



Guiding Spirit to Shipping Industry

Sagar Sandesh

Maritime Tabloid English Weekly Thrice E - Paper

In association with R L Institute of Nautical Sciences, Madurai, Tamil Nadu. | RNI No. TNENG/2012/41759 | Friday, November 18, 2022 | Voyage 11 Wave 120

Published & Released on Every Monday, Wednesday and Friday



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Speed and Performance Claim and Wrongful Arrest



Dr. (Capt.) Vivek Jain

By Dr. (Capt.) Vivek Jain, Barrister (England), Master Mariner, LLB (Lon.), LLM (Lon.), BVC (Lon.), MBA (Norway)

vessel's state, performance, and obligation to comply with the defendant's instructions, subject to there being "no adverse currents"

- o Clause 15 provided that time lost and the cost of extra fuel was to be deducted from the hire.
- On 21 September 2019, the vessel was delivered to the charter party at Rotterdam and thereafter proceeded to Riga and completed loading there on 3 October 2019.
- The Charterers instructed to steam at eco-speed.
- On 5th October, the vessel bunkered at Skaw in Shetland Island,
- The Vessel proceeded from 6th October and reached New Orleans on 27 October. Discharge was completed on 1 November,
- The vessel was inspected in New Orleans and was found to have "considerable marine growth (barnacles) on her visible hull area ..." and thereafter redelivered to the Owners on 3 November 2019.

DISPUTE

- Weather routing company, AWT, of the Disponent Owners reported that there had been a loss of time of 1.15 hours and no overconsumption of heavy fuel oil and marine gas oil.

and a statement that a claim was made by them that they would be making a claim under clause 15.

- The Claimants claimed that it was entitled to recover outstanding hire, bunkers, and expenses totaling some USD99,982.79 and disputed any deduction from hire under Clause 15.

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In a new case, *Eastern Pacific Chartering Inc v Pola Maritime Ltd (The Divinegate)* – [2022] EWHC 2095 (Comm), Queen's Bench Division, Commercial Court, issues of speed and consumption were revisited by High Court after many years. It clarified the confusion that used to exist as a few arbitrators will take into account positive current and a few would not allow it provided the clause on speed and performance in a charter party is silent on positive current.

FACTS AND RELEVANT LAW

- By a trip time charter party, on standard NYPE 1946 form, dated 18 September 2019, MV *Divinegate* was chartered by the Claimant, the Disponent Owner, to the Defendant for the carriage of cargo via the Baltic sea to the Mississippi River in the USA.
- **The relevant clauses were:**
 - o Clause 8 set provides claimants' obligations as regards the



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Speed and Performance Claim and Wrongful Arrest

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- The Charterers sent a letter describing their position before arbitration was commenced on 17 January 2020 and included:
 - o they Asserted that 51.4 hours had been lost because of the master's failure to proceed with utmost despatch in accordance with the defendant's instructions; and
 - o a further 32.2 hours had been lost by reason of hull fouling; and
 - o they further counterclaim for USD72, 629.01 as damages in tort on grounds of the Claimant's allegedly wrongful arrest of *their time chartered vessel*; and
 - o overall, they asserted USD59, 129.25 was due to them
- The Claimants arrested a vessel, thinking that the Defendants were the beneficial owners of the arrested vessel, but it turned out that the Defendants were just time charterer to secure their claim.
 - In arbitration counterclaim for slow steaming succeeded to the extent of a loss of time of 16 hours that fell to be deducted from hire but could not succeed on wrongful arrest claim
- The good weather method had been tried and tested, and was the established starting point to decide the cases and the "RPM" method alone cannot be deciding method as suggested by Charterers as do not take into account weather conditions as agreed in the charter party. RPM method alone is not a good method as compared to the conventional method because the 'RPM method' incorrectly assumed that resistance on the hull would be the same whether the engine was being run at lower or higher RPM. For non-engineers, a small explanation is that to run a vessel at a particular warranted speed as provided in the charter party, the vessel has to maintain a particular RPM and if the records have highlighted suggested lower RPM, then an argument arise that vessel never intended to perform on the warranted speed pursuant to the charter party.
 - It was not appropriate as a matter of law and practice for **positive currents** to be taken into account in favor of the Defendant in assessing performance, unless charter party wording demand that.
 - However, adverse currents could provide a defense to the Owners against delay as distinct from positive currents.
 - Having reviewed the conflicting expert evidence, the judge found that there had been underperformance against the performance warranty giving rise to a loss of time of 16 hours. Logbook evidence regarding weather was taken into account to analyze the issues.
 - Evidence of hull fouling impacting speed was not found reliable.
 - Claim for wrongful arrest was dismissed as Defendant failed to establish that proceedings to arrest the vessel were commenced in bad faith involving implied malice or with gross negligence (*crassa negligentia*). In this case, there was a lack of clarity in the public domain about the beneficial interest of the vessel and it protected the Owners.

HELD

- Conventional means of establishing that a vessel had not achieved warranted speed and performance was the "good weather method".
- There was no good weather period on this voyage and the Claimant was entitled to benefit of the doubt.



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