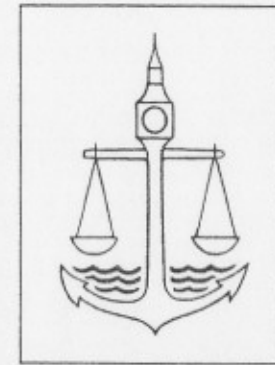


THE LONDON MARITIME ARBITRATORS ASSOCIATION



**THE L.M.A.A. SMALL CLAIMS
PROCEDURE 1989**
and COMMENTARY

THE L.M.A.A. SMALL CLAIMS PROCEDURE

1989

1. INTRODUCTION

These provisions shall be known as the L.M.A.A. Small Claims Procedure 1989 ("the Small Claims Procedure").

2. APPOINTMENT OF ARBITRATOR

- (a) If a dispute has arisen and the parties have agreed that it should be referred to arbitration under the Small Claims Procedure, then, unless a sole arbitrator has already been agreed on, either party may start the arbitration by giving notice to the other requiring him to join in appointing a sole arbitrator. If within fourteen days the parties have agreed on a sole arbitrator and the intended arbitrator has accepted the appointment, the Claimant shall within a further fourteen days send to the Respondent (with copies to the arbitrator) a letter of claim accompanied by copies of all relevant documents and shall further send to the arbitrator a remittance in his favour for the fixed fee of £600.
- (b) If the parties have not within fourteen days agreed on a sole arbitrator, either party may apply in writing to the Honorary Secretary, London Maritime Arbitrators Association, 30-32 St. Mary Axe, London EC3A 8ET, for the appointment of a sole arbitrator by the President. Such application shall be copied to the other party and shall be accompanied by a copy of the letter of claim together with copies of all relevant documents and a remittance for £700 in favour of the L.M.A.A. The President, having considered the nature of the dispute, shall appoint an appropriate arbitrator and shall give notice to the parties. The L.M.A.A. shall send to the arbitrator the letter of claim and the documents together with the fixed fee of £600, and shall retain the balance in respect of administrative expenses.

3. THE ARBITRATOR'S FEE

- (a) The fixed fee of £600 includes the appointment fee, interlocutories, a hearing not exceeding one day, the writing of the Award and the assessment of costs (if any). It does not include expenses, such as the hire of an arbitration room, which shall in the first instance be paid by the Claimant on demand.

- (b) If the case is settled amicably before a date for the hearing has been fixed, the arbitrator may retain out of the fixed fee a sum sufficient to compensate him for services thus far rendered and any balance shall be repaid to the Claimant. If the case is settled after a date for the hearing has been fixed, or, where the case is to proceed on documents and written submissions only, after the arbitrator has received the documents and submissions, the arbitrator may retain the fixed fee.

4. RIGHT OF APPEAL EXCLUDED

The right of appeal to the Courts is excluded, and, immediately following the appointment of the arbitrator, each party shall send to the arbitrator a letter confirming that such right of appeal is excluded.

5. PROCEDURE

- (a) A letter of defence and details of counterclaim (if any) accompanied in each case by copies of all relevant documents shall be delivered to the Claimant within twenty-eight days from the receipt of the letter of claim or from the date of the appointment of the arbitrator, whichever shall be the later.
- (b) Letter of reply and defence to counterclaim (if any) within a further twenty-one days.
- (c) Where there is a counterclaim, letter of reply to defence to counterclaim within a further fourteen days.
- (d) No extension to the above time limits will be granted unless application is made before expiry of the existing time limit.
- (e) Copies of all the above letters and documents shall be sent to the arbitrator.

6. DISCLOSURE OF DOCUMENTS

- (a) There shall be no Discovery, but, if in the opinion of the arbitrator a party has failed to produce any relevant document(s), he may order the production of such document(s) and may indicate to the party to whom the order is directed that, if without adequate explanation he fails to produce the document(s), the arbitrator may proceed on the assumption that the contents of that document(s) do not favour that party's case.
- (b) The expression "relevant documents" includes all documents relevant to the dispute, whether or not favourable to the party holding them. It includes witness statements, expert's reports and the like on which he intends to rely, but does not include documents which are not legally disclosable.

7. THE HEARING

- (a) Most cases will proceed on documents and written submissions only. The arbitrator shall however have discretion as to whether or not there should be an oral hearing, but oral evidence will be allowed only exceptionally and in the discretion of the arbitrator.
- (b) In the case of an oral hearing the arbitrator shall have power to allocate the time available (which shall be limited to one working day) between the parties in such manner that each party has an equal opportunity in which to present his case.

