

Brazilian Immigration Controls on Seafarers

The Club previously reported in February 2011 (<http://www.simsl.com/Publications/Articles/BrazilCrewFines0211.htm>) that certain immigration authorities were imposing fines and preventing crew from disembarking in Brazilian ports where those crew were from countries which were not signatories to either the ILO Convention 185/2003 or the earlier Convention 108/1958. The Federal Police Circular of March 2011 is also available on the Club's website*.

This Risk Alert is to warn members of seemingly contradictory approaches adopted by the Brazilian immigration authorities in imposing fines in respect of seafarer's identity documents which do not comply with the ILO Convention 185/2003.

In January 2010, Brazil was reported to have ratified the ILO Convention 185/2003 and at the same time denounced the earlier Convention of 1958 (108/1958). Article 2 of the ILO Convention 185/2003 provides that state parties to the Convention shall issue to each of its nationals who is a seafarer (or to seafarers who have been granted the status of permanent resident in its territory) a seafarers' identity document. Unlike the earlier Convention 108/1958, it does not permit the flag state to issue identity documents to non-national/non-residents.

However, the immigration authorities appear generally to take the view that, because the ILO Convention 185/2003 has not been sanctioned by the President of Brazil, it is not actually in force, and hence the earlier Convention 108/1958 applies.

Unfortunately, to add further confusion, the Club has recently had a number of instances where the authorities in Rio de Janeiro appear to regard the ILO Convention 185/2003 as being in force, and have imposed fines on crew members and required deportation if they do not leave Brazil within 8 days, on the grounds that their seafarer's identity documents did not comply with this more recent Convention 185/2003 even though (i) the documents did in fact comply with the earlier Convention 108/1958 (being issued by the flag state to crew serving on board) and (ii) the crew



members never actually left their vessels whilst they were in the territory of Brazil.

In relation to this latter point, as Club correspondents Shipping Consultoria point out, even if the seafarer's identity document is invalid, that merely means that the state is not required to allow entry to the seafarer – neither of the Conventions give a right to impose fines. Indeed, they advise that the approach of the central immigration authorities in Brazil is that fines should not be imposed so long as the seafarer in question remains on board.

The problem arose because the crew members in question had seafarers' identity documents issued by the vessel's flag state, the Bahamas, but they were not nationals nor permanent residents of the Bahamas (and hence, although valid under Convention 108/1958 they were not valid under Convention 185/2003).

There seems to be some inconsistency within the immigration authorities in Brazil, not only as to which Convention is in force, but also as to whether or not fines should be imposed merely by virtue of the presence of the crew within Brazilian territory even though they remain on board.

The Club is monitoring the situation, not only in Brazil, but also to see if the fact that under ILO Convention 185/2003 the flag state can no longer issue seafarer's identity document where the seafarer is neither a national nor of permanent resident status will lead to problems

arising elsewhere. In the meantime and until the situation is clarified, the best advice we can give is that:

- (1) In the case of vessels flagged by a state which is a party to the ILO Convention 185/2003 and which is proceeding to Brazil, the members ensure that all crew have seafarers' identity documents issued by the states of which they are nationals or have permanent resident status;
- (2) Take and follow advice as to the period of time that the vessel can remain within the territory of Brazil without incurring fines (note the general 30 day restriction on ocean-going vessels remaining within Brazilian jurisdictional waters)
- (3) In the case of other vessels proceeding to Brazil, seamen who do not hold seafarers' identity documents valid under either ILO Convention 108/1958 or ILO Convention 185/2003 do not disembark from the vessel for any reason unless authorised to do so.

*The Federal Police Circular 3/2011 "Migratory Inspection of Maritime Crew on Board Long Voyage Vessels" is available to view on the Steamship Mutual website:

Portuguese:
www.simsl.com/BrazilImmigrationOrder230311Pt.pdf

English:
www.simsl.com/BrazilImmigrationOrder230311En.pdf