



The Federation of National Associations of Ship Brokers and Agents

TIME CHARTER INTERPRETATION CODE 2000

Disclaimer

Where any of this code conflicts with any of the terms of the relevant time charter, those of the latter shall prevail to that extent, but no further:

Introduction:

AIMS AND OBJECTS

In commercial practice many aims and objectives for standardisation are often frustrated by the laws in different jurisdictions and where the legal understanding and interpretation may differ the one from the other.

The main jurisdictions applicable to maritime disputes are:

- a) The Common Law countries – mainly England and the USA.
- b) The Civil Law countries such as France, Germany, Italy, etc.

The endeavour is not going to be the alter-ego of the Laytime Definitions for Voyage Charters; nor is this an attempt to create new charter party clauses, but merely a Code of how to interpret existing charter party clauses as well as to assist disputing parties where charter parties are silent or non-determining.

There is a vast difference between definition and interpretation, but in some ways and sometimes they may compliment one another. For example, nobody in shipping needs a definition of what speed and consumption are or mean, but how should one deal with a speed claim, if any?

The chief objective of the Code is to try to eliminate many often occurring and avoidable maritime charter parties disputes in the field of time charter.

1. Speed and Consumption

The following is to apply to any dry cargo time charter not containing a performance clause, and to any combination carrier when engaged in dry cargo trading:

The speed and consumption warranties of the time charter are to apply for its duration and whether the vessel is fully, partly loaded or in ballast, and shall be computed from pilot station to pilot station on all sea passages while the vessel is on hire, **excluding:**

- a) Any day on which winds of Beaufort Wind Scale 4 or above are encountered for more than six (6) consecutive hours;
- b) Any time during which speed is deliberately reduced for reasons of safety, or on charterers' orders to steam at economical or reduced speed, or when the vessel is navigating within confined waters, or when assisting vessels in distress;
- c) Any complete sea passage of less than 24 hours duration from pilot station to pilot station;
- d) Periods in which time is lost on charterers' instructions or due to causes expressly excepted under terms of the time charter;
- e) Periods when the vessels' speed is reduced by reason of hull fouling caused by charterers' trading orders.

When specific figures have been agreed to for the vessel in ballasted condition these shall be taken into consideration as shall agreed specifics for reduced or economical speed and consumption, when computations are made.

The mileage made good during qualifying periods shall be divided by the warranted speed and compared to the time actually spent. Any excess is to be treated as off-hire. If the word 'about' precedes the speed and consumption, same will be understood to mean ½ knot less in the speed and 5% more in the consumption, not be cumulative.

As to consumption, the recorded qualifying periods, as above shall be multiplied by the warranted consumption on the qualifying days and compared to the actual consumption. In case of any excess, the charterers are to be compensated by the owners for such excess in cost to the charterers calculated at the prices at the last port bunkers were supplied during the time charter, or those at delivery whichever applicable. Such amount may be deducted from hire.

The immediate financial consequences of a speed deficiency shall be set-off with any saving caused by under-consumption.

The computations shall be made sea passage by sea passage. The vessel's speed and consumption shall be reviewed at the end of each twelve months, or other lesser period as appropriate.

If in respect of any such review period it is found that the vessel's speed has fallen below the warranted speed, hire shall be reduced by an amount equivalent to the loss in time involved at the rate of hire. And if in respect of any review period it is found that the vessel's consumption has exceeded the warranted consumption, the additional costs shall be borne by the owners.

The foregoing is without prejudice to any other claim(s) that a party may have on the other.

2. Withdrawal for late/non payment of hire

Except where otherwise specifically permitted in the provisions of the charter party, the charterers shall have no right to make arbitrary deductions from hire which shall remain payable punctually and regularly as stipulated therein. Nothing in the charter party shall, however, prejudice the charterers' right to make any equitable set-off against a hire payment due provided that the calculation is reasonable, made bona fide, and that it is in respect of a claim arising directly out of their deprivation of the use of the vessel in whole or in part.

Except as provided herein, the owners shall have a right of permanent withdrawal of their vessel when payment of hire has not been received by their bankers by the due date by reason of oversight, negligence, errors or omissions of charterers or their bankers. In such cases prior to effecting a withdrawal of the vessel, the owners shall put the charterers on preliminary notice of their failure to pay hire on the due date, following which the charterers shall be given two clear banking days to remedy the default. Where the breach has been cured the payment shall be deemed to have been made punctually.

In respect to a payment of hire made in due time, but insufficient in amount, the owners shall be permitted a reasonable time to verify the correctness of a deduction. If, thereafter, there is found to be disagreement on the amount of the deduction, then the amount in dispute shall be placed in escrow by the charterers and the matter referred to immediate arbitration in accordance with the terms of the charter party's arbitration clause. In that event there shall be no right of withdrawal.

Except as provided heretofore, withdrawal of the vessel may be made by the owners, which shall be without prejudice to any other claim they may otherwise have on the charterers.

3. Off-hire

Any period of time qualifying as off-hire under terms of the charter party shall be allowed to the charterers for any time lost in excess of three consecutive hours for each occurrence.

In addition to matters referred to as off-hire in the charter party, shall be included time lost to the charterers caused by interference by a legal, port of governmental authority, resulting in the charterers being deprived of their unfettered use of the vessel at any given time during the currency of the charter party, or in the vessel being prevented from leaving the jurisdiction contrary to charterers' requirements.

4. Deviation

All periods of off-hire due to deviation shall run from the commencement of the loss of time to charterers, deviation or putting back, and shall continue until the vessel is again in a fully efficient state to resume her service from a position not less favourable to the charterers than that at which the loss of time, deviation or putting back occurred.

5. Legitimacy of the Last Voyage

In the absence of any specific provision in the time charter relating to redelivery and orders for the final voyage, the following shall apply:

Charterers undertake to arrange the vessel's trading so as to permit redelivery within the period and permissible redelivery area as contained in the charter party. As soon as the charterers have arranged the final voyage they shall immediately so inform the owners giving a realistic estimated itinerary up to redelivery time. The owners shall notify the charterers within two working days thereafter as to whether they agree or disagree with charterers' estimate. Should they disagree and consider the vessel will overlap the maximum period, they shall nonetheless allow the voyage to be undertaken at the time charter rate of the charter party without prejudice to their ultimate right to compensation for additional hire at the market rate should an overlap subsequently have proven to have occurred, and should the market rate be higher than the charter party rate of hire.