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NEWS LETTER

Stowaways

Stowaways are very much still an increasing problem in West Africa, and the issue we have had to face lately is the restrictions made to possibilities of disembarking them in some ports that used to be more flexible.

Dakar (Senegal): The decision lies with the Harbour Immigration Director, and the one in place at the moment does not want to hear about disembarking stowaways.

The only exception is if the stowaway is a Senegalese national.

When a vessel completes operations in Dakar, the Port authorities will request issuance of a document confirming that a stowaway search was performed. What we would suggest is for the Master to add that should a stowaway / stowaways be discovered after vessel's sailing despite the search carried out, then the vessel will bring him/them back to Dakar. If such a provision is inserted in the statement then the Harbour Immigration Director should refrain from imposing a fine.

Abidjan (Ivory Coast): Stowaways can be disembarked in Abidjan, without any distinction made between nationals and non nationals or port of boarding. A fine of XOF 1,000,000 corresponding to EUR 1,525 per stowaway will be imposed by the port.

Conakry (Guinea Conakry): Disembarkation of stowaways, without any distinction made between nationals and non nationals or port of boarding. Disembarkation on roads is also possible.

Please note that we recently organised disembarkation of some stowaways in Marseille (France) where our main office is based.

Under French law, the ship on which the stowaway is found is considered as responsible for him and is usually not allowed to sail without the stowaway or until the stowaway is repatriated or taken in charge by the French authorities (if he/she is minor for example or managed to obtain Political asylum).

We have been able in specific cases to disembark the stowaway and to obtain that the vessel on which the stowaway was discovered could sail provided that another vessel in the same Ownership was to call the same port (Marseille) and with the Owners' undertaking that should it be impossible to finally repatriate the stowaway to his home country then the incoming vessel would take the stowaway on board to take him back to the country where he/she allegedly boarded the vessel.

The same is also on occasions accepted in other French Ports given trust we have set up with the authorities over the years.

Tunisia:

In recent years, the authorities have refused to disembark foreign stowaways for safety reasons.

Only Tunisian stowaways are accepted taking the following steps: Prior to a stop in Tunisia, Master needs to advise local agent of the situation well in advance, submit copy of an ID preferably. If not available, obtain a name (even if fake) and clear photos.

We then clear the matter ashore and restore identity.

Illness of crew members and repatriation & repatriation of deceased seamen

We still see the usual malaria cases in West Africa and have noted a slight increase lately. After investigations, it would appear that some crewmen (especially Philipinos) are not taking their anti-malaria pills against malaria, creating a favourable field for serious disease to include cerebral coma and necessity to be repatriated.

Depending on the condition of the crew member, a stay in local hospital can be required, and the quality of medical facilities varies from one West African Country to the other. We maintain a list of suitable medical facilities.

We have faced difficulties lately with repatriating the remains of deceased crewmembers, with more and more formalities to comply with since concerned embassies are not always nearby the location of the death. We however confirm we have necessary connections to render this service in the ports we cover.

Arrests and claim for unpaid bunkers in West African ports

Since OW bunkers went bankrupted, we have been involved in several matters where ships were arrested in West-African countries.

Owners are then stuck in local proceedings where adjournments are a bad habit and the matter can seem to drag on forever.

We have however defeated OW/ING's claims twice in full in Abidjan and Conakry recently.

Claims in Conakry, Guinea

We have again assisted Owners with a multi arrest case in Guinea/Conakry, where arrests can generate outrageous delays to be ruled by unpredictable jurisdictions pushed by doubtful local lawyers in collusion with unscrupulous authorities.

Several Owners have attempted to obtain in advance undertakings from receivers that no arrest would take place but nevertheless, they are confronted with abusive arrest cases in breach of any such undertaking.

Owners should be aware that the extraordinary slowness of the judiciary system there can block a vessel between 9 months and 1 year on average.

Customs fines for deficit to the manifest in Benin, Ivory Coast and Togo

Clubs and Owners are unfortunately familiar with fines imposed by local Customs in case discrepancies are noted between the manifested quantities and the final figures allegedly recorded by stevedores. This applies in Benin and Ivory Coast.

It is to be noted that such fines are no longer imposed by Customs in Lomé, Togo.

