



FRIDAY 20 JANUARY 2023

IN THE COURT OF APPEAL

ON APPEAL FROM COMPETITION APPEAL TRIBUNAL
1339/7/7/20



BEFORE LORD JUSTICE LEWISON
LORD JUSTICE GREEN
LORD JUSTICE SNOWDEN

CA-2022-000906

ON PAPER

Application No.

CA-2022-000906 AND
CA-2022-000924 AND
CA-2022-000944 AND
CA-2022-000945

B E T W E E N

1. MOL (EUROPE AFRICA) LTD
2. MITSUI O.S.K. LINES LIMITED
(a company incorporated under the laws of Japan)
3. NISSAN MOTOR CAR CARRIER CO. LTD
(a company incorporated under the laws of Japan)
4. KAWASAKI KISEN KAISHA LTD
(a company incorporated under the laws of Japan)
5. NIPPON YUSEN KABUSHIKI KAISHA
(a company incorporated under the laws of Japan)
6. WALLENUS WILHELMSSEN OCEAN AS
(a company incorporated under the laws of Norway)
7. EUKOR CAR CARRIERS INC
(a company incorporated under the laws of Korea)
8. WALLENUS LOGISTICS AB
(a company incorporated under the laws of Sweden)
9. WILHELMSSEN SHIPS HOLDING MALTA LIMITED
(a company incorporated under the laws of Malta)
10. WALLENUS LINES AB
(a company incorporated under the laws of Sweden)
11. WALLENUS WILHELMSSEN ASA
(a company incorporated under the laws of Norway)

APPELLANTS / RESPONDENTS TO CROSS APPEAL

-and-

MARK McLAREN CLASS REPRESENTATIVE LIMITED

RESPONDENT / CROSS APPELLANT

UPON the judgment of the Competition Appeal Tribunal (the ‘**Tribunal**’) dated 18 February 2022 [2022] CAT 10 (‘**CAT Judgment**’), the further ruling of the Tribunal refusing permission to appeal dated 27 April 2022 [2022] CAT 18 (the ‘**PTA Judgment**’) and the subsequent order of the Tribunal dated 20 May 2022 (the ‘**CPO Order**’)

AND UPON the appeal of the First to Third and Fifth to Eleventh Appellants (the ‘**MNW Appellants**’) against the CPO Order (the ‘**MNW Appeal**’)

AND UPON the appeal of the Fourth Appellant (**'KK'**) against the CPO Order (the **'KK Appeal'**)

AND UPON the Class Representative's Respondent's Notice in response to those Appeals

AND UPON the appeal of the Class Representative (the **'CR'**) having cross appealed in relation to the treatment of deceased persons in the CPO Order (the **'CR's Cross Appeal'**)

AND UPON the Court of Appeal hearing Leading Counsel for all parties at a hearing on 8 and 9 November 2022

AND UPON the Court of Appeal handing down judgment (the **"Judgment"**) on 21 December 2022

AND UPON the MNW Appellants applying for permission to appeal in relation to (1) the partial dismissal of the MNW Appeal and (2) the setting aside of paragraphs [121] to [124] of the CAT Judgment

REASONS

The order below as to costs is made upon the following bases:

- (i) That the decision of the Court to remit the matter to the CAT forthwith for reconsideration was a case management matter and that there should be no order for costs in relation to that part of the judgment (insofar as the parties incurred costs on the issue of remittal at all).
- (ii) In relation to MNW and taking into account (a) the conclusion at (i) above (b) the failure of the MNW appeal (c) the failure of the CR's Cross Appeal and (d) the success of the Respondent's Notice, an order that the MNW appellants pay 75% of the costs of the CR excepting costs incurred in relation to KK (see below) is appropriate;
- (iii) In relation to the KK appeal we consider that KK should pay the CR's costs of defending the KK appeal and should not be entitled to any costs in relation to the CR's Cross Appeal, in which it did not play any material part; and,
- (iv) The CR is entitled to an total interim payment of £100,000. Bearing in mind the role that each party played in the appeal proceedings we

consider that the interim payment should comprise a payment of £80,000 from the MNW appellants and £20,000 from KK.

IT IS ORDERED THAT:

Remittal

1. The collective proceedings are remitted to the Tribunal in order that it might reconsider case management of the dispute between the parties as to the approach to pricing

The MNW Appeal

2. The MNW Appeal is dismissed

The CR's Respondent's Notice

3. Paragraphs [121] to [124] of the CAT Judgment are set aside.

The KK Appeal

4. The KK Appeal is dismissed.

The CR's Cross Appeal

5. The CR's Cross Appeal is dismissed.

Costs

8. The MNW Appellants are to pay 75 % of the costs of the CR on all matters save those incurred in relation to the KK appeal.
9. The MNW Appellants shall make a payment on account of costs in the sum of £80,000 within 30 days of this Order.
10. The KK appellant is to pay the costs of the CR in defending against the KK appeal.
11. The KK Appellant shall make a payment on account of costs in the sum of £20,000 within 30 days of this Order.

12. All references to “costs” are to reasonable and proportionate costs, to be subject to detailed assessment on the standard basis if not agreed.

Permission to appeal

13. The MNW Appellants’ application for permission to appeal to the Supreme Court is refused.

BY THE COURT