Time Charter - Charterers’ Orders to Proceed by a Specified Route - Whether Navigation or Employment?

Time Charter - Charterers’ Orders to Proceed by a Specified Route - Whether Navigation or Employment? Charterers may give instructions as to the route to be adopted for a voyage but these may conflict with the master’s own assessment of the route to be followed in order to ensure safe passage. This issue was considered in the “Hill Harmony”¹ and the Court of Appeal decision in that case was reviewed in Sea Venture Vol.19².

The House of Lords³ has overturned the decision of the Court of Appeal (which had upheld the first instance decision) and upheld the arbitrators’ award. It held that the choice of route is a matter of employment of the vessel. Relevant extracts from the decision appear below:

(Lord Bingham)

"...subject to safety considerations and the specific terms of the charter, the charterers may not only order a vessel to sail from A to B but may also direct the route to be followed between the two. ..."

(Lord Hobhouse)

"...

In fact, upon the findings of the arbitrators, the vessel was fit to sail by the shorter northern route and the master did not have any good reason for preferring the longer southern route. It was not a good reason that he preferred to sail through calm waters or that he wanted to avoid heavy weather. Vessels are designed and built to be able to sail safely in heavy weather.

...

Under the time charter the obligation is not simply to proceed by a usual route but to proceed with the utmost dispatch.

...

But even if the courts below should have got involved, which they have not, in a discussion of what was the usual route across the Pacific from Vancouver to the east coast of Japan, the arbitrators’ Reasons were clear. The northerly route was the shortest route. There was no evidence that any other route was a usual route. There was evidence that the northerly route was the usual route to follow as it had been by 360 vessels over a three month period. It was also incorrect to treat the case as if it left open the possibility that there had been a rational justification for refusing to proceed by the northerly route. The arbitrators found that the master did not have any rational justification for what he did. My Lords, it follows from what I have already said that, on the findings of the arbitrators, the charterers were, by ordering the vessel to proceed by the shortest and most direct route, requiring nothing more than was in any event the contractual obligation of the owners. Therefore the question whether the order was an order as regards the employment of the vessel is academic. But it was in truth such an order. The choice of ocean route was, in the absence of some over-riding factor, a matter of the employment of the vessel, her scheduling, her trading so as to exploit her earning capacity. [emphasis provided] The courts below, by contrast, accepted the owners’ argument that it was necessarily a matter of the navigation of the vessel.

...

The master remains responsible for the safety of the vessel, her crew and cargo. If an order is given compliance with which exposes the vessel to a risk which the owners have not agreed to bear, the master is entitled to refuse to obey it. Indeed, as the safe port cases show, in extreme situations the master is under an obligation not to obey the order.

...

In the present case, the exception did not provide a defence. First, the breach of contract was the breach of both aspects of the owners’ obligations under clause 6 of the time charter - to prosecute the voyage with the utmost dispatch and to comply with the orders and directions of the charterers as regards the employment of the vessel. As a matter of construction, the exception does not apply to the choice not to perform these obligations.

...

In the absence of overriding circumstances, therefore, the master is obliged to follow charterers’ instructions as to the route to be adopted for the voyage.

¹ Kawasaki Kisen Kaisha Ltd v Whistler International Ltd, 1999 2 Lloyd’s Rep. 209
² Pages 90 to 92
³ [2001] 1 Lloyd’s Rep. 147