

IN THE MATTER OF THE ARBITRATION ACT 1996

AND

**IN THE MATTER OF AN LMAA SMALL CLAIMS PROCEDURE
ARBITRATION**

B E T W E E N :-

**TUNE CHEMICAL TANKERS BV
of The Netherlands**

**Claimant
(Disponent Owners)**

- and -

**KVG GLOBAL LIMITED
of Hong Kong**

**Respondent
(Charterers)**

m.t. "LADY SINA" – C/P dd. 03.11.2016

FINAL ARBITRATION AWARD

Tribunal:

**Brian Williamson
Sole Arbitrator**

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Introduction

1. By a charterparty on an amended VEGOILVOY form with Charterers' Rider Terms, as evidenced by a fixture recap dated 3 November 2016 ("the Charterparty"), the Claimant disponent owners, Tune Chemical Tankers BV ("Owners"), chartered the motor tanker "LADY SINA" ("the Vessel") to the Respondent charterers, KVG Global Limited ("Charterers") for the carriage of a cargo of crude palm oil ("CPO") from STS Kumai, Indonesia, to Kakinada or Chennai and Budge Budge in India, on terms set out therein. The relevant Charterparty clauses are attached to this Award at Annex 1.

The agreement to arbitrate

2. The agreement to arbitrate was set out in a letter sent by the Owners' representatives, Campbell Johnston Clark (CJC), addressed to the London Maritime Arbitrators' Association (LMAA) dated 8 March 2018 in which they confirmed that the parties agreed on the following arbitration terms:
 - (a) London arbitration under the LMAA Small Claims Procedure;
 - (b) Sole arbitrator to be appointed by the President of the LMAA;
and
 - (c) English law to govern the contract.
3. The President of the LMAA subsequently appointed me, **BRIAN WILLIAMSON** of Craigmillar, 10A Hungershall Park, Tunbridge Wells TN4 8NE, to act as Sole Arbitrator. I am a Full Member of the LMAA and I accepted my appointment under the LMAA Small Claims Procedure (SCP) 2017 terms accepting that no word limit would be imposed on the submissions. As the parties otherwise agreed the SCP terms apply to this reference, they thereby agreed to waive all rights of appeal.

4. The seat of the arbitration is London, England.

The disputes referred to arbitration and representation

5. The dispute concerns a claim by Owners for demurrage in the sum of US \$89,975.00 as detailed in their laytime statement dated 20 December 2016, for which Charterers denied liability.
6. The Owners are represented by CJC Singapore and the Charterers by Rajah & Tann, Singapore. Both parties made written submissions and provided me with documents upon which they rely. Neither party requested an oral hearing, nor did I consider one to be necessary. I have therefore determined the issues on the basis of the documents and written submissions alone.

The factual background and submissions

7. The motor tanker LADY SINA has a summer deadweight of 13,053.25 tonnes on a corresponding draught of 8.71m. She is 128.60m in length overall and has a beam of 20.54m. She was built in 2009 and is classed by ABS.
8. In accordance with the Charterparty, the Vessel proceeded to load a cargo of about 11,000 tonnes CPO at Kumai, Indonesia, between 19 and 29 November 2016. She thereafter proceeded to the first discharge port, Kakinada, where she discharged her first parcel between 8 and 10 December; and thereafter proceeded to her second and final discharge port, Budge Budge to discharge the remaining parcel. She arrived at Sandheads anchorage on 11 December, she proceeded up river to Budge Budge on 16th, completing discharge on 18 December.

9. Although certain times are contested in the parties' submissions, I consider the most reliable evidence on the timing of key events to be the contemporaneous Statement of Facts (SOF) as they have been signed by three parties: including, the Master for the ship, the agents for the Charterers, and surveyors for the receivers. As the parties' submissions have no evidential value, it is therefore incumbent upon a party alleging an event to have occurred at a different time and/or date, from the SOF, to support such allegation with reliable documentary evidence.

