

## Summary of the Detention Case 24-03-2015

### General

#### Ground for detention

The vessel was detained due to the following detainable deficiencies:

10114 Voyage data recorder (VDR)/Simplified Voyage data recorder (S-VDR) - S-VDR MALFUNCTION;

05105 MF/HF Radio installation - MF/HF RADIO NOT WORKING.

#### Dispute

The flag State did not agree with the detention by the port State Authority and expressed views that:

1. The master of the ship had acknowledged the existence of the fault in the mentioned equipments even before entering the port;
2. The company had arranged the maker's technicians for checking and fixing the problem upon the arrival of the ship in the port and also informed the flag State about the malfunction observed and the arrangement made prior to the inspection by the port State; therefore, in accordance with SOLAS Ch. IV Regulation 15.8, the ship would not be considered as unseaworthy since necessary steps had been taken; and
3. Referring 2.3.5 of IMO Resolution A.1052(27), all possible efforts should be made to avoid unduly detention and delay and the main purpose of PSC is to prevent a ship to proceed to sea if it is unsafe or present an unreasonable threat of harm to the marine environment; but the detention seems not in line with it.

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. In accordance with SOLAS Ch.1 Regulation 11(c), the company failed to report the defects to the appropriate authority of the port State even though it had a sufficient time before it arrived at the port;
2. The master did not inform PSC officers of the defects before start of the PSC inspection; through the ship rounding and interviews with service technicians, PSC officer found the defects by himself; and
3. The major reason of detention is not because of the malfunction of general radiocommunications but because of incapability of all distress and safety functions of DSC which is crucial part of GMDSS, bearing in mind SOLAS Ch.IV Regulation 15.8 do refer to capability for performing all distress and safety function and, based on Appendix 2 to IMO Resolution A.1052(27), absence or failure of proper operation of the radio equipment for distress and safety communication is a detainable deficiency.

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. SOLAS Ch.1 Regulation 11(c) states clearly that, whenever a defect is discovered and the ship is in a port of another Contracting Government, the master or owner shall report immediately to the appropriate authorities of the port State; In this case, the shipmaster or owner nevertheless did not report the port State about the defects on board. It violate the requirement of regulation;
2. Having flag State informed and repair technician arranged are not considered as prior notification to the port State regarding the defects discovered on board. The shipmaster should notify the port Authority by means of pre-arrival notice because the port Authority might have corresponding measure to provide safety precaution and necessary assistance to the ship in order to protect other stakeholders from being affected by the defective ship;
3. It is true that any equipment is subject to failure but shipmasters have to notify the port Authority prior to ship's arrival. Without advance notification to the port Authority on the defect, the port Authority cannot make arrangement in advance of any preventive measure to avoid other users of port from being adversely affected, nor would any assistance be arranged to the defective ship;
4. Failure of the proper functioning of the essential radio equipment, MF/HF, for distress and safety communication, and failure of a voyage data recorder (VDR) are considered as serious deficiencies that warrant a detention in accordance with the PSC Procedures 2011 (IMO Resolution A.1052(27));
5. It is the duty of shipmasters to report to the port Authority any major defect of the ship under his/her command before the ship's arrival. This duty is prescribed in SOLAS Chapter 1 regulation 11 (c) and should be fully aware by all shipmasters.

One panel member did not support the detention and expressed the view that:

1. Although the ship's master or owner seemed not informing the port state about the defective equipment which affect to the safety of the ship in accordance with the requirement of SOLAS Reg.I / 11(c), the master/company of the ship had acknowledged the existence of the defective equipment, made the arrangement for the rectification of the defects and notified the flag State appropriately;
2. It should be recognized that all equipment is subject to failure and it is appropriate to repair the malfunctioned equipment on their own initiative. It could not be seen "the merit of detention" in this situation with under-going repair, even if these deficiencies are serious enough to detain the ship. In such case, if the repair would not be completed before departure and the ship would intend to sail with serious deficiencies, the detention should be considered for the safety of the ship; and
3. Main reason for detention stressed by Port State Authority is failure to report the defects to the port State, but the detention itself is made related to the equipment; In that case, the convention reference in the event of the detention should be regulation 11 of SOLAS chapter 1 and this deficiency should be considered separately from the deficiencies of equipment in this case. An ISM related deficiency (compliance with mandatory rules) could be considered if the violation of SOLAS Reg.I / 11(c) is to be addressed in this case; moreover, even an ISM related deficiency is recorded, which is not considered as detainable/major non-conformity.

## **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.