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# Norgrain 89 Form – Notices of Readiness

An arbitration tribunal in London has recently looked at the inter-reaction between a NOR & the right to cancel the charterparty when problems occur.

The Norgrain Charterparty Form remains a popular choice of contract when chartering ships to carry soya beans and meal. An arbitration tribunal in London has recently looked at the inter-reaction between a valid notice of readiness “NOR” and the right to cancel the charterparty when problems occur.

In the dispute, the charterers had chartered in a vessel to carry 21,900 mts – 26,900 soya in charterers’ option from Myrtle Grove to Casablanca, on an amended Norgrain Form. The vessel’s laycan was 24 August – 2 September.

The important terms of the Charter were as follows:

- NOR could be given whether the vessel was in free pratique or not, whether it was in berth or not, whether it was in port or not and whether it was customs cleared or not.
- If the vessel could not enter the limits of the port, because the first berth or anchorage was available in the port limits, the Master could tender NOR from a usual anchorage outside the port limits, if he believed the vessel was physically fit. If the vessel failed inspection once it had entered the port, the notice of readiness would not be considered as valid. A new NOR would need to be re-issued after the vessel had passed inspection.
- If that clause did not apply, the NOR was to be accompanied by certificates from the National Cargo Bureau /Port Warden and Grain Inspectors’ certificate confirming the vessel’s readiness to load.
- If the NOR was not tendered by a certain date/time, carrying charges would be settled between the shippers and the owners directly. In addition, the charterers had the option of cancelling the charterparty anytime thereafter but no later than one hour after the NOR had been tendered.

## The Dispute

- The vessel arrived at the South West Pass and picked up a pilot. It tendered a NOR by email at 01.15 hours on 24 August. At 01.40 hours, it entered the Mississippi River and changed pilots at Pilottown at 03.15 hours. It then anchored at Point Celeste Anchorage at around 07.32 hours waiting for a berth. Later the same day, the NCB and USDA boarded the vessel. The NCB initially rejected the holds. Later that day the holds were re-inspected and passed. The USDA also passed the vessel. The original NOR, certificates and various other documents were then presented to the loading terminal.
- On 25 August the US Coast Guard initiated the Maritime Hurricane Contingency Port Plan.
- Tropical storm Isaac struck on the 30 August and the vessel ran aground. It remained aground for some two weeks and was finally re-floated on 15 September.
- On 4 September the charterers stated the vessel was not ready to load cargo and the laycan had expired, notwithstanding that the NOR had been given in good time.
- On 6 September the charterers stated that all the cargo destined for the vessel was water damaged by the hurricane and declared force majeure relying on the “Act of God” exception.
- On 27 September the owners sent a message saying the vessel had been re-floated and was ready to receive cargo.
- On 3 October the charterers’ response was that the original NOR was invalid because the vessel had not been an arrived vessel and was not in all respects ready to load.
- On 4 October the vessel moved from Point Celeste Anchorage to Port Celeste and re-tendered the original NOR given on 24 August. The Charterers rejected that NOR using the same arguments given on 3 October. They also stated that the NOR re-tendered on 4 October had been tendered after the cancelling date and they were exercising their right to cancel the charterparty.
- The owners considered that cancellation to be a repudiatory breach of the charterparty and on 9 October, they accepted that repudiation.
- The owners started arbitration to recover demurrage and their other losses. The charterers counterclaimed for loss of income on the original sale and other losses.

## The Tribunal's Approach

- The charterers were correct that the original NOR was invalid. There had been no loading berths or river anchorages available when the vessel reached the South West Pass, so the vessel could not proceed any further. It was common for ships' Masters to tender NOR at the first pilot station at the end of the sea passage, but that was done in the mistaken belief that was the correct procedure, when in fact the tribunal thought it was not.
- The vessel was not available to the charterers at that stage. The vessel had arrived at the South West pass but only stayed long enough to take a pilot to Pilottown. From there the vessel had moved upriver.
- The tribunal's view was that for the NOR to be valid the Master would have needed to have waited until the vessel was anchored at Point Celeste to tender it. The holds did not pass the NCB inspection and the NOR tendered in the South West Pass had been premature. The Master was bound to issue a new NOR after the re-inspection by the NCB but he had not. An invalid NOR had therefore been given to the loading terminal.
- Although both parties had acted in error, nobody had picked up on that issue though at the time. The charterers' agents' actions in submitting an invalid NOR with the NCB and USDA certificates amounted to a waiver of the charterers' rights to insist on a new NOR. They were stopped from undoing the position many months after the event, as it was clear the owners had relied on the acceptance, to their detriment.
- The tribunal decided against that background that the charterers had accepted the invalid NOR when their agents submitted it to the terminal with the various certificates. Laytime started once the storm abated and there was a period that could be considered as a weather working day.
- The "Act of God" defence did not apply as the clause 36 of the Norgrain Form, does not contain clear and precise language, which states it is to apply to laytime and demurrage.
- The tribunal decide the charterers had lost the right to cancel and the owners were entitled to demurrage.