

Port State Control Detention Over Two Hour Temporary Defect Upheld

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In a decision handed down last week, the Administrative Appeals Tribunal upheld a Port State Control decision to detain a ship for a defect which was rectified within approximately two hours of the inspection.¹ Whilst the detention was only in force for one day, it will remain on the ship's inspection record permanently.

The Decision

The "Fuji Spirit" was inspected in Melbourne by an Australian Maritime Safety Authority ("AMSA") inspector as part of a Port State Control inspection. The inspector discovered that the return line on the ship's sewage treatment plant was not flowing properly. If not fixed, this defect was grounds for detention. However, the inspector advised the Chief Engineer that if the defect could be rectified before the inspection was completed, no detention order would be issued. The defect was partially rectified but the return line was still not flowing continuously when the inspector returned about one hour later. The inspector issued a provisional detention order. The ship was not due to depart for another 8 days.

Approximately one hour later, the defect was rectified. The next day the inspector returned to the ship, verified the rectification and released the vessel from provisional detention. However, unless overturned, the detention would be recorded permanently on the ship's inspection history.

The Australian manager of the ship applied to overturn the decision and remove the detention notation from the ship's inspection history.

The question for consideration was whether it was appropriate for the inspector to provisionally detain the ship, rather than issue some other, lesser, order (e.g. requiring rectification before departure). The Tribunal held that even temporary defects which are capable of being fixed almost immediately and, in any event, before sailing, are sufficient to

¹ *Teekay Shipping (Aust) Pty Ltd and Australian Maritime Safety Authority* [2012] AATA 519 - <http://www.austlii.edu.au/au/cases/cth/AATA/2012/519.html>.

justify detention under the relevant statutory definition of unseaworthiness, which is lesser than the definition at common law and requires only that it “*appears* to the [inspector] that a ship is unseaworthy or substandard”, a threat to the environment or overloaded.

The application was unsuccessful and the decision to provisionally detain the vessel was affirmed.

Implications

Temporary deficiencies can be grounds upon which AMSA may lawfully issue a provisional detention order. This is so even if the defect is capable of almost immediate rectification, or in any event, rectification before sailing. The standard for Port State Control detention is far less than the ordinary definition of unseaworthiness and includes where it *appears* to an inspector that the ship is not fit for the intended voyage, substandard, poses a threat to the environment or is overloaded, even where this is later shown not to be the case. Where this lesser standard is met, an inspector may issue a detention order, even where other, lesser rectification orders are available.

With this decision AMSA inspectors may be more likely to issue provisional detention orders for these types of defects, permanently marring the ship’s record. Many charterers consider a ship’s inspection record when making a decision whether or not to take on a ship. A recorded detention can be reason for some charterers to reject the nomination of a ship. Accordingly, we recommend that ship operators obtain immediate legal guidance upon the issuing of any detention order.

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