

Circular Ref: 2018/0003

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Charterparty Dispute - Loading Iron Ore Fines

In a recent arbitration (2018) 997 LMLN 2, the subject vessel was fixed under a NYPE form as amended for a time charter trip. In the event, the Owners refused to load the Charterers' cargo of iron ore fines, and the charter was accordingly never performed. As a result, the Owners advanced a claim for unpaid hire and bunkers in the sum of USD145, 965.03, further and alternatively damages, and also damages for wrongful redelivery. There were other minor disputes as well and are therefore not discussed within the article.

The real problems arose as a result of the cargoes of iron ore fines that the Charterers wished to load on the said vessel. There were two background facts that were of particular significance. The monsoon season started on 16 June 2011, before the vessel arrived at Haldia, and continued throughout the time she was there. And the cargo which the Charterers first wanted to load was stored in the open, at a site distant from the berth where loading would have taken place. At no stage, any IMSBC requirements were satisfied - such as, no proper shippers' declarations were available and some of the documents showed a Moisture Content ("MC") that was greater than the Transportable Moisture Limit ("TML"). Although the ship was called to berth, there was no point in her going alongside for as long as the shippers failed to show that their cargo was compliant, as was the case at all relevant times. For the sake of completeness, the MC (in Cargo Declaration Form) should be lower than TML (provided in Certificate by Shippers).

The relevant charterparty provided:

Clause 88 contained a list of cargo exclusions, including:

... all injurious/inflammable/dangerous goods/commodities as listed in latest IMO DG Code and/or any subsequent amendments/modifications thereof.

Later in the clause, under a heading "Concentrates loading" there appeared:

... before loading concentrates, Charterers to supply vessel with shipper's certificate of flow moistures' content evidencing cargo compliance with IMO regulations...

All cargos always to be loaded/stowed/carried and discharged in strict accordance with local/national and IMO regulations...

EVIDENCE

The time of dropping the last outward sea pilot at Chittagong was 02.30 on 21 June 2011. It was clear to the tribunal that the Charterers failed to show that the cargo they first intended to ship complied with the

IMSBC Code. *On the contrary, it was dangerous and thus unlawful.* The refusal to load it was therefore justified and not a breach of the charter. Surveyors for the Owners (and the head owners) took samples from the proposed stockpiles: those samples failed moisture tests, although the Shippers' sample apparently passed, but with what the owners said were suspiciously high figures for TML and Flow Moisture Point (FMP). Enormous, but inappropriate, coercion and pressure tactic was used on the Master to persuade him to start loading. The Shippers of the first intended cargo having, according to the Charterers, cancelled the shipment and the sub-charter on 7 July, on 13 July the Charterers said they were booking an alternative cargo. It was not without significance that on 22 July the Charterers and Shippers refused to participate in any further joint testing. On 22 July, whilst the ship was still at Haldia, the Charterers sent a notice redelivering her to the Owners.

Accordingly, Owners succeeded in claiming hire; port charges at Haldia, expenses of the vessel going to Singapore, but failed on additional expenses at Singapore (burden of proving the claim is on the claimants).

FDD division of ALCO advice to Andrew Liu's clients is:

- a) All coercion should be resisted from shippers or charterers when it comes to safety of crew and the vessel arising out of loading cargo that is not complying with Public International Law such as IMSCB or SOLAS or MARPOL and so forth. Many vessels have capsized with total loss and loss of crew members. Is it worth? Charterers being traders should also appreciate the safety aspect that is relevant even in commercial matters.
- b) Owners and Charterers should contact their respective Club immediately to pre-empt disagreements at the loading port. In a few cases, FDD personnel have flown to the port to resolve the crisis as part of crisis-management services available to clients of ALCO from FDD department.

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