

News 09 Mar, 2018

West of England Member succeeds in its STS demurrage claim in arbitration

STS operations in West Africa: West of England Member succeeds in proving its demurrage claim in full and defeats a counterclaim for alleged additional expenses incurred by the Charterer

In a unanimous London arbitration award following a 4 day hearing the tribunal has held that since the charter party provided that any STS operation was to be in accordance with latest version of OCIMF guidelines, there was an overriding right and obligation upon the owner to prepare and operate a prudent process towards ensuring the safety of nominated vessels, as required by OCIMF and MARPOL. Accordingly, where the owner – as one of several factors taken into account when vetting a proposed daughter vessel – required a SIRE inspection report that was less than 6 months old, the tribunal held that this was not an unreasonable requirement for the owner to make, even though the charter party did not contain an express SIRE requirement. In its detailed award, the tribunal reviewed all the factors that the owner had taken into account when considering the suitability of proposed daughter vessels, including each daughter vessel's proposed mooring plan, the number and configuration of closed chocks, any recent SIRE inspection reports, whether there were any open Class recommendations and whether an Oil Major had recently accepted the proposed daughter vessel for STS operations.

Furthermore, noting that an owner is entitled to a reasonable period in which to decide whether or not to comply with the charterer's orders (as confirmed in HOUDA [1994 CA]), the tribunal held that the owner had not delayed unreasonably in considering the information and documents provided by the charterer relating to the proposed daughter vessels.

Accordingly, the tribunal held that the owner was entitled to its demurrage claim in full and that no discount was to be applied on STOLT SPUR [2012] principles. (In the STOLT SPUR, the owner was held not to be entitled to claim demurrage whilst the vessel was not available to the charterer because, while the vessel was waiting for a berth to become available, the owner carried cargo under another charter party.)

The owner was also held not liable in damages – a claim that was twice as large as the owner's demurrage claim - for the additional expenses that the charterer stated that it had incurred in order to charter in additional daughter vessels, following the owner's rejection of some of the charterer's nominated daughter vessels.

Any questions or comments can be directed to Nicola Cox at Nicola.Cox@westpandi.com or on +44 (0)207 716 6071.