

## Summary of the Detention Case 40-02-2021

### I. General

#### Ground for detention

The ship was detained due to the following detainable deficiencies:

01220 Seafarers' employment agreement (SEA) - SEA Expired of four crew "crew1" 19-12-2020 Ext. 19-03-2021 "crew2" 27-02-2021 "crew3" 27-02-2021 "crew4" 27-02-2021;  
18199 Other (Minimum requirements) - No repatriation plan confirmed by the company and the Flag State was found on board.

#### Dispute

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

1. The subject vessel's nature of work is based in the High Seas as a bunker vessel operating 2-3 months at a time before restoring bunkers in the port, where the vessel normally operates in and out. With the difficulties around foreign crew member repatriations due to the travel restrictions placed by Governments in each country due to the Pandemic, the company applied to Flag to accept seafarer extensions beyond the specified eleven (11) months. The flag State applied some leniency in the decision-making to grant the extensions because of the outbreak and difficulties around travel;

2. The company identified that the vessel was to sail to the port of inspection, which presented an opportunity to repatriate the crew. There have been no MLC complaints from the serving crew to date. A correspondence e-mail was sent by the company on the 11<sup>th</sup> April 2021 (10 days before the detention) planning to repatriate the crew "subject to flight availability" which was clearly pointed out by the attending PSC officer in his inspection. Realistically, in the current climate, everything is subject to availability as the world battles through living the new normal with COVID. The on-signing crew was able to make it to the port of inspection in time but not present at the vessel at the time of the detention due to COVID tests being undertaken; and

3. Taking into account that, in accordance with the Interim guidance relating to COVID-19 circumstance, applying flexibility on the issue of extending periods of service on board ships would be required and that flag State would be liaised for resolving cases of crew suffering fatigue or not fitting for duty, however, in this case, there were no MLC complaints onboard and the port State did not liaise with the flag State about the matter. If the flag State was contacted, the issue could have been resolved; moreover, the crew change/repatriation, which caused the detention, was completed timely as planned.

Based on the above, the detention was excessive and it is requested to downgrade code 30 to 17.

The port State Authority is of the opinion that:

1. At the time of the PSC inspection, the Port State Control Officer (PSCO) found that the ship had (4) crewmembers with more than 12 months onboard, as evidenced by the Crew List and SEAs collected during the inspection;

2. In accordance with the Guidance for dealing with impact of the outbreak of the

COVID-19 relating to MLC 2006, “Letter of dispensations issued by flag States including appropriate conditions, accompanied by a plan submitted by the shipowner describing what measures being taken to comply with the conditions imposed by the flag State” should be provided. But the dispensation from the flag State was not found at the time of inspection;

3. During the inspection, the master of the vessel could not provide documentary evidence to confirm the repatriation plan for the crewmembers concerned but only an e-mail communication from the company dated 11 April 2021, which contained instructions and information about the crew change process “subject to flight availability”;

4. Since the service period onboard of the crewmembers concerned exceeded the maximum period as stipulated in MLC and the letter of approval of a plan for repatriation and extension of the employment contract by the flag State was not delivered, the ship was detained to correct the situation.

Based on the above, the detention was appropriate and correct.

## **II. Opinions of the panel**

The panel members reviewed the relevant information and materials received. As the result of evaluation, panel members reached general opinions as follows:

1. At the time of the inspection 4 seafarers were identified as having been onboard for more than 12 months. This represents more than the maximum continuous period that a seafarer can serve onboard a ship without taking leave as per MLC R.2.4, R.2.5) and the SEA was expired (MLC/R.2.1). No supplement or SEA extension was provided during the PSC inspection to show that the seafarers had a valid SEA;

2. It is reported frequently that the SEAs are extended under the pressure of the shipowner/company, which was very likely to appear in this particular case, as there was no evidence available to demonstrate consent for extension of period of service on board from 3 out of 4 seafarers concerned. Such would be the clear grounds to believe that seafarers no longer fit for duty due to clear suffering from fatigue. This situation indicated serious violation of MLC R.2.4, R.2.5 and R.2.1 even considering the flexibility to be given in accordance with the Interim guidance relating to COVID-19 circumstances;

3. Regarding the matter of extension of seafarers’ service period over 12 months, the vessel should provide documentary evidence of a repatriation plan in accordance with the Interim guidance relating to COVID-19 circumstances; however, at the time of inspection, the master could only provide communication from the company giving information that the process was being undertaken without any confirmative evidence; and

4. Based on the above findings, the company didn’t take all efforts to repatriate the seafarers by the end of the 11 months period.

Apart from above, one panel member expressed view that, since MLC does not include any provision for Repatriation Plans or their approval by the flag State, the detainable deficiency – “No repatriation plan confirmed by the company and the Flag State was found on board” would need to be reconsidered because it has been based on the COVID-19 Guidance issued by the Tokyo MOU and as such is guidance only. Any deficiency issued under PSC Inspection MUST be against a Convention or Code requirement. But this deficiency is against a guidance note, therefore it is considered not appropriate.

### **III. Conclusion**

The panel members are of the unanimous opinion that the decision of detention as a whole was justified. Therefore, the port State Authority would not be asked to reconsider/withdraw the decision of the detention. However, the port State Authority would be invited to reconsider the description of detainable deficiency of “No repatriation plan confirmed by the company and the Flag State was found on board.” as appropriate.