

Arbitration usually for a good reason

Simon Tatham looks at how a potentially long and costly dispute was avoided.



► Simon Tatham.

Lloyd's of London decided recently to publish LOF salvage awards on their Salvage and Arbitration Branch's website. I thought it might be interesting to trawl through some of the more recent awards to see whether they threw up anything of interest. When a case goes to arbitration it is usually for a good reason.

One such case involved a 1996 Japanese-built geared general cargo vessel of 18,000grt which had been involved in a heavy collision off Nouakchott in Mauritania. Her no.2 hold had been penetrated and was tidal.

I flew into Nouakchott some 30 years ago on a case and recall the anchorage being littered with wrecks, though I understand many have since been cleared. More alarming to me were the aircraft carcasses near the runway. In the present case, an ISU contractor's salvage tug on standby in Senegal was mobilised together with a salvage team from Europe, arriving in early June 2013.

The vessel was shifted to a new position and a large patch was fabricated on board measuring 9m x 10m, lifted into position using the ship's crane and welded in place with reinforcements. This took about three weeks. It held. The weather meanwhile was unhelpful, while both electrical power and

provisions had to be supplied by the tug to the casualty. The contractors then advanced funds to enable a bank guarantee to be provided to the port, to the crew who were unpaid and on strike and to cover agents' disbursements, all of which were agreed as allowable salvage disbursements. In return for the cash advances and the subsequent willingness of the salvors to tow the vessel to Turkey, the respondent owners accepted that a minimum salvaged fund of US\$5.85m would apply. Tact and diplomacy was needed to placate the authorities and allow the flotilla to leave.

By week seven the casualty was under tow to Gibraltar and there the tow was handed over to a sister tug. Funds of around US\$140,000 were advanced with paperwork for the costs of passage through the Dardanelles, and the vessel, after a tow of 38 days over 3,000 miles, was delivered to the repair yard at the beginning of September.

The services had lasted 88 days in total. At the arbitration there was debate as to what risks the vessel had faced as a result of one hold being tidal and the extent to which a perilous situation might then have been avoided by the action of the crew. There was found to be a low order, medium- to long-term risk of catastrophe in this respect. The

vessel was nevertheless immobilised and in need of professional assistance. All told, the salvors' out-of-pocket expenditure to be taken into account, including bunker costs but excluding tugs and crew, was around US\$1.5m. The services were prompt, skilful and successful.

The arbitrator felt constrained by the modest salvaged fund from making an encouraging award that would, in the arbitrator's opinion, fully remunerate the salvors. It was therefore one of those cases where the inevitable issue was, how much of the fund should be returned to the respondents? The arbitrator said 65 per cent, or around US\$4m, and awarded this together with interest at 6 per cent plus costs. If the salvors were considered efficient, this was matched by the lawyers, as the award was published almost precisely seven months after the end of the services.

● Simon Tatham is a partner of Tatham Macinnes LLP and a founding member of the TugAdvise.com service. He has 30 years' experience in shipping law.

ISU builds on relationship with insurance industry

The AGM of the International Salvage Union (ISU) was held in Hamburg on 2nd October and was attended by more than 75 delegates from ISU member companies.

Hosted by ISU member Bugsier, the meeting conducted the formal business of the ISU and considered a range of issues currently facing the salvage industry, including improving relationships with key parts of the wider shipping and insurance industries. President of ISU, Leendert Muller, managing director of Dutch salvage and towage company Multraship, said: "It is

excellent to see so many of our members here in Hamburg and to be able to discuss with them the matters which concern them and to consider the best response from the salvage industry. ISU is proud of its role as the sole voice of the global salvage business.

"One of the things which we have committed to do is to continue to build our relationship with the property insurers and others in the insurance industry. It has therefore been a privilege to hear from the International Union of Marine Insurance (IUMI) at our meeting. I look forward to continuing our work with

IUMI – improving understanding, building trust and campaigning together on issues such as Places of Refuge."

Guest speaker at the event, Lars Lange, Secretary General of IUMI, said: "The property insurance industry knows the vital role salvors play and we welcome ISU's efforts to develop its relations with us and our members. Of course salvors must the saving of life and the protection of the environment, but after that it is property – the ship and its cargo – which benefits from the services provided by the salvors."







The Leader in Maritime e-Learning
ONBOARD | ONSHORE | ONLINE

Future-Proof Your Crew Training

- Regular Updates
- Multiple Platforms
- Cutting-Edge Training Solutions



Training Products & Services for IMO, ISM & STCW Standards from the World's Leading Multi-Media Producer of Maritime Safety Training Solutions



sales@videotel.com | www.videotel.com | +44 (0) 207 299 1800

