



Soundings

Meaning given to the description of ship's holds as being "free of salt"

A recent LMAA Small Claims Arbitration reference offers useful guidance on the question of what "free of salt" means when used in a cargo hold description. The case was brought by a Member entered in the Association.

Background

The facts of the dispute centred upon allegations that the ship was delivered with salt traces in the holds in breach of a warranty in the time charterparty that the ship's holds should, on delivery or arrival at the first loadport in Vietnam be;

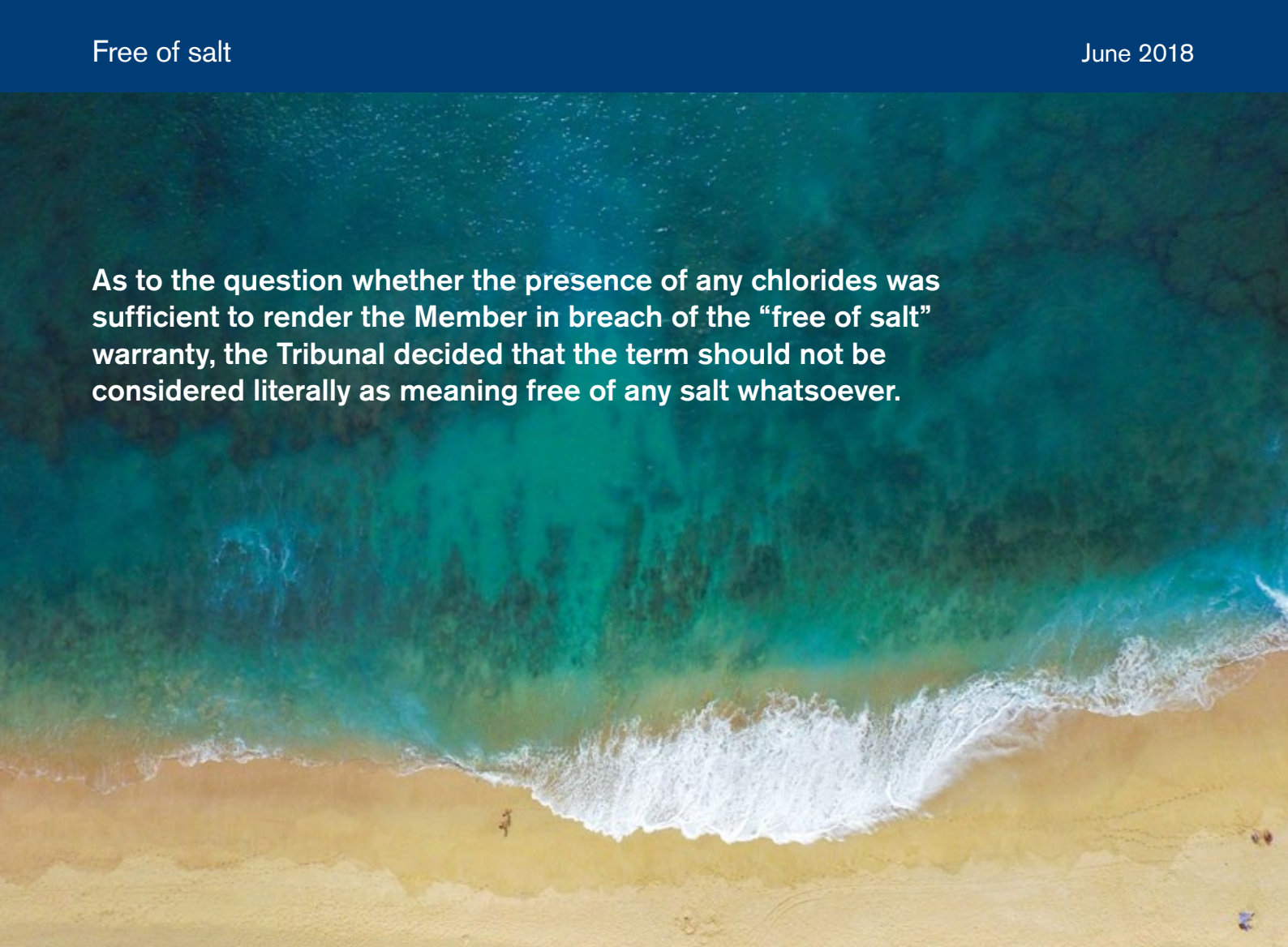
"clean swept / washed down by fresh water and dried up so as to rcve chtrs int cgos in all respects, free of salt, loose rust scale... to the independent surveyor satisfaction".

During an on-hire condition survey conducted by the charterer shortly after delivery a visual inspection revealed that the holds were "cleaned, normal condition, no visible damages". This was unsurprising since the Member had freshwater washed the ship's holds prior to delivery. Nevertheless, despite protests from the Master, the surveyor was instructed by the charterer to carry out

silver nitrate testing in the ship's holds. The surveyor subsequently alleged the salt traces had been detected and the ship was placed off hire.

Having first reserved its position that the holds were contractually compliant the Member arranged freshwater washing of the holds in order to minimise delay and to avoid the matter escalating. The finished steel product cargo parcel was then loaded.

At the second loadport in Korea the charterer alleged that water dropping from the hatch cover area in hold numbers 2, 3 and 4 had contaminated some steel pipes in the holds with salt. A debate between the master and supercargo developed as to the origin of any salt on the pipes. Again, in order to minimise delay and after



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reserving its position, the Member instructed the crew to mop the tank tops in the holds to remove cargo and hold “sweat”. With mopping complete, the holds were approved for loading. Again, the ship was placed off hire for the duration of the stoppage.

The Member sought recovery of the hire deducted by the charterer.

The Decision

As to the question whether the presence of any chlorides was sufficient to render the Member in breach of the “free of salt” warranty, the Tribunal decided that the term should not be considered literally as meaning free of any salt whatsoever. Practically, in the Tribunal’s view, it is unrealistic to require or expect the holds of a ship in a maritime environment to ever be entirely free of salt. The Tribunal considered that the most realistic interpretation of the term would be along the lines of “free of any significant presence of salt”.

Further, the Tribunal concluded that the unilateral nature of the silver nitrate testing conducted by the charterer’s own appointed surveyor at the loadport was not “independent”. The surveyor’s evidence therefore did not have the same value as the opinion of an independent surveyor as to the absence of salt as required by the cargo hold warranty in the charterparty. In any event, the charterer had not provided specific silver nitrate test results,

merely a survey report that there had been a “positive reaction” to silver nitrate tests in the holds.

Consequently, the Tribunal found that the charterer failed to establish that the ship was delivered with its holds in a condition that placed it in breach of the charterparty. The Member was awarded damages representing the amount of hire deducted plus costs and interest.

Conclusion

Whilst the reasons given for the decision are not strictly binding it demonstrates support for an owner who has had its ship with freshly-washed holds rejected by an over-zealous surveyor who unjustifiably provided a charterer with a reason to place the ship off-hire. The sums at stake may not in this case have been significant, however, as a matter of principle, it was an important case for the Member to have the support of the Association.

Although the decision is confidential, both parties have given permission for the case to be reported.

If Members have any queries relating to this arbitrary award please contact the Managers.

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