

Advanced Chartering Problems II

Professor W. Sembler

Maritime College SUNY

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By Joyce Bloom

*Term Paper*

PROCEDURE"

"U.S. MARITIME ARBITRATION

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The function of this paper is to describe in real terms what the process of Maritime Commercial Arbitration in the United States entails for the parties involved. Therefore, it is necessary to understand what is meant by the term arbitration, who becomes involved in Maritime arbitrations, the procedure followed in Maritime Arbitrations, and what the benefits or disadvantages are in the use of arbitration.

Arbitration is "The settlement of a question at issue by one to whom the parties agree to refer their claims in order to obtain an equitable decision." The above definition according to the Oxford Universal Dictionary dates back as far as 1634, and the use of arbitration as a means to settle disputes event further back.

Commercial arbitration first became backed by the courts in England in 1889 in the original English Arbitration Act. This statute was later revised as part of the Act of 1950.

In the United States the first arbitration statute was that of the State of New York in 1920. A Federal Arbitration Act came into being in 1925. These acts were codified in 1940 and finally the Uniform Arbitration Act of 1955, as amended in 1956, became the law for most of the land.

The Acts' main function was to enforce the strength of arbitration as a method of settling commercial disputes. Arbitration is binding and the award or decision is irrevocable except under those reasons as laid out in the law. The Act also provides

" If any dispute arises the same to be settled by two referees, one appointed by the Captain and one by the Charterer or their Agents, and if necessary, the Arbitrators to appoint an Umpire. The decision of the Arbitrators or Umpire, as the case may be, shall be final, and any party attempting to revoke this submission to arbitration without leave of a court, shall be liable to pay to the other, or others, as liquidated damages, the estimated amount of the chartered freight."

Clause 21

Net Grain Charter

"That should any dispute arise between Owners and the Charterers, the matter in dispute shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two chosen; their decision or that of any two of them, shall be final and for the purpose of enforcing any award, this agreement may be made a rule of the Court. The Arbitrators shall be commercial men."

Clause 17

New York Produce Exchange

"Any dispute arising under the Charter to be referred to arbitration in London (or such other place as may be agreed) one Arbitrator to be nominated by the Owners and the other by the Charterers, and in case the Arbitrators shall not agree then to the decision of an Umpire to be appointed by them, the award of the Arbitrators or the Umpire to be final and binding upon both parties."

Clause 23

(Code Name - BALTIME 1939)

Uniform Time - Charter

The Baltic and International Maritime Conference -

Some common Charter Party Arbitration Clauses read as follows:  
of the standard contracts of the trade.  
In the maritime field arbitration clauses are a common part by persons chosen as arbitrators.  
guidelines for the proceedings and the qualifications to be met

arbitration procedure.

these arbitrations we will outline the actual format of Maritime the Maritime industry, and the parties who become involved in Now that we have defined arbitration as it is employed in

Arbitration Clause if there is one.

of Lading) are not bound to or entitled to the rights of the the terms of Charter Party incorporated into their contract (Bill by incorporation into the contract. Third parties who have had their disputes by arbitration having expressly provided to do so between whom the contract has been concluded are obligated to settle From the above clauses, it is evident that the parties be-

premises." hereunder on any court having jurisdiction in the fees and judgement may be entered upon any award made costs, including a reasonable allowance for attorneys Award made in pursuance to this clause may include including, but not limited to, specific performance, and within the scope of the agreement of the parties, they, or a majority of them, deem just and equitable termination. The arbitrators may grant any relief which differences under this charter for hearing and deter- of the other party to specify further disputes or notice served on the arbitrators and on an officer hearings, either party shall have the right by written until such time as the arbitrators finally close the of the three on any points or points shall be final. and one by the two so chosen. The decision of any two to be appointed by the owner, one by the charterer board of three persons consisting of one arbitrator laws relating to arbitration there enforced before a arbitration in the City of New York pursuant to the nature arising out of this charter shall be put to "Any and all differences and disputes of whatsoever

Clause 29

STB Voy

NEW YORK MARITIME ARBITRATION PROCEDURE

1. Initiation of Arbitration

A party wishing to invoke his right to arbitration must be able to produce written evidence of this right. A contract including an arbitration clause in the United States must be in writing according to Section 1 of the Uniform Arbitration Act (Act relating to arbitration and to make uniform the law with reference thereto) of 1955. Section 1 states:

"A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract. This act also applies to arbitration agreements between employers and employees or between their respective representatives (unless otherwise provided in the agreement)."

