

# Hill Harmony case still defines a master's authority

The law is explicit on who has the final say on a vessel's route, writes **John A C Cartner\***

A great deal of ink has been spilt by commentators on whether the master of a vessel has the ultimate authority to choose its route or whether this power resides with the time charterer. One answer is to be found in the *Hill Harmony* case (*Kawasaki Kisen Kaisha Ltd v. Whistler International Ltd. - The 'Hill Harmony'* [2001] 1 Lloyd's Rep. 147 (LLords Dec 2000)).

The *Hill Harmony* was sub-sub-time chartered for a month or so from Vancouver to Shiogama on an amended New York Produce Exchange Time Charter form (as was the preceding sub-time charter) voyaging from Vancouver to Yokkaichi. The owners undertook seaworthiness and fitness for service and maintenance at delivery and during the voyage (clause 1) and were responsible for navigation, acts of pilots or tugs, insurance, crew and otherwise as if trading for their own account (clause 26). The charterers were obliged to furnish the master with the necessary instructions and sailing directions (clause 11). The master was to prosecute the voyage with utmost despatch and, even though appointed by the owners, was under the orders and directions of the charterers as to employment and agency (clause 8). The charterparty included three clauses paramount. These clauses in effect did *not* permit the usual exception for loss or damage arising from "the act, neglect or default" of the master in the navigation or management of the vessel (see: Article IV Rule 2(a) of the amended Hague Rules).

On the two voyages, charterers instructed the master to proceed by the northern great circle route recommended by a contract weather service. The master disregarded and took a southerly rhumb line. Compared with the recommended route expectation, one voyage was six and a half days longer and consumed 130 tons more fuel, the other was three days longer and consumed 69 tons more fuel. The charterers consequently suffered financial losses.

Prior to the first voyage, the vessel sailed from Benicia to Tsukumi by great circle with weather damage. The master stated that he had disregarded the charterers' instructions



*The law does not impinge on a master's navigational duties*

on the first voyage because of the damage on the Tsukumi voyage. The reason given for his failure to follow directions on the second voyage was a supposed defective auxiliary boiler causing unseaworthiness. This excuse was later abandoned.

The last two charterers in the chain each claimed a reduction of hire and compensation for extra bunkers. The two arbitrations were conducted together before three London arbitrators. The arbitration hearing was on documentary evidence. Evidence was read that 360 vessels over the three-month period in question used the northern route without attendant damages. The master asserted his navigational rights and duties for going south because of the prior damage on a similar voyage.

The arbitrators disagreed, it went to court and was agreed and went to the Law Lords (the highest appeal court). They disagreed and found in favour of the time charterer.

Satellite real-time weather routing around dangerous meteorological phenomena is commonly used and has a proven track record. The other edge of that sword is that if prediction is available, there is a record of the weather, easily comparable with the master's route. One can be cynical and call this another attack against the primacy of the master in making his lawful decisions. That is a stretch, however. The facts of the case are clear and the master's legal and doctrinal position as the man in charge on the vessel was not changed by the case. Applying the principle that the simplest explanation is most likely the correct one (otherwise known

as Ockham's razor) suggests the master simply used bad judgment and excused himself by blaming a past voyage. That of course ignores time and space because the seasons continue and the weather patterns change, and shipmasters know or ought to know this in contemplation of their voyages.

So what is the upshot? The *Hill Harmony* case is a citable case distinguishing between navigational doctrinal duties in a reasonable fashion and the charterer's directions to the master. Ultimately, the master retains authority over the voyage, but unless the order within the charter is patently unsafe, the master is compelled to follow it by contract. The master had no better way of predicting the future than the past which was inherently unreliable. The contract routing service had superior knowledge. The master ought to have taken advantage of this superior knowledge with a better excuse for any damage: the charterer ordered it and the contract weather service affirmed it.

Another way of looking at *Hill Harmony* is that it affirms the time charterer is always right. That is a gross misreading of the case. The time charterer's perfectly proper concern in contract was not to pay more money than bargained. The master's proper concern was with safety. There is no reason to think that the charterer was trying to cut corners on safety. **TST**

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