

Summary of the Detention Case 23-02-2015

General

Ground for detention

The vessel was detained due to the following detainable deficiencies:

01308 Records of rest - THE REST HOUR RECORD FOR ALL CREW NOT REFLECT ACTUAL WORKING HOURS (E.G. DRILL, MANEUVERING);

15105 Resources and personnel - SMS IMPLEMENTATION ON BOARD NOT EFFECTIVE DUE TO ABOVE ITEM 3, 4. ADDITIONAL AUDIT TO BE CARRIED OUT.

Note: Item 3 refers to a deficiency of "01308 - Records of rest/THE REST HOUR RECORD FORM IS UNOFFICIAL FORM." with action code 17 AND item 4 refers to the above mentioned detainable deficiency.

Dispute

Although the flag State accepted deficiencies pointed by the PSCO but disagreed with the detention by the port State Authority and expressed views that:

1. In accordance with the guidelines for the CIC on STCW Hours of Rest 2014, which will be incorporated in the PSC Manual as general guidance for PSC officers, the two deficiencies (i.e. item 3 and 4) under 01308 would be enough to be given code 17 rather than 30;

2. In accordance with IMO Resolution A.1052(27) "Procedures for Port State Control", the detention is taken by the port State when the condition of the ship or its crew does not correspond substantially with the applicable conventions to ensure that the ship will not sail until it can proceed to sea without presenting a danger to the ship or persons on board, or without presenting an unreasonable threat of harm to the marine environment (1.7.4) and the main purpose of port State control is to prevent a ship proceeding to sea if it is unsafe or presents an unreasonable threat of harm to the marine environment (2.3.5). The mentioned deficiencies should not be considered as reason of detention; and

3. Since the two deficiencies (i.e. item 3 and 4) under 01308 were not considered as detainable deficiencies, the ISM related deficiency stemming from them should be with action code 18 because non detainable deficiencies should not be considered as a serious failure of SMS on board.

Based on the above, the flag State is of the opinion that the detention was not justified.

The port State Authority is of the opinion that:

1. Based on the facts that the IMO recommended model format for records of hours of work or rest is not used onboard, that records of rest are only for 9 out of 13 crew onboard and that all crew's rest records are recorded the same (i.e. 8 hours work and 16 hours rest everybody everyday in the same pattern), obviously actual working hours are not correctly reflected (e.g. drill, maneuvering, bunking), as such it is concluded that all records were false; due to the poor supervisory on the hours of rest, the crew may be excessive fatigue and endanger the ship, therefore, in accordance with IMO Resolution A.1052(27) "Procedures for Port State Control", the ship is detained;

2. Although suggested action code for “deficiency related to hours of rest not being recorded correctly” is 17, it is understood that such deficiency, if repeated frequently, could be regarded as detainable deficiency; and

3. Taking into account that falsifying records of hours of work or rest would be a significant deficiency, which could also provide objective evidence of failure or lack of implementation of the ISM code, it was considered that SMS implementation on board is not satisfactory, due to not comply with the requirement of STCW (i.e. a major non-conformity on rest hours onboard), and additional audit should be carried out.

Based on the above, the detention was correct.

Opinions of the panel

Majorities of the panel members considered the detention justified with the opinion that:

1. There is sufficient evidence to support the contention that there were problems/issues with the Records of Work and Rest. The three examples presented in the evidence pack provided by the port State potentially indicate that the Hours of Work and rest were recorded in the same pen script, by a single person, on a single occasion, and without the endorsement by the individual seafarers as required by the STCW Code. These records are prepared and endorsed in a potentially fraudulent manner, or at least non-systemic manner, indicating a breakdown in shipboard management processes and record keeping, effectively compromising the internationally agreed regulations and protections defining crew working hours and fatigue management. In the absence of any further evidence indicating that the crew are well rested, the attending PSCO would be the best judge as to the immediacy of any threats to the ship, crew, and environment from fatigue. As such, the decision to detain the ship on the basis of STCW is supported; and

2. Drawing upon the apparently deliberate nature of the offered records, it is assessed that the ship’s ISM system had broken down to the state where effective record keeping had been compromised, as such the welfare and safety of the ship and crew had been jeopardized. Given this degraded state of shipboard management processes, then detaining the ship on ISM grounds to allow a thorough external audit is supported.

One panel member did not support the detention and expressed the view that there is lack of sufficient and objective evidence to determine that:

1. the crew of the ship is genuinely suffering from fatigue and overwork due to insufficient rest, and that the vessel, when allowed to depart in this condition, would pose a serious threat to the safety of life onboard and the marine environment; and

2. there is a major non-conformity under ISM relating to compliance with the basic requirements on the minimum hours of rest.

Conclusion

The majority opinion of the panel is that the detention was justified. Therefore, the port State Authority would not be asked to re-consider the decision of the detention.