



‘About’ tolerances, currents and speed claims

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A recent London arbitration decision has examined a number of issues which crop up fairly regularly when dealing with speed and consumption disputes.

A vessel had been chartered on the NYPE Form for a time charter which contained the following wording in the clause dealing with the vessels description.

Speed and Consumption

“Laden:

ABT 14 K ON ABT 29 T IFO 380 MDAS ABT 13K ON ABT 26T IFO 380 NDAS

ABOVE SPEED AND CONSUMPTION WARRANTIES ALWAYS UP TO BEAUFORT SCALE FORCE 4/DOUGLAS SEA STAE 3 AND WITH A TOLERANCE OF 5PCT ABOUT, NO NEGATIVE INFLEUNCE OF CURRENTS/SWELL, DSS3 MEANS 1.25M SEA AND SWELL COMBINED. “

Weather Routing

“The charterers have the right to supply independent weather routing service company advice to the master. Evidence of weather conditions is to be taken from the ship’s logs and weather service reports. In the events of discrepancy between the deck logs and the weather service report as well as any dispute performance analyse report, the parties are either to appoint jointly a separate weather routing company whose findings to bind or resort to arbitration”

The charterers weather routing company who advised the master concluded that the vessel had underperformed and over consumed on the time charter. However, the charterers also commissioned two further reports from weather reporting companies. They also reached the same conclusion as the original weather routing company, albeit using slightly different approaches.. The first report concluded that 34.21 hours was lost and 91.12mts of IFO was overconsumed. The second report used AIS data and concluded that 34.2658 hours had been lost. The last report indicated that 90.03 hours had been lost and that 95.847mts of IFO had

been lost.

The owners starting point to the defence of charterers claims was to allege that the wording of the description clause meant that the “about” tolerance was to be applied to both the speed and consumption warranties. This meant that the actual warranty was that the vessel would achieve a speed of 13.3 knots (15 knots less 5 per cent) on 30.5 mts IFO (29 mts plus 5 per cent).

The vessels logs concluded the vessels speed had been 13.59 knots which exceeded the warranty. In addition they pointed out that the first weather reporting company also showed the average daily consumption was 29.578 mts in good weather which was also less than the daily warranty.

The charterers tried to persuade the arbitration tribunal that the owners were not entitled to apply the “about” tolerance to both the speed and consumption warranties. They should only be entitled to use it once on the speed warranty because the parties had only agreed a single tolerance. They relied upon the words “with a tolerance of 5pct about” in the last line of the vessel description clause.

The arbitration tribunal seemed unimpressed with that argument. They decided that the speed and consumption warranties were both subject to a 5% per cent tolerance.

The second line of attack by the owners related to the fact that the charterers first weather routing report had deducted a current factor of 1.07 knots from the good weather performance speed calculations to produce an adjusted speed of 12.51 knots in their report. The owners claimed that this was the wrong way to approach the issue of currents. The description clause stated “no negative influence of currents/swell”; in practical terms this gave the owners the ability to defend a claim for breach of the speed warranty, when it was caused by a negative influence of currents.

What the charterers had attempted to do was to factor in the effect of favourable currents on the vessels speed. The charterers had alleged that although the vessel had achieved a speed within the given speed warranty, they should be entitled to treat it as a breach by factoring the benefit of a positive current into the calculations. The charterers asserted that if the vessel could only proceed at the warranted speed with the assistance of a positive current, then by default the vessel was unable to meet its warranted speed.

The tribunals view was that the owners were correct. The parties had agreed that the owners should receive a benefit from the problems caused by an adverse current. All other periods including ones of favourable current formed part of the general conditions in which the vessels performance was to be looked at when looking at the speed warranty.

Finally the owners attacked the time periods and distances for calculating the good weather performance. This involved periods when the vessels speed had been intentionally reduced on the approach to Port Said because of heavy traffic and separation schemes and safety reasons.

The owners position was that the vessel was not in breach of the speed and consumption warranties. The

arbitration tribunal agreed with that analysis and dismissed the charterers claims.