

Case summary

SBT Star Bulk & Tankers (Germany) GmbH & Co KG v Cosmotrade SA [2016] EWHC 583 (Comm)

Facts

The claimant owners and defendant charterers on an amended NYPE 1946 form with additional clauses entered into a “one time charter trip” via good and safe ports and/or berths via Continent/Mediterranean/Black Sea/East Mediterranean to Red Sea/Persian Gulf/India/Far East, always via Gulf of Aden. The charter also gave a list of places where the charterer warranted that the vessel would not trade, which did not include Oman. The vessel loaded cargo as per the contract and berthed at Dammam in the Persian Gulf on 7 December 2013. On 8 December 2013, the charterers ordered the vessel to proceed to Sohar in Oman, when the vessel was empty of cargo and load a new cargo for delivery at the West Coast of India. It was common ground that such order was given before the vessel had completed discharge at Dammam. This led to the dispute between the owners and the charterers as to whether the charterer had been entitled to give the order to load at Sohar for discharge in India under the charter i.e. whether this was a legitimate or illegitimate order. The owners alleged that after discharge at Dammam the vessel had been ordered to proceed to the charter redelivery place as the “one time charter trip” had been completed.

The question was whether a trip time charter on an amended NYPE form with typed additional clauses allowed the charterers to order the vessel m/v WEHR TRAVE on a further voyage after she had discharge her cargo. In particular, the charter being a “one time charter trip”, whether the charter had contained sufficiently clear words to exclude Sohar as a loading port, and the meaning of the words “via” and “to” in the context of the charter.

Construing the charter – Trip Time Charter

The judge observed that the present charter was a time charter, meaning that the vessel is under the directions and orders of the charterers for a period of time stated in the charter in return for payment of hire and subject to charter terms such as geographical, period, trading limits and other constraints.

The judge also touched on the definition of “trip”. The fact that the charter here was for a “one” time charter trip was not much of assistance. Ultimately, the scope of any “trip time charter” would depend on the particular terms agreed between the parties and the charters’ entitlement to give directions and orders may be restricted to what was agreed upon, for example, period, trading limits, geographical route and even (perhaps) number and designation of loading and discharging port or ranges. However, any such restriction would have to be specifically agreed and would require clear words.

Further voyage to Sohar

In this case, as a matter of language that the charterers had not been restricted to loading the vessel at a single port. They had been entitled, in principle to call at such ports as they wished provided that the calls were within the trading limits and the route was not inconsistent with the contractual route. Sohar was not inconsistent with the contractual route and not an excluded loading place under the charter. Therefore, the charterers were entitled to order the vessel to load cargo there.

The words "via" and "to"

The judge held that the word "via" simply meant "by way of" and the word "to" denoted the contractual route. Those words did not restrict the charterers general entitlement to give orders and directions under the charter to load and discharge cargo, even in the context of the charter being for a one time charter trip. The charterers were, upon paying hire, entitled to call upon the vessel to load and discharge at any port or ports within trading limits subject to any express agreement to the contrary.

Conclusion

The judge emphasized that the word "trip" can be unclear and therefore the Courts will pay attention to the words used to see what was meant by the parties. The Court construed the trip time charter here to mean that so long as the trip was along the defined contractual route and in accordance with the contractual terms, the charterers were entitled to order the empty vessel which had already discharged cargo from one voyage under the charter to call to another loading port and perform another trip before redelivered to the ship owners at the agreed redelivery range.