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Quantity Of Bunker And Deduction From Hire Dispute - Recent Arbitration

In a recent case, *London Arbitration 17/19*, the subject vessel was time-chartered on a charterparty containing the following clause:

> **BUNKERS CLAUSE**
>
> A. BUNKERS ON DELY ABT 700 MT IFO AND ABT 45 MT MGO
>
> NO BUNKER PAYMENT WITH FIRST HIRE.
>
> CHRTRS TO REDELIVER THE VESSEL WITH IFO ABT SAME QTIES AS ON DELIVERY AND MGO AS ON BOARD PROVIDED CONSUMPTION IS NOT MORE THAN 10MT, OWISE CHRTRS TO REPLENISH SAME AS ON DELIVERY. ANY DISCREPANCIES TO BE SETTLED WITH PREFINAL HIRE STATEMENT ON REDELIVERY.
>
> BUNKER PRICES – SAME BENDS – USD380/550 FOR IFO/MGO RESP…

On delivery, the subject vessel had bunkers of 600.88 mt IFO and 33.12 mt MGO. In contrast, on redelivery she had 510.48 mt IFO and 20.227 mt MGO. There was no dispute as the breach by the charterers for delivering the vessel with lesser quantity of bunkers. The only issue was how much margin should the allowed to the Charterers as per London Arbitration 15/13 (2013) 881 LMLN 1, however, the Charterers maintained that 5 per cent was appropriate and should be allowed.

It was held that 5% margin would be allowed only in relation to IFO quantity and there would be no margin of allowance available for MGO. This margin was in relation to calculate the quantity of bunkers pursuant to breach by the Charterers. In addition, in order for the Owners to claim the right market price of the aforesaid bunkers that are subject to breach by the Charterers, it was held that the Owners are also under the obligation to mitigate their losses by stemming bunkers at a reasonable place, if it is possible. This means the bunker could be stemmed at the bunker hub if it is possible for the vessel operationally. For sake of completeness, according to us this is only applicable to the bunker quantity that is considered under the breach of contract. However, it is our view that the shortfall of bunker quantity that is within the margins allowed, the usual charterparty approach will be applicable for calculating the payments for shortfall.

In the same case, there was another clause:

> It is expressly agreed that Charterers cannot deduct any hire against performance claims unless Owners' consent is given [emphasis added]

Since the Charterer had deducted the sum for performance claims in this case that was later withdrawn by them and they had lost the matter on bunker claim, the arbitrator was not pleased by the Charterer's conduct that they had deducted the sum.

FDD department of ALCO for Andrew Liu's clients are as follows:

a) Before the Owners or Charterers go down the route for deductions from the charter hire, they need to carefully check the clauses.
b) FDD department has been used by many clients to take even the second opinion to bolster the cases or just to negotiate the settlement with the opposing parties.

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