8. THE AWARD

The Award will be made within one month, in a documents only case, from the date when the arbitrator has received all relevant documents and submissions, or, where there is an oral hearing, from the close of the hearing.

9. COSTS

The arbitrator may give directions with regard to the ultimate responsibility for his fee and expenses and with regard to legal costs and may assess such costs. Such assessment shall be on a commercial basis and the amount which one party may be ordered to pay to the other in respect of legal costs shall not exceed £1,000, but in small cases the arbitrator may in his discretion limit such amount to £500.

10. GENERAL

The arbitrator may in exceptional cases depart from or vary the above provisions.

**COMMENTARY ON
THE L.M.A.A. SMALL CLAIMS PROCEDURE**

The Small Claims Procedure has been introduced to provide a simplified, quick and inexpensive procedure for the resolution of small claims. It is supplementary to the Documents Only procedure contained in the Third Schedule to the L.M.A.A. Terms 1987.

It is suggested that it should be used where neither the claim nor any counterclaim exceeds the sum of \$25,000. It is not suitable for use where there are complex issues or where there is likely to be considerable examination of witnesses, especially expert witnesses. In the interests of saving costs and time, an oral hearing – and one is allowed only in the discretion of the arbitrator – will be limited to one day. On the other hand, the Procedure may be suitable for handling larger claims where there is a single issue at stake.

Attention is drawn to the following features:

1. REFERENCE TO A SOLE ARBITRATOR

This will provide a saving both in time and expense. It is expected and hoped that in most cases the parties will be able to agree on the sole arbitrator. Where they cannot agree, application may be made to the L.M.A.A., and the President will then make the appointment. There will be a charge of £100 to cover the administrative expenses.

2. ARBITRATOR TO RECEIVE A FIXED FEE

So that the parties know where they stand at an early stage, it is provided that the arbitrator will receive a fixed fee of £600. Members of the L.M.A.A. have agreed to do this as a service to the industry, though it will be appreciated that, having regard to current rates of remuneration, it may in many cases involve some financial sacrifice. Any expenses must be paid in addition.

3. INFORMAL PROCEDURE

There will be no formal pleadings and no discovery as such. Each party will be informed of the case against him by a simple exchange of letters accompanied by copies of all relevant documents, including witness statements. A strict but reasonable timetable is imposed, and, to avoid the dragging of feet, extensions of time will be allowed only sparingly.

There is substituted for discovery (a procedure frequently used to gain time) an obligation on the parties to disclose all relevant documents with their letters of claim or defence. Should a party fail in this obligation, the arbitrator is given power to order production of any missing documents and to give warning to that party that, if he fails to produce them without adequate explanation, the arbitrator may proceed on the basis that those documents do not favour that party's case.

4. THE HEARING

It is expected that most cases will proceed on documents and written submissions only. However the arbitrator has discretion to allow an oral hearing not exceeding one day. To avoid time wasting, the arbitrator is given power at his discretion to divide up the available time so that each party has an equal chance to present his case. Oral evidence will be allowed only at the discretion of the arbitrator.

The use of lawyers is not excluded, but it is thought that in many cases they will not be necessary, especially those that proceed on documents only. Where there is an oral hearing, it may be that cases can be presented by parties themselves or their brokers or club representatives. But it should be borne in mind that advice from a lawyer can often indicate to a party the strength or weakness of his case and can assist in reaching an amicable settlement; also, if settlement cannot be reached, the case may be presented by a lawyer in a more orderly and concise manner.

5. THE COSTS

The power of an arbitrator to award costs has been retained as an important feature of London arbitration. It operates to deter spurious claims or defences and may assist in promoting an amicable settlement. The arbitrator is given power to tax or assess legal costs, but on a commercial and strict basis. The amount recoverable will be limited to £1,000, or in small cases £500.

6. THE AWARD

The arbitrator must make his Award within one month from the close of the hearing or, in a documents only case, from the date on which he has received all the papers.

7. EXCLUSION OF APPEAL

To ensure that the dispute is brought to a conclusion without delay, the right of appeal to the Courts is excluded. By way of confirmation, each party is required, immediately after the appointment of the arbitrator, to write to him confirming that the right of appeal is excluded.

8. DISCRETION

It is expected that in the great majority of cases the strict timetable and provisions of the Procedure will be observed and enforced, but in exceptional cases there is discretion for the arbitrator to vary or depart from them.