

§ 812. - Labour Inspection (Seamen) Recommendation, 22 Giugno 1926 n. 28

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Ninth Session on 7 June 1926, and

Having decided upon the adoption of certain proposals with regard to the general principles for the inspection of the conditions of work of seamen, the question forming the second item on the agenda of the Session, and

Having determined that these proposals should take the form of a Recommendation,

adopts this twenty-second day of June of the year one thousand nine hundred twenty-six, the following Recommendation, which may be cited as the Labour Inspection (Seamen) Recommendation, 1926, to be submitted to the Members of the International Labour Organisation for consideration with a view to effect being given to it by national legislation or otherwise, in accordance with the provisions of the Constitution of the International Labour Organisation:

Whereas among the methods and principles of special and urgent importance for the physical, moral and intellectual welfare of the workers, the Constitution of the International Labour Organisation makes it a duty of the International Labour Organisation to devote special attention to the inspection of conditions of work in order to ensure the enforcement of the laws and regulations for the protection of the workers;

Whereas the International Labour Conference at its Fifth Session (October 1923) adopted a Recommendation concerning the general principles for the organisation of systems of inspection to secure the enforcement of the laws and regulations for the protection of the workers;

Whereas that Recommendation is based essentially on the experience gained in the inspection of industrial establishments and it would be particularly difficult to apply or even to adapt it to the work of seamen, the nature and conditions of which are essentially different from those of work in a factory;

Whereas the inspection of the conditions under which seamen work will increase in importance in proportion as legislation for the protection of seamen is developed in the different countries and as further conventions concerning the working conditions of seamen are adopted by the Conference;

Whereas for the foregoing reasons it is desirable, in order to place the experience already gained at the disposal of the Members with a view to assisting them in the institution or reorganisation of their systems of inspection of the conditions under which seamen work, to indicate the general principles which practice shows to be best calculated to ensure the enforcement of measures for the protection of seamen;

The General Conference therefore recommends that each Member of the Organisation should take the following principles into consideration:

I.

SCOPE OF INSPECTION

1. That the principal duty of the authority or authorities responsible in each country for the inspection of the conditions under which seamen work should be to secure the enforcement of all laws and regulations dealing with such conditions and the protection of seamen in the exercise of their profession;

2. That, in so far as it may be considered desirable and possible, by reason of the experience they gain in carrying out their principal duties, to entrust the inspecting authorities with other secondary duties of a social nature which may vary according to the conceptions, customs, or traditions prevailing in the different countries, such duties may be assigned to them in addition to their principal duties on condition that—

(a) they do not in any way interfere with the performance of the inspectors' principal duties;

(b) they do not in any way prejudice the authority and impartiality which are necessary to inspectors in their relations with shipowners and seamen.

II.

ORGANISATION OF INSPECTION

The Conference recommends:

3. That, wherever it is compatible with administrative practice and in order to secure the greatest possible uniformity in the enforcement of the laws and regulations relating to the conditions under which seamen work, the different services or bodies responsible for supervising the enforcement of such laws and regulations should be centralised under a single authority;

4. That, if existing administrative practice will not admit of such centralisation of supervision, the different services or authorities whose functions are wholly or partly concerned with the protection of seamen should be enabled to benefit by one another's experience and to regulate their methods of work according to such common principles as may be considered the most effective;

5. That for this purpose close liaison and constant collaboration should be established between these different services or authorities, so far as is compatible with administrative practice and by the means considered the most suitable in each country (exchange of reports and information, periodical conferences, etc.); and

6. That the different services or authorities responsible for supervising the conditions under which seamen work should keep in touch with the authorities responsible for factory inspection, in matters of mutual concern.

III.

REPORTS OF THE INSPECTION AUTHORITIES

The Conference recommends:

7. That an annual general report on the supervision of the conditions under which seamen work should be published by the central authority or by

the collaboration of the different authorities responsible for carrying out such supervision;

8. That this annual report should contain a list of the national laws and regulations affecting the conditions under which seamen work and their supervision, together with any amendments thereto, which have come into operation during the year;

9. That it should also contain statistical tables with the necessary comments on the organisation and work of inspection and giving information, as far as may be possible and compatible with national administrative practice, on the following points:

(a) the number of vessels in commission subject to the various forms of inspection, the vessels being classified according to type (mechanically propelled vessels and sailing vessels) and each category being subdivided according to the purpose for which these vessels are used;

(b) the number of seamen actually engaged on board the vessels of each class;

(c) the number of vessels visited by the inspectors with an indication of the strength of the crews;

(d) the number and nature of breaches of the law or regulations ascertained by the inspectors and of the penalties imposed;

(e) the number, nature, and causes of accidents occurring to seamen during their work;

(f) the means adopted for the enforcement of the provisions of international labour Conventions which relate to the conditions under which seamen work, and the extent of the compliance with such provisions, either in the form of the annual report transmitted to the International Labour Office under Article 22 of the Constitution of the International Labour Organisation or in some other appropriate form.

IV.

