

Circular Ref: 2019/0018
Date: 29 November 2019

岸吊费用和租金扣减

在最近伦敦海事仲裁员协会裁决的 London arbitration 27/19 一案中，涉案船舶经修改过的 NYPE 格式出租，由定租确认书确认。船东声称，根据账户余额，他们有一笔 27,425.66 美元的应收帐款已到期。涉案双方的分歧主要涉及岸吊使用费的归属及其他索赔。

承租人从租金中扣减了 5 月 11 日 7:30 到 5 月 12 日 11:45 之间发生的岸吊使用费和装卸工待时费，船东对此表示质疑。承租人扣减的依据是定租确认书和租船合同中的一系列条款。条款列明如下：

定租确认书：

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.

租船合同：

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.

仲裁庭不认为有足够的证据证明索赔的岸吊租赁费归因于承租人声称的 2 号起重机出现问题,这是
在任何情况下都会发生的费用。因此, 本案中的承租人没能提供足够证据来证明他们的案件。

ALCO 抗辩险部 (FDD department) 给 Andrew Liu 客户提供如下建议:

- a) 对于任何索赔, 案件中的一方负有证明自己主张的举证责任。在本案中, 是承租人提出主张并要求索赔。他们的法律代表本应该协助他们正确表述案情。
- b) 我司抗辩险部门可提供相关协助, 诸多 FDD 客户得益于抗辩险部的帮助。

以上由 Andrew Liu & Co., Ltd 编译, 应以英文为准!

信息来源: Andrew Liu & Co., Ltd www.andrewliu.com.hk