

Circular Ref: 2019/0018
Date: 29 November 2019

Shore Crane Charges And Deductions From Hire

In the latest LMAA arbitration, London arbitration 27/19, the subject vessel was chartered on an amended NYPE form evidenced by a fixture recap. The Owners claimed that a balance of US\$27,425.66 was due to them on the balance of account. The differences between the parties related, inter alia, to liability for shore crane charges among other claims.

The owners disputed a deduction made from hire by the Charterers for shore crane hire and stevedore standby charges incurred between 07.30 on 11 May and 11.45 on 12 May. The Charterers relied on a number of provisions in the recap and charterparty, as follows:

Recap:

17 . GEAR CLAUSE

VESSEL TO LOAD AND DISCHARGE AT ANY OF HER FIVE HATCHES
SIMULTANEOUSLY WITH OWN CRANES ...

CRANES TO BE IN GOOD WORKING ORDER AND CONDITION DAY AND NIGHT AND
AVAILABLE FREE OF EXPENSES TO THE CHARTERERS, STEVEDORES OR THEIR
SERVANTS ...

ANY TIME LOST DUE TO SHIP'S CRANES BREAKDOWN BY REASON OF DEFECTIVE
GEAR/EQUIPMENT, NOT TO COUNT AS TIME FOR HIRE PAYMENT, PRORATA TO THE
NUMBER OF CRANES AFFECTED. ...

IN CASE OF SHIP'S CRANES BREAKDOWN, CHARTERERS/RECEIVERS HAVE THE
OPTION TO ORDER SHORE CRANES TO REPLACE FAULTY SHIP'S CRANES, SUBJECT
TO OWNERS APPROVAL, IN WHICH CASE COST TO BE FOR OWNERS' ACCOUNT BUT
TIME TO COUNT IN FULL BUT PRODUCTION TIME LOST IN COMPARISON TO
VESSEL'S CRANES TO BE FOR OWNERS' ACCOUNT.

Charterparty:

28. Cargo Gear and Lights

The Owners shall maintain the cargo handling gear of the vessel which is as follows:

...

providing gear (for derricks or cranes) capable of lifting capacity as described ... Charterers shall
have the use of any gear on board the Vessel. If required by the Charterers, the Vessel shall work

night and day and all cargo handling gear shall be at the Charterers' disposal during loading and discharging ... In the event of disabled cargo handling gear ... the vessel is considered to be off hire to the extent that time is actually lost to the Charterers and the Owners to pay stevedore stand-by charges occasioned thereby, unless such disablement or insufficiency in power is caused by the Charterers' stevedores. If required by Charterers, the Owners shall bear the cost of hiring shore gear in lieu thereof, in which case the Vessel shall remain on hire.

The tribunal was not satisfied that the evidence sufficiently established that the crane hire charges claimed were *attributable* to the problem with crane no 2 as alleged by the charterers and would have been spent in any event. Therefore the Charterers were unable to prove their case on evidence.

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

- a) For any claim, the burden of proof to prove the allegations is on one of the parties to the case. In this case it was the Charterers that were alleging and claiming. They should have been assisted properly to present their case by their legal representatives.
- b) Lots of FDD clients have taken regular assistance from FDD department to assist them.

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