

UK CLUB

Hi-Lights

I am very pleased to announce that Area group H1 will, at regular intervals, produce bulletins on topical issues relevant to our Members. The following bulletin is our first such publication and deals exclusively with Personal Injury issues.

I am sure you know we have a dedicated PI team of Ernest Foster and Evangelos Nomikos. I trust you find the following bulletin interesting and informative. If you have any queries, please do not hesitate to let us know.



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The Filipino Seafarer: a company employee?

Is this issue important?

With over 200,000 seafarers the Philippines continue to be the single largest supplier to the World's merchant fleet, so the answer to the question is **YES**. It is, for the reason that company (regular) employees in the Philippines are able to file for termination and retirement pay while contractual employees are not. If it is ultimately decided that seafarers are regular employees, then a precedent will be set with the likelihood of severe financial implications for Owners and their manning agents.

This issue came to prominence several years ago when the Philippines Overseas Employment Administration (POEA) was requested to consider the case of two Marine Engineers and whether they should be classed as regular, not contractual, employees. The POEA decided in favour of the Owners and a subsequent appeal of the matter to the National Labour Reconciliation Commission (NLRC) also found in favour of the Owners.

The case should then have passed to the Court of Appeal, but this stage was bypassed and the matter went directly to the Supreme Court. The Supreme Court reversed this decision finding in favour of the engineers, classing them as regular employees and not contractual employees. The immediate effect is that Filipino seafarers would be entitled to "retirement benefits."

For example, a Filipino seafarer who has served continuously an employer for several number of years, would be entitled to 22 days pay for every year of service upon reaching the age of 60 years, having served the employer with at least five years of service. There may be also other implications.

The case is presently on Motion for Reconsideration before the First Division of the Supreme Court and could still be appealed to the Supreme Court should the Motion for Reconsideration be denied.

Here, it should be pointed out that under Philippines Law a crewing agent and his owner are held jointly liable for liabilities brought against them by a seafarer they recruited. Even if the crewing agent no longer represents the owner against whom a suit has been filed, the crewing agent will remain liable for the sums due.

Naturally, it is hoped that the Supreme Court will find in favour of the Owner in this case. Manning organisations are considering the filing of a Petition for Declaratory Relief to have the courts declare once and for all whether seafarers are regular or contractual employees. **In other words, watch this space.**

Landing of stowaways in Ukraine

A breakthrough has recently been achieved with Authorities in Ukraine in respect of documenting, landing and repatriation of stowaways from the local ports. Not only is it now possible to land and repatriate stowaways where Travel Documents for them are already available, but also due to the constant growth in the number of African/Asian Embassies/Consulates in Kiev, applications can be made to these Embassies/Consulates for the issuance of emergency Travel Documents.

Immigration Authorities are also assisting having built specialist rooms at Odessa Airport to detain stowaways until their scheduled flights, as well as arranging for other formalities to be completed by liaising with other Ukrainian Administrations (Customs, Quarantine, etc.) for smooth processing.

The Association's local correspondents are also taking steps to obtain from their Authorities visas for their employees to allow them to travel to African/Asian countries, so that where an escort is required to accompany stowaways, then this can be arranged not only to intermediate airports, but to the final destination points.

We have recently had reason to test this procedure through our Odessa correspondent when four stowaways were discovered on board of one of our Members' ships which had arrived from Takoradi, Ghana. Emergency Travel Documents were obtained from the Ambassador of the Ghanaian Embassy in Moscow to allow the stowaways to be repatriated from Odessa. While it was unfortunate that the ship had to sail due to its next fixture, the documentation has been forthcoming which will facilitate the landing of the stowaways at a future port, the Travel Documents being valid for a three month period.

The information provided in this bulletin is believed to be correct, but we do not guarantee its completeness or accuracy.

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PIRACY / ARMED ROBBERY

Piracy attacks continued to rise in the first quarter of the year, with nearly half of the attacks taking place in Indonesian waters and the Malacca Straits.

Some 44 ships were boarded in the first quarter of 2001 and one was hijacked. Attempts were made on 23 more, for a reported total of 68 incidents. In the same period last year, 56 incidents were logged, while for 1999, 66 incidents were recorded for this period.

