

Redelivery bunker quantities remain a topic of heated debate

Prokopios Krikris, Oct 26 2021

Introduction

Redelivery bunker quantities continuing to provoke heated debate in the shipping industry on a regular basis.

It is common ground that the Charterers should redeliver the vessel with certain bunker quantities and this necessitates the co-operation of both parties. But frequently in practice, the Charterers will not be able to fulfil their standing obligation for various reasons, which will act like either as a 'sword' or as a 'shield' for the Charterers or for the Owners.

These reasons involve many terms of the charterparty and raise points of fact only or mixed points of fact and law. Then the problem becomes two-fold: (a) there is little precedent; and (b) there are fact dependent issues, which make each case easily distinguishable.

The below analysis summarizes the usual points of debate among the parties as found in practice and in arbitration awards. Further, it illustrates the complex nature of these issues by using some practical examples.

Redelivery bunker quantities

This is the central issue of the disputes. Usually, the parties agree that the Charterers should redeliver the vessel with certain bunker quantities. Failing this, the Charterers find themselves exposed to liabilities.

Then, as found in a number of awards and in practice, the parties rely on the following points to defend their position:

- The quantities supplied were basis the masters' calculationsⁱ;
- The master has wrongly calculated the quantitiesⁱⁱ;
- The master suddenly increased the required quantities and Charterers could not change their bunker stemⁱⁱⁱ;
- Charterers disregarded Owners' request to reduce the bunker quantities;
- The discrepancy falls within the 'about' allowance in the bunker clause;
- The 'about' means '5 % or 2 %'^{iv} or something different basis the construction of the charterparty;
- Discrepancies between master's figures and surveyor's figures i.e. no shortage or surplus basis surveyors' bunker figures;
- The vessel delivered with less bunkers than required and this is the benchmark to establish any discrepancy on redelivery;
- Owners' increased bunker stem affects the Charterers' operation;
- The vessel's underperformance caused extra bunker consumption^v;
- The vessel's slow steaming resulted in extra bunkers on redelivery;

- The vessel's off-hire period or deviation resulted in bunker shortage^{vi};
- The unforeseen contingencies resulted in this bunker discrepancy;
- Unnecessary deviation to take bunkers while the vessel had sufficient bunker margin^{vii};
- The loss will be crystalized only when the missing bunkers are supplied^{viii};
- The relevant benefits should be factored into the loss assessment to arrive at the net loss position;
- The extra LSDO offsets the shortage of VLSFO and *vice versa*;
- The Owners have a duty to mitigate the parties' losses^{ix};
- The damages claimed fail on the test of causation and foreseeability;
- Disponent Owners suffered no loss since by applying the bunker prices under the head charter it provides a benefit;
- The vessel was sold and no loss incurred to supply any short quantity;
- A combination of the above issues.

The meaning of about

This is usually the starting point of defence and requires some analysis.

It is practically impossible to redeliver a vessel with the exact quantities of bunkers as there was on delivery. Therefore, this obligation is often qualified by the word 'about' to justify small discrepancies. This is consistent with commercial reality.

But the parties usually disagree on the meaning of the word 'about' and try to distinguish their case from the previous decisions, in order to give a different meaning to the word 'about'.

Although there are competing awards on this point, the majority of the awards show a preference to 5% allowance for the word 'about' in the bunker clause. This means that if a vessel was delivered with 100mts of fuel then the Charterers are obliged to redeliver the ship with quantities in the range of 95-105 mts of fuel.

In one published award, the tribunal decided the word 'about' gives a margin of 2% in the factual matrix of that case. This makes business sense since a percentage allowance should be allowed when a party tried to perform his obligation, thus protecting the parties' honest expectations.

Practical example

The bunker clause stipulated the vessel to be delivered with 600/650 mts of VLSFO and to be redelivered with about same quantity as actually on delivery. The parties disagreed on the proper margin of 'about' on redelivery.

It was extensively argued that basis the delivery bunker obligation, as the delivery quantity was provided basis 600/650 mts, the 'about' implies an allowance of 50 mts and not 5% on the redelivery quantities. This

argument depend upon implication, but it was not necessary, for business efficacy or otherwise, to follow that process, nor was the parties' intention.

This example illustrates that the parties may argue a totally different interpretation when the terms are not clear i.e. 'about' means 5% or any other fixed percentage figure.

Bunker prices

The charterers pay for bunkers on delivery and the Owners for bunkers on redelivery. So, cost benefit incentives may influence the Charterers to redeliver the vessel with short or surplus bunkers.

Then the usual questions are:

- (i) Which price will apply to calculate the compensation for short bunkers?
- (ii) Which price will apply to calculate the value of excess bunkers?

The parties usually refer to the below options that will result in different claim amounts:

- The bunker prices of the next charterparty;
- The prices under the head charter in case of a back to back redelivery under string of contracts;
- The current market bunker prices on redelivery area^x;
- The bunker prices at the closest bunkering port on redelivery^{xi};
- The published platts prices of a specific bunkering port^{xii}

- The charterers' last bunker purchased prices^{xiii};
- The bunker prices of the next port of the Owners' supply^{xiv}.

The below two practical examples illustrate that even with short quantities, the claimed amount significantly changes depending on the applicable bunker prices.

