



Circular N^o CH 43-1

To: All Shipowners of Swiss flagged Vessels, Masters, Shipboard Safety Committee, Recognised Organisations and approved Inspectors

Sub.: Complaint Procedures

- Ref. a) Maritime Labour Convention, 2006 (hereafter “MLC”), Regulation 5.1.5**
b) Ordinance implementing the Federal Law on Navigation under the Swiss Flag (Navigation Ordinance, SMO), Art. 37
c) Guidelines for Flag State Inspections under the MLC, 2006

PURPOSE:

This Circular provides the key elements of an on-board complaint procedure, the purpose of which is to provide for the fair, effective and expeditious handling of seafarers' complaints relating to the MLC. This Notice is intended to assist:

- (1) the shipowner or ship operator in understanding the requirements that must be met in implementing an on-board complaint procedure, and
- (2) the seafarer in understanding his/her rights and the procedures involved in filing a complaint.
- (3) Recognised Organisations in understanding their role.

A complaint is an expression of formal notice of dissatisfaction related to job requirements, working and living conditions or other aspects of a seafarer's employment agreement or an alleged violation of a seafarer's employment agreement, or the rights of the Seafarer under the MLC.

If a Seafarer considers himself aggrieved, he shall make his complaint and give proof of a mistreatment or of a violation of the Seafarer's conditions of employment or the provisions contained in the MLC.

It is evident that individual seafarers also have a responsibility in maintaining the standards required by the MLC.

APPLICABILITY:

This Notice applies to all vessels registered under the Swiss flag.

REQUIREMENTS:

1. General

- 1.1 A shipowner or ship operator shall provide to a seafarer at latest at the time of his embarkation a copy of the on-board complaint procedures applicable to the ship together with a copy of the seafarers' employment agreement in accordance with Navigation Act, Art. 68 to 70.
- 1.2 Any seafarer on board a Swiss flagged vessel shall have the right to lodge a complaint (i.e., a labour grievance) and to have that complaint investigated, provided it is specific in nature and is alleged to constitute a breach of seafarers' rights under the MLC or Navigation Act or Regulations.
- 1.3 Any victimisation of a seafarer for filing a complaint is strictly prohibited. Victimization is understood to mean any adverse action taken or threatened by any person with respect to a seafarer for lodging a complaint which is not manifestly vexatious or maliciously made.

- 1.4 Officers and/or crew members may be represented in labour grievance procedures by a labour organisation which is party to a collective contract of employment entered into pursuant to the laws of Switzerland and which covers the officers and/or crew members. The seafarer may request the participation of such a labour organisation. The employers shall ensure such rights in their internal disputes procedure.

2. Complaint Procedures

- 2.1 The following procedures shall be observed.
- 2.2 Any seafarer with a complaint shall have the ability to have the matter addressed by bringing it to the attention of the proper authority on board, as provided below.
- .1 **Initial Level of Complaint:**
Head of Department (for Deck and Catering Personnel: Chief-Mate, for Engine Personnel: Chief-Engineer)
 - .2 **Higher Level of Complaint:** Master
 - .3 **Highest Level of Complaint:**
Flag or Port State Administration, Seafarers Organisation, etc.

3. Initial Level of Complaint

- 3.1 Initial complaints on the lower level can be made orally or in written form. Complaints should be sought to be resolved at the lowest level possible; and only when the matter cannot be resolved to the satisfaction of both parties, should it be elevated to the next level.
- 3.2 If the complaint cannot be resolved on the lower level, the Seafarer will submit his complaint directly to the Master.
- 3.3 Crew members shall, within five (5) days from the date of the alleged occurrence of the labour grievance, bring the matter to their Department Head, the Master or his or her appointee, who each in the chain of command dealing with the grievance shall have a further five (5) days to bring about a solution to the matter through conciliation, provided that this time limit is appropriate to the seriousness of the matter.

4. Higher Level of Complaint

- 4.1 Should a complaint reach the higher level, the Master shall:
- .1 Conduct an investigation or inquiry, as appropriate;
 - .2 Reference the terms and conditions of employment; and
 - .3 Seek the advice of the Company DPA or his/her designee where necessary.
- 4.2 If the Master cannot reconcile the complaint, the matter should be formally referred within 10 days to the Company DPA or his/her designee who must conciliate the matter in accordance with the terms and conditions of employment.
- 4.3 If a matter is to the prejudice of the Master, then a seafarer should present his/her case directly to the Company DPA or his/her designee.
- 4.4 Until such time as the Company DPA's decision is received, the Master's decision shall be binding on all parties.
- 4.5 The Circular CH 43-9 contains detailed information regarding Master's competence when exercising disciplinary power or acting as examining Magistrate on board Swiss Flag vessels.
- 4.6 The onboard complaint procedures on Master's level shall be in written form and include:
- .1 Contact information (full style) of the Shipowner's Designated Person Ashore (DPA) or his/her designee;
 - .2 Contact information (full style) of the Swiss Maritime Navigation Office;
 - .3 Contact information (full style) of the seafarers' Trade Union Nautilus International, and of the Recruitment and Placement Service through which the seafarer has been employed; and

- .4 The person(s) on board ship who can, on a confidential basis, provide seafarers with impartial advice on their complaint and assist them in following the complaint procedures. Such assistance rendered by this person may include attending meetings or hearings, if requested by the complainant seafarer.

5. Highest Level of Complaint, External Authorities

- 5.1 Notwithstanding, in all cases, seafarers shall have the right to complain directly to the Master and, where they consider it necessary, to the Company Designated Person Ashore (DPA) or his/her designee for conciliation.
- 5.2 Seafarers shall have the right to file a complaint directly to an appropriate external authority, such as, but not limited to:
- the Flag Administration Nautical Inspector (if on board)
 - the Swiss Maritime Navigation Office
 - a Flag Administration Recognized Organization Inspector;
 - a Port State Control Official;
 - a local seafarer labour organization representative; or
 - other seafarer welfare assistance service.
- 5.3 Should a complaint reach the Highest Level of external authorities, that authority shall be provided with the full style and address of the Swiss Maritime Navigation Office and requested to communicate the complaint to that office.
- 5.4 The Swiss Maritime Navigation Office shall communicate the complaint to the Company DPA who shall then be expected to resolve the matter in accordance with the terms and conditions of employment to the satisfaction of both parties.

6. Unresolved Disputes

If after 20 days, conciliation acceptable to both parties cannot be reached, either party shall have a further 20 days to call upon the Office of the Administration, or an agent appointed by that Office, to act as mediator to endeavor to find a solution to the matter satisfactory to the parties.

7. Arbitration

If a dispute cannot be resolved by conciliation or mediation, either party may submit the matter to an independent arbitrator or arbitrators for a final determination in accordance with the Arbitration Rules and Proceedings provided in the Collective Agreement of Employment, Art. 23.

8. Record Keeping

- 8.1 Subject to sub-paragraph 4.3 above, any correspondence from the seafarer to the Company DPA or his/her designee should be signed by the Master where seen.
- 8.2 All complaints and the decisions on them shall be recorded and a copy provided to the seafarer or seafarers concerned.

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