy Council Appeal No. 19 of 1970

Arnold Malabre & Co. Ltd. - - - - - *Appellant*

v.

Kingston Pilotage Authority - - - - - *Respondents*

FROM

THE COURT OF APPEAL OF JAMAICA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 27TH JUNE 1972

Present at the Hearing :

LORD WILBERFORCE

VISCOUNT DILHORNE

LORD DIPLOCK

LORD CROSS OF CHELSEA

SIR VICTOR WINDEYER

[Delivered by LORD WILBERFORCE]

This appeal arises out of a claim for pilotage fees made by the respondents, the Kingston Pilotage Authority, against the appellant as shipping agents for the owners of the vessel "Koei Maru". The fees are claimed in respect of an inward voyage and an outward voyage made by the vessel into and out of the port of Kingston on 7th and 9th November 1965. The appellant duly paid one pilotage fee in respect of each voyage but the respondents complained that it should have paid two such fees in respect of each voyage. The Resident Magistrate, who heard the complaint, decided on 14th November 1966 that the respondents were right and ordered the appellant to pay £27 6s. 11d. in respect of the inward and £27 6s. 10d. in respect of the outward voyage. On appeal to the Court of Appeal of Jamaica his judgment was upheld by a majority (Mr. Justice Shelly and Mr. Justice Luckhoo), Mr. Justice Waddington dissenting.

The relevant enactment relating to Pilotage in Jamaica is the Pilotage Law 1957 (Law 28 of 1957). The Law made provision for the establishment, in relation to Ports in Jamaica, of pilotage limits or areas: these might be compulsory or optional. By regulation under this Law (Regulation 30) optional and compulsory limits were defined both for the port of Kingston and for other ports. For Kingston, the optional limit was set as a line joining the Fort Charles flagstaff at Port Royal across the entrance to the bay forming the natural harbour of Kingston to the jetty at Small Point on the mainland. The compulsory limit lies seaward of the optional limit and is defined by a line from

Healthshire Point on the mainland to the Southern point of South Cay to the east, produced to the Meridian of 76° 44' 10" West, passing through the Red Cliff at Rockfort and thence along this Meridian to the foreshore of the Palisadoes. A vessel approaching Jamaica from the high seas and wishing to enter the port of Kingston, would thus cross the compulsory limit, and have to engage a pilot. It could not, however, reach the port without crossing the optional limit. Similarly, a vessel outward bound from the port of Kingston would first traverse an area of sea shorewards of the optional limit and after crossing that limit would traverse an area of sea shorewards of the compulsory limit. The question raised in the appeal, which is of general importance, is whether, as the respondents contend, one pilotage fee is payable in respect of pilotage within or up to the optional limit and another pilotage fee in respect of pilotage within or up to the compulsory limit—two fees in all—or whether one single fee is payable in respect of the whole voyage between the compulsory limit and the port (or *vice versa*).

The respondents mainly rest their claim for a double fee upon Regulation 15 which provides—

“(1) There shall be payable in respect of pilotage services within the compulsory limits of any port, the fees specified in Part IV of these Regulations for such services.

(2) There shall be payable in respect of pilotage services within the optional limits of any port, the fees specified in Part IV of these Regulations in respect of such services.”

This is completed, in Part IV, by Regulation 33, which provides

“PART IV. Pilotage Fees

(1) The fees payable in respect of pilotage services within the compulsory pilotage limits of first class ports shall be as follows—

(Here follows a table of fees assessed on registered gross tonnage).

(3) The fees payable in respect of pilotage services in optional pilotage areas shall be the same as are prescribed by paragraphs (1) and (2) above.”

It is necessarily accepted by both sides that these provisions must be read in the larger context of the Law and Regulations.

Before referring to the relevant provisions their Lordships will refer briefly to the law as it stood before 1957: this was contained in the Pilotage Law Cap. 293 of the 1953 Revised Edition of the Laws of Jamaica. Under that Law there was no central pilotage authority. Masters of vessels inward bound had to accept the first pilot for the port who offered his services within 3 miles of the limit of the port; but if the vessel reached a certain line—commonly called the excused limit—without a pilot having offered his services, the master was not obliged to accept a pilot, though of course he could do so. The excused limit for the Port of Kingston was a line drawn north to south some distance seaward from the present optional limit. In the case of outward bound vessels, the master had to hoist a signal for a pilot and keep it hoisted for a specified time. The pilot who had piloted this vessel inward had the first right to take it out, but if he did not offer his services within the time specified, the master was bound to accept the first pilot who did so. Pilots were entitled to fees at prescribed rates based on registered gross tonnage. In the case of the port of Kingston, provision was made for reduced fees if the vessel was only piloted for part of the distance between the prescribed limits and the port. It may be added that the scale of fees prescribed had been, and until 1957 remained, the same as they were fixed in 1891. The scale fees fixed in 1957, in a schedule to the Pilotage Law, were considerably greater than those applicable before that date.

