

NEWSLETTER

SHIPPING

September 2011

Change from Greek Flag to a Foreign: Labour issues to be dealt with by the Greek Owners

1. Labour issues /legal status under Greek law

Due to the nature of the shipping trade a ship is inevitably linked to various legal fora. As a result, the ship's flag is always a significant tell-tale sign as regards to the laws and regulations governing the ship and her crew. Although the flag is not always binding, the rule is that for ships flying flags of national registries (as opposed to the so-called Flag of convenience registries) like the Greek registry, the applicable law will be, in most cases, the Law of the Flag. Therefore, any change of flag may affect the legal status of the crew on board.

A Greek Managing Company may, for various reasons, change the flag of a ship managed by them. On this Note, we focus on the problems arising in the event of change of the Greek flag, of a Greek-owned ship to a foreign flag where the Greek Managers may face claims for severance pay from the ship's crew.

According to Art. 68 of the Greek Code of Private Maritime Law ("CPML") as supplemented by the Greek Seamen Collective Agreement in force from time to time ("GSCA"): "Any contract of

employment of a seaman shall be terminated on the following grounds: (a) loss of the ship; (b) loss of Greek flag; and (c) sale in a public auction".

In view of (b), namely in the event of change of the ship's Greek flag to a foreign flag (important: this provision does not apply in the event of change from a foreign to a Greek flag or change from a foreign flag to another foreign flag), the seaman is *ipso jure* ("automatically") entitled to **severance pay** which, according to Art. 75 and Art. 76 of the CPML, is equal to fifteen (15) days of full wages if the termination (i.e. the change of flag) takes place in Greece, thirty (30) days if the termination takes place in a port of the Mediterranean, the Black Sea, the Red Sea and Europe and forty-five (45) days in case of termination in any other port or Sea of the world.

By this provision the CPML specifically intends to protect Greek seamen from the subjection to an - unknown- foreign law which may be detrimental to their rights and working conditions. Although rather antiquated, this provision still has value whenever the ship is sold to a "third" company of non-Greek interests.

Accordingly, if the ship's managing company does not change and the terms and conditions of employment remain the same (i.e. wages, benefits, pension rights, jurisdiction, applicable law, etc.), the "formal" change of flag, in the end, may not affect the seamen's legal and financial status and/or their working conditions at all, which is the ratio of Art. 68 providing for severance pay in the event of change of the Greek flag.

Under the circumstances, in order to avoid a potential claim for severance pay by the seamen serving on board (which, by virtue of Art. 68, is expected to be accepted by the Courts of Piraeus) the Managers should observe securing and providing the same terms and conditions, wages and benefits under the new flag as under the Greek flag.

2. Claims / Precedent / Types of claims / Measures:

In the past, by virtue of Art. 68 of the CPML, Greek seamen have brought claims before the Courts of Piraeus against the Owners claiming severance pay. In many occasions (always depending on the merits of each case), these claims were successful and the seamen were held to be entitled to severance pay even in cases where the only thing that had changed was the flag. To tackle this eventuality and avoid paying severance pay the Greek Managers should act proactively taking the measures described below.

In the event of change of Greek flag, the Managers may face three different types of cases:

- (a) Greek seamen who, on the pretext of the change of flag and the provision of CPML, can ask to be discharged at the first port of call after the change of flag and on their repatriation claim severance pay;
- (b) Greek Seamen who, despite the change of flag, will remain on board and continue to work as if "nothing" has happened; and
- (c) Foreign seamen

2.1. Greek seamen who, on the pretext of the change of flag, can ask to be discharged and terminate their contracts at the first port of call:

- This is the most difficult situation because, according to the **prevailing** precedent of the Courts of Piraeus (including the Appeals Court), any seaman requesting his discharge and repatriation on the occasion of change of the Greek flag to a foreign flag is, by virtue of Art. 68, **ipso jure entitled to severance pay**. Notwithstanding the above, according to a very recent judgment of the Court of First Instance of Piraeus (where our Firm represented the Greek Owners) on a case of change from a Greek flag to a Liberian Flag while the managing company remained the same, (i.e. same terms and conditions of the contract, etc.), **the Court entirely dismissed the writ** for severance pay stating that, in view of the "unchanged" status, this was an **abuse of right** from the seaman's part, on the grounds that, eventually, the seaman's rights remained untouched after the change of the Greek flag.
- In view of the above, measures should be taken by the Managers before changing the Greek flag, say, about two months before the scheduled date of change.

Pro-active Measures

- (a) It must be secured that the terms and conditions of the seamen's employment will remain the same or that they will not be deteriorated. Therefore, the contract of employment must remain almost the same except for the name of the Owning company and the flag. A new clause that must be added is one referring to the payment of NAT contributions [see also below 2.1 (b) and 2.1 (c)]. The applicable law and jurisdiction will be Greek "to the exclusion of any other foreign law or

jurisdiction” (our suggestion is that a clause with the above wording should be added in the Contracts for Greek crew of all “Greek owned” ships) which is a strong argument to refute the basic reasoning/ratio of Art. 68 i.e. the seaman’s protection from the subjection to a foreign law/ jurisdiction.

