

Trade&Transport CaseNote

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Tasman Orient Line CV v New Zealand China Clays Ltd & Ors (*The "Tasman Pioneer"*) [2010] 2 Lloyds Rep 13

This New Zealand case has been much discussed around the world by reason of the fact that at first instance and on appeal the carrier had not been permitted to rely upon the nautical fault defence in Article IV Rule 2(a) of the Hague-Visby Rules because of the master's subsequent actions, which were held not to have been performed in good faith in the navigation or management of the ship. Those decisions have now been overturned.

Readers familiar with the background to the case might recall that the vessel had grounded on route from Yokohama to Busan. The master did not alert the Japanese coastguard after the grounding, continued to steam at full speed and only advised the owner's agents after he had anchored about 2½ hours later. The master also instructed the crew to lie to coastguard investigators and assert that the impact had been with an unidentified floating object. The charts had also been altered to show a false course.

At first instance it had been held that had the master notified the authorities promptly salvors would have been engaged and the cargo would have been saved. The master's post-grounding conduct was said to have occurred "in the navigation of the ship" but Article IV Rule 2(a) imported an obligation of good faith, which had been breached and the carrier, it was held, was precluded from relying on the nautical fault defence.

On the appeal to the Supreme Court of New Zealand, from the New Zealand Court of Appeal, it was held that Article IV Rule 2(a) did not import any requirement of good faith and it was only if the acts or omissions of the master and crew amounted to barratry that the carrier would not be able to rely on the nautical fault defence. It was too late for cargo interests to now argue that the actions of the master amounted to barratry and it was found that the Master's actions following the grounding, although reprehensible, were actions in the navigation or management of the vessel.

Interestingly in defining what is meant by barratry the High Court adopted the language of the Hague-Visby Rules in Article IV, Rule 5 (VI bis) and Article IV Rule 5(e) where a servant or agent of the carrier, in the first case, and the carrier itself in the second case, are precluded from relying on the limits of liability contained in the Rules where it is proved that damage "resulted from an act or omission of the carrier done with intent to cause damage, or recklessly and with knowledge that damage would probably result".

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