The Wehr Trave

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The English High Court has recently provided guidance as to the meaning and nature of a 'time charter trip'.

The facts

The *Wehr Trave*[1] was chartered by SBT Star Bulk Tankers (the owner) to Cosmotrade SA (the charterer) on an amended NYPE 1946 form, dated 16 October 2013, for:

'One time charter trip via good and safe ports and/or berths via East Mediterranean/Black Sea to Red Sea/Persian Gulf/India/Far East always via Gulf of Aden...'.

The ship was to be delivered at Algeciras (Spain) and redelivered at one safe port in the charterer's option within the Colombo/ Busan Range, including China, but not north of Qingdao.

Upon delivery, the ship was ordered to load cargoes at three separate ports, namely Sevastopol/Avitla, Novorossiysk and Constantza/ Agigea. She proceeded on her route and discharged at one port in the Red Sea (Jeddah), one port in the Gulf of Oman (Sohar) and three ports in the Persian Gulf (Hamriyah, Jebel Ali and Dammam).

The day after berthing at Dammam, the charterer ordered the ship to go back to Sohar, once the ship was empty of cargo, and to load a project cargo for delivery at New Mangalore or Cochin (west coast of India).

It is this subsequent order that led to the dispute and the question as to whether the charterer's order to load another cargo was legitimate (ie permissible under the charter).

Issue to be decided

The arbitration tribunal concluded that this was an order the charterer was contractually entitled to give. On appeal to the High Court, the question for decision by the judge was as follows:

'On the true construction of the Charter, was the respondent charterer under a "one time charter trip" after the vessel had discharged the entirety of all previous loaded cargo, entitled to order the empty vessel to another load port (Sohar) and discharge port to perform a further trip/voyage; or only to order the vessel to proceed to the agreed Charter redelivery place having completed the agreed one time charter trip?'

The central issue was whether the charter terms permitted the charterer to order the ship to load the further cargo after the initial cargo had been discharged. The owner submitted that the 'one time charter trip' had been completed following discharge at Dammam and, therefore, the subsequent order was illegitimate.

1 [2016] EWHC 583 (Comm)

The Court's decision

The High Court judge refused the owner's appeal and agreed with the tribunal. He emphasised the importance of the charter being a time charter where the defining characteristic is that the ship is under the orders of the charterer as regards the employment of the ship for the agreed charter period. The scope of any 'trip time charter' will depend upon the particular terms agreed between the parties and can be restricted by reference to period, trading limits and/or geographical route. It was common ground that proceeding to Sohar was not inconsistent with the contractual route.

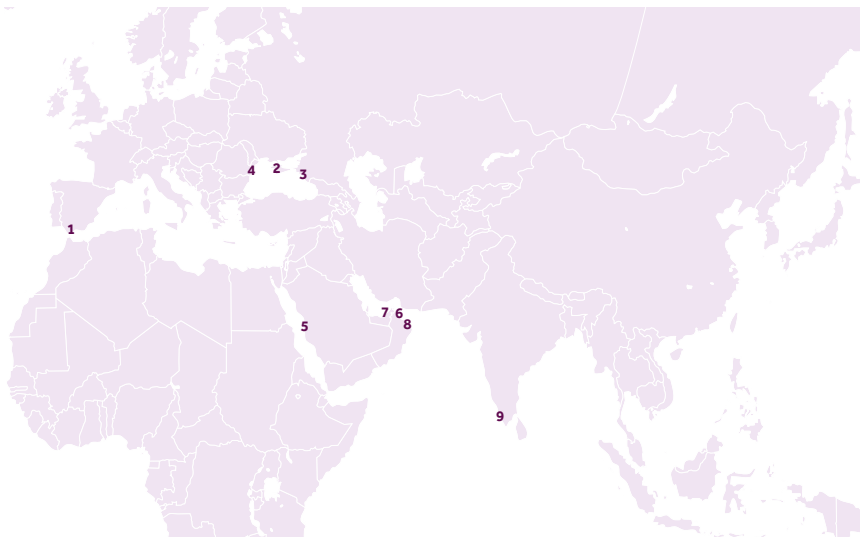
The judge did not consider that, even in the context of this charter being for 'one' charter trip, this restricted the charterer's general entitlement to give orders with regard to loading and discharging, provided the calls were within the agreed trading limits and the route was not inconsistent with the contractual route.

The judge further recognised that the concept of a 'trip time charter' can embrace a number of possible permutations, including loading and discharging at a number of different ports along the permitted route, and held that there was no single definition as to what constitutes a 'trip' or 'one trip'.

The judge also rejected the owner's argument that the words 'via' and 'to' restricted the range of ports at which the ship may load and discharge cargo.

Comment

It is clear from this decision that, if an owner wishes to limit the scope of the orders a charterer may give, whether it be in relation to trading limits, geographical route or number and designation of loading and discharge ports, clear and specific language to that effect will be required in the charter. Clear and express language is strongly recommended in all contracts to avoid disputes.



The *Wehr Trave*
1. Algeciras
2. Sevastopol/Avitla
3. Novorossiysk
4. Constantza/Agigea
5. Jeddah
6. Sohar and Hamriyah
7. Jebel Ali and Dammam
8. Sohar
9. Cochin