

# The Great Creation – the importance of redelivery notices



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The case *Maestro Bulk Ltd v. Cosco Bulk Carrier Co Ltd (The Great Creation)*<sup>1</sup> deals with the measure of damages to be awarded, under English law, where a ship is redelivered with insufficient notice under a time charter.

## Facts

In *The Great Creation*, the ship was time chartered on an amended NYPE form for four to five months, plus 15 days at the charterer's option.

The charterparty contained the following redelivery notice clause:

*'On redelivery charterers to tender 20/15/10/7 days approximate and 5/3/2/1 days definite notice.'*<sup>2</sup>

Before redelivery, the charterer intended to employ the ship on a final voyage. However, because of delays, the charterer subsequently realised that such a final voyage would not be possible.

As a result, on 13 April, a 20-day approximate notice of redelivery was served. On 14 April, the 15/10/7-day approximate notices were all tendered. On 16 April, the 3/2/1-day definite notices were served by the charterer.

On April 19, only six days after serving the first 20-day approximate notice and in breach of the charter, the ship was redelivered. While the owner was able to fix the ship for a new voyage, it was only able to do so at a rate well below the market rate at the time.

## Discussion

The parties agreed that the correct measure of damages, where a charterer fails to give redelivery notice(s) in line with the relevant

charterparty, is that which puts the owner in the same financial position it would have been in had no breach taken place. However, in *The Great Creation*, the owner and charterer were unable to agree on the correct 'no breach' position.

The owner categorised the charterer's breach as redelivering without providing contractual prior notice. As a result of this breach, the owner argued that the correct measure of damages was the hire which would have been earned from a notional voyage that the owner would have fixed for the ship had the charterer redelivered in accordance with the agreed notice provisions, minus the hire actually received under the new charter.

In contrast, the charterer stated that the breach was akin to premature redelivery, i.e. by redelivering six days, rather than 20 days, after the first notice was served. The charterer argued that the owner was entitled to hire payable, at the existing charter rate, for approximately 20 days after the date that the first notice was actually served, i.e. 20 days after 13 April, less any hire earned in mitigation.

## Arbitrators' award

The London arbitrators agreed with the owner, categorising the charterer's breach as redelivery with insufficient warning, which resulted in redelivery taking place earlier than the owner was entitled to expect. The owner was

<sup>1</sup> [2014] EWHC 3978.

<sup>2</sup> It was found that 'approximate' notice amounted to a two-day 'either-way' allowance. So a 20-day notice could in fact be treated as 18 days' notice.

therefore awarded damages on the basis of a notional further fixture for the ship, had the charterer redelivered in accordance with the terms of the charter.

#### The High Court's decision

The English High Court disagreed with the arbitrator's decision and found in the charterer's favour, stating that the charterer's breach lay in failing to redeliver in accordance with the contractual notice given on 13 April.

The High Court held that the effect of the charterer's failure to provide accurate redelivery notices was to deprive the owner of the hire payable under the relevant charter for the balance of the notice period after actual redelivery took place, i.e. the 12-day period between redelivery on 19 April and the time when redelivery should have taken place in line with the 20-day [18 days in reality] approximate notice (on 1 May).

Any earnings received from employment obtained in mitigation would be offset against the subject charter hire. However, in this case, because the charter was below the market rate, no such allowance was made.

The High Court agreed with the charterer that the owner's argument that damages should be assessed on

the basis of a hypothetical follow-on fixture leads to '*...unquantifiability, unpredictability, uncontrollability and disproportionality at the date of the charter...'*

#### Comment

While this case is fact-specific, it provides arguable authority that an owner's claim for damages following breach of the redelivery clause by a charterer is limited to the charter hire payable in the missing notice period. This judgment may preclude an owner from arguing for an alternative method of assessing damages in some circumstances.

#### Practical suggestions

Owner members should be cautious about relying upon approximate redelivery notices. It is suggested that shipowners do not act on approximate notices of redelivery, but instead only take active steps to fix future employment when definite notices of redelivery have been received.

Owners may wish to renegotiate the terms of their charterparties to ensure that definite notices are provided as early as practicable.

#### The following table sets out the timeline as found by the judge:

Date	Event
13 April	<b>20-day approximate notice served</b>  [It was found that 'approximate' amounted to a two-day 'either way' allowance. So a 20-day notice could in fact be treated as 18 days' notice.]
14 April	15/10/7 – approximate notices tendered.
16 April	3/2/1 – definite notices served.
19 April	<b>Ship redelivered</b>
1 May	Date ship should have been redelivered under the 20-day approximate redelivery notice.

The diagram shows a vertical timeline on the left. A red bracket spans from 13 April to 1 May, labeled '20-day notice [18 days in reality]'. A black bracket spans from 13 April to 19 April, labeled '6 days'. A blue bracket spans from 19 April to 1 May, labeled '12 days'.