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Early Redelivery - Measure of Damages

In a new arbitration case, *(2017) 984 LMLN 4*, the method of calculation of measure of damages was highlighted by the learned arbitrators.

On 8 August 2015 the subject vessel was chartered on an amended Shelltime 4 charter for a period of 12 months with an option for a further 12 months plus or minus 30 days. The hire was US$70,000 per day. The Charterers said that the going rate of hire for voyages from the Arabian Gulf to China at the time of the charter was between US$45,000 and US$50,000 per day. Immediately 8 days before the delivery, it was announced that Iran sanctions were to be lifted on 16 January 2016, and it brought the freight market considerably down from its peak. The Charterers were expecting a bit of flexibility from the Owners as to the hire rate, and therefore they accepted the delivery of the vessel.

On 11 January 2016, the Charterers sent an email to the owners which read:

> *Under current circumstances, we are not in position to run the vessel in profitable way and would like to apply for cancellation of the charterparty dated 08/08/15 and request owners to take immediate steps to seek alternative employment for the vessel.*

In the present case, the Tribunal was satisfied that the Charterers' email of 11 January 2016 evinced a clear intention not to continue performance of the charter and therefore amounted to a repudiation of it, so that the owners' response email of 13 January 2016 brought the charter to an end where they accepted the Charterers' renunciation of the contract.

As to damages, the vessel was returned to the Owners on 13 January 2016, whereas under the terms of the charter she should have been returned on 26 October 2016, i.e. 286.94 days early. The charter hire rate of US$70,000 per day, had the charter gone to full term, the owners would have received a further US$20,085,111.11,the bunker consumed during this time were to US$1,383,391.42, and the Charterers would have had to pay a similar amount had she not been redelivered early. Between the date of early redelivery and the due date, the vessel performed four voyages and part of a fifth voyage, all on a voyage charter basis, with significant periods of non-employment, and the money earned by the owners deducting costs such as port costs was US$5,887,916.67. Therefore, the total loss the Owners have suffered is loss of US$15,580,585.86 and it was decided by the Tribunal that there was no failure of mitigation of costs.

Andrew Liu's FDD department's, based in Shanghai, advice to the clients is as follows:

(a) Any e-mail in such sensitive matter should be drafted by legally qualified people with years of experience. Such decisions can prove to be costly.

(b) FDD department has assisted over the years many clients in drafting appropriate emails protecting the interests of the clients.

Source of Information: Andrew Liu & Co., Ltd www.andrewliu.com.hk