

Insight Article

English law – Extension of charter period

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Extension of charter period

The English Court of Appeal has recently confirmed that charterers have the right to use the vessel for the margin period after the stated term has ended.

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What is the Charter Period?

The period of a time charter begins with “delivery” of the vessel to the charterers. This means the placing of the ship and her crew at the disposal of the charterers at the place stipulated under the charterparty. Consequently, the redelivery of the vessel to owners by charterers indicates the end of the charter period and hire ceases to run. In order to determine the end of the charter period, it is important to take into account the standard period under the charterparty and to include any additional or margin period which may provide an extension to this standard period.

It is necessary to consider the charter period when determining the validity of charterers’ orders for the final voyage. It is therefore necessary to know whether the charter period will be extended by an additional margin. This depends upon the words in which the parties have defined the charter period.

Where a margin may be implied

As it is not commercially practicable for the charterers to make their voyage planning to such an extent that they are able to determine exactly when the final voyage will end and the vessel will be redelivered, if the charterparty is for a simple stated period the English courts will imply a reasonable margin.

A margin will normally be applied where the period of the charter is stated as a range such as “four to six months” or where a range of dates is given for redelivery.

The presumption in favour of an implied margin is reinforced when the charter period is preceded by the word “about” (as provided under the NYPE charterparty form).

Where a margin may not be implied

Where the charter period is expressed as being between a certain “minimum” and “maximum” time, the court will not imply an additional margin beyond the stated “maximum”.

Additionally, no further margin will be implied where the parties have themselves included a margin in their definition of the charter period, for example, by adding to the basic period “15 days more or less”.

Valid Final Voyage Instructions

The date upon which the vessel is to be redelivered to owners is often confused by the parties, particularly when it comes to the orders for the final voyage of the vessel prior to redelivery. These instructions for the final voyage are important as the vessel should complete this final voyage within the time charter period.

The validity or legitimacy of orders for the final voyage under a time charter are measured at the time when the orders are to be performed. The charterers will usually give orders for the final voyage in advance and if at the time such orders are given, they appear to be valid in the sense that it can reasonably be expected that the voyage will be completed to allow redelivery by the end of the charter period (including an express or implied margin), the owners are not entitled to refuse them.

The validity of an order for a final voyage is contingent and if circumstances change after the order is given which render the order invalid, then owners are entitled to refuse the orders and call for fresh orders for a final voyage that is legitimate. Thereafter, if charterers still refuse to give valid orders or by conduct show that they do not intend to perform their obligations under the charter, owners may treat the charter as discharged, seek other employment for the vessel and claim damages.

In ordinary circumstances, if charterers order the ship on a final voyage which exceeds the charter period, including any express or implied margin, charterers will be in breach of the charterparty, whether or not the orders for the final voyage were valid, in the sense that charterers may reasonably have been expected that the voyage would have been completed by the end of the charter period and the vessel could have been redelivered in accordance with the charterparty terms.

Effect of a “last voyage” clause

It is important to distinguish between the clauses which protect charterers from a liability in damages (when a legitimate final voyage overruns) and those which effectively make orders for a final voyage, that would otherwise have been illegitimate, legitimate.

The printed form of the Shelltime 3 charterparty makes special provision (by way of clause 18) for what is to happen if the ship is still on her final voyage at the end of the charter period.

In 1992 the Court of Appeal¹ accepted that a final voyage clause could be so worded as to enable the charterers to give orders for a last voyage which would overrun the maximum period of the charter. The charterparty in question was on a Shelltime 3 form. Clause 3 provided: “a period of six months fifteen days more or less in Charterers’ option”.

The WORLD SYMPHONY[1992] 2 Lloyd’s Rep. 115 (C.A.).

Clause 18 dealt with the final voyage and stated that: “Notwithstanding the provisions of clause 3 hereof, should the vessel be upon a voyage at the expiry of the period of this charter, Charterers shall have the use of the vessel at the same rate and conditions for such extended time as may be necessary for the completion of the round voyage on which she is engaged and her return to a port of redelivery as provided by the charter.”

The charterers exercised their 15-day option and the basic charter period expired on 24th December 1988. On 4th October 1988, charterers ordered a final round voyage which would not be completed by that expiry date. Redelivery took place on 18th January 1989 and owners claimed damages based on the market rate for the overrun from 24th December 1988 until date of redelivery.