The loadport: Kumai

10. According to the SOF signed by the relevant parties, the sea passage terminated at 0800 on 19 November 2016. The Vessel anchored at 1000 and NOR was tendered. The first hose was connected at 1020 on 20th and loading commenced at 1110. Loading completed at 1500 on 26th and the last hose disconnected at 1530, following which ullaging, calculations and sampling took place between 1600-1800. Documents were completed at 2200 on 26th, and the Vessel cleared out at 0230 on 29th.
11. According to Owners' laytime calculation, laytime began to run 6 hours after tendering of NOR on 19th, that is at 1600, and ran continuously until the Vessel cleared out at 0230 on 29th, a period of 9 days, 10 hours and 30 minutes.
12. As the total reversible laytime allowed for 11,000 tonnes of CPO is 137.5 hours for loading and 88 hours for discharging, a total of 225 hours 30 minutes, or 9 days, 9 hours and 30 minutes is therefore allowed. According to Owners' calculation, laytime expired at 0130 hours on 29th, with the result that the Vessel was on demurrage for one hour at Kumai.

13. Charterers challenged Owners' calculation. They submitted that the Vessel was not an arrived ship when NOR was tendered. Charterers place reliance on an email from the Master dated 20 November 2016 confirming that the Vessel anchored at the Kumai STS location at 1024. They argued that, to be an arrived ship, the Vessel had to reach the STS location which she only did at 1024 on 19 November, rather than at 1000 when NOR was tendered. Charterers therefore contend that the NOR given at 1000 was invalid. Since an invalid NOR cannot become valid on its own, in the absence of a re-tender of a valid NOR, laytime began at 0930 on 20 November when the NOR was accepted, as recorded in the SOF. As loading commenced at 1110, Charterers submit that laytime should start to count from 1110.
14. As cargo documentation completed at 2200 on 26th, Charterers contend that the delay that ensued until the Vessel was cleared out is not their responsibility. Charterers therefore calculate the laytime used at Kumai was 5.18 days.
15. Owners disputed that STS Kumai means that the Charterparty is a berth charter, as Clause 4 of the VEGOIL form expressly provides that NOR should be tendered when the Vessel has arrived at the port of loading or discharge, and that laytime will commence whether the Vessel is in or out of berth. In any event, the Vessel had reached the customary waiting area at 1000 when she anchored, as recorded by the SOF.
16. Owners also disputed that the delay after 2200 on 26th is for Owners' account, as the Vessel was detained for Charterers' purposes and only received clearance to sail at 0230 on 29th.

Consideration and decision

17. I must reject Charterers' submission that the Charterparty is a berth charterparty as Clause 4 of Part II makes provision for the presentation of a valid NOR and the commencement of laytime. As the SOF records the Vessel had arrived at the loadport at 1000 on 19th, I am satisfied that laytime should commence after the expiration of 6 hours, irrespective of whether the Vessel is in berth or out. I therefore find laytime commenced to run at 1600 on 19 November 2016.

18. Although the cargo documentation was completed at 2200 on 26th, I am further satisfied that the delay that ensued until the agent boarded and the Vessel was given clearance outwards is for Charterers' account. I therefore find that time continued to run uninterrupted until 0230 on 29th. As the laytime of 225.5 hours allowed expired at 0130 on 29th, I find that the Vessel came on demurrage at that time, with the result that on sailing from the loadport, demurrage of one hour had accrued.

First discharge port: Kakinada

19. Pursuant to Charterers' orders, the Vessel arrived at Kakinada on 8 December for discharge of her first parcel, consisting of 5,000 tonnes of CPO. According to the SOF, the Vessel arrived at 1700 and NOR was tendered at the same time. The pilot boarded at 1854 and the Vessel was fast alongside at 2024.

20. Ullaging, sampling and calculations began at 2200 on 8th and completed at 0015 on 9th. The hose was connected at 0030 and discharge commenced at 0036. Discharge completed at 0330 on 10th and the hose was disconnected at 0430. The Vessel was cleared outwards at 0445 and she left the port at 0512.

21. According to Owners' laytime calculation, time began to run at 2024 on 8th when the Vessel was all fast alongside and ran continuously until 0430 on 10 December when the cargo hose was disconnected. They calculate time on demurrage at Kakinada amounted to 1 day 8 hours 6 minutes.
22. Once again, Charterers challenged Owners' calculations. Charterers submitted that the NOR tendered was invalid because it was tendered at the end of sea passage, whereas laytime should only commence after Charterers/receivers' acceptance of the NOR on arrival at berth, bearing in mind the free time allowed after acceptance. They contend that time only begins to run when the NOR was accepted at 0015 hours on 9 December.
23. Charterers' alternative case is that, if the original NOR is valid, laytime will only start to count, as from commencement of discharge at 0036 on 9 December, as main terms allow 6 hours unless used and excludes time for shifting as excepted by Rider Clause 3(a). In addition, Charterers submit that the time for gangway placement between 2015-2045 also should not count, as this is in the control of the ship's staff and, as such, is beyond Charterers' control.

