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THE SWEE LEAN

Society of Maritime Arbitrators, Inc., New York, Award No. 1757 of November 12, 1982

Arbitrators: H. Evans (Chairman), Hammond L. Cederholm, and Michael A. van Gelder

Parties: Claimant: Allied Shipping International (Charterer)
Defendant: Seanav International Co. Ltd. (Owner)

Published in: Award Service of the Society of Maritime Arbitrators Inc., No. 1757.

Subject matter: formation of contract

FACTS

Owner and charterer negotiated the chartering of owner's vessel by means of an exchange of telexes among owner, charterer, and their respective brokers. Charterer accepted an offer from owner on February 21, 1980, agreeing to charter the vessel according to main terms already agreed upon and "sub details BFC C/P", meaning subject to the details of the standard Baltimore Form C charter party. The next morning charterer sent a confirmation telex which proposed many additions and deletions to the standard form, and included the Centrocon Strike Clause. Owner accepted charterer's details with some revisions, but insisted on the Gencon Strike Clause and stated that Owner would consider the vessel free to trade elsewhere if charterer did not reply by a specified time. After owner's deadline had passed, charterer requested an extension and made a counter offer. The counter offer accepted most of owner's terms, but again insisted an the Centrocon Strike Clause. Owner refused to grant the extension and found substitute employment for the vessel. Arbitration ensued at which charterer contended that owner had acted in breach of contract by obtaining substitute employment for the vessel, and was liable for the resulting damages sustained by charterer.

The issue upon which owner's liability depended was whether the parties' agreement on main terms committed them to a fixture subject to the details of the BFC charter form, even though they were unable to agree to the details of that form and an additional clause. The arbitration panel held that a binding fixture existed.
"The majority of the Panel is of the opinion that a binding fixture existed as of Thursday night, February 21st, 'subject details' which both parties were obliged to work out as best they could and as promptly as possible. If one or more details were impossible to agree on, the terms of the printed form prevailed.

[...]

"The complete Panel feels that brokers and principals generally have been unaware of the dangerous entrapment they have long created for themselves in 'sub details' agreements. The legal community has often privately expressed caution on this term because it is a fundamental precept of law that mutual agreement on the fewest material terms creates binding bargain.

[...]

"The majority of the Panel finds that a binding fixture between Allied Shipping International, the Charterers, and Seanav International Company, Limited, the Disponent Owners, existed, which the Disponent Owners breached, making them liable to the Charterers for proven damage and collateral costs. If the Parties cannot agree on the quantum of those items, the Panel will do so for them."

[...]

Referring Principles:
IV.2.1 - Contractual consent