It is now necessary to refer to some provisions of the Pilotage Law of 1957 which bear upon the interpretation of Regulations 15 and 33 set out above.

Section 2 is a definition section and two definitions are relevant—

“ ‘ compulsory pilotage area ’ means the area within the limits fixed by regulations under section 4 of this Law within which it shall be compulsory for a ship to take a pilot; ”

“ ‘ optional pilotage area ’ means the area within the limits fixed by regulations made under section 4 of this Law within which it shall not be compulsory for a ship to take a pilot; ”

Section 4 enables the Marine Board to make regulations—

“ (a) defining the limits of pilotage areas, distinguishing as respects any pilotage area in part of which pilotage is compulsory and in part of which pilotage is optional, the part of the area in which pilotage is compulsory; ”

...

“ (j) fixing the rates of pilotage dues; ”

and provides (subsection (2)) that until varied or revoked by the Board, the regulations contained in the First Schedule shall be in force.

Section 32 (1)

“ Every ship (other than an excepted ship) while navigating in a compulsory pilotage area shall be under the pilotage of a pilot licensed for such area. ”

Section 34

“ It shall not be compulsory on the master or other person in charge of a ship to take or employ the services of any pilot when such ship is not navigating in a compulsory pilotage area, and every such master or other person may lawfully pilot and conduct his own ship within the optional pilotage limits as defined in the regulations made under this Law, so long as he does so without the aid or assistance of any person other than the ordinary crew of such ship. ”

Section 45 (1)

“ If a pilot—

...

(k) quits the ship, which he is piloting, before the service for which he was engaged has been performed and without the consent of the master of the ship, that pilot shall, in addition to any liability for damages, be liable in respect of each offence to a fine not exceeding one hundred pounds. ”

The following regulations, contained in the First Schedule, and so effective till varied, are relevant.

“ Regulation 3. The limits of the pilotage areas of the Island shall be as defined in Part II of these Regulations. ”

Regulation 14 (1) (which is made applicable to Kingston pilots by Regulation 3 (2) of the Pilotage (Authority) Regulations 1957) prescribes that a pilot shall

...

“ (f) not leave a ship piloted by him unless she is berthed alongside a wharf or jetty or brought to a safe anchorage or if outward bound, until the appropriate limits have been reached; ”

...

(j) when he is about to take charge of a ship which is outward bound or which is about to be moved from where she is lying, go on board and report himself to the master or officer in command

before the appointed time so as to enable her to be moved out from the wharf or jetty or to proceed to sea or to her destination;"

Regulation 15. (This has been quoted above.)

Regulation 19. "Subject to the provisions of Regulations 15 and 18 of these Regulations a pilot piloting a ship from any one part of any port to any other part thereof shall be entitled to a fee equivalent to one-half of the appropriate fee specified in Part IV of these Regulations in respect of such ship."

Regulation 30. "The limits of the pilotage areas in the Island are hereby defined as follows—

PORT OF KINGSTON

Compulsory pilotage limit. A line from Healthshire Point to the Southern Point of South Cay and produced in the same direction to the Meridian of 76° 44' 10" W. passing through the Red Cliff at Rockfort and thence along this Meridian to the foreshore of the Palisadoes.

Optional pilotage limit. A line joining the Fort Charles flagstaff at Port Royal to the jetty at Small Point."

Regulation 33. (This has been quoted above.)

It is evident from a reading of these provisions that the process of interpretation is not an easy one. The terminology used, no doubt adequate for practical purposes of daily application, is not scientific or exact: it reflects additions and piecemeal modifications made to earlier legislation. In particular the use of the critical words "areas" and "limits" is not completely consistent: thus Regulation 15 which refers to *compulsory limits* and *optional limits*, does not fit, with any exactitude, either with Regulation 30 which uses the singular word *limit* or with Regulation 33 which refers to compulsory pilotage *limits* and optional pilotage *areas*.

The appellant's primary argument was that the phrase "within the compulsory (pilotage) limits" means "inside" or "shoreward" of the line which defines the compulsory pilotage limit: the result would be that a single fee at the scheduled rate would under Regulation 33 (1) cover all pilotage services inshore of this line up to the shore. This would consequently disentitle the Board to a second fee in respect of services within the optional limit line, for the reason that the pilot's services would already have been fully paid for under Regulation 33 (1). Support was claimed for this argument from the definition of "compulsory pilotage area"—the word "within", it was said, being commonly understood to mean, in a marine context, "shorewards of".

A related argument was that favoured by Waddington J. A. in his dissenting judgment. He found significance in the distinct use in the legislation of "limit(s)" and "area"—the former referring to a line marking the seaward boundary of an area, the latter all the surface of the sea enclosed by the limit(s) and by the shore. The effect of Regulation 30 was, in his view, first to create a compulsory pilotage area extending from the outer line to the foreshore, and then to except or exclude therefrom, as being the optional pilotage area, the area lying between the foreshore and the inner line. From this he drew the conclusion, as contended for by the appellant, that the services for which a single pilotage fee was payable as regards incoming or outgoing vessels were all services within the compulsory limit regardless of the area within which they were performed.

