

ARBITRATION AWARD FOR THE MERCHANT MARINE INDUSTRY (Dec. 2004)
Translation by Spanish Shipowners' Association (ANAVE)

CHAPTER I
Configuration Rules

Art. 1. Functional and personal application scope.

1. The present Arbitration Award regulates minimum labour conditions for the Merchant Marine industry, in what refers to professional structure, wages structure, professional and economic promotion as well as disciplinary power.
2. It will be applicable to labour relations of workers in service on board Spanish flagged merchant ships, without any distinction for personal reasons, in particular, without any exclusion for reason of nationality of the enlisted worker.

Art. 2. Temporal scope.

1. The present Arbitration Award will enter into force on 1 January 2005 and will have an indefinite duration.
2. It could be totally or partially repealed by an agreement contained in a General Collective Agreement applicable to all Spanish flagged merchant ships, in application of the provisions of Title III of the Workers' Statute.

Art. 3. Nature and efficacy of the Arbitration Award.

1. The present Arbitration Award has been dictated in accordance with Transitory Provision Six of the Workers' Statute, on the basis of the powers entrusted by this Provision to the National Consultative Commission on Collective Agreements and the arbitrator designated by this Commission.
2. It totally replaces the provisions of the Labour Ordinance for the Merchant Marine, adopted by Ministry Order of 20 May 1969 (Spanish Official Journal 1 July).
3. The provisions of this Arbitration Award has a supplementary character with respect to Collective Agreements, either of company or Sectorial scope, so that the provisions of these Collective Agreements will always have preferential application with respect to the provisions of this Arbitration Award.
4. In case of absence of regulation by Collective Agreement, the provisions of this Arbitration will be binding for labour contracts subscribed by workers and employers included in its scope of application. Its rules will have imperative character, as rules of necessary right, not being the workers able to freely dispose validly by contractual agreement, before or after their acquisition, of the rights recognized in the present Arbitration Award.
5. The prohibition against disposal of rights established in the previous paragraph must be understood without prejudice of the provisions of Additional Provision 15th of Law 27/1992, of 24 November, on State Ports and Merchant Marine; of Art. 20 of Law 55/1999, of 29 November (Spanish Official Journal 30 December), of Fiscal, Administrative and Social Measures; as well as Art. 79.1.d of Royal Decree 864/2001, of 20 July (Spanish Official Journal 21 July), Regulation of the Law on rights and freedoms of foreigners in Spain.
6. Individual economic or other nature conditions will be respected if they are more beneficial than the provisions of this Arbitration Award.

CHAPTER II

Wages structure

Art. 4. Definition.

1. Wages will include all the workers' economic perceptions, either in money or in kind, for their provision of professional services.
2. Wages will be integrated by the basic salary and by the salary supplements.
3. Other extra-salary perceptions, such as the amounts received in concept of compensations for the expenses made as a consequence of their labour activity, Social Security compensations and benefits as well as compensations for moving, suspension or redundancy, will not be considered as part of the wages.

Art. 5. Basic salary and salary supplements.

1. The basic salary is integrated by the wage determined by unit of time that corresponds to each worker on the basis of his belonging to one specific group or professional category.
2. The following will be considered salary supplements: the seniority supplement, the UMS supplement, the lashing supplement and the extra pays.
3. The amount of the basic salary and of the salary supplements will be established in the labour contract, unless they are fixed by Collective Agreement.
4. Alternatively to the differentiation between basic salary and salary supplements, there could be an agreement on the inclusion of all salary elements in a global wage that would include all these elements during the embarkation period.

Art. 6. Seniority supplement.

Workers will receive, as a seniority supplement, a periodic salary increase every three years of service in the company, that will not be less than of 2,5% of their basic salary, with the possibility of fixing a maximum of tri-annual supplements to receive.

Art. 7. UMS supplement.

On ships where there is an Unattended Machinery System (UMS), workers in situation of "stand by" will receive a UMS supplement, without prejudice to the right to receive the salary corresponding to the hours effectively worked during the period in "stand by".

Art. 8. Lashing.

On ships where the seafarers perform operations of lashing and unlashings, workers that perform these operations shall receive a specific salary supplement for this concept.

Art. 9. Extra pays.

1. Two extra pays will be paid every year, on the months of June and December, which right to perception will be developed during the corresponding natural semester.
2. The amount of each extra pay will not be less than one monthly basic salary of each worker, or the proportional part in case of incorporation to the company during the last semester.

Art. 10. Other salary supplements.

In the fields of hard or hazardous occupations; explosive, toxic or dangerous cargo; war zones, staying in noxious or epidemic areas and other special occupations, the provisions of the IV General

Collective Agreement of the Merchant Marine (Spanish Official Journal 24 June 1982) will be applicable.

Art. 11. Overtime.

1. For the purpose of this Arbitration Award, overtime hours will be all working hours in excess to the agreed ordinary working day or, in defect of that, to the ordinary working day established in the applicable legislation.
2. Remuneration for overtime hours will not be less than the value of the ordinary hour of effective work.

Art. 12. Singular situations.