With this in mind the first step in the arbitration procedure is for the party initiating proceedings to send written notice to the other party demanding and specifying the items of claim. He also nominates his arbitrator at the same time.

2. Appointment of Arbitrators

Assuming no settlement has been reached outside of arbitration it is then up to the second party to appoint an arbitrator. Both nominees must strictly adhere to the terms of the



The day of the first hearing all parties concerned must be present. The court reporter swears in the arbitrators or the chairman requests of the opposing parties if they are willing to waive the oath. If the arbitration clause does not specifically incorporate the rules of the Society of Maritime Arbitrators dated July 1, 1974 as amended, before presentation of opening statements the chairman may ask both parties to abide by the rules of the Society if it is the intention of the panel to conduct the hearing in accordance

The First Hearing

4.

agreement is addressed.

- g. Statement of agreement to submit to the Arbitration Clause and have the dispute arbitrated by the panel to whom the
- f. The counter-claims and the award sought by the Respondent, if any;
- e. The award sought by the Petitioner;
- d. The basis of the dispute;
- c. The vessel as described in the Charter Party and/or its addenda;
- b. The type of Charter Party and date enacted and terms of the Arbitration Clause;
- a. The parties as named in the contract who are in dispute;

tors of the following:

award. The submission Agreement should inform the arbitra-

one of two alternatives:

Agreement had been prepared, the panel may choose to enforce employed must present it at this time. If no submission panel prior to the first hearing, the opposing attorneys if If the Submission Agreement has not been provided to the

*(Not until after the award)*

tor's right to serve on the panel. the right to request a decision by the court on the arbitra- refuses to step down the party opposing his appointment has they are satisfied. If an arbitrator is challenged and has the right to challenge any arbitrator appointed until this time any of the members of the panel. Each party other members of the panel. The parties may challenge at This includes the parties in dispute, their counsel and the disclosure of all relations with any of the involved parties. At this time each member of the panel is required to make a

*Tim  
as  
usually  
before  
the award*

aware of what they entail. have a copy of the rules hady in case either party is not the provision of any section(s) to be waived. He should at this time also advise the parties if the panel wishes accordance with the rules of the Society. Further, he will that it is the panel's intention to conduct the hearings in the parties at the time of notifying them in his first letter with these rules. The chairman will have usually advised



When the Claimant has completed presentation of his case, the Defendant's attorney will submit his opening statement in defense with all documents pertinent to the case marked as exhibits. He will also state at this time counter-claims

appointing a convenient location. ability of the witnesses and to facilitate the chairman in intend to call witnesses especially as regards the avail- on any matter. Attorneys should advise the panel if they attorneys and/or witnesses for the purpose of clarification wise conduct themselves. The panel has the right to question that the opposing counsel at each stage of the hearings like- sentation and to request at the beginning of the hearings reserve their questions until the end of the attorney's pre- more informal, it is common practice for the panel to proceedings, although following court procedure, are somewhat port of it, which he has marked as exhibits. Because the by a written statement and all pertinent documents in sup- The Claimant's attorney presents his case usually accompanied

The Case

5.

1. Prepare one at the hearing utilizing the form supplied in the Society booklet;
2. Instruct the attorneys to prepare a Submission Agreement and mail it to the panel within a set period of time usually within one week or prior to the second hearing.

and place are to be established to the convenience of all  
If a second or subsequent hearing is required, the time, date  
the question or testimony may be asked, withdrawn or rephrased.  
In the case of an objection raised, to questioning or testi-

tioning by the panel.

by the opposing attorney, on matters developed during ques-  
he is appearing, on points brought out in cross-examination  
examination by the attorney for the party on whose behalf  
cation. The witness is then subject to a subsequent re-  
matters material to their evidence or on points of clarifi-  
and it is the panel's privilege to question the witness on  
ness is subject to cross examination by the opposing attorney  
a statement outlining the facts as known to him. The wit-  
on whose behalf he is appearing or merely requested to make  
Witnesses may be questioned by the attorney for the party  
so that full and complete record of his testimony may be made.  
present when witnesses appear as well as a court reporter  
Both parties, their attorneys and the full panel must be

Witnesses

6.

It.  
Submission Agreement in order to have the panel decide on  
presented, it must have been incorporated as part of the  
on the behalf of the Respondent. If a counter-claim is

All three arbitrators must be present at discussions on the merits of the cases presented to them. It is the chairman's

Development of the Award

9.