Their Lordships appreciate the force of these arguments, but in their opinion, having regard to the variety of the terminology used in the Law and Regulations, they are not conclusive. It remains the fact, and

on this point all three members of the Court of Appeal were agreed, that the legislation creates pilotage areas—compulsory and optional—and that these are exclusive one of the other. The appellant's arguments above mentioned would have much greater force if it could be said that the compulsory pilotage area included the optional pilotage area, but this is evidently not so. Since the two are separate and exclusive the contention remains open that a separate fee is payable for services in each area. It can plausibly be said that both section 34 of the Law and Regulation 33 support it.

In their Lordships' opinion the choice between the rival interpretations cannot be made purely on linguistic arguments from the use of "limits" and "areas". It is necessary to look more broadly at the scheme of the legislation. It is relevant to have in mind that under the previous system there was only one "limit" properly so called, coupled with an excused limit, within which it was not compulsory to employ a pilot. The new system introduced by the Law of 1957 represents, on the appellant's construction, a variation or adaptation of this system. Instead of an excused limit there is to be an optional pilotage limit. If a vessel navigates in a compulsory pilotage area a pilotage fee is payable: for navigation exclusively in an optional pilotage area pilotage is optional, but if it is resorted to, a fee is payable at the same rate. In either case the single fee covers all the services rendered. The new scheme thus represents an improved version of the old without any radical change of principle.

If, on the other hand, the respondents' contention was correct, there would be a new system altogether. An incoming vessel would be liable to a fee once it crossed the compulsory pilotage limit. Then, when it reached the optional pilotage limit it would be open to the master to dispense with the pilot and take over navigation of the ship himself: if he did not, another fee would be payable. Similarly on an outward voyage, the master could dispense with the pilot's services until the optional pilotage limit was crossed and would have to pay him from then on. Such a system represents so clear a departure from the old scheme that one would expect some plain indication—much plainer than is given—that this was intended. This is all the more so because of the practical difficulties to which it gives rise. Under section 45 (1) (k) and Regulation 14 (1) (f) and (j) a pilot has definite obligations imposed upon him. Under Regulation 14 (1) (f) he may not leave the ship till berthed or brought to a safe anchorage. But on the respondents' contention his duties on an inward voyage might terminate once the vessel reached an imaginary line on the sea unrelated to any safe anchorage. And similarly, on an outward voyage, Regulation 14 (1) (j) obliges him to go on board and report to the master at the point where the vessel is lying, but, on the respondents' contention, his pilotage duties might not commence until the vessel reached the same imaginary line on the sea.

All this strongly argues for a simpler system under which the services for which a fee is payable include all services from the compulsory pilotage limit to port and *vice versa* and not merely a part of those services.

Side by side with these provisions relating to navigation from and up to the compulsory pilotage limit there are those relating to navigation within an optional pilotage area. It was argued that, on the appellant's construction, these were meaningless or at least were surplusage. In their Lordships' opinion this is not so. Once the conception of an optional pilotage area is introduced, as it was for the first time in 1957, it is necessary to lay down what the position is to be if a pilot is engaged exclusively for navigation in these areas. Under section 4 (1) (j)

the fixing of dues in pilotage areas is to be done by regulation. The Regulations might have fixed greater or lesser fees than those applicable within the compulsory limits: in fact Regulation 33 (3) fixes them as "the same". The appellant indeed seized on these words as supporting its conception of one fee, or at least as contradictory of the respondents' conception of two fees, but whether this argument is valid or not, their Lordships regard the combined provisions referred to as entirely consistent with the Act's scheme as they see it. There may be truth in the observation that in the end, Regulation 33 is saying nothing more than that pilotage anywhere within the compulsory pilotage limit attracts a scheduled fee, but their Lordships regard it as perfectly natural that the legislature having created two separate pilotage areas, with different characteristics, should have specified separately the fees chargeable where pilotage is (i) compulsory or (ii) optional. To have made no separate mention of the fees chargeable in optional pilotage areas would have left the amount of the fees to be charged to implication. Other arguments were founded on other provisions of the Act and Regulations: mention might be made of Regulation 18 which was relied on by both sides, but these, both singly and in aggregate, are indecisive.

For the reasons which their Lordships have endeavoured to state, they prefer, in substantial agreement with Waddington J. A., the appellant's construction of the Law and Regulations to that of the respondents. They would add that they do not regard the increase in fees made in 1957 as legitimate support for one view or the other. So to use it would involve unwarranted speculation as to the legislature's intentions.

Their Lordships will humbly advise Her Majesty that the appeal be allowed and the complaints dismissed. The respondents must pay the costs before the Board and in the Courts below.



In the Privy Council

ARNOLD MALABRE & CO. LTD.

v.

KINGSTON PILOTAGE AUTHORITY

DELIVERED BY
LORD WILBERFORCE