



Offhire varies

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SINCE hire rates fell last year many period charterparties have been disadvantageous to charterers. In an adverse market, a charterer will look closely at any clause entitling him to cancel. Many charters contain a provision allowing the charterer to cancel if the vessel has been offhire for more than a certain number of days.

It is, however, worth looking at a couple of reported decisions to see that what is and is not offhire can vary dramatically depending upon the clause used.

In *The IRA* (1995 1 *Lloyds Rep.* 103), the contract contained a clause providing that, if a drydocking prevented the full working of the vessel, the payment of hire would cease for the time and would thereby be lost. This is a so-called “net loss of time” clause.

After discharging in Ravenna, the vessel proceeded to Piraeus for repairs. Thereafter, charterers arranged for the vessel to load in the Black Sea. Charterers argued that the vessel was offhire for the duration of the voyage from Ravenna to Piraeus. However, the court decided that it was not.

In essence, the court said that one should look at the question of what time has been lost and therefore how long the vessel has been offhire, with hindsight in certain circumstances. In effect, as the charterers’ next employment turned out to be in the Black Sea, the judge considered that the charterers only lost time on the very small deviation from the direct route from Ravenna to the Black Sea.

The court gave judgment in a case with some similarities but a different clause in February this year. In *The TS Singapore* (2009 1 *Lloyds Rep* 54) charterers had cancelled the contract under a clause entitling the charterers to cancel if the vessel was offhire for 20 consecutive days. Owners claimed that the vessel had not been offhire for a sufficient number of days. The vessel had suffered an accident and one of the offhire clauses provided that, if the vessel lost time as a result of an accident, it would be offhire “until the vessel is again efficient”. This is a so-called period clause.

The vessel suffered the accident at Yokohama and would have otherwise proceeded to Shanghai. However, as a consequence of the accident, class imposed a condition that the vessel proceed to Hong Kong. Charterers contended that the ship was offhire from the moment of the accident and throughout the voyage to Hong Kong.

Owners said that the vessel was not offhire once it left Yokohama because the first part of the route to Hong Kong was identical to that to Shanghai. The arbitrators, “not without some hesitation”, found in the owners’ favour, but this was overturned on appeal by the High Court. Under the period offhire clause, the vessel was offhire until it was again “efficient”.

To be efficient the vessel had to be in a state to resume service. The judge did not consider that the vessel was efficient when it was proceeding towards Shanghai, even though that was the direction charterers required it to go. What the charterers required was a vessel to go to Shanghai, not just towards Shanghai. It was therefore offhire throughout and charterers were entitled to cancel.

POINT OF LAW: Care needs to be exercised when cancelling under a charterparty provision allowing cancellation if the vessel is continuously offhire for a set number of days. Under an offhire clause that calculates offhire as a period rather than a loss of time, offhire can continue even if the charterer is receiving some benefit from the vessel, and charterer may be entitled to cancel.

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