Shipowners and charterers have competing interests when it comes to nominating vessels for performance and fixing the scope of the laycan. It is in the charterers' interest to establish a fixed date or range of dates for the arrival of the ship at the port of loading so he can make arrangements to procure the availability of the cargo. It is in the interests of the shipowner, however, to have the date(s) as flexible as possible, to take into account adverse conditions delaying the arrival of the vessel and indeed to secure (in the case of nomination) suitable tonnage at an acceptable rate.

The recent case of Universal Bulk Carriers Ltd v Andre et Cie S.A. provides guidelines as to the status of a laycan narrowing provision incorporated into a voyage charterparty and the effect, on the respective parties' performance of the contract, of a failure to comply with such a provision. The owners, Universal Bulk Carriers Ltd, agreed to charter a vessel to Andre et Cie SA for a voyage from the US Gulf to Malaysia to carry a cargo of grain on the Baltic Exchange Grain term C of 1913. The charter incorporated, inter alia, a clause narrowing the laycan spread, clause 42, which read:

“Laycan on first half December to be narrowed to 10 days spread 32 days prior to the first layday”.

Although the clause did not specify who was to give a notice narrowing the laycan it was common ground that the notice was to be given by the charterers. In accordance with this provision, a 10 day spread would result in the first layday beginning at 12 o'clock on 6th December 1996 and any narrowing of the laycan spread would have to take place on or before 4th November.

The charter also contained a clause requiring the shipowner to nominate the performing vessel, at the latest, 15 days before the expected time of her arrival at the loading port and to give the charterers 10 days notice of the vessel's expected readiness at the loading port. Both obligations were agreed to be conditions of the contract in the sense that if not performed in time by the owners, the charterers would have been entitled to terminate the contract.

The charterers failed to narrow the laycan spread within the time limit required. The owners claimed that narrowing the laycan spread clause was a condition of the contract and charterers' failure to comply with this condition meant that the owners were no longer under an obligation to nominate the performing vessel.

The charterers, on the other hand, claimed that that the provision for narrowing of the laycan spread was merely an option and their failure to exercise it did not amount to a breach of contract. Charterers claimed that the owners, in failing to nominate a performing vessel, had wrongly and unilaterally terminated the contract. The charterers chartered a substitute vessel (at a higher rate of freight because of the rising market) to carry the same cargo and as a result of this new fixture claimed the freight differential from the owners.

The main issue to be decided by the arbitrators was whether the notice to be given by the charterers narrowing the laycan under clause 42 of the charter-party was a condition precedent to the nomination by the owners of the vessel, or just an option to be exercised at charterers' choice.

The majority of arbitrators held that the clause narrowing the laycan spread was not a condition but merely an option in favour of the charterers and it was entirely up to them whether to exercise this option. The owners were held to be in breach of contract because of their failure to provide a vessel and liable in damages to the charterers.

The owners appealed against the ruling. The Commercial Court considered the nature of clause 42 and agreed with the minority view of the arbitrator Mr Robert Gaisford, that it was clear, as a matter of construction, that the parties did not intend the clause narrowing the laycan spread to be an option, otherwise they would have so worded it. Elsewhere in the charterparty there was clear language conferring an option on the charterers where this was intended. It was held that the clause amounted to an obligation to narrow the laycan spread, not least because the words "to be" in clause 42 naturally imported an obligation.

The Court then went on to consider whether charterers' obligation under the clause was a condition precedent to nomination of the vessel by the owners and in fact to the performance of the charterparty, or a lesser obligation, breach of which gave rise to a claim by owners in damages only.

The Court was obliged to consider the case of the "Nizuru", where it was held that an obligation on shipowners to narrow a laycan spread for delivery of a vessel under a time charter was a condition precedent to any requirement for charterers to take delivery of the vessel. Although it was tempting to extrapolate from this a finding that in every contract an obligation to narrow laydays is likewise a condition, Mr Justice Longmore felt that he could not do this. He referred to Lord Rookills speech in Bunge Corporation v Tradax Export S. A., which dealt with time stipulations and applied it to laycan provisions. He concluded that in the absence of an express agreement that the laycan provision was to be a condition, the Court had to consider the nature of the contract and the relevant surrounding circumstances in order to establish the nature of the clause.

The facts of the "Nizuru" differed from the facts in this case mainly in that the obligation to narrow the laycan was an owners' obligation and their failure to comply with that obligation significantly prejudiced the charterers in that they were "unable to arrange their affairs". In the Court's view the same could not be said of the owners' position in this case when faced with charterers' failure to narrow the laydays.

The laycan narrowing provision in this charterparty conferred a clear benefit on the charterers, but was less advantageous to the owners, in whose interests it was to have as flexible a laycan as possible to enable them to arrange suitable tonnage. Any disadvantage that the owners might have suffered as a result of charterers' failure to narrow the laycan spread could be compensated in damages. The clause could not have been intended to be a condition, any breach of which would entitle the owners to terminate the charterparty.

The Court further held that the owners were entitled, in principle, to be compensated for any loss they may have suffered as a result of charterers' failure to narrow the laycan, however no such damages were in fact proved by the owners in this particular case.

[2000] 1 Lloyd's Rep 459
[1996] 2 Lloyd's Rep 66
[1981] 2 Lloyd's Rep 1