(b) A very strong argument, among others, brought for by seamen who terminate their employment on the occasion of the change of flag is the NAT insurance and the loss of promotion or pension benefits. Therefore, it is essential that the ship even under the foreign flag **remains in the insurance of NAT and of the corresponding Welfare Funds (ΤΠΕΝ, ΤΠΚΠΕΝ)**, so that the seamen do not lose their pension rights and status of promotion and service («*υπηρεσιακή κατάσταση και προαγωγικά δικαιώματα*»). Accordingly the Owners prior to the change of flag (at least 1-2 months before) have to make an agreement with NAT for the insurance of the Greek seamen serving on board.

(c) A further point that should be taken into consideration is the following:

Greek seamen working on board ships under Greek flag pay an amount of monthly contribution to NAT that is slightly smaller than the amount of contribution paid by Greek seamen working on board ships under a foreign flag insured («*συμβεβλημένα*») with NAT. For example in 2010, a Chief Engineer paid Euro €727.26 under a Greek flag while under a foreign flag Euro €822.04. Therefore, this **balance** should be paid to the seaman every month as “balance of NAT contribution” to avoid a decrease of his total monthly earnings and, thus, rebut any relevant argument that may be brought for by the seaman in case of a claim before the Greek Courts

(d) An attempt should be made to retain **the same ratio between the foreign and Greek crew on board** after the change of flag because, to the best of our experience from previous cases, a usual

argument brought for by seamen is that if, for example, only two Greek seamen have remained on board after the change of flag, the working conditions of the remaining, say, the Greek Chief Engineer may have been, allegedly, deteriorated because his co-operation with his new personnel is now impaired due to lack of communication or lack of the same seamanship of the new, say, Filipino crew, etc.

(e) About **one month** before the change of Greek flag, the Greek seamen (not the foreign, see below 2.3) must be summoned by the Master who shall **advise** them about the change of flag reassuring them that all seamen will continue to work as before, that the ship will remain under the same management, and that nothing will be changed for them after the flag change (e.g. wages, benefits, NAT, contracts, applicable law, jurisdiction, etc.). Afterwards, a Declaration must be signed by the Greek crew stating, amongst others, that the ship will remain under the same management, the working terms and conditions remaining the same, etc.

(f) Taking into account that, in such cases, the role of the Master is instrumental, the Owners should make sure that the particular ship’s Master at the time of change is a loyal person to the company.

- We always suggest that a clause dealing with this issue must in any case be included in the Seamen’s contracts. Taking into account that the provision of Art. 68 is of “*obligatory law*”, such clause may not be totally binding for Greek Courts, especially if the measures mentioned above (same terms, wages, NAT, etc.) have not been taken by the Owners, nevertheless in any event this clause may dissuade seamen from thinking to disembark on the change of flag and from claiming severance pay.

2.2. Greek seamen who, despite the change of flag, will remain onboard:

- If the seamen remain on board after the change, working as before, etc., prima facie, there will be no problem. Nevertheless, as they may be entitled to claim severance pay on the completion of their employment and/or on their repatriation, to be on the safe side Owners will have to take the same measures as described above. For such cases the prevailing precedent of the Courts of Piraeus is rather favourable to the Owners (depending always on the merits of each case).

2.3. Foreign seamen

- In most cases the contracts of employment of foreign seamen working on board do not provide for the application of Greek law and jurisdiction. Nevertheless, if they bring a writ of action in Greece it is expected, on various legal grounds, that the Greek Court will accept jurisdiction and apply Greek Law which may entitle them to the same severance pay as their Greek colleagues. Notwithstanding the above, our opinion is that the managers should refrain from any action as regards to foreign seamen, because, if they do so, they may entice them to terminate their contract on the same pretext and claim severance pay to which, after all, they are not entitled to under their contracts.

Contact

Dionyssis Constantinidis
Partner

E-mail: d.constantinidis@kgdi.gr Tel: +30 210 822 6801

Main (Athens) Offices

28, Dimitriou Soutsou Str.,
115 21, Athens
Greece
Tel: +30 210 817 1500
Fax: +30 210 68 56 657/8

Piraeus Branch

Alassia Building,
13, Deferas Merarchias Str.,
185 35 Piraeus
Greece
Tel: +30 210 413 8800
Fax: +30 210 413 8809

Thessaloniki Branch

17, Ethnikis Antistaseos Str.,
55 134, Thessaloniki
Greece
Tel: +30 2310-478640 / 50 / 60 / 70
Fax: +30 2310-455126

www.kgdi.gr

Disclaimer: This newsletter contains general information only and is not intended to provide specific legal, or other professional advice or services, nor is it suitable for such professional advice, and should not be used as a basis for any decision or action that may affect you or your business. Before making any decision or taking any action that may affect you or your business, you should consult a qualified professional advisor. We remain at your disposal should you require any further information or clarification in this regard.

© Kyriakides Georgopoulos & Daniolos Issaias Law Firm, 2011