



SEMAPHORE

Newsletter of the Maritime Law

Association of Australia and New Zealand



High Court Judgment on Maritime Pilots' Licence Criteria

Justice DB Collins has concluded that the Director of Maritime New Zealand (MNZ) took a “too broad” definition of Maritime Rules Part 90: Pilotage in regard to criteria governing an applicant for a maritime pilot licence.

The March 26 declaratory judgment followed a Wellington High Court hearing on March 6, in which proceedings were brought by the New Zealand Maritime Pilots' Association and the New Zealand Merchant Service Guild against the Director.

BJ Marten and EPP Maclaurin represented the Pilots' Association, GG Ballara the Guild and both DR Ferrier and A Roberts represented MNZ.

The catalyst for the case was an experienced dredge skipper working for Port Otago who held a qualification that ranked below that of Master and which only allowed him to operate vessels under 500 gross tonnes within domestic waters.

“On August 22, 2017, Port Otago sought clarification from the Director as to whether the dredge skipper could be considered for pilot licensing, explaining that although he did not hold a certificate as Master, he ‘does more harbour transits per annum than our pilots do’,” stated the judgment.

“On September 4, 2017, the Director confirmed that he was satisfied that the dredge skipper ‘meets the experience, qualifications and competency requirements to be appointed as a pilot on successful completion of the approved training programme’.

“Both the Association and the Guild became concerned that the Director’s interpretation of r 90.41 would have the effect of lowering the standards for becoming a pilot in New Zealand.”

Rule 90.41(1)(b) of the Maritime Rules provides that an applicant for a maritime pilot licence must, amongst other criteria:

(b) either—

- (i) hold a certificate as Master issued in accordance with [the Rules]; or
- (ii) hold an equivalent certificate to that referred to in subparagraph (b)(i) recognised or accepted by the Director [of Maritime New Zealand] under the [Maritime Transport Act 1994]; or
- (iii) provide evidence of experience, qualifications and competencies equivalent to those required in subparagraphs (b)(i) or (b)(ii), or otherwise relevant to pilotage, that are acceptable to the Director; ...

Analysis of the text and purpose of Rule 90.41(1)(b)(iii) led Justice DB Collins to the conclusion “the interpretation advocated by the Director is incorrect”.

“In my assessment, r 90.41(1)(b)(iii) is to be interpreted in a way that gives primacy to the requirement to hold a certificate as Master or its equivalent. Consideration may be given under r 90.41(1)(b)(iii)

to naval officers with extensive experience of commanding naval vessels and to persons who have obtained a pilot's qualification in a jurisdiction that trains pilots without a certificate as Master or its equivalent. Rule 90.41(1)(b)(iii) cannot be extended to apply to persons such as the dredge skipper.”

Just DB Collins consequently issued the following declaration:

Rule 90.41(1)(b)(iii) of the Maritime Rules allows the Director when receiving an application for a pilot licence to accept either:

evidence of qualifications, experience and competencies that are equivalent to a certificate as Master; or

evidence of pilot-related qualifications, experience and competencies that demonstrate the candidate's seafaring skills are of an equal calibre to a person holding a certificate as Master.

The plaintiffs were deemed entitled to costs on a scale 2B basis.

MNZ Director Keith Manch welcomed the clarification, noting it had previously been open to interpretation as to whether a Master ticket was deemed a necessary prerequisite for an individual to commence a training programme to become a marine pilot.

“This decision clarifies the requirements of the current Maritime Rules regarding education, skills and experience for pilots in New Zealand,” said Mr Manch.

“To some extent, it broadens the pool of people available to become pilots – subject to appropriate training and competency checks.

“Pilots must have appropriate experience, qualifications and competencies for safe pilotage as they play a crucial role in guiding ships into our ports and harbours – a big responsibility to place on anyone's shoulders.

“MNZ's view is that ultimately what really matters is that the pilot is competent to undertake this responsibility – regardless of the path they have taken to get to this position.”

Mr Manch said MNZ looks forward to continuing to engage with industry to continually develop and improve the regulatory system for pilotage so that it operates effectively to support the safe, efficient and effective operation of the maritime sector.

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