Double-check where you can anchor – lessons from the AFRA OAK decision

The recent High Court decision of AFRA OAK serves as a timely reminder of how risky it can be to anchor Outside Port Limits (OPL) Singapore. Owners should make sure to obtain the necessary permissions from local authorities when anchoring in these waters.

Published 13 May 2025

Written by Oliver Goossens, Kim Jefferies, Adrian Moylan

It is common for vessels that trade through the Malaca and Singapore Straits to receive instructions to wait "OPL Singapore" for voyage orders. "OPL" stands for "Outside Port Limits". However, under the UN Law of the Sea Convention (UNCLOS), Malaysia, Singapore and Indonesia have overlapping territorial seas in areas outside of Singapore port limits, and there are no recognized international waters east of Singapore. Anchoring or idling OPL Singapore while waiting for orders without permission can therefore lead to detention and fines.

This is exactly what happened in the *AFRA OAK* case.

Detained for eight months

In February 2019, during loading operations in Singapore, the charterers of the tanker 'AFRA OAK' gave owners orders to proceed to Singapore "EOPL" (Eastern Outer Port Limits) once loading was complete and to await further discharge orders. The charterers did not specify where the vessel should anchor, and the Master proceeded to anchor in Indonesian waters without obtaining the necessary permission from Indonesian authorities. As a result, the vessel was detained, the Master and vessel were held for eight months, before the Master was eventually convicted and the vessel was released.

Owners' claims and charterers' counterclaims arose from the vessel's prolonged detention.

Arbitration decision

In the arbitration tribunal, owners claimed that charterers were in breach of the safe port/place warranty. They argued that the anchoring place was unsafe, given that the vessel was exposed to a risk of unlawful detention. The tribunal rejected this on the basis that the anchoring was prohibited by Indonesian law, and that this was a risk that the Master could and should have avoided.

Interestingly, given that the underlying contract was a voyage charter, owners also advanced a claim for an implied indemnity. This was done on the basis that owners had simply followed charterers' orders and that they were entitled to be indemnified for the losses arising therefrom. This claim was also rejected by the tribunal. Whilst it was not decided whether an implied indemnity under this voyage charter could arise, it was held that it was not charterers' orders, but the Master's independent decision to break the law and anchor in Indonesian waters that had caused the loss.

Meanwhile, charterers advanced their own set of claims against the owners. They claimed that the vessel was unseaworthy either as a result of the Master's incompetence or because of poor passage planning. The tribunal dismissed these claims. Charterers also claimed damages for breach of charterers' employment orders, on the basis that their instruction to 'wait at Singapore OPL', included the implication 'where owners consider it safe to do so, using good navigation and seamanship' – which precluded anchoring in Indonesian waters.

Owners defended this claim on the basis that owners were entitled to rely on the

Hague-Visby defence of ' *act, neglect, default of the master…in the navigation or in the management of the ship*' .

Charterers' argument was also rejected by the tribunal and the owners Hague-Visby defence was upheld. It was this final line of argument which was given leave to appeal in the High Court.

High Court decision

The question for the court was: Where charterers give an order as to employment, can owners rely on the Hague-Visby (Article IV(2)(a)) defence of 'negligent navigation'?

Charterers argued that this defence was not available to the owners, relying on the distinction drawn between employment and navigation established in *The Hill Harmony* . In that case, owners decided to forego the shorter 'northern great circle route' and proceed via the longer 'rhumb line route'. Owners were found to be in breach of their utmost despatch obligations and could not rely on the 'negligent navigation' defence.

Owners on the other hand, argued that even where an employment order is breached, owners may have a defence if they can establish that the fault arose from the act, neglect or default of the Master in the navigation of the ship.

Owners' argument was upheld. The court rejected charterers' argument that it was necessary to distinguish between employment orders and navigation orders when considering a Hague-Visby defence. Whilst it was held in *The Hill Harmony* that the 'negligent navigation' defence did not apply, that was not authority for the argument that the Hague-Visby defences cannot be applied to employment orders. The 'negligent navigation' defence did not apply in *The Hill Harmony* as the Master's choice of route was not caused by an error in navigation, but in the present case, the decision to anchor in Indonesian waters was a navigational error. Given that owners on the facts could show that this was the cause of the loss, owners had a valid defence to charterers' claims.

Key take-aways

This case serves as a reminder of how important it is for owners to incorporate the Hague-Visby rules into their contracts. The 'negligent navigation' defence was key for the owners to be able to defend against all of charterers' claims.

Another takeaway is the importance of double-checking where vessels are permitted to anchor and obtaining the relevant permission from the authorities. Anchorage and local agent fees are typically for charterers' account and provision for this under the contracts should also be double-checked. Illegal anchoring in Malaysia is no small problem: just around Johor, our correspondents note there have been 117 vessels arrested since the beginning of 2022. In addition comes the vessels that quietly pay substantial fees in order to be released and to avoid further sanctions. These figures can easily exceed six figures, according to trade press reports.

When employment orders call for waiting OPL Singapore, owners face a significant dilemma if they do not obtain (and pay for) the necessary permission and make a mistake as to the precise location of where to safely anchor. If they are caught by the authorities, they will likely be placed between a rock and a hard place – either paying substantial sums to release the vessel, or going through the local legal process, risking a lengthy imprisonment of the crew, without any guaranteed recourse from their charterers.