

Circular From NORTH**Date: 4 December 2019**

The Limitations of WIPON And The Risk of Charterers Doing

Nothing With An Invalid NOR

We are often asked whether a Notice of Readiness (NOR) can be validly tendered outside of port limits. The answer depends on the wording of the charterparty and the specific circumstances at the port in question.

It is important to know that a WIPON clause, which you may include in your charterparty to allow for a NOR to be tendered “whether in port or not” has its limitations. Such limits were discussed in the recent London Arbitration 13/19 decision.

This decision also reminds charterers of the danger of doing nothing where owners serve an invalid NOR.

The facts

The vessel arrived at South West Pass pilot station, Mississippi and tendered NOR. It then entered the Mississippi River, changed pilots and anchored at Point Celeste Anchorage awaiting berth. Shortly after, the National Cargo Bureau (“NCB”) Surveyor failed the holds. After further cleaning, the NCB Surveyor passed the holds. Charterers’ agents then delivered loading documentation to the terminal, including the NOR. Charterers claimed the NOR was invalid and, therefore, no NOR had been properly tendered before the cancelling date, allowing them to cancel the charterparty. Owners disagreed.

Did the WIPON provision mean the NOR was valid?

The terms of this charter included a WIPON provision which allowed the NOR to be tendered from the usual anchorage outside the limits of the port where the vessel couldn’t enter due to congestion. However, the vessel could proceed to an anchorage within the port – which it did (anchoring at Point Celeste Anchorage after taking on the pilot) – and so the Tribunal held that the WIPON provision did not assist owners to enable tender of a valid NOR at South West Pass.

A vessel couldn’t “be considered to have been more than on its way” when NOR was tendered by the Master at a pilot station in London Arbitration 19/10.

The point of picking up a pilot didn’t properly represent the point at which the carrying voyage came to an end and the vessel was at the immediate and effective disposition of the charterers in London Arbitration 8/03. The Tribunal in London Arbitration 13/19 said it was “common for ship masters to

tender notices of readiness at the first pilot station at the end of a sea passage, but that was usually done in the mistaken belief that that was the correct procedure, when in fact it was not”.

Accordingly, even if there is a WIPON provision in the charterparty, this does not mean there is an automatic right to tender the NOR outside port limits. If the vessel can proceed closer to the berth then it should do so, and be at the correct waiting place, before tendering the NOR. Had there been no loading berth or river anchorages available when the vessel arrived at South West Pass and had she waited there, then the NOR would have been valid, subject to the vessel being ready to load.

It was also held by the Tribunal that even if the NOR had not been premature, it was invalid because, under the terms of the charter party, the holds did not pass the NCB inspection. The Master should have tendered a new NOR once the holds had been passed as clean.

The Tribunal highlighted that the owners should have informed the Master of such a charterparty requirement and, likewise, the charterers should have informed their agents.

How did owners' claim for demurrage succeed?

Because the charterer's agents submitted the invalid NOR to the loading terminal, this constituted acceptance by the charterers of the NOR. The greater responsibility in this case lay with the charterers and when they were presented with a NOR they (or their agents) should have formally accepted or rejected it.

Lessons to be learnt

As an owner you should always make sure the Master is aware of the NOR requirements in the relevant charter. We would also remind Masters to keep tendering new NORs “*without prejudice*” to the last whenever there is a change of position or circumstance.

As a charterer you should make sure your agents are aware of the charterparty NOR requirements and, if you want to claim a NOR is invalid then to officially reject the NOR as invalid. A failure to do so and to continue as if the NOR is valid could lead to you waiving your right to claim invalidity.

Source of Information: North of England P&I Club