

C054 - Holidays with Pay (Sea) Convention, 1936 (No. 54)

Preamble

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 Twenty-first Session on 6 October 1936, and

Having decided upon the adoption of certain proposals with regard to holidays with pay for seamen, which is the fifth item on the agenda of the Session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this twenty-fourth day of October of the year one thousand nine hundred and thirty-six the following Convention, which may be cited as the Holidays with Pay (Sea) Convention, 1936:

Article 1

- 1. This Convention applies to the master, officers and members of the crew, including wireless operators in the service of a wireless telegraphy company, of all sea-going vessels, whether publicly or privately owned, which are registered in a territory for which the Convention is in force and are engaged in the transport of cargo or passengers for the purpose of trade.
- 2. National laws or regulations shall determine when vessels are to be regarded as sea-going vessels for the purpose of this Convention.
- 3. This Convention does not apply to--
 - (a) persons employed in vessels engaged in fishing, whaling or similar pursuits or in operations directly connected therewith;
 - (b) persons employed in any vessel the crew of which consists entirely of members of the owner's family as defined by national laws or regulations;
 - (c) persons not remunerated for their services, or remunerated only by a nominal salary or wage, or remunerated exclusively by a share of profits;

- (d) persons working exclusively or mainly on their own account;
- (e) persons employed in wooden ships of primitive build such as dhows and junks;
- (f) persons whose duties are connected solely with the cargo carried on board and who are not in fact in the employment either of the owner or of the master;
- (g) travelling dockers.

Article 2

- 1. Every person to whom this Convention applies shall be entitled after one year of continuous service with the same undertaking to an annual holiday with pay the duration of which shall be--
 - (a) in the case of masters, officers and wireless operators, not less than twelve working days;
 - (b) in the case of other members of the crew, not less than nine working days.
- 2. For the purpose of calculating when a holiday is due--
 - (a) service off articles shall be included in the reckoning of continuous service;
 - (b) short interruptions of service not due to the act or fault of the employee and not exceeding a total of six weeks shall not be deemed to break the continuity of the periods of service which precede and follow them;
 - (c) continuity of service shall not be deemed to be interrupted by any change in the management or ownership of the vessel or vessels in which the person concerned has served.
- 3. The following shall not be included in the annual holiday with pay:
 - (a) public and customary holidays;
 - (b) interruptions of service due to sickness;
 - (c) any time off allowed in compensation for weekly rest days and public holidays worked at sea.
- 4. There may be defined by national laws or regulations or by collective agreement special circumstances in which, subject to conditions prescribed by such laws or regulations or fixed by such agreement--
 - (a) an annual holiday with pay due in virtue of this Convention may be divided into parts or be accumulated with a subsequent holiday;

- (b) there may be substituted for such a holiday, when in exceptional circumstances the service so requires, a cash payment at least equivalent to the remuneration provided for in Article 4.

Article 3

- 1. The annual holiday shall be given in the territory in which the vessel is registered at one of the following ports:
 - (a) the port from which the vessel trades;
 - (b) the port at which the person entitled to the holiday was engaged; or
 - (c) the port of the vessel's final destination.
- 2. Provided that the holiday may be given at any other port by mutual consent.
- 3. When an annual holiday is due it shall be given by mutual agreement at the first opportunity as the requirements of the service allow.

Article 4

- 1. Every person taking a holiday in virtue of Article 2 of this Convention shall receive in respect of the full period of the holiday his usual remuneration.
- 2. The usual remuneration payable in virtue of the preceding paragraph shall include a suitable subsistence allowance and shall be calculated in a manner which shall be prescribed by national laws or regulations or fixed by collective agreement.

Article 5

Any agreement to relinquish the right to an annual holiday with pay, or to forego such a holiday, shall be void.

Article 6

National laws or regulations may provide that a person who engages in paid employment during the course of his annual holiday may be deprived of his right to payment in respect of the period of the holiday.

Article 7

A person who leaves or is discharged from the service of his employer before he has taken a holiday due to him shall receive in respect of every day of holiday due to him in virtue of this Convention the remuneration provided for in Article 4.

Article 8

Each Member which ratifies this Convention shall require employers to keep records for the purpose of facilitating its effective enforcement.

Article 9

Each Member which ratifies this Convention shall establish a system of penalties to ensure the application of its provisions.

Article 10

Nothing in this Convention shall affect any law, award, custom or agreement between shipowners and seamen which ensures more favourable conditions than those provided by this Convention.

Article 11

- 1. In respect of the territories referred to in article 35 of the Constitution of the International Labour Organisation, each Member of the Organisation which ratifies this Convention shall append to its ratification a declaration stating--
 - (a) the territories in respect of which it undertakes to apply the provisions of the Convention without modification;
 - (b) the territories in respect of which it undertakes to apply the provisions of the Convention subject to modifications, together with details of the said modifications;
 - (c) the territories in respect of which the Convention is inapplicable and in such cases the grounds on which it is inapplicable;
 - (d) the territories in respect of which it reserves its decision.
- 2. The undertakings referred to in subparagraphs (a) and (b) of paragraph 1 of this Article shall be deemed to be an integral part of the ratification and shall have the force of ratification.
- 3. Any Member may by a subsequent declaration cancel in whole or in part any reservations made in its original declaration in virtue of subparagraphs (b), (c) or (d) of paragraph 1 of this Article.

Article 12

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 13

- 1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.
- 2. It shall come into force six months after the date on which there have been registered by the Director-General of the International Labour Office the ratifications of five Members of the Organisation each of which has more than one million tons gross of sea-going merchant shipping.
- 3. Thereafter, this Convention shall come into force for any Member six months after the date on which its ratification has been registered.

Article 14

As soon as the ratifications of five of the Members mentioned in the second paragraph of Article 13 have been registered, the Director-General of the International Labour Office shall so notify all the Members of the International Labour Organisation. He shall likewise notify them of the registration of ratifications which may be communicated subsequently by other Members of the Organisation.

Article 15

- 1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
- 2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 16

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 17

- 1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides,

- (a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 15 above, if and when the new revising Convention shall have come into force;
 - (b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.
- 2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 18

The French and English texts of this Convention shall both be authentic.