1. **Active service.** The worker will be considered to be in this situation when he is on board of the ship performing his customary functions, or from the moment when he leaves his domicile for providing services having been previously in situation of “embarkation expectative”. He will have right to the full perception of his wages, according to the provisions of the previous articles.
2. **Special services.** The seafarer shall be considered in this situation when he has been commissioned for a service in whatever place, different from the normal situation of embarkation in the company’s ships of the, including in particular missions on ships under construction. Seafarers in “special services” situation will have right to the real salary they were receiving in their latest position in active service.
3. **Embarkation expectative.** This is the situation of a seafarer who is at his domicile, coming from a situation different from “Active Service” or “Special Service”, available and at company disposal. The situation of “Embarkation expectative” lasts until the eve of the day when the seafarer leaves his home for active or special service. When in this situation, the seafarer will have right to the Basic salary and the Seniority supplement. A seafarer cannot be maintained in this situation for more than 30 days, and in such a case he will automatically pass to the situation of “Special service”.
4. **Paid leave and license with right to salary.** In this field, the provisions of the IV General Collective Agreement for the Merchant Marine will be applicable. When, according to such agreement the seafarer has the right to retribution, he will receive the salary corresponding to the situation of “Active service”.

Art. 13. Extra-salary payments.

In what refers to allowances, maintenance, compensation for luggage loss, accident insurance, social security allowance for professional illness or labour accident, birth and other extra-salary payments, the provisions of the IV General Collective Agreement for the Merchant Marine will be applicable.

CHAPTER III
Professional classification

Art. 14. Professional structure.

1. Without prejudice of the professional categories existing in each company, the following professional groups are established:
 - a) Captain
 - b) Officers

c) Petty officers

d) Ratings

2. The different professional categories established in the next articles have an informative character, and it does not imply that all of them must be covered.
3. Labour contracts shall include the worker's professional group or category or, if applicable, the polyvalent character agreed among the parties.
4. Under the supervision of the Captain or the person in which he delegates, the worker shall perform the agreed work as well as other professionally equivalent tasks, always without undermining his professional dignity and his training and professional promotion.
5. Independently of the above and of the professional groups established in the present professional classification, in order to perform any of the on board activities, when applicable, the worker must hold the academic or professional certificates legally required to perform the corresponding work.
6. In any case, and for all professional groups, any of the seafarers shall perform, in situations where the Captain considers of necessity, urgency or danger, functions different to those customary of his group or category and to co-operate in the benefit of persons and goods.
7. The seafarer shall obey his hierarchical supervisor in the regular exercise of his managing powers, without prejudice of the possibility to immediately reclaim against the orders and instructions received, once fulfilled. In case the urgency of the work allows it, the worker may express his disaccord to his hierarchical supervisor or, in his absence, to the immediate responsible. If a given order implicates the performance by the subordinate of a task he considers is not included in his customary duties, the subordinate may require receiving the order in written form, without prejudice that, in case of urgency, this can be done after the fulfilment of the order.

Art. 15. Captain.

Is who, holding the required titles and certificates, manages, coordinates and controls all the on board activities, being responsible of the safety of the ship, crew, cargo, navigation and organization of the work on board, and of the ship's conservation and operative capacity by adopting the necessary legal measures in order to ensure that the conduct on board is as required, being obliged to fulfil the existing laws, regulations and standards, and representing the ship operator vis-à-vis third parties.

Art. 16. Officers.

1. This group is integrated by all seafarers that, in order to carry out their professional functions, need to hold the corresponding certificate, with the powers legally established for each case.
2. This group includes, among others, the following: deck and bridge officer, engineer officer, radio-electronic officer, purser and superintendent.

Art. 17. Petty officers.

1. This group includes all personnel that perform functions or jobs on board that require an important practical experience or specialization.
2. It does include, among others: bosun, donkeyman, plumber, fire fighter, electrician, chief steward, chief cook, pantry boy, store keeper and cabin assistant.

Art. 18. Ratings.

1. Includes those seafarers that carry out on board tasks that require some knowledge or experience, but lower than those necessary for petty officers.
2. This group includes, among others: AB seaman, waiter, kitchen assistant.

Art. 19. Roster.

In this field, the provisions of the IV General Collective Agreement for the Merchant Marine will be applicable.

CHAPTER IV

Professional and economic promotion

Art. 20. Professional promotion.

1. Promotions inside the professional classification system will take place according to the general regime agreed between the company and the workers' representatives.
2. In any case, promotions will take place according to the worker's training, merits and seniority, as well as the organizational possibilities of the company.
3. Criteria for promotion in the company will apply the same rules for workers of both sexes.
4. In order to stimulate professional promotion of companies' workers, when these have necessity to hire workers to cover vacancies, they will take into account the possibilities of professional promotion of their workers.
5. If, as a consequence of the functional mobility, one worker does perform functions higher to those of his professional group or salary level, for a period longer than 6 months during one year or 8 months in 2 years, the worker could request the professional promotion or the consolidation of his wage level.

Art. 21. Economic promotion.