RIGHTS, POWERS AND DUTIES OF INSPECTORS

(a) Rights of inspection

The Conference recommends:

10. That the inspection authorities, on proof of their identity, should be empowered by national law:

(a) to visit without previous notice any vessel flying the national flag by day or by night, in national or foreign territorial waters, and, in exceptional cases fixed by national law and by authorisation of the maritime authority, at sea, provided, however, that the time and manner of such visits should in practice be fixed so as to avoid as far as possible any serious inconvenience to the working of the vessel;

(b) to question without witnesses the crew and any other persons whose evidence may be considered desirable, to make enquiries which may be judged necessary, and to require production of any of the ship's papers or documents which the laws or regulations require to be kept in so far as such papers or documents relate to the matters subject to inspection;

11. That national law should provide that the inspectors should be bound by oath, or by any other method which conforms with the administrative practice or customs in each country, not to disclose commercial secrets which may come to their knowledge in the course of their duties, under pain of criminal penalties or appropriate disciplinary measures.

(b) Compulsory powers The Conference recommends:

12. That the inspection authorities should be empowered, in serious cases where the health or safety of the crew is endangered, to prohibit by proper authorisation of the maritime authority a vessel from leaving port until the necessary measures have been taken on board to comply with the law, subject to appeal to higher administrative authority or to the court of competent jurisdiction, according to the law in the different countries;

13. That prohibiting a vessel from leaving port should be considered a measure of exceptional gravity, which should only be employed as a last resort when the other legal means at the disposal of the inspection authority to ensure respect for the law have been used without effect;

14. That the inspection authorities should be empowered in special cases to issue orders for securing observance of the laws and regulations governing the conditions under which seamen work, subject to appeal to higher administrative authority or to the court of competent jurisdiction, according to the law in each country;

15. That the central authority should be empowered in special cases to grant exemption from any specified requirement of any law or regulation governing the conditions under which seamen work, if such authority is satisfied that that requirement has been substantially complied with, or that compliance with the requirement is unnecessary in the circumstances of the case, and that the action taken, or provision made, as regards the subject matter of the requirement is as effective as, or more effective than, actual compliance with the requirement.

(c) Right to call for an inspection

The Conference recommends:

16. That national law should provide that the master of a vessel should be entitled to call for an inspection in all cases where he considers it necessary;

17. That national law should provide that the members of the crew of a vessel should also be entitled, subject to such conditions as may be prescribed, to call for an inspection on any matters relating to health, the safety of the vessel, or the rules affecting the conditions under which seamen work.

(d) Co-operation of shipowners and seamen with the inspection authorities

The Conference recommends:

18. That, so far as is compatible with administrative practice in each country, and by such methods as may be considered most appropriate, shipowners and seamen should be called upon to co-operate in the supervision of the enforcement of the laws and regulations relating to the conditions under which seamen work. In particular, the Conference draws the attention of the different countries to the following methods of co-operation:

(a) it is essential that every facility should be afforded to seamen freely to bring to the notice of the inspection authorities either directly or through their duly authorised representatives any infringement of the law on board the vessel on which such seamen are employed, that the inspection authority should as far as possible promptly make an enquiry into the subject matter of any such complaint, that

such complaints should be treated by the inspection authority as absolutely confidential;

(b) with a view to ensuring complete co-operation by shipowners and seamen and their respective organisations with the inspection authorities, and in order to improve conditions affecting the health and safety of seamen, it is desirable that the inspection authorities should from time to time consult the representatives of shipowners' and seamen's organisations as to the best means of attaining these ends. It is also desirable that joint committees of shipowners and seamen should be set up, and that they should be enabled to co-operate with the different services responsible for supervising the enforcement of the laws and regulations governing the conditions under which seamen work.

(e) Safeguards

The Conference recommends:

19. That only such persons should be appointed inspectors as command the full confidence both of the shipowners and of the seamen, and that such persons should therefore be required to possess:

(a) the qualities necessary to ensure absolute impartiality in the performance of their duties;

(b) the technical qualifications necessary for the performance of their duties; It is desirable that the inspection service should include men who have served at sea whose appointment whether in a permanent or temporary capacity should be at the discretion of the administrative authority;

20. That, when necessary, inspectors should be as-

sisted in their duties by competent experts who command the full confidence of the shipowners and seamen;

21. That inspectors should be public servants whose status renders them independent of changes of Government;

22. That they should be prohibited from having any financial interest whatsoever in the undertakings subject to their inspection.

(f) Other duties

The Conference recommends:

23. That as, by reason of the nature of their duties, inspectors have special opportunities of observing the practical results of the operation of the laws and regulations governing the conditions under which seamen work, they should be called upon, so far as it is compatible with the administrative methods in each country, to assist in improving legislation for the protection of seamen and to give the most effectual help possible in promoting the prevention of accidents;

24. That, so far as is compatible with administrative practice in each country, they should be called upon to take part in enquiries into shipwrecks and accidents on board ship, and that they should be empowered, where necessary, to submit reports on the results of such enquiries;

25. That, so far as is compatible with the administrative methods in each country, they should be called upon to collaborate in supplying information preparatory to the drafting of laws and regulations for the protection of seamen.