

SHIPPING

MARITIME LABOUR CONVENTION BEGINS TO BITE

The Maritime Labour Convention (MLC) came into force internationally on 20 August 2013 and, within two weeks of port state control having commenced, the first vessel was detained for non-compliance.

During a port inspection of the Liberia-flagged offshore supply vessel the *Atlantic Carrier* on 3 September, the Danish Maritime Authority observed that the crew had employment contracts that were not MLC compliant. The vessel was detained by port state control in Esbjerg for 24 hours whilst the issues were corrected and she was then permitted to proceed to operations in the North Sea.

This is understood to be the first time that a vessel has been delayed in port because of non-compliance with the MLC. It is a significant event for the global shipping industry because it demonstrates that ratifying states are serious about enforcing the MLC and the rights of seafarers to decent working and living conditions at sea that it enshrines. As such, the circumstances of the detention of the *Atlantic Carrier* bring the standards and principles of the MLC into sharp focus.

The requirement that each crew member has an employment contract is only one aspect of seafarers' rights under the MLC. "Shipowners" (as defined in the MLC) are also required to implement measures relating to seafarers' wages and hours of work, accommodation, food and catering, health protection, medical care, welfare and social security protection.

A shipowner also has to ensure that the vessel carries an on-board complaints procedure. This must enable seafarers to raise issues about MLC compliance including their own employment rights with the vessel's master, without being victimised for having done so.

If the seafarer's complaint is not satisfactorily dealt with, he may bring it to the attention of the next MLC port state control inspector, who in turn has the power to detain the vessel in serious cases of non-compliance.

The MLC has received widespread ratification internationally. At the time of writing (13 September 2013), 51 states have ratified the MLC, and the vessels flying the flags of those states represent in excess of 75% of the world's gross shipping tonnage.

Although 20 August of this year was the landmark date on which the MLC finally entered into force internationally, there is an important point to note. This is that ratifying states have 12 months from the date of ratification to enact the MLC in their domestic law and commence enforcement via flag and port state control. There is therefore an important distinction to be made between those 30 states that had ratified the MLC by 20 August 2012 and have been enforcing the MLC since 20 August this year, and those states that ratified later and have 12 months to enact and enforce. Denmark and Liberia were among the first states to ratify.

In principle, therefore, one would expect to see a phased introduction of the MLC by different flag states across the globe over the coming months. Shipowners whose vessels fly the flag of a state that has recently ratified might be tempted to interpret this as meaning they have a grace period before their vessels need to be MLC compliant.

However, the "no more favourable treatment" provisions of the MLC need to be borne in mind. In effect, these require ports of states where the MLC has already entered into force to inspect all vessels for compliance, regardless of the flag they fly, meaning that shipowners' interests may be best served if they take steps to ensure their vessels are MLC compliant now.

There will be variations in approach between flag state authorities but the UK provides a case in point. The UK did not ratify the MLC until 7 August 2013 and in principle has until 7 August 2014 to enact it in its domestic law and commence enforcement. However, those parts of the MLC dealing with vessel survey and certification have already been enacted and are in force, and the remaining parts are expected to follow suit well in advance of 7 August 2014.

Reflecting the point made about “*no more favourable treatment*”, the Maritime & Coastguard Agency’s position is that, as the MLC has already entered into force internationally, shipowners whose vessels are flying the UK flag should have their vessels inspected and obtain the necessary documentation constituting *prima facie* evidence of compliance for purposes of MLC port state control without delay.

As the circumstances of the *Atlantic Carrier* and subsequent enforcement actions by port state control officers show, seafarers’ employment rights have entered into a new era and, if shipowners have not addressed the MLC and its ramifications to date, it is unlikely that they will be able to avoid doing so for much longer.

In our Winter 2014 Shipping E-brief, we will discuss the implications of the MLC for charter parties and who might be the “*shipowner*”.



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