



## Obligations on time and place – London Arbitration 7/23

*The place and timing of redelivery of a chartered vessel are key obligations of a charterer. A recent arbitration decision considered whether Owners were entitled to recover for losses which purportedly arose from a breach of these obligations. Summary by [Lucinda Roberts](#), Senior Associate, CJC.*

### The facts

The vessel was chartered on the NYPE form for a time charter trip carrying coal in bulk from Richards Bay, South Africa, with redelivery to take place at Charterer's option in either India or Pakistan. In the event, Charterers redelivered the vessel off Fujairah, UAE.

The charterparty terms prohibited Charterers from sub-chartering the vessel, but Charterers did sub-charter it. Once the cargo of coal had been loaded, Sub-Charterers ordered discharge to take place by way of ship-to-ship transfer at Gadani, Pakistan, which was not permitted under the charterparty. The vessel sustained damage during the ship-to-ship operation, for which Charterers were liable.

The vessel could not be repaired at Gadani, so Charterers ordered the vessel to Khor Fakkan where the repairs were carried out. Upon completion of the repairs, Charterers instructed the vessel to bunker at Fujairah, after which Charterers purported to redeliver the vessel to Owners.

Owners commenced LMAA arbitration seeking recovery of losses purportedly arising from Charterers' non-contractual redelivery.

### The Claims

Owners initially advanced various claims against Charterers, several of which were settled prior to the arbitration. Owners' three remaining claims came before the Tribunal for determination:

1. USD 27,420 for an additional bonus paid to the crew after the vessel sailed in a war risks area from Gadani to Fujairah;
2. USD 160,000 for lost earnings due to the loss of an intended subsequent fixture; and
3. USD 93,622.80 for lost earnings and bunkers while the vessel awaited its next fixture at Fujairah.

Owners alleged that all their losses were underpinned by Charterers' breach of charter in i) sub-chartering the vessel, and ii) undertaking an unsafe discharge operation at Gadani.

#### *Claim 1: the war risks bonus*

Owners sought reimbursement from Charterers of war risks bonus payments they had paid to the crew as a consequence of following Charterers' orders to sail from Gadani to Khor Fakkan and Fujairah. In doing so, Owners relied on clauses 35(d)(ii), 61(5) and 88 of the charterparty:

- i) Clause 35 (d)(ii) provided “[i]f the Owners become liable under the terms of employment to pay to the crew any bonus or additional wages in respect of sailing into an area which is dangerous ... then the actual bonus or additional wages paid shall be reimbursed to the Owners”.
- ii) Clause 61(5) provided “[i]f the Owners become liable under the terms of employment to pay to the crew any bonus or additional wages in respect of sailing into an area which is dangerous ... then such bonus or additional wages shall be reimbursed to the Owners by the Charterers.”
- iii) Clause 88 provided “...[a]s to bonus/overtime to crew paid by Charterers, same should be subject to the payment standard of flag or nation of Vessel”.

Charterers argued that reimbursement was unnecessary as Owners were not legally obliged to pay the additional bonuses. Owners admitted the payments “were not strictly required as a matter of contract”, but asserted they were “customary and necessary to ensure that the crew continue to do the work required”.

*Claim 2: loss of the subsequent fixture and Claim 3: Loss while waiting at Fujairah.*

Owners claimed that these losses had arisen because of Charterers’ breach in sub-chartering the vessel, and the alleged unsafety of the discharging operations.

Owners claimed that had redelivery taken place at Gadani, the vessel would have been fixed “almost immediately” with employment from Richards Bay to East Coast India, at a market rate of USD 14,000 per day. Following redelivery off Fujairah, Owners fixed the vessel a few days later at a daily rate of USD 10,000. Owners quantified their claim at USD 160,000, being the daily hire differential of USD 4,000 multiplied by 40 days (the voyage length from Gadani to Richards Bay and back to India).

Charterers argued that the normal measure of loss should apply, being the net profit Owners would have earned on a hypothetical voyage under the charterparty from the actual place of redelivery to the contractual redelivery place. Accordingly, Charterers put Owners’ loss at USD 33,495, based on a voyage from Fujairah to Gadani at a daily rate of USD 16,500 and, allowing for payments they had already made, asserted Owners could only recover USD 21,175.50.

Charterers also contended that there was no causal link between the loss and the actual redelivery. The loss of the follow-on fixture was too remote: it was due to the *timing* of redelivery, whereas Charterers’ breach related to the *place* of redelivery. Charterers argued the follow-on fixture would have been lost even if they had ordered the vessel to Gadani after repairs.

Owners also claimed for nearly six days’ waiting time at Fujairah while the vessel awaited employment.

## **Judgement**

*Claim 1: the war risks bonus*

The Tribunal rejected this claim. Owners had failed to adduce any evidence that payment of the bonus was either necessary, or customary.

*Claim 2: Loss of the subsequent fixture*

The Tribunal found that the effective breach leading to any losses suffered by Owners was Charterers’ failure to contractually redeliver the vessel, rather than the sub-charter or unsafe discharge operation. While the latter breaches sent the vessel to Khor Fakkan and Fujairah, they were not an effective cause of any losses, and such losses were not reasonably foreseeable consequences of these breaches.

The Tribunal held that Owners' loss of the fixture was not caused by the *place* of redelivery, but rather the *timing* of redelivery. There was no charterparty obligation as to the timing of redelivery. Given that the loss did not arise from Charterers' breach in redelivering the vessel in an alternate location, Owners were awarded USD 21,175.50 (in line with Charterers' case), rather than the full amount claimed.

*Claim 3: Loss while waiting at Fujairah*

The Tribunal rejected this claim as it was a duplication of certain sums claimed under Claim 2.

**Comment**

The case reiterates the importance of the legal principle of causation. It is insufficient for a party to establish a breach of charter in and of itself to recover losses; a party must also establish a causal link between the breach of which they complain and the precise loss. A tribunal will scrutinise this carefully. Where the chain of causation is broken (for example, by a legitimate action following a breach), or the loss is too remote a consequence to have been foreseeable, recovery will not be permitted.

**For further information, please contact:**



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