Berth Laytime Rules v Charterparty Laytime Rules

In a recent London Arbitration (15/21,) the Tribunal was asked to consider whether the rules of the berth operator, United Bulk Terminals, USA, had been incorporated into a charterparty and took precedence over the laytime regime in the charterparty.

The chartered vessel had arrived at the Southwest Pass on 13 April but could not berth because of congestion. The owners tendered a Notice of Readiness ("NOR") that day. The vessel arrived at an anchorage on 17 April. After an initial draft survey and a hold pass certificate being issued, a second NOR was then tendered, expressly without prejudice to the earlier one. As a result of congestion, the vessel was not able to berth until 24 April, and a third NOR was tendered, again without prejudice.

The owners presented a claim of US$109,495.83, for demurrage to the charterers, as a result of the delays at the loading port. The charterers denied liability and argued that they were entitled to despatch of US$6,359.38.

NOR Issues

The owners relied upon the first NOR and claimed that laytime started after it has been issued. The charterers disagreed and relied upon the UBT Rules, which they said were incorporated into the recap by reference to the words "ATTACHED UBT RULES SHALL INCORPORATE WITH THIS CP" and were physically attached to the recap. They argued that the UBT Rules which were mentioned in the recap also took precedence over any conflicting terms in the rest of the charterparty, otherwise agreed between the owners and the charterers.

The UBT Rules specifically provided that the vessel had to be either at the loading berth or the closest available anchorage, before a valid NOR could be given. As the Southwest Pass was not the closest available anchorage and a deletion had been made at clause 1 of the CP, the charterers argued that the vessel should have proceeded to the load port itself, and only there could have given a valid NOR. They also argued that the vessel was not ready to load until the hold inspection had been completed and that in any event, the second and third notices were invalid as they were served outside the laycan.

The charterer's arguments rested entirely on whether the UBT Rules were considered as incorporated into the CP and took precedence over the other terms.

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The Tribunal did not agree with them. They decided that the charterers' reliance on the clause 1 deletion was incorrect. The Tribunal stated that there was no actual contractual requirement for the vessel to pass any inspection before giving a NOR, for the notice to be accepted or for any notice to be given in the laycan.

The Tribunal then referred to The Linardos [1994] 1 Lloyd's Rep 28 whereby it is established that "where an incorporated document conflicted with the terms of the primary agreement entered into by parties, the conflicting terms had to give way to those in that primary agreement with which they were inconsistent". Applying the principle in The Linardos, the aspects of the UBT Rules relied on by the charterers conflicted with the terms of the fundamental agreement as found in the recap.

Further, as in The Linardos, the UBT Rules' purpose was that of governing contractual relationships between the terminal and users of the berth. The Tribunal stressed that caution had to be exercised in interpreting them in the charterparty, to ensure that only those provisions in the UBT Rules that were truly relevant to and compatible with the charterparty were given effect to.

The Tribunal decided that the owners had given a valid NOR at the Southwest Pass and the UBT rules did not affect this. The owners' claim was successful at US$109,495.83 plus interest and costs.

If you have any questions or concerns regarding charterparty laytime rules, please contact our specialist Marine Lawyers on 023 8082 7416 or by emailing online.enquiries@la-law.com

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