The Cost of Deviation to Interim Ports

A common additional clause found in tanker voyage charterparties allowing for a vessel to call at additional load or discharge ports reads as follows:

"Charterers shall pay for additional load/discharge port at cost plus additional steaming time incurred plus such deviation which exceeds a direct route from first load port to the furthest discharge port. Such time shall be paid at demurrage rate plus additional bunkers consumed as per Master's telexed or faxed statement at price last paid by Owners and port costs as per Agent's telex disbursement. 100% of such time shall be paid together with freight. Hard copies of supporting documents to follow soonest."

When charterers exercise their rights under this type of clause and direct a vessel to additional load or discharge ports disputes often arise over the calculation of the payments due to the owners. Is all time spent in the deviation to and from the additional port including time in the port itself to count at the demurrage rate or only the time spent at sea on the deviation?

Analysis

A Court when interpreting a contract will always try to give effect to all of the contract terms. Where conflict exists additional clauses - i.e. clauses additional to the standard wording of a contract - will tend to be given precedence.

When it is possible to interpret contractual clauses in a way that gives effect to all of the contract a Court will aim to achieve this result.

If there is doubt over the interpretation of a clause the benefit of any doubt will often be given to the party not seeking to rely on the clause. This is particularly so in relation to "penalty type" provisions which impose payment obligations or seek to exclude or limit liability.

The additional clause provides that load/discharge ports are to be paid at cost plus additional steaming time incurred for deviation to another port. The clause provides that "such time" shall be paid at the demurrage rate plus additional bunkers consumed.

Whilst not entirely clear, the correct interpretation of this clause is most probably that the demurrage provision applies only to the additional time taken for the vessel to proceed from the most direct route between the first load and final discharge port in order to reach the interim port. The time provision would not however extend to the time spent in port.

So, if the interim port was directly on the vessel's intended route between the first load port and final discharge port there would be no deviation from the most direct route and accordingly no additional steaming time and no demurrage payment.

The clause does not make it clear that the time spent at any additional port should count as time at the demurrage rate, and commonly elsewhere in the charterparty there will be provision for the commencement and running of laytime.

For example Clause 13(1)(a) of the Shellvoy 5 Charterparty provides that time at each loading or discharging port shall commence 6 hours after the vessel is in all respects ready to load etc. When the additional port clause and the laytime clause are read together the structure of the Charterparty is such that additional steaming time taken to deviate to an additional load or discharge port will be payable at the demurrage rate, together with any bunkers consumed in this operation. However, the time spent at the additional load or discharge port will then run as laytime within the provisions of the Charterparty itself.

The impact of this is to allow Charterers the benefit of any exceptions within the laytime clause for delays experienced by the vessel at an interim port and also allow them the benefit of the 6 hours period of time from tender of notice of readiness customarily provided in Charterparties before laytime or demurrage commences at any load or discharge port.

The impact, from Owners' perspective, may be quite severe.

Conclusion

In the future Owners may wish to amend such an additional interim port clause to ensure that it is clear that the provisions of the clause, in relation to any interim port, apply the demurrage rate to all time spent in any deviation to, including port time, at an interim port. It should also be made clear that the interim port clause overrides the laytime provisions contained elsewhere within the Charterparty.

If members require further information about the contents of this article or suggestions for an alternative clause, they should feel free to contact their usual contacts at the Managers' London representatives.

With thanks to Stephen Mackin of Eversheds for preparing this article.