



Vessel Performance & Bad Weather

London Arbitration 32/22 builds on a string of awards that add to the ongoing discourse between owners and charterers when considering a vessel's performance analysis vis-à-vis the applicable weather data and contractual terms. The award highlights the contractual implications of defining (or not defining) a "good weather" period as the Tribunal was asked to consider whether small intervals of weather with adverse currents would be enough to exclude an entire day of good weather from the performance analysis.

What happened?

The parties entered into a time charter for the carriage of steel slabs from Brazil to Baltimore. Charterers claimed a deduction from hire under the vessel's performance warranty. Owners disputed the deductions, and the matter was referred to arbitration.

The Charterparty stated that:

AN UNDERPERFORMANCE CLAIM CAN ONLY BE SUBMITTED IN RESPECT OF DAYS ON WHICH THE VESSEL ENCOUNTERED WIND UPTO BEAUFORT 4 AND/OR DOUGLAS SEA STATE 3 (WITH MAX COMBINED SIGNIFICANT WAVE HEIGHT 1.25M) WITH NO ADVERSE CURRENT OR SWELL. SPEED IS NOT TO BE DEBITED DUE TO FAVOURABLE CURRENTS.

Charterers issued their claim based upon a report produced by a Weather Routing Company ("WRC"), which opined that the vessel had lost over 35 hours on the voyage and overconsumed bunkers. The Charterers were permitted to appoint the WRC under the charterparty.

The Owners rejected Charterers' claim stating that the WRC report was incorrect because:

- Days on which adverse currents were experienced should be excluded in their entirety, irrespective of whether good weather was assessed at some other point within the same 24-hour period. Owners argued this because the Charterparty expressly referred to the word "days", meaning that if bad weather was experienced at any point during a day (including adverse currents), that could not be a 'good weather' day, and no claim for underperformance could be submitted; and
- The WRC report was not conclusive evidence of weather conditions; thus, the deck logs should be taken into account. Owners relied on the deck logs to assert that the vessel experienced 2m of swell

throughout the Charterers' alleged "good weather" periods and argued this was outside of the contractual parameters for an underperformance claim.

The Charterers defended their position by asserting that:

- The Charterparty recap defined 'good weather' days as *"Beaufort Force 4 and/or Douglas Sea State 3 (with max combined significant wave height 1.25m) with no adverse current or swell"*.
- The word "OR" meant that an assessment as to 'good weather' could be made in either Beaufort Force 4 or Douglas Sea State 3 (with max combined significant wave height of 1.25m), provided that there was either no swell or no adverse current. Charterers argued the WRC did not need to consider both Beaufort Force 4 and Douglas Sea State 3.
- The Charterers relied on [*Polaris Shipping Co Ltd v Sinoriches Enterprises Co Ltd \(The 'Ocean Virgo'\)* \[2018\]](#) to submit that a period of less than 24 hours could be considered a good weather day.

The Tribunal's Decision

- The Tribunal considered the interrelationship between the performance warranty and the contractual effect given to the WRC report.
- They found that on a clear interpretation, an underperformance claim could be submitted in either (a) wind strengths not exceeding BF4 (with no adverse swell or current) and (b) sea conditions where the combined significant wave height did not exceed 1.25m with no adverse current or swell.
- Accordingly, the Charterers could not claim against periods where adverse currents were present, and an assessment of the "net adverse currents" could not be applied. Favourable currents were to be included.

To delve into the detail:

Adverse Currents

The Tribunal found that the WRC report and the deck logs both revealed the presence of adverse currents during the “good weather” periods upon which Charterers made their claim. The WRC’s inclusion of a six-hour interval of adverse current was in breach of the performance parameters, irrespective of whether it was included within a “net” current assessment. The Charterparty made clear that adverse currents were not to be included.

Swell

The Tribunal noted that the WRC report failed to expressly account for swell, albeit their six hourly intervals were intended to represent the combined significant wave height of sea and swell. This made it difficult to ascertain what proportion actually related to swell and could, therefore, not be compliant.

Evidence of Weather

The Tribunal was presented with the vessel’s deck logs and the WRC weather data. They found that whilst there had been some discrepancies with the deck log figures, specifically in relation to the noon reports – which had been exaggerated both on sea state and swell; it was necessary that due regard be given to the deck logs as well as the WRC weather data.

The Outcome

The Tribunal found that the WRC report could not form the basis of the Charterers’ underperformance claim because it did not accurately assess the vessel’s performance in accordance with the contractual performance warranty; the Charterer’s deductions were, therefore, unlawful.

Key takeaways:

1. This award falls in line with a general trend that weather routing reports appear to be straying too far from the parameters established by the underlying charterparty. Whilst it might be the “norm” to assess the “net” adverse currents, it may not be permitted in all charters.
2. Owners and Charterers should be mindful of the ‘good weather’ period in charter negotiations – it is now clear that a sub-period/short interval of adverse currents is enough to bar a full day of “good weather” if, like in this case, the charter only permits an underperformance claim to be submitted in respect of “days” of good weather. The decision supports London Arbitration 27/19.
3. Conversely, the Charterers were not entitled to rely on *Polaris Shipping Co Ltd v Sinoriches Enterprises Co Ltd (The “Ocean Virgo”)* [2018] – where it was held that a 21-hour period could be considered “good

weather” period as in that case, there was nothing in the charterparty which defined the good weather period and thus required it to run from noon to noon.

This award serves as a reminder to owners and charterers to carefully analyse their contractual provisions both pre-fixing and at the stage of procuring a weather routing report. Reports must be prepared in compliance with the contractual provisions. Parties are reminded to seek legal advice where required.

Contact us

If you have any questions, please contact our specialist [shipping and logistics lawyers](#) by emailing online.enquiries@la-law.com.