Consideration and decision

24. Irrespective of whether or not NOR was valid, Clause 4 provides laytime is to commence after the expiration of 6 hours after tendering NOR or immediately upon the Vessel's arrival in berth, whichever occurs first. I am satisfied that time begins to count as from 2024 on 8 December when the Vessel was all fast alongside. I do not accept Charterers' submissions that the gangway placement should interrupt time as this is part of the usual process of arrival alongside, and as such is for Charterers' account.

25. Although Owners purported to revise their laytime calculation, I do not consider what was suggested to be appropriate at the Reply Submissions stage in an SCP matter. I shall not therefore consider their alternative proposal further.
26. As there is no dispute about the conclusion of running time, which ran until 0430 hours on 10th, I accept Owners' calculation and find that laytime ran continuously from 2024 on 8th until 0430 on 10th, with the further accumulation of 1 day, 8 hours, 6 minutes demurrage.

Second discharge port: Budge Budge

27. After sailing from Kakinada, the Vessel proceeded to Budge Budge to discharge the remaining parcel of 6,000 tonnes of CPO. She arrived at Sandheads anchorage at 1900 on 11 December, and tendered NOR. The Vessel was obliged to wait at the anchorage until 16 December, as no berths were reachable as a result of the bore-tides.
28. The Vessel began her inward passage towards the berth at 0515 on 16 December, and was fast alongside at 1800.
29. Discharge commenced at 2018 on 16th and completed at 1536 on 18th. The last hose was disconnected at 1636 on 18 December, and the Vessel sailed shortly thereafter.
30. According to Owners' laytime calculation, time began to run 6 hours after tendering of NOR, with time beginning to run as from 0100 on 12 December. Time was interrupted between 0515 and 1800 on 16th for the shifting operation from Sandheads anchorage to the berth at Budge Budge, where the Vessel was fast alongside at 1800.
31. According to Owners' calculation, time used at Budge Budge was 6 days, 2 hours and 51 minutes, bringing the total time on demurrage to

- 7 days, 11 hours and 57 minutes, which at US \$12,000 per day, is equivalent to US \$89,975.00.
32. Charterers challenged Owners' laytime calculation, both on the basis that the NOR was invalid and, in the alternative, if it was valid.
 33. Charterers firstly submitted that as Budge Budge was named as the discharge port, NOR can only be tendered on arrival at Budge Budge, where the Vessel only arrived on 16 December. Charterers submit that the place where the ship anchored at 1442 on 16 December represents the outermost limit of Budge Budge port area, where ships for the port usually wait.
 34. Alternatively, if the NOR tendered at Sandheads was valid, despite it being 200 km away, time will not count until the Vessel was all fast alongside the berth for the following reasons. Clause 3 of the Rider Clauses provides: *"time shall not count as laytime or time on demurrage when used for inward passage moving from anchorage, including awaiting full daylight unless the Vessel is secured moored at a berth"*.
 35. Charterers submit that from 1900 on 11 December the Vessel was awaiting daylight as night navigation is not permitted in Budge Budge, and Rider Clause 3(a) excepts waiting daylight from laytime or time on demurrage.
 36. Also, the time from midnight 0000 on 12th December to 2400 on 16th December, should not count as laytime or time on demurrage as Clause 3 provides *"time not to count as laytime or time on demurrage for certain awaiting like situations such as awaiting for daylight, or any other reason whatsoever over which charterers have no control."* Charterers argue that the Vessel's movement after arrival at Sandheads to Budge Budge was prevented by order of Kolkata Port

Trust Authorities, which governs the movement to all ports within Kolkata Port Trust, and that is Haldia, Kolkata and Budge Budge.

