

Circular From SKULD
Date: 24 November 2016

Laytime WWD (Weather Working Days)

Legal news

Laytime provisions in a charter are most often of a fixed duration. Without any further stipulation in the express terms of the contract, laytime of a fixed duration, such as allowing four days, runs uninterrupted. It is therefore common that the charter defines how time will run. An example of this is the use of the qualification “WWD” or, in its full style, “weather working day”.

What is a “weather working day”?

The definition of “weather working day” is set out in the Laytime Definitions for Charter Parties 2013 (definitions that would apply if they are specifically agreed in the c/p). These provide as follows:

“WEATHER WORKING DAY shall mean a Working Day or part of a Working Day during which it is or, if the Vessel is still waiting for her turn, it would be possible to load/discharge the cargo without interruption due to the weather. If such interruption occurs (or would have occurred if work had been in progress), there shall be excluded from the Laytime a period calculated by reference to the ratio which the duration of the interruption bears to the time which would have or could have been worked but for the interruption.”

The words “weather working days” therefore act to limit laytime running to i) working days and ii) instances where the weather allows the specific ship to conduct loading or discharge operations without interference from weather.

It follows that this wording inserted alongside laytime restricts time running each day to the duration the port works whilst weather does not prevent cargo operations. By way of example, this means that with a ship loading at a port with working hours of 0800 to 2000, these are the hours for which laytime may be interrupted. Accordingly, a period of bad weather outside the port’s working hours would not interrupt laytime.

Building on this example, if weather conditions at the port in question were such that loading operations were not possible between 1000 and 1300, the total laytime spent for the day would have been 18 hours. This calculation is an extrapolation across the full 24 hours of the interruption as a percentage of the working day (i.e. 3 hours is 25% of the working day of 12 hours and 6 hours is 25% of 24 hours, so 24 hours less 6 hours gives rise to 18 hours). This is of course somewhat shorter than the 24 hours that would have passed without the “weather working days” qualification. Once the NOR is tendered and laytime

commenced, the words “weather working days” dictate that whenever there is weather that would have precluded cargo operations, whether the vessel is in fact in the process of loading or discharging or waiting for berth, laytime is suspended in accordance with the above comments (*The Darrah* [1977] AC 157).

Moreover, the same weather may affect one particular ship but would not impact upon the cargo operations of another, even if the two ships are berthing at the same port. This is due to the fact that the type of cargo loaded may be influenced in different ways by weather. Rain is an obvious case, which may hinder loading of dry bulk cargoes, such as nickel ore, but containers would remain unobstructed.

Examples of “weather” interruptions

As guidance on what would constitute a “weather” interruption to laytime, it is worth noting decisions by London tribunals and the English courts. In London Arbitration 10/04, various different cargoes were to be loaded on to a vessel under a charter containing the “weather working days” laytime qualification. These cargoes were affected differently by the prevailing weather, which prevented the loading of some but not other cargoes. The tribunal held that, if any but not all of the cargoes could be loaded in the weather conditions, then laytime would continue to run.

For weather to interrupt laytime, it must present conditions that would directly impact on the cargo operations or would have impacted the cargo operations if the vessel had been at berth. The fact that the berth may become unsafe owing to weather conditions with the vessel obliged to leave does not necessarily mean that laytime is suspended. In *The Maria G* [1985] 1 Lloyd’s Rep 616 a bore tide requiring the vessel to leave her berth did not affect cargo operations and so was not within the definition of “weather working days”.

Nonetheless, if a vessel is forced to leave berth, the period the berth was unsafe could still be considered as weather working days, so long as it could be established on the facts that the weather conditions, although making the berth unsafe, would not have stopped loading or discharge operations.

Considerations

First of all, owners and charterers must pay particular attention to the express terms of the charterparty describing laytime. As set out above, the insertion of “weather working days” significantly changes how laytime runs and, ultimately, the amount becoming owing in respect of demurrage. The trading patterns of the vessel are important in this regard and should be factored into the contractual definition of laytime. Some ports may have more restrictive operating hours which, as a result of the qualification of “weather working days”, will lead to laytime being expanded over a longer period.

Moreover, as is often the case, in order to establish whether the prevailing weather conditions would likely be considered as falling within the contemplation of the parties with reference to “weather working days”, contemporaneous evidence is crucial.

The value of gathering and retaining evidence is pertinent in the event where a vessel is forced to shift from an unsafe berth as a result of weather, for instance where a vessel was forced to shift from berth owing to unsafety and charterers wish to establish that, aside from creating an unsafe berth, the weather prevented cargo operations. Ultimately, in order to keep the costs and complexity of prospective disputes to a minimum, owners and charterers should seek to ensure that they can accurately show to a third party at a later date the weather conditions experienced during loading.

Source of Information: Skuld P&I Club

Andrew Liu & Co. Ltd