If attorneys' request the right to issue reply briefs, they are usually allowed to make such a presentation with the stipulation that a time limit be set from receipt of the initial briefs.

of the hearings and set in the record. The time limit must be set by the chairman at the conclusion of these briefs which are usually presented by mail. A time limit is set for the preparation and submission of these briefs which are usually presented by mail. together with any legal precedents and case law they wish to offer. A time limit is set for the preparation and submission of these briefs which are usually presented by mail. Upon conclusion of the hearings each attorney is offered the opportunity to present a brief in support of their case

Conclusion of the Hearing(s)

8.

hearing in the case of X vs. Y". Subsequent hearings are conducted in the same manner as the first hearing, always being brought to order and placed on the record by the chairman announcing "This is the

Subsequent Hearing

7.

Section 7 of the Uniform Arbitration Act. The panel has the right to issue subpoenas as outlined in parties before the hearing ends and placed in the record.

10.

The Award

The award should consist of

"1. a general background to the controversy,

2. a brief review of the procedures of the specific

arbitration,

3. excerpts from the highly relevant charter party

clauses,

4. a short history of the facts,\*

5. the arguments advanced by the disputants,

6. the findings of the panel (include reasons here), and

7. summary and reconciliation of monetary items

awarded.

All mathematical computations should be complete,

including interest if any."<sup>1</sup>

obligation to set a date convenient to all three for these discussions and the forthcoming decision. The discussions can only take place after receipt of all evidence, briefs and counter briefs on the record. Decisions according to the rules of the Society of Maritime Arbitrators must be rendered within ninety days. Decisions may be agreed upon either unanimously or by a majority of the panel. It is usually the chairman's duty to write the award.

The award must indicate the amount of fees payable to each arbitrator and the division of the fees between the two parties, if any. Similarly, fees for the court reporters expenses, rental of the hearing room, if any, and any other petty costs incurred and the assessment against either party or the division between the parties of these expenditures.

Fees

11.

Award Service.

If the decision is not unanimous then the minority arbitrator must write a dissenting opinion inclusive of all information relative to the issues on which he has dissented. Copies of the award are sent by the chairman to the other members of the panel for signature prior to distribution both parties or their counsel, along with the dissenting opinion, if any. Generally, all awards are filed with the Society of Maritime Arbitrators Inc. for inclusion in the Award Service.

otherwise abused.

is not being used to make points for either side or is  
b. Limit time off record and ensure any off record time

questions;

a. restrain attorneys from irresponsible or personal

5. To ensure a sense of dignity at the proceedings

procedure;

4. To conduct the hearing according to the rules of Parliamentary

3. To arrange for a court reporter;

the hearing;

2. To notify all the parties of the date, time and place of

1. To select the site for the hearing;

Duties of the Chairman

the one selected must be held to by all concerned.

two or three dates may be offered to all parties concerned and

slides in conjunction with the other panel members. Alternatively,

firm date not to be revised for the hearing which he usually de-

the proceedings, it is the chairman's obligation to decide upon a

the panel feels one side or the other is unnecessarily delaying

tude in order to accommodate all parties concerned. If however,

It is desirable that the panel adopt a very flexible atti-

Delays, Adjournments, Revisions of Hearing Dates

6. Set time limits for the preparation and submission of briefs, counter-briefs;
7. Set time, date and place for panel's discussion of the case;
8. Write the award; and
9. Set out the division of fees.

difficult to find qualified arbitrators who are sufficiently  
The maritime industry is a close knit field and it may be  
chance of winning or losing strictly on the merits of their case.  
case law, anyone going to arbitration has at the outset an equal  
Since arbitrators in the United States are not bound by

actually no means of adjusting the award.  
contract, thereby having a dissatisfied owner or charterer with  
been settled in accordance with the specific terms of the disputants  
are reluctant to clutter their calendars with cases which have  
There is no real means for appeal of arbitration; courts  
proceedings.

settlement, it is still very costly, if not as costly as court  
arbitration is usually a quicker and more informal means of  
through the court system, is the comparative speed. Although  
Another advantage to arbitration as opposed to settling disputes  
men" may mean any man in commerce, such as a retail store owner.  
is not incorporated in the arbitration clause, then "commercial  
is meant to require maritime commercial men. If this provision  
limited, however, if it is not understood that "commercial men"  
blems settling the disputes which may arise. This advantage is  
people familiar with the trade and the particular trades' pro-  
maritime field. Firstly, we must note the advantage of having  
as to the advantages and disadvantages of arbitration in the  
From the procedure set forth, we can now draw conclusions



unbiased toward either party.

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