

Tendering a valid Notice of Readiness



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It is a well-established principle of English law that laytime under a voyage charterparty will only commence once a valid Notice of Readiness (NOR) has been tendered. While the ship's physical location at the time of tendering the NOR is an important consideration, so is the method by which the NOR is tendered.

Introduction

The commercial reality of today is that communication between the ship and its charterer is commonly done using email, rather than by earlier methods of communication such as fax and telex. However, a number of standard form charters which predate email are still widely used. As a result, some charterparties do not mention email at all. This was the situation faced by the owner in *The Port Russel*¹ English High Court decision.

The Port Russel

The *Port Russel* was chartered on an amended BPVOY3 form to carry a cargo of clean petroleum products. Clause 19 of the charterparty, relating to the tendering of a valid NOR, was unamended and provided that the NOR was to be tendered either by 'letter, facsimile, transmission, telegram, telex, radio or telephone'. In this case, the NOR was tendered by email. The question before the English court was whether email was a contractually permissible method of serving the NOR under the charter.

The judge hearing the case concluded that email was not a permissible method to serve the NOR under this charter. In the judge's view, the only contractual methods under which an NOR could be tendered were the methods specified in clause 19 itself. This list was exhaustive and there was little point, in the judge's view, to specify a list of valid methods for tendering an NOR if any method was permissible.

The club's recommendation

The decision in *The Port Russel* ought to be taken into account whenever fixing a ship under a voyage charterparty. An owner does not want to inadvertently tender their NOR using a method not specified/permitted in the charter, because it may have drastic consequences for their subsequent entitlement to claim demurrage.

A review of some of the more common voyage charterparties used in the liquid cargo trade reveal that some charters allow for the NOR to be tendered by email, while others do not.

¹ *Trafigura Beheer BV v Ravennavi SPA (The Port Russel)* [2013] EWHC 490 (Comm).

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Charterparty	NOR clause	NOR methods
Asbatankvoy 1977	Cl. 6	Letter, telegraph, wireless or telephone
Bimchemvoy 2008	Cl. 10	Requirement that NOR is given but no method specified
BPVOY3	Cl. 19	Letter, facsimile transmission, telegram, telex, radio or telephone (and if given by radio or telephone, to be confirmed in writing, and if given by facsimile, to be confirmed by telex)
BPVOY4	Cl. 6	Letter, telex, facsimile or telephone (but if NOR is tendered by facsimile or telephone, to be confirmed promptly by telex)
BPVOY5	Cl. 10	Email, radio or telephone (but if NOR is tendered by radio or telephone, it shall be confirmed promptly by email)
ExxonMobil VOY2000	Cl. 11	Letter, electronic mail, telex, facsimile, radio or telephone (if radio or telephone, to be confirmed promptly in writing)
ExxonMobil VOY2005	Cl. 11	Requirement that NOR is given but no method specified
ExxonMobil VOY2012	Cl. 11	Requirement that NOR is given but no method specified
Shellvoy 6	Cl. 13	Written notice. No specific method required
Vegoilvoy	Cl. 4	Letter, telegraph, wireless or telephone

If the charterparty under negotiation does not provide for the tendering of NOR using email then, assuming email is the normal method used by the ship, it is suggested that the relevant clause relating to the tendering of NOR be amended. This can be done either in the fixture recap, or by means of an additional clause to the charterparty.

Such a clause could be a replica of clause 10 of BPVOY5 form, which provides:

'NOR may be tendered either by email, radio or telephone, (but if NOR is tendered by radio or telephone it shall be confirmed promptly by email).'