Example 1: Excess redelivery bunkers 95 mts VLSFO & 17 mts LSDO

Options	VLSFO/LSDO prices (USD)	Value of excess bunkers (5% applied)
Charter party prices	530/580	95 mts VLSFO @ 530 & 17 mts LSDO @ 580 = 60,210 USD.
Local Market prices	274/ 325	95 mts VLSFO @ 274 & 17 mts LSDO @ 325 = 31,555 USD.
Charterers' purchased prices	460/ 515	95 mts VLSFO @ 460 & 17 mts LSDO @ 515 = 52,455 USD.
Owners' next port purchased prices	192 /212	95 mts VLSFO @ 192 & 17 mts LSDO @ 212= 21,844 USD.
Next charterparty bunker prices	250/ 310	95 mts VLSFO @ 250 & 17 mts LSDO @ 310= 29,020 USD.

Example 2: Short redelivery 62 mts VLSFO at Vietnam

Options	VLSFO prices (usd)	Damages claim
Charterparty prices	330	-----
Hong Kong platts	393	62 mts VLSFO @63 = 3,906 USD
Next charterparty price	420	62 mts VLSFO @ 90 = 5,580 USD

Bunkers survey findings

The bunkers survey findings may impact on the Charterers' obligation to redeliver the vessel with proper quantities. Any changes on the delivery quantities will affect the redelivery quantities when Charterers should 'redeliver the ship with about same bunker quantities as actually on delivery'.

For these purposes, the parties usually agree to a joint bunker survey to be binding the parties. However, in practice, there are some difficulties:

- The survey results may not be conclusive even if signed^{xv};
- The surveyor never attended to conduct survey^{xvi};
- The surveyor disembarked without agreeing on the survey findings;
- The surveyor's figures should be preferred absent proof of being wrong^{xvii};
- The master concealed the bunkers during the survey^{xviii};

- The master suddenly declared more bunkers on board, and he was constantly reporting under-consumption^{xix}-raising doubts;
- The master had undeclared margins of bunkers^{xx}-raising doubts;
- The Owners failed to provide a satisfactory explanation as to why different bunker figures were provided for Owners and Charterers on redelivery^{xxi};
- A unilateral bunker survey used to amend the bunker quantities;
- The Charterers insisted that the parties conduct multiple bunker surveys;
- The multiple surveys showed different results, which may also raise doubts about the surveyors' competence and due carrying out of the survey;
- The parties unreasonably withheld their consent to a proposed surveyor.

These cases turn upon hard contemporaneous evidence and probable explanations submitted by the parties. So, it can become a matter of whether the master's or the surveyor's figures are true. To decide this, the parties adopt a 'back calculation'.

Practical example

Based on deductive reasoning, assuming that the surveyors' findings are correct then working backwards one tries to identify if the previous or the next records of consumption are reasonable. If, say, that shows a daily

consumption at sea almost 10 mts below her described consumption in the Charterparty, this probably means that something went wrong.

Back calculation is not free of artifice. Adopting a 'back calculation' method can sometimes be very problematic when: (i) the vessel encountered bad weather; or (ii) the vessel's performance description provided basis 'without guarantee'; (iii) no previous bunker surveys carried out; (iv) the performance report issued by a weather routing company is non-compliant with the charterparty description; (v) the deck and engine logs are not accurately filled in by the crew; and (vi) the evidence of subsequent or previous performance, or bunker findings, may not be admissible.

In an unpublished award, the issue concerned a serious discrepancy between the surveyors' and the masters' bunker figures on redelivery. The arbitrator decided to split the difference of this discrepancy basis 50/50 given the difficulties to ascertain each party's position on the evidence available. This also reduced the separate bunker shortage compensation claim since the amended quantities applied to calculate the compensation basis Owners' next purchased prices.

Discussion

Undoubtedly, disputes concerning the redelivery bunkers will continue to create concern, thus it is in the interests of the parties to minimize their exposure to a best possible extent.

All in all, the parties control the language used to allocate clearly their rights and obligations in the charterparty.

So, clear drafting will likely assist the parties to reduce disputes concerning issues of interpretation e.g. defining the word 'about' and the bunker prices to conditionally apply in very specific conditions.

Definitely, clear drafting of terms is desirable to maintain commercial certainty and business efficacy. But clear drafting alone is not enough as shown by the above analysis. It requires also hard evidence.

Then, the Owners must maintain updated maintenance records, collect contemporaneous evidence, and ensure that proper seamanship & best management practices are being exercised before, during, and after the performance of the charterparty.

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without the below award citations.

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ⁱ London Arbitration 17/15

ⁱⁱ London Arbitration 4/02

ⁱⁱⁱ London Arbitration 13/03

^{iv} London Arbitrations 13/03; 15/13; 17/89; 17/15; 17/19; 24/19

^v London Arbitrations 6/21; 13/03

^{vi} London Arbitration 6/21

^{vii} London Arbitrations 4/80; 2/85

^{viii} London Arbitration 17/19

^{ix} London Arbitration 17/19

^x London Arbitrations 17/19; 17/15; 31/80

^{xi} London Arbitration 17/19

^{xii} London Arbitration 26/04

^{xiii} London Arbitration 17/15

^{xiv} London Arbitration 4/80

^{xv} London Arbitration 1/99

^{xvi} London Arbitration 6/10

^{xvii} London Arbitration 5/18

^{xviii} London Arbitration 7/15

^{xix} London Arbitration 20/19

^{xx} London Arbitration 5/21

^{xxi} London Arbitration 1/06