

WRC or Deck Log?

This article (in the same or a different version) previously appeared on:

The Maritime Executive, 29 September 2021

The Marine Law Box, No. 6, January, 2022

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One of the important warranties that shipowners give in time charterparties is as to the speed-consumption capability of the vessel. Should the vessel's performance fall below the warranty, the vessel will take a longer time to complete the voyage and/or more fuel. This will in turn cost more hire and fuel for the charterer, for which the charterer will make its underperformance claim. The warranty will typically be subject to good weather. For example, the warranty can be that the vessel is capable of steaming on sea passages in laden condition at the speed of about 15 knots on a consumption of about 30 mt IFO 380 per day under good weather conditions of wind force not exceeding code 4 in Beauford scale and sea state not exceeding code 3 in Douglas sea scale.

When a dispute arises as to whether the vessel kept up to the warranty, the vessel's performance during a period or periods of good weather within the relevant sea passage or passages will be tested. If the performance during the test period is short of the warranty, then the vessel is not capable of the warranted performance and there is a breach of the warranty. The shortfall will be extrapolated to the entire sea passage or passages in question including periods of bad weather to assess the compensation payable to the charterer for the breach of warranty. The methodology of establishing the breach and extrapolating the results to the relevant entire sea passage has been dealt with in a previous article of the author (<https://arunkasico.com/bulletin-mlb-1-2021>).

A frequent challenge that will be taken at the stage of establishing the breach is whether the period proposed as the test period satisfies the 'good weather' criteria stipulated in the charterparty. On this challenge, it is not uncommon for the master's deck log entries to conflict with the charterer's weather routing company's (WRC) report. The arbitral tribunal is tasked to assign the weight to each of them and/or to prefer either one. Sometimes, the charterparty may make the preference by saying that a particular WRC's report or the deck logbooks are to be preferred. It may provide for the resolution of differences between a WRC's report and deck logbooks by reference to a weather bureau's data. Before considering the competition between the WRC's report and the deck logbooks, it will be helpful to have a brief overview of how deck log entries are made and comparatively how a WRC's report is prepared.

Deck log entries

The deck log entries contain data of the weather conditions including wind force and the state of the sea and swell. They are recorded by the watchkeeper on duty. The watchkeeper, if he is not the master, records them on behalf of the master. The watchkeeper records them as observed by him usually with naked eyes from the bridge. They are normally recorded in a frequency of four hours, based on the watchkeeper's continuous observation for the four hours.

A watchkeeper is usually guided by what he sees of the sea surface, waves, smoke from the funnel, etc as well as weather data available at that time in filling in the Beaufort scale wind force in the deck logbook. He usually fills in the sea state by a description like smooth, light, moderate, rough, etc rather than by the Douglas sea state codes. It must be admitted that they are the result of human observation and are subject to human errors that one may make in observation. For example, an entry made during a dark night can be more prone to human errors in observation than the one made during a sunlight day. Another type of human error is in converting the wind force that he observed to Beaufort scale numbers. For example, he might record Beaufort scale code 4 and at the same time a wind force outside 11-16 knots (the Beaufort scale code 4), hence the error.

Another difficulty with the deck log entries is on the sea state (sea waves) recording. It is not always easy to distinguish sea waves (caused by local winds) from swell waves (caused by distant winds). In London Arbitration 4/12, the deck log entry showed Douglas sea state code 4 (rough) for a particular period in question. However, the charterer's weather bureau report noted swell waves of 2 metres high for the same period. The tribunal took the view that the watchkeeper must have been misled by the swell waves and mixed them up with the sea waves in his estimation to record code 4 for what indeed could be code 3 (moderate) insofar as the sea waves were concerned. The tribunal further said that watchkeepers usually do not pay attention to separating sea and swell waves. However, an advantage of the deck log entries is that the observations are made from the bridge of the immediate surroundings, which adds to its accuracy.

WRC report

WRC reports rely on the weather information obtained from satellite imaginaries, weather buoys, etc. These data, unlike the deck log entries, are not collected by a manual process, hence immune from human observation errors. However, there are disadvantages with the satellite and weather buoy data. The satellite imaginaries are normally collected in a frequency of one or two per day. Hence, they are less representative of the weather condition for the time in question than the deck log entries recorded usually in intervals of four hours. Weather buoys measure the conditions for a far distance covering hundreds of square metres from its position. Hence, they less represent the weather condition for the given place than the deck log entry recorded from the immediate surrounding.

Which one to prefer – WRC or deck log?