The Malacca Straits, one of the world's busiest shipping lanes, continues to be a focal point for attacks by armed gangs, this despite an increase of patrols by the Malaysian Marine Police and Navy. The most risky area is within a 25 nautical mile radius surrounding 02N - 102E. Boxships were increasingly targeted. During the first three months of this year, 12 were attacked, this compares with just five the year before, and eight in 1999. Tankers were also a target, with 18 recorded attacks, this compares with 10 last year and 17 in 1999. Bulk carriers show a marked target decrease with 10 incidents as compared with 20 last year and 16 in 1999.

Fortunately, nobody has been killed since 1998, when 24 crew members lost their lives. However, violence against crew members continues to be a theme of the attacks on shipping. Pirates who boarded a Ukraine-flagged dredger Kherones, in the Singapore strait on 26 January left three crew members injured before making their getaway. The Master had his hand and chest slashed by a machete. A second crew member was slashed in the back with a fireman's axe while a third received injuries to his abdomen causing profuse bleeding. All required hospital treatment.

Ships' Masters have been requested to take extra precautions for ships calling at the Indonesian ports of Belawan, Dumai, Jakarta, Merak, Samrinda and Tanjung Priok respectively.

Boarding (Attempts)

Indonesia	17* (6)	Congo Republic	1 (-)
Malaysia	3 (1)	Ghana	1 (-)
Malacca Straits	3 (6)	Ivory Coast	1 (-)
Philippines	1 (1)	Nigeria	3 (-)
Singapore Straits	2 (-)	Red Sea	- (3)
Thailand	2 (-)		
Myanmar (Burma)	- (1)	* Includes one hijacking	
Papua New Guinea	1 (-)		
Bangladesh	6 (2)		
India	3 (2)	Source: International Maritime Bureau (IMB)	
Colombia	- (1)		
Cameroon	1 (-)		

LOSS OF AND DAMAGE TO THE EFFECTS OF SEAMEN AND OTHERS

When a ship suffers a casualty such as grounding, flooding or fire on board resulting in damage to seamen's or others' personal effects, it will assist the case handler if the ship's Master has his crew prepare a list of their personal effects damaged or destroyed as a result of the casualty.

While many contracts of employment now incorporate a section for loss of or damage to seamen's personal effects with a maximum limit of compensation for such items, (USD2,000 or USD3,000 for example), or were this is not the case then the preparation of such lists, while events are fresh in the mind and usually while crew members are housed ashore in the event of damage to crew accommodation, will assist in reimbursing owners for these costs.

Items such as cash, negotiable instruments, precious or rare metals or stones, valuables or objects of a rare or precious nature are usually excluded from cover under the Rules of the Association and should not form part of any recovery under owners' claim on the Association. Remember, be wary of the man who claims to have had USD5,000 hidden under his mattress and lost in the casualty

MOROCCO - PORTS OF SAFI AND CASABLANCA

We have received reports of large numbers of individuals attempting to board ships at the ports of Safi and Casablanca with a view to becoming stowaways. While there may appear to be nothing unusual in the fact that people are attempting to board ships at these ports, it is the manner in which the attempts are being made which is rather disturbing.

At the port of Safi, which is an open port and security virtually non-existent, gangs of youths throw bottles, stones and bricks at the crew, while one or more of the gang try to board the ship. While crew try to repel borders from one part of the ship, youths try to board at a different point.

Immigration and Police appear to be totally ineffective, and any requests for assistance from these Authorities are ignored. If a stowaway is found on board and put off the ship, he is at liberty to try again to board simply because the Immigration/Police take no action against the offenders.

At the port of Casablanca, during early May, attempts were made to board a ship again using the tactics of simultaneous attacks. Here the people attempting to stow away concealed themselves in a building about 50 metres from the ship and used dust clouds, which apparently severely reduced visibility locally to 20 metres, to hide their approach.

Again, representations by the Master and the ship's Managers to the appointed local agent for better protection with security guards and/or the Police, passed without apparent success. Numerous stowaways who were discovered were ejected from the ship, but were again at liberty to make further attempts to board.

This behaviour appears to be endemic at several ports throughout Morocco at this time, with young Moroccans apparently prepared to go to any lengths to stow away in the hope of a passage to Europe where, no doubt, their aim is to seek political asylum at the first port of arrival.