The ‘MV Santa Isabella’

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How do you assess whether a particular route on a voyage is usual and reasonable?

A recent English High Court case has addressed a number of areas of interest to carriers of bulk cargo. The Santa Isabella had been chartered on a Synacomex Charter Form to load corn and maize in Topolovampa for discharge at Durban and Richard’s Bay.

The voyage took 39 days and on arrival at the first discharge port, the cargo was found to have suffered extensive damage. The South African authorities refused to allow the cargo to be discharged as it was found to be contaminated with toxins. As a consequence of the delays caused by that issue, a large bill for discharge port demurrage and expenses was incurred in the sum of USD 75,561.66.

The charterers accepted that delays in discharge would normally be for their account, but relying upon the rule in Budget v Billington (a reported case from 1891), they argued they should not be liable for the demurrage. This was because the alleged problems with the cargo had been caused by the fault of the owners. The charterers blamed the owners for the following issues/breaches:-

- The Master had taken the vessel via the Cape Horn rather than through the Panama Canal. The charterers argued that the Master should have taken the shortest and most direct route to the discharge port.
- The Master had failed to ventilate the cargo in accordance with “a sound system”.
- The Crew had failed to disinfect areas of the vessel outside of the cargo holds once loading had taken place at Topolovampo and had not fumigated adequately which had caused the toxins found in the cargo.
- The vessel was in breach of its speed and consumption warranty on the voyage to Durban.

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The owners' rejected these allegations. They argued that it had not been possible to ventilate the cargo during the voyage, due to fumigation restrictions. They also rejected the charterers' position that the vessel had not taken a usual contractual route down to Durban via Cape Horn. During the voyage, the weather and sea conditions had prevented ventilation for the majority of the voyage. Liability for problems with the cargo discovered at Durban and Richard's Bay were therefore rejected.

The Court concluded that:-

Choice of route

- The issue for the Judge was whether the Cape Horn route was a usual and reasonable route. In his view, the arrival of damaged cargo at the discharge port after the vessel had loaded a clean cargo called for an explanation. One explanation was a possible inference against the owners. The charterers had argued that proceeding via Cape Horn was not reasonable and usual. The route was geographically longer than the Panama Canal route and it involved a voyage through a significantly colder ambient temperature, thereby increasing the end to ventilate the cargo. It also exposed the vessel to predictably worst weather, which would ultimately affect the vessel's ability to ventilate.

- The Court thought that the route had to be reasonable in the interests of all concerned including the charterers and the shippers. The cargo was the relevant factor but, the Court did not like charterers' approach because it led to a distinction which seemed arbitory. It would mean that a ship owner was always bound to take the direct sea track regardless of all other considerations including such matters as bunkering. The consequences of the owners being held to have deviated were quite severe. It involved them making difficult decisions in weighing up the various factors of taking one route rather than another. The Court decided that the Cape Horn route was a usual and reasonable route and did not amount to a deviation.

Ventilation

- On the basis that the route was reasonable, the ventilation was properly and carefully carried out in accordance with a sound system. Even if the vessel had properly ventilated the cargo, the evidence was that there would only have been 6-12 inches of dry crust at the top of the cargo.

Vessel Speeds

- The vessel's warranted speed was 13.3 knots but in fact, its average speed was 11.13 knots. The effect of that was that the cargo was exposed to potential condensation damage over a longer period of time. However, it did not seem to be possible to identify any particular element of damage or loss caused by that stand alone breach.

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Reinfestation

- After the vessel arrived at Durban, the cargo was found to have contained an infestation of weevils requiring fumigation. On the evidence that was caused by inadequate cleaning of the topsides. The Court was satisfied that the owners were in breach under Article III Rule 2 of the Hague Visby Rules, which were incorporated into the charterparty, because they had not properly and carefully handled the cargo.

Turning to the demurrage claim, the charterers' argued that all of the delay in Durban and Richards Bay was as a result of condensation damage. The South African Authorities had prohibited discharge, which had then required the charterers to take steps to enable discharge to take place. If the vessel had only arrived at Durban with a crust of 6-12 inches at the top of each hold then, the Court estimated that discharge at Durban would have taken 8.5 days, which was 3.7 days in excess of the remaining laytime and that discharge would have been completed at urban within the laytime of 3.68 days.

If you would like further information about The MV Santa Isabella, please contact our specialist marine solicitors.

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