The Court of Appeal rejected this claim and stated that clause 18 included the crucial words: “notwithstanding the provisions of clause 3 hereof” which indicated that the draftsman of the charterparty form recognised the inconsistency between the two clauses and that this inconsistency was to be resolved in favour of clause 18. Accordingly, the charterers’ orders were legitimised by the latter clause and they were not obliged to redeliver within the basic charter period.

The KRITI AKTI

A recent Court of Appeal decision 2 clarified the position further as to what constitutes the charter period. Briefly, the facts are as follows: Petroleo Brasileiro S.A. time chartered the vessel KRITI AKTI from the owners on a Shelltime 3 form. The charterparty provided under clause 3 that the duration of the charter period was for a period of “11 (eleven) months, 15 days more or less in Charterers’ option”.

Kriti Akti Shipping Co. S.A. v. Petroleo Brasileiro S.A.[2004] EWC Civ. 116 (20th February 2004).

The charterparty included clause 18, unamended (as set out above) and an additional clause 50 which stated as follows: “Any loss of time during which the vessel is off hire shall count as part of the charter period and may be used by charterers at their option as an extension of the aforesaid period.”

The vessel was delivered to charterers on 25th May 2000. During the charter period the vessel was placed off-hire on various occasions and for the purpose of the appeal, the total period of off-hire was assumed to be 36 days.

The 11-month period provided by clause 3 expired on 24th April 2001 and on 13th March 2001 charterers informed owners that they were exercising their option to extend the final date of the charter to 14th June 2001. This date was calculated on the basis that charterers were entitled to add to the 11-month period (the basic period) the further 15 days provided under clause 3 (the option period) and 36 days off-hire (the extension period). They took the view that the reference to “period of this charter” in clause 18 meant the total period for which they would otherwise be entitled to employ the vessel.

On 29th May 2001, whilst the vessel was discharging, charterers ordered her to carry out another voyage. Owners argued that the charter had already expired on the basis that the “period of this charter” under clause 18 meant the basic 11-month period in clause 3 only, or at the most, the basic period plus the clause 50 extension period (36 days), but in either case excluded the 15-day option period. Accordingly, owners refused to comply with charterers’ orders unless the hire rate was increased.

Charterers commenced arbitration proceedings seeking damages for the owners’ refusal to comply with their legitimate orders for the vessel’s employment.

The arbitrators were asked to determine two preliminary issues: i) Whether the “period of this charter” in clause 18 included or excluded the additional period for which charterers may like to keep the vessel on charter in exercise of their option under clause 50; and ii) If it included the clause 50 period, whether the charter as extended by clause 50 included the 15 days option period in clause 3.

In the first instance, the arbitrators held that the charterers could add the off-hire period to the 11 months, but they could not add the 15 days option period. The tribunal therefore dismissed charterers’ claim.

The High Court decision

Thereafter, charterers’ appealed to the High Court, arguing that the charter period did include the 15-day option period. Owners appealed the decision that the expression “the period of this charter” included any off-hire period which the charterers chose to make use of as an extension to the charter under clause 50.

The court held in favour of the charterers that on a true construction of the charterparty, clause 18 only came into operation at the time when the basic 11-month period, the clause 50 extension period and the 15-day option period had all expired.

The owners appealed to the Court of Appeal, which upheld the High Court’s decision in charterers’ favour.

The Court of Appeal decision

The Court of Appeal decided that the correct calculation of the charter period is that any extension period under clause 50 is first added to the basic period and thereafter the 15-day margin (option period) is applied. The court said that it can not have been intended that once charterers opted to extend the basic charter period by adding the off-hire days under clause 50 they became bound (subject to clause 18) to redeliver on the exact final terminal date.

Furthermore, the court found that the natural meaning of the wording of clauses 3 and 18 of the Shelltime 3 form was to entitle charterers to the full commercial use of the vessel for a period as stated in clause 3 plus or minus the optional period.

Conclusion

The Court of Appeal's judgment is important as it has clarified for both owners and charterers what the charter period is deemed to be and it has also provided further comments relating to the time when the final voyage instructions may be made. Generally, charterers have the vessel at their disposal for any period between the basic stated period and any margin period. In addition, in accordance with clause 18 of the Shelltime 3 form (unamended), any final voyage may be commenced at any time during the period that the vessel is at charterers' disposal.

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