37. Charterers therefore submit that the actual cause of the prevented movement of the Vessel from Sandheads to Budge Budge was not the bore-tide, as claimed by Owners, but rather the order of Kolkata Port Trust Authority, an external organisation over which Charterers have no control. Hence, this was a reason beyond Charterers' control and excepted by Clause 3(a) of the Rider Clauses.
38. Charterers go on to argue that, even if the bore-tide was the actual cause, the facts on record clearly show that waiting from 11th to 16 December was due to the Port Trust order not to permit movement during bore-tide period, for delay in reaching Budge Budge. Charterers submit it would still not have counted, as laytime or time on demurrage, as it would have been a cause beyond Charterers' control, as excepted by Rider Clause 3(a).
39. Owners disagreed with Charterers' submissions. They argue that Sandheads anchorage is the anchorage location for the port of Budge Budge, and is therefore within the port of Budge Budge for the purposes of determining whether the Vessel is an arrived ship. Owners also dispute Charterers entitlement to rely on Clause 3(a) as the plain wording mandates that it only applies to the period of an inward passage, when the Vessel is moving from an anchorage and does apply when the Vessel was waiting at anchorage. Moreover, Charterers attempt to attribute part of the delay at Sandheads to awaiting daylight was not causative of the delay. The documents submitted with Charterers' submissions confirm that Budge Budge is within the Kolkata dock systems, and Sandheads is expressly listed as the anchorage for Budge Budge port. In addition, Charterers' documents confirm that no seagoing vessel is allowed to navigate the river without a qualified pilot, and vessels are required to wait at the

port's designated anchorage until they can be safely escorted by a pilot to Budge Budge when a berth is available.

40. Owners also argued that it is well-established that what constitutes a port for the determination of whether the Vessel is an arrived ship can be wider than the legal port limits. They cited §§ 3.55-3.61 of *Laytime and Demurrage by John Scofield, 7th Edition*, which confirms that the limits for a particular port may vary according to the purposes for which the limits are being defined. This could be by law or by custom, and the extent of the port may be different for administrative, fiscal, geographical and commercial purposes.
41. So far as Charterers' allegation that Clause 3(a) provides an exception, Owners argue that the exception only applies to the period when the anchor had been raised and the Vessel starts moving from the anchorage. It cannot therefore apply to time spent waiting at the anchorage prior to such inward passage.
42. Furthermore, as the burden of proof is upon Charterers to bring themselves within any exceptions relied upon, they have not shown that the timing of the Vessel's arrival at Sandheads was causative of the delay, as they did not procure a reachable berth in Budge Budge for time to commence. In Owners' submission, a valid NOR was tendered at Sandheads anchorage. Even if NOR was invalid, Owners claim damages for an equivalent sum on detention.

Consideration and decision

43. I am satisfied on the basis of the documents supplied that Sandheads is the usual waiting area for vessels arriving for the port of Budge Budge, and I so find. I am also satisfied that the Vessel could not proceed to port because of the bore-tides. As Charterers are allowed a further 6 hours free time for the final discharge port, I find that time

began to run again at 0100 on 12th. Apart from the suspension of running time for the shifting operation from 0515 to 1800 on 16th, when the Vessel was all-fast, I further find that time ran continuously until completion of discharge and the hose was disconnected at 1636 on 18th. That is 6 days, 2 hours and 51 minutes.


Summary of findings

44. As the total time allowed for all ports is 9 days, 9 hours and 30 minutes, and the Vessel used 16 days, 21 hours, 27 minutes, I find and hold the Vessel was on demurrage for 7 days, 11 hours and 57 minutes which, at US \$12,000 per day, is equivalent to US \$89,975 less 2.5% commission (US \$2,249.38), makes a total of US \$87,725.63 due to Owners.
45. Given the extensive submissions made by the parties, I am satisfied that there will be no breach of the indemnity principle by awarding Owners their costs, assessed by me on a commercial basis, in the sum of £4,500, in accordance with the SCP provisions.
46. I also award reimbursement of the costs incurred for this Award in the sum of £3,250.00 paid on 16 March 2017.
47. As Owners have succeeded, I have awarded compound interest on the sum now due to Owners from 1 January 2017 until payment by Charterers.

