

Notes for Discussion

17.10.2002

NEW COMPLAINTS PROCEDURE

Present position:

ILO convention 147 art. 4. provides that a port State which receives a complaint from a member of the crew of the ship, may report to the flag State and to ILO. In addition the port State may take measures necessary to rectify any conditions on board which are clearly hazardous to safety or health.

Issues raised by Office:

ILO office has in its document TWGMLS/2002/1 (39 to 50) proposed to extend the remedies and to include criterias such as “serous material hardship” “and “serious and repeated violation”. In addition it is proposed to “facilitate resort to the local court (port State courts)” and “removal of the flag States authority to issue certificates under the consolidated Convention”. The proposals from ILO office are also reflected in the proposed text for a consolidated Convention, document TWGMLS/2002/3 (Part V.)*

ILO office has also in the 2 mentioned document proposed an “internal resolution system” at the level of the flag State in addition to the complaint procedure at the level of the port State. A facilitating of access to the courts of the port States, is suggested (see above) and/or a system with a maritime labour inspector to assist in particular situations when the seafarer is abandoned and in cases of non payment of wages.

Initial Proposal of Shipowners' Group:

The shipowners' Group is in favour of a complaint system for the crew members, but will propose an alternative procedure to that by the ILO office. The Group's proposal is listed in the points a to e below.

a. On board complaint system

A seafarer who considers himself aggrieved shall make his complaint in accordance with the following procedures:

1. The seafarer shall first approach the head of the Department in which he is assigned to explain his grievance
2. The seafarer should make his complaint in an orderly manner, and mutually choose a time convenient to both parties when his complaint can be properly heard

* Part V, Reg. 5.1.10, 5.2.2, 5.2.6, 5.2.7 and 5.2.8

3. The head of Department shall deal with the complaint and where a solution is not possible at his level, refer the complaint to the Master who shall handle the case personally. A written record of the hearing and the master's decision should be kept.
4. If the case is not settled, the seafarer may appeal to the management of the Company (employer).

For seafarers whose employment is covered by a collective agreement, the seafarer who does not obtain a settlement of his complaint with the Company, may ask the parties to the collective agreement to attempt to settle the conflict.

b. Settlement at the Consulate/Embassy of the flag State in the port State

If a conflict can not be settled by the remedies in the point a above, the case should be submitted to the flag State's Consulate/Embassy in the port State for final or interim solution

c. Settlement at the Consulate/Embassy of the labour supplying State (the seafarer's national state) in the port State

If the conflict can not be settled by the remedies mentioned in the points a and b, a final or interim settlement should be attempted with the Consulate/Embassy of the seafarer's national State in the port State.

d. Court procedure

The seafarer shall have free access to courts in the flag state or his national state (labour supply state) as he may choose.

e. Complaint to the authorities in the port State

The seafarer may complain to the port state inspector if the conditions on board are clearly hazardous to safety and health

When a seafarer complains to PSC, the PSC authorities should enquire whether the aforementioned processes had been used and take the response to this enquiry into account when deciding how to handle the seafarers's complaint. If the PSC authorities consider that the complaint may be well-founded, they should ask for comments from the Master of the ship and the company (Employer).

The port State inspector may inform the flag State and the ILO office about the complaint (in accordance with the provisions in ILO convention 147) and may take measures necessary to rectify any conditions on board which are clearly hazardous to safety and health.

The term “complaint” as it is used above in this point “e”, does not mean all sorts of requests or objections from the seafarer, only serious breaches of obligations (definition here may be discussed further)

f. Miscellaneous

Any crew member who lodges a complaint should not suffer any discrimination or repercussion and should also have adequate safeguards of confidentiality. The complaint procedure should be made available to all seafarers. (The principles in point f needs to be discussed further to ensure that seafarers who make serious malicious complaints are not automatically protected from the consequences of such actions).