1. In what refers to economic promotion, the previous articles, and in particular, articles 6 and 19 of the present Arbitration Award will be applicable.
2. If, as a consequence of the functional mobility, some workers perform functions over their group or retribution level, no matter the duration in time of this situation, those workers will have right to receive the difference in salary corresponding to the execution of those higher functions.

CHAPTER V

Disciplinary regime

Art. 22. Discipline.

1. Workers may be sanctioned by the company management for the infringements to the labour obligations acquired by signing the labour contract, according to the graduation of infringements and sanctions established in the present Arbitration Award.
2. Such infringements will classify in minor, serious and very serious infringements.

Art. 23. Minor infringements.

This consideration will be given to:

1. None justified lack of punctuality, in case they do not produce objective damage to service and related to the workers' functions, in which case they will be considered as a serious fault.
2. Abandonment of the labour position without authorization or justified reason, in case they do not produce objective damage to service and related to the workers' functions, in which case they will be considered as a serious fault.
3. Discussion on board with working colleagues that alter the normal coexistence in the ship.
4. All those that violate in a non serious way the normal coexistence and working rules.
5. Lack of personal tidiness during the stay in the common service spaces.
6. Minor infringement of the regulations on prevention of labour risks.
7. Carelessness in the conservation of materials, tools and other instruments that the seafarer has to his care.

Art. 24. Serious infringements.

This consideration will be given to:

1. Unjustified and reiterated lack of punctuality in the period of 3 months, as well as those that produce objective damage to service.
2. Negligence or carelessness in the work that seriously affect its good development.
3. Disobedience to orders received in matters related to service.
4. Recurrence in 3 minor faults in the period of 60 days.
5. Not embarking the seafarer in the date assign by the company, without sufficient justification.
6. Producing frequent disputes and wrangling on board with working colleagues.
7. Serious infringement to the regulations on prevention of labour risks.

Art. 25. Very serious faults.

This consideration will be given to:

1. To make disappear, make useless, destroy or intentionally cause damage to materials, tools, machinery, appliances, facilities, cargo or documents.
2. Regular drunkenness in act of service when it has a negative impact on the work or alters normal on board coexistence.
3. Violating the secrecy of the official, company or private correspondence or private documents.
4. Simulation of accidents or illness.
5. Asking for licenses or permits, arguing non existing reasons or exceeding the time granted for them without a justified cause.
6. Absence on board not being free of service, without permission on his supervisor.
7. Not fulfilling the embarkation order, without a serious reason, in more than one case in a period of 6 months.
8. Staying on land due to his fault when the ship sails to the sea, during his period of embarking.
9. Provoking serious incidents due to negligence.
10. Recurrence of serious faults in the same embarkation period.
11. Verbal or physical mistreatment and serious lack of respect or disregard to other crew members.
12. Recurrence in infringements of insubordination, lack of discipline or none fulfilments of duties.
13. Abuse of authority by seniors with respect to their subordinate seafarers.
14. Watch abandoning without a justified reason.
15. Smuggling or possession of goods, currency or products prohibited by the law.
16. Very serious infringement of the safety and health regulations that directly affects the physical integrity of persons, safety or deteriorates ship's facilities or spaces.

17. Failing to execute the specific functions of the job when this produces a serious harm.
18. Imprudence or negligence in acts of service which implies risk of accident or of damage for ship's equipment, as well as serious negligence which produces poor conservation of the safety elements.
19. Harassment for racial, ethnical, religion, age, sexual orientation or other reasons to the captain or other persons on board.

Art. 26. Sanctions.

1. For committing minor infringements, some of the following sanctions may be imposed:
 - a) verbal admonition
 - b) written admonition
 - c) employment and salary suspension up to 2 days
2. For committing serious infringements, some of the following sanctions may be imposed:
 - a) disqualification for professional promotion up to 1 year
 - b) employment and salary suspension up to 2 days
3. For committing very serious infringements, some of the following sanctions may be imposed:
 - a) employment and salary suspension up to 3 months
 - b) disqualification for professional promotion up to 2 years
 - c) dismissal
4. In each one of the possible sanctions for each level of infringements, there is no order of precedence, being possible to impose any sanction of those indicated.

Art. 27. Sanctions procedure.

1. Infringements that deserve a sanction will be imposed by the Captain or by the company management. In the first case, the Captain will inform the company's management. In any case, the ship's delegate or workers representatives must be informed in written, jointly with a summary explanation of the facts motivating the sanction. Nevertheless, this communication will be omitted when it is so required expressly and in written by the seafarer concerned. In case there is no ship delegate on board, the communication will be made directly to the Company Committee.
2. Sanctions consisting in dismissal or in employment and salary suspension will be effective only from the moment when the seafarer is disembarked in a Spanish port, unless the continuity in the professional activity does objectively affect coexistence on board. In any case, the expenditures necessary for the return of the seafarer to his domicile will be for the account of the company, which should advance them. In case the ship does not envisage calling in a Spanish port in one month, the sanction will only be effective from the following day to the one in which the seafarer returns to Spanish territory, being the company equally obliged to advance the expenditures necessary for the return to his domicile.
3. The legally established prescription deadlines for submission by the worker of the corresponding claims against the sanctions imposed will start to count from the moment when the worker is disembarked in Spanish territory.