In the absence of a clause in the charterparty for the preference, generally deck log entries of weather conditions have been preferred to conflicting WRC findings (see *Nicoban Shipping Co v Alam Maritime Ltd (The "Evdokia")* [1980] 2 Lloyd's Rep 107 (HC); London Arbitration 6/19). However, a charterer may be able to reverse it by

successfully challenging the authenticity or otherwise accuracy of the deck log entries (see London Arbitration 4/12; London Arbitration 15/07 – both awards discussed later in this article). It is not uncommon to see a charterer mounting an authenticity challenge alleging overstatement or manipulation of weather conditions in the deck log entries to favour the shipowner. A charterer may challenge the accuracy of the deck log entries with allegations such as that details are missing or inconsistent in the entry, sufficient care was not taken in making the entries, the watchkeeper was not competent, etc. Challenge may also be mounted on the entries on the ground that they do not follow the standard set by the charterparty. Whichever channel the challenge is takes, in practice, the burden is on the charterer to convince the tribunal that the WRC finding must be preferred to the deck log entries at any point of time in the case (*The “Dimitris Perrotis”* (2000) LMLN 533).

In London Arbitration 4/12, the tribunal seemed to accord less weight generally to deck log entries saying “log entries are at times made with half an eye on the charter warranties”. This general statement is quite contrary to the trend of preferring the deck log entries in the absence of a successful authenticity or accuracy challenge. However, the statement must be read in the circumstances of the case. The competition was between the findings of the Danish Meteorological Institute (DMI), the meteorological office of Denmark, relied on by the charterer and the deck log entries relied on by the shipowner. The charterparty expressly provided that an independent weather bureau report was to prevail over the deck log entries in case of consistent discrepancy, which apparently was the case here. The tribunal found that, looking at the finding of DMI that the swell waves were at 2 m height during the period in question, the deck log entry recording code 4 of the Douglas sea state scale (rough) for the same period must be the result of the watchkeeper erroneously mixing up sea waves with swell waves. These circumstances must have influenced the tribunal to hold as it did. Another case in which the tribunal expressed doubt over the deck log entries, on the factual matrix of the case, was London Arbitration 4/11.

In conclusion, the preference, in the absence of a provision to the contrary, is for the tribunal to determine in each case. In practice, the tribunal gives a good weight to the deck log entries, which is open to the charterer to rebut.

Preference clause

It is not uncommon for the parties to include a rider clause in their time charterparties to prefer one technical evidence to another. It may provide that in the event of a conflict, the parties will appoint an independent WRC whose 'expert determination' shall be final, as in cl 12(e) of NYPE 2015 form. It may alternatively provide that, where there is a conflict, deck log entries will prevail over the charterer's WRC report (though seldom) or vice versa. The parties will be bound by the evidence procured by the agreed mode. Hence, ordinarily, the tribunal will have to accept it.

However, such a clause can only regulate the evidential part and not the decision part which is for the tribunal to make. Suppose that the agreement is that the independent WRC expert determination is final and binding. In such a case, while the arbitral tribunal will accept the technical findings of WRC, the tribunal is likely not bound to accept that the findings are relevant to the case or that the methodology adopted by the WRC is correct or the conclusion reached by the WRC is accurate. Hence, the arbitral tribunal still retains some control as the decision-making tribunal (London Arbitration 15/05; 21/04). Suppose that, as per the charterparty, the benefit of a favourable 'current' is to go to the benefit of the owner, but the WRC factored favourable 'current' in favour of the charterer, then the tribunal will be able to reject the current factor included in the WRC's calculation.

The difference between the process by which an expert determination is made and an arbitral decision is made must be observed. In the former process, the parties are not heard, while in the latter process, the parties are heard, which is important for a 'decision' making process to adhere to natural justice (*Wilky Property Holdings plc v London & Surrey Investments Ltd* [2011] EWHC 2226 (Ch)). An expert is liable for negligence (*Sutcliffe v Thackrah and others* [1974] 1 All ER 859 HL), while an arbitrator is immune from actions save where he acted in bad faith (s 29 UK Arbitration Act 1996). An arbitral award is statutory binding (s 58 UK Arbitration Act 1996), while an expert determination is binding only as a matter of agreement between the parties.

Sometimes, the clause may merely provide that an independent bureau report will be taken into account if there was a consistent discrepancy between them and the deck log entries (London Arbitration 4/12; 9/18). This is not a preference clause and indeed does not add anything to the charterparty as the tribunal can consider such an independent report even in the absence of such a clause (rule 15(a) LMAA Terms 2021).

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14 May 2023

Acknowledgements:

Thanks to Mr. Prokopis Krikris (Claim Manager) of Meadway Bulkers, Athens and Mr. Georgios Zaponakis (Legal Counsel) of Thenamaris, Athens for reviewing a draft of this article and making helpful suggestions.

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