ANTARICA GROUP
Russia & Ukraine
www.antarica.com

antarica
group

NEWSLETTER – SOUTH RUSSIA

CONTENTS:

CONTACTS: + 7 8617 726 907 + 7 8617 711 534
group@antarica.com | www.antarica.com

1 DEATH COMPENSATION AND COLLECTIVE BARGAIN AGREEMENT (CBA)

In recent years, we are facing increased number of personal injuries, hence handling variety of cases, often specific and quite unique. It is difficult to estimate in what particular manner should a "people's claim" be handled and creating an algorithm of actions is not practicable. Yet, we noticed some typical issues, which we wish to enlighten.

First, we noticed that most of Collective Bargain Agreement (CBAs) under the latest Marine Labour Convention (MLC) regulations contain very similar death compensation clauses, which are to be followed in any country of a late seafarer's residence. It is obvious that some of countries may have local Legislation different from the regulations of the agreement but even for the others, having rectified the Convention and, therefore, the most of CBA standards, the local Law could provide room for construing the paragraphs each time in a different way.

The most common issue we face here in Russia is the fact that the "nominated beneficiary", very often a body entitled for receiving the death compensation is not indicated in the Contract of Employment or any other enclosures to the same. Going forward into the wordings we usually have a supporting clause or sentence stating what rule should be implemented in case of absence of such "beneficiary", however, there are many cases when at the same time we may see a box/line/field "Next of Kin" (NOK) completed correctly with a name and details of a person, who the late seafarer entrusted to receive a death compensation.

In Russia, there is neither specific Law nor a precedent for such circumstances, and this produces confusion by the end of the day when undergoing repatriation process, standing before the compensation matter and release formalities.

In such cases an obvious understanding of a Ship-owner would be that a late seafarer had an intention for the "Next of Kin" to receive compensation in case of death and was just confused not comparing the exact phrases in CBA and Contract of Employment (COE) or even not reading a CBA at all relying only on basic knowledge of the Maritime Labour Convention (MLC) terms.

A reasonable question would be: can a Ship-owner be certain that he will not face another claim from a legal heir and upon a logically understandable rejection, and will not be sued with allegedly undone obligation, which could produce a double-payment by the end of the day.

Of course, the answer is "No", and yet if it is a case, what particular rule should be followed then and should it be simply done otherwise, i.e. just a compensation to be paid to a person entitled to receive it in case that there is no name of a "beneficiary" in the COE (or enclosures). Unfortunately, the answer here is still "No" and this produces another confusion.

Based on our statistics, 70-80% of all such cases show that legal heirs are often the same as “NOK” or “beneficiaries”, however, there are still number of cases when the situation is different.
We will put an example first and then will revert with our recommendations to follow.

CASE STUDY

A seafarer sadly passed away on board a vessel. He signed a COE prepared in strict accordance with MLC terms together with an ITF/IBF CBA referring mainly to salary and working hours terms in accordance to the above-mentioned CBA and also having no specific terms for death compensations etc. In CBA, we found the above clauses however there was no indication of a beneficiary but only a “Next of Kin” box inside the CoE, that did not mention any family relative (only his friend). The deceased had an adult daughter and the important fact was also that he had never been married.

Although it did not fully comply with CBA regular terms, we fully shared the view of Ship-owner that it would be unfair not to compensate the NoK, who the seafarer intentionally indicated being of sound mind.

The situation became easier once we found that the listed NoK and the single legal heir (the daughter of the deceased) were in good relations and ready to share the death compensation, moreover, each of them independently intended to do so.
We had then prepared an Agreement between them in addition to the typical Receipt & Release agreement stipulating the terms of payment and sharing of the compensation.
This complicated case, however, made us investigate such kind of cases deeper with regards to the existing Legislation in Russia.

Our conclusion unfortunately did not meet the expectations.
Dealing with death at sea claims produces liability for the Ship-owner in any case under the terms of MLC, however, the implementation of relevant CBAs correctly under the International practice would not always eliminate some risks of inappropriate court decisions.
We found that the practice and precedents showed quite opposite court tendencies. Some are referring to CBA terms, however, many other judges treat even some documents, showing the clear identity of “beneficiary” as an inappropriately arranged, and therefore, rejects relatively basic demands.
We found that that the number of related court decisions in this matter in Russia is limited, and we had to use sources outside South Russia (our region of operation) to collect sufficient quantity of precedents.

P&I CORRESPONDENT RECOMMENDATIONS

1. Collection of full package of documentation and every enclosure to a CoE, signed by the seafarer;

2. enquiring about seafarer's heirs and family members potentially having any possible opportunity to claim for a heritage/compensation, etc;

3. Be prepared for defense against potential distant claimants;

4. Even in case of several alleged beneficiaries reaching an amicable intention to share the compensation, it is very important to arrange for special Agreement prepared by an experienced lawyer and signed by all parties. This would save future unpleasant "surprises".

2 CUSTOMS RELATED CLAIMS

In recent years, we are facing number of customs related claims of similar or resembling nature and, therefore, we are happy to share a strategy of handling same with interested parties.
Each and every case could be generally similar with an example described further but particulars still may vary, causing increased risks to Ship-owner/Charterer.
The most severe cases Shipowners and Charterers may encounter in the Black Sea coast is improper declaring of goods on board or non-declaring them at all.
In Russia customs usually refer to the article 16.2 of Administrative Violations Code of Russia and relevant punishment could be chosen among several following options (all related to the goods/cargo undeclared or improperly declared): confiscation, administrative fine in amounts up to double market price of goods, both sanctions may be implemented simultaneously.
The market price of goods is always determined by a governmental expert but still can very much vary from the actual cost of goods/cargo. This may produce a confusion in the court even in case if Ship-owner or Charterer is saving expenses for claim handling and is fully accepting liability for the violation, because the administrative fine imposed in such circumstances could be substantially different to the one expected by a suffering party.
Despite of risks listed above for most of minor claims and violations, we do not recommend to appoint a lawyer and, moreover, usually suggest to make an application to the customs making them forward the case to court with a remark that the claimed party (Shipowner/Charterer) was cooperating during the formal procedures and investigation.
This usually makes minor investigations in customs and also related formalities go smoother and quicker.

CASE STUDY

Vessel arrived in Novorossiysk and during the inward clearance formalities it was noted that the Master did not declare some expired pyrotechnics. This became noticed by the customs who made procedural actions in this connection. The vessel was not detained or arrested, however, administrative case commenced against the Master and Ship-owner.
We met the customs officer in charge and discussed the circumstances of the case, explaining that the Master was not aware of the expired but still retained pyrotechnics and was not intentionally hiding same.
It was further decided also not to involve a lawyer to save costs as the claim amount in question was less than USD 1,500. We asked Ship-owners to arrange formal letters to court and customs and the case was closed with single imposed sanction – confiscation of goods without an administrative fine.

P&I CORRESPONDENT RECOMMENDATIONS:

1. Carefully study the documents issued by the customs (protocols, interrogation lists etc.) and obtain the code of violation/article;
2. Obtain information regarding possible minimum and maximum punishment and any existing related sanctions;
3. Contact the customs officer in charge for proper explanation of the case.

We have to underline that such recommendations shall never be applied to the bunker undeclared (under any reason), because bunker disputes in customs could attract more attention of police and prosecutor's office, therefore, it is of utmost importance to have an experienced lawyer protecting the Members' interests in such circumstances.

Newsletter by
Denis Shashkin

01 September 2017

ANTARICA GROUP®