NOW I, the said **BRIAN WILLIAMSON** having taken upon myself the burden of this reference and having carefully and conscientiously read and considered the submissions made and the documents provided to me and having given due weight thereto, **DO HEREBY MAKE, ISSUE AND PUBLISH** this my **FINAL ARBITRATION AWARD** for the reasons herein as follows:

1. **I FIND AND HOLD** that the Owners' claim succeeds in the sum of US \$87,725.63
2. **I THEREFORE AWARD AND DIRECT** that Charterers shall pay to the Owners forthwith the sum of US \$87,725.63 (United States dollars eighty-seven thousand seven hundred and twenty-five and sixty-three cents) together with interest thereon at the annual rate of 5% (five per cent) and pro rata compounded at three monthly intervals from 1 January 2017 until the date of payment.
3. **I FURTHER AWARD AND ADJUDGE** that Charterers shall bear their own and pay Owners' costs, assessed by me (in accordance with the SCP 2017 limits) in the sum of £4,500.00 together with interest thereon at the rate of 5% per annum compounded at three monthly intervals from the date of this Award until the date of payment of such costs.
4. **I FURTHER AWARD AND ADJUDGE** that Charterers shall bear the cost of this Award in the sum of £3,250. Charterers shall therefore reimburse Owners by payment of the sum of £3,250, together with interest thereon, at the annual rate of 5% compounded at three monthly intervals, from 17 March 2018 until the date of payment of such costs by Charterers to Owners.
5. **I DECLARE THIS AWARD IS FINAL** as to the matters herein determined.

GIVEN UNDER MY HAND this 19th day of June 2018 in London, the seat of this arbitration.

Signed


BRIAN WILLIAMSON

“LADY SINA” – C/P dd. 3.11.2016

ANNEX 1: the Charterparty dated 3 November 2016

Extracts from Fixture recap, VEGOILVOY Charterparty and rider clauses dated 3 November 2016:

VEGOILVOY Charterparty:

“PREAMBLE

...

The Vessel shall receive from the Charterer or supplier at the port or ports of loading ... the cargo described in Part I, for delivery as ordered on signing bills of lading to the port or ports of discharge, or so near thereto as she may safely get always afloat; and there to discharge the cargo ...

PART I

C. Loading port. 1 STS KUMAI

...

D. Discharging Port. 1 **SPB KAKINADA OR CHENNAI + 1 SPB BUDGE BUDGE**

E. Total Laytime :
FOR LOADING: **80 MTPH**
FOR DISCHARGE: **125 MTPH**

SHINC REVERSIBLE + 6 HRS NOTICE BENDS UU

...

H. Demurrage Per Hour. **USD 12,000 PER DAY PRO RATA**

I. Commission. **TTL COMM 2.5% TO ENCORE SHIPPING INDIA PVT LTD ON F/D/D/ PAYABLE BY OWNERS.**

PART II

...

4. NOTICE OF READINESS AND COMMENCEMENT OF LAYTIME. (a) When the Vessel has arrived at the port of loading or discharge and is ready to load or discharge, a notice of readiness shall be tendered to the Charterer or its agent by the Master or Agent by letter, telegraph, wireless, or telephone. The Vessel shall be deemed ready within the meaning of this clause whether she arrived during or outside of usual business hours, whether she is in or out of berth or whether or not she has ballast water or slops in her tanks. Laytime shall commence either at the expiration of six (6) running hours after tender notice of readiness, Vessel in or out berth, except that any delay to the Vessel in reaching her berth caused by the fault of the Vessel or Owner shall not count as used laytime; or immediately upon the Vessel's arrival in berth (i.e. finished mooring when at sealoading or discharging terminal and all fast when loading or discharging alongside a wharf) with or without notice of readiness, whichever first occurs. (b) Notwithstanding anything contained in paragraph (a) of this clause, laytime shall commence when Vessel arrives at the loading or discharging port, whether or not berth is available; provided that notice of readiness shall always be tendered as therein stipulated.

6. SAFE BERTH, SHIFTING. (a) If under Part I hereof the Charterer is given the right to name the loading and discharging berth, the Vessel shall load and discharge at any safe place or wharf, or alongside vessels or lighters reachable on her arrival, which shall be designated and procured by the Charterer, provided that the Vessel can proceed thereto, lie at, and depart therefrom always safely afloat, any lighterage, being at the expense, risk and peril of the Charterer ...

Charterers' Rider Terms

...

3. Time shall not count as laytime or if on demurrage as demurrage time when used:

a) For and on an inward passage moving from anchorage, including awaiting tugs, ~~pilot, tide,~~ daylight, ~~locks~~ or any other reason whatsoever over which charterers have no control, even if lightening has taken place at anchorage, until the vessel is securely moored at the berth or other loading or discharging place specified in part 1(c) and (d) thereof.

...

7. Charterers have the option to shift the vessel to additional berth(s) and shifting charges to be for charterer's account. **TIME TO COUNT IN FULL**