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A year of the shameful treatment of stranded seafarers

The shipping industry is quite aware of how important crew change is to the smooth functioning of global shipping. Crew change, prior to the COVID 19 pandemic, was seldom headline news. However, with border closures and lockdowns being imposed across many countries, vessels had been prevented by various port states from enabling crew change. New crew is prevented from arriving, and on-vessel crew is prevented from disembarking and leaving. Thousands of seafarers have been stranded and trapped onboard their vessels for weeks on end, with no end in sight. The damaging effects on their mental health and wellbeing are clearly palpable, as has been reported by various maritime safety organisations.

The IMO Maritime Safety Committee met in November 2020 and approved plans to publish a list of all ports where crew changes are possible. The list also makes clear what crew change procedures and formal requirements are prescribed by local regulations in these countries. Although a step in the right direction, with very few countries completely open for crew change and repatriation and very few countries being prepared to recognise seafarers as key workers to be prioritised for repatriation, the outlook for stranded crew does not look promising. That does not however mean that there is nothing the industry could or should do. Their duties to the crew must surely extend beyond the strict contractual period of employment – there is a moral case for seeing to the welfare, and health and safety of the crew whose contracts of employment would have ended and ensuring that they are properly repatriated. Some, but not enough, shipowners have gone to great lengths diverting their ships hundreds of miles to facilitate crew changes, at the pain of contractual penalties or legal actions. The commercial fallout is problematic – charterers are increasingly unprepared to place a charter if crew changes are needed, for obvious reasons; but that places immense commercial pressure on shipowners and crew. Crews are placed under pressure to agree to work longer terms. Whilst the charterer's position is understandable, commercially speaking, it makes the bad situation much worse.

Of course, the pandemic was not the only cause, in the last year or so, of the stranding of crew. The coal standoff between the People's Republic of China (PRC) and Australia has led to many coal carriers being barred from entering PRC ports. At its peak, it was reported that around 80 ships were affected; at the last week of February 2021 the number at around 50 is too high. Ship managers, owners and shipping associations are naturally calling on the states to take the moral highroad and resolve the dispute. But is there anything they, as the industry, could do themselves?

Shipowners and charterers are naturally concerned about suspending the discharge of cargo at the pre-agreed PRC port/s and deviating to nearby ports to enable crew change. They could be exposed to substantial demurrage payments and risking breaching their contracts of carriage. Traders too might not be ready to agree to the suspension or cessation of cargo discharging operations for fear of breaching their contracts of sale/purchase or not receiving the goods they had paid for (against the prior tender of conforming shipping documents). The matter is exacerbated by the fact that all this is happening when a good number of ports are still closed to crew change because of the pandemic.

The moral solution is for all concerned to work together and enable those vessels to call at open ports without incurring commercial sanctions or financial penalties. The traditional English law's insistence on the strict performance of contracts, subject only to the narrow limits of frustration and illegality, is of course a reminder to us about the separation of law and morality. The strictly legal response however is not necessarily right, in such desperate circumstances. Those in shipping seeking to insist on their strict contractual rights should not mislay their moral compass.

J Chuah