Customs fine for inaccuracy of declared bunker quantities/lube oil quantities in Senegal

We have recently faced cases in which Customs are eager to fine vessels for inaccurate declaration by the Master of quantities of bunkers on board. The port of Dakar is most often concerned here.

We would accordingly strongly advise that Owners make their Master fully aware of the above and before they call in Dakar make sure that all the calculations are indeed correct and all declarations have been filled in before Customs came on board or are received by the Master, as local customs will not hesitate to fine the vessel quite heavily even for the smallest mistake. Fines can be negotiated with the assistance of our local office although there is not that much room for negotiation.

In such a case the vessel will not be formally arrested through the Court but will be detained and will not be allowed to sail until an agreement on the amount is found as no security is accepted.

Normally, local agents are supposed to issue a warning on this matter to all incoming vessels.

One way to avoid taking a risk is also for the Master to seek advice from our local Dakar office (SENEGAL P&I senegalpandi@gmail.com Tel: + 221 33 842 90 93/Mob: + 221 77 630 12 49) prior to arrival for our monitoring of documentation in case of doubt.

Importance of always going through agents for purchases in Abidjan, Ivory Coast

We recently assisted an Owner after Customs imposed a fine in the amount of XOF 15,000,000 / EUR 22,868 as a result of the Master having ordered food to be delivered to the vessel without going through the local agent.

Customs saw there a perfect opportunity to fine the vessel.

We were able to negotiate the amount of the fine downwards, but still, we have never seen anybody pay so much for bread...

It is therefore of utmost importance that Master and crew are instructed to refrain from doing any dealing with anybody other than the vessel's agent.

Writ of summons served on the Agent in Morocco

Local agents who are considered as the local representative of the Owners still haven't done anything about their very bad habit of not informing Owners when a notification of claim or proceedings is served on them. This can lead to default judgment (+ enforcement) without a possibility for the Owners to be aware and consequently defend their interests in the first instance.

It is important that agents are briefed to pass all formal documents they receive to enable Owners to prepare their defence before the local Court within the legal delays.

Setting up security in Morocco

One should also be aware that issue of bank letter of guarantee in Morocco is only possible when the beneficiary is a Moroccan national/entity.

Thus, disputes between foreigners cannot be guaranteed by bank letter of guarantee issued there.

When LoUs cannot be set up for some reason, cash deposit into an escrow account is the only solution to obtain the release.

When the dispute is over, the balance of the escrow funds will be scrutinised by exchange control authorities and their clearance allowing the transfer out of the country can take months.

Issues to be met when discharging bulk cargo in Tunisia

Bulk carriers calling in Tunisia very often give rise to shortage claims on an anticipatory basis and long before the end of discharge. As a preventive measure, claimants ask for security, to be amended in accordance with the final stevedores' shore scale figures. This is cargo interests' way of securing the risk of shortage that may arise on completion of discharge.

Local P&I correspondents' interim security is accepted (to be then replaced by a bank letter of guarantee), and it is the only way to avoid a conservatory arrest against the vessel.

Appointing our local office (ACAT/ Béchir Merzoug: pandi@acat.tn Tel: +216 71 78 33 68/Mob: +216 98 36 05 03) for monitoring discharge is recommended in order to mitigate/avoid alleged shortage claims and to have accurate and exhaustive data allowing the sea carrier to react immediately as a claim rises.

As to the settlement of claims:

- Loss of transit for private receivers varies between 0.2 and 0.5% and negotiated settlements are possible
- However, *Office des Céréales* (wheat and barley importers), as a State owned company, enjoys a "privileged" status and does not recognize any trade allowance, while any "settlement" must be on 100% basis plus survey costs...

Assistance for technical and H&M services

While tally services can be proposed and ensured in all ports, for more nautical matters our network is organised around three major poles: one in Ivory Coast, one in Togo and one in Nigeria, where we have competent surveyors who can travel to attend major damages to vessels, pollution matters, grounding etc... covering all neighbouring countries.

In addition, Laurent DALMAS, former Chief Engineer, has joined the ETIC's team in Marseilles recently and is very dedicated to control and to brief our local surveyors so that the surveys are properly handled and reports rendered time wise at the highest standards.

ETIC claims handling and operations teams