



SEMAPHORE

Newsletter of the Maritime Law

Association of Australia and New Zealand



NZ Branch Report

Branch Activity

Just as we launched into surveying members whether they would attend our New Zealand Branch conference in Wellington in November – and having received an overwhelming response supporting the event – Auckland gets put into Level 3 Lockdown. So in all likelihood we will need to postpone our New Zealand Branch conference and we will be looking at Zoom-style seminars to fill the void.

The lesson learnt from my perspective is that we need to keep moving with technology via virtual seminars, like the Western Australia Branch has been running, and make that the norm and celebrate collegially when we can in person sometime in the future. I for one was guilty of reverting back to the old norm and not encouraging more virtual seminars which the New Zealand Branch had operated when we were in Level 3 and 4 Lockdown.

I know the New Zealand Branch, which meets again later this month, will be planning virtual seminars using many of those who had been selected to speak at our branch conference. I will keep you informed on seminars as they come to hand.

Maritime Activities in New Zealand August/September

In each report I will advise of any interesting cases or activities occurring in New Zealand over the preceding months. I start this edition reporting in on the loss of a livestock carrier off the coast of Japan which had sailed from New Zealand, look at the prosecution of foreign crew who had run their vessel aground in Tauranga and finish off with the ordering of \$780,000 reparations in a health and safety prosecution where three crew members of a fishing vessel lost their lives.

Gulf Livestock 1 – Loss of Vessel off Coast of Japan

In response to the loss of the Gulf Livestock 1 in international waters south of Japan on September 2, Maritime New Zealand (MNZ) is continuing to work with a number of agencies in New Zealand and overseas on all aspects of the incident. The focus is on maritime safety as well as offering appropriate support to our partners such as the Ministry for Primary Industries (MPI).

In terms of any investigation into the vessel's loss, under international conventions, the Flag State for the vessel involved (the place where the ship is registered) – in this case Panama – has a responsibility to investigate the incident in accordance with established international procedures (known as the Casualty Code). As the search and rescue (SAR) operation has subsequently been suspended, it is expected the focus will now move to understanding the causes of the incident.

As New Zealand has a strong interest in this incident, MNZ has contacted Panamanian maritime authorities to express its interest in this matter so that New Zealand will be kept informed and can provide any support that may be required.

In terms of responsibility for the SAR operation, as this incident occurred within Japan's SAR region, the Japanese authorities had been leading that response until the search was suspended. MNZ had been in close communication to ensure it had a clear picture of the SAR activity and to offer any support or information that might have assisted.

In any SAR operation, once extensive searching is completed – and when it is judged that there is a very small chance of finding any more survivors – international guidelines provide a process to be followed to allow the suspension of active search efforts. The responsible authority will make such a decision (as Japan has done) after a careful review of all of the relevant circumstances.

In the meantime, MNZ is continuing to work with and support MPI, the Ministry of Foreign Affairs and Trade and other New Zealand Government agencies to ensure a co-ordinated response to the incident from a New Zealand perspective .

MV Funing – Log Carrier

In August and September we saw a number of maritime-based prosecutions.

The master and chief engineer of the log carrier MV Funing were sentenced and fined after admitting charges relating to the grounding of the ship at the Port of Tauranga in July.

Master Liang Guang Hong and chief engineer Chameekara Prasad Nanayakkara both entered guilty pleas in the Tauranga District Court on September 10 to charges brought by MNZ under the Maritime Transport Act (MTA) 1994. This followed an investigation by MNZ after the Singapore-registered ship lost power and passed over a channel marker with the propeller becoming caught in the markerchain, before making contact with a sand bar in the Tauranga Harbour channel.

The master was fined \$3250 and ordered to pay \$130 court costs, after pleading guilty to one charge under Section 65(1)(a) of the MTA, of operating the vessel “in a manner which caused unnecessary danger or risk to other persons or property, including the passengers and crew of the MV Funing”.

The chief engineer also admitted one charge under section 65(2)(a) of the MTA, of causing or permitting the ship to be “operated, maintained, or serviced, in a manner that caused unnecessary danger or risk to any other persons or property, including the passengers and crew of the MV Funing”. He was also fined \$3250 and ordered to pay \$130 court costs.

The maximum penalty for both charges was 12 months’ imprisonment or a \$10,000 fine.

Michael-Paul Abbott, MNZ’s central region compliance manager said: “Following a series of checks on the engine of the Funing prior to its departure from the Port of Tauranga, a problem was found with the fuel quantity pistons. At this time, the wind was gusting 15 to 30 knots (28-56 kph) with the wave height approaching four metres and rain had reduced visibility.

“The problem started when one of the engine’s fuel quantity pistons indicated an error, which means that if this isn’t addressed, the engine’s power will be reduced – which is power it needs when exiting the narrow harbour entrance.”

In the hours leading up to the engine failure, the chief engineer tested the affected parts a number of times, each time triggering an alarm suggesting the problem had not been rectified. The decision was then made to override the mechanism that automatically slows down the vessel in the event of a problem with the engine, as an attempted precautionary measure.

“The pilot subsequently came aboard around midnight and the master handed him the Pilot Card which indicated that there were no issues affecting a safe departure,” continued Mr Abbott.

“But as the ship tried to increase speed on leaving port, the chief engineer realised there was still a problem with one of the fuel quantity pistons and that the engine was not responding with the shift to ‘full ahead’ (full power). The pilot asked the master several times why the ship was going slowly, but did not receive a clear explanation.

“As a result, the No 2 engine cylinder lost all power, and during this time the wind and swell had increased. At 0043 hours the pilot called the tug boats to come and assist and the master ordered the

anchor to be dropped. At 0047 hours the main engine stopped after the propeller became entangled with the channel marker while the stern swung around and came into contact with the sand bank.

“The tugs then turned the vessel into the deeper channel water and held it there until it could be towed into safer anchorage. There it remained until July 14 when it was towed into port.”

Mr Abbott said the maritime investigation and subsequent prosecution proved that the master knew there was an issue with the main engine prior to departure and failed to notify the pilot that there was a problem.

The chief engineer was also proven to have failed to retest the main engine to ensure it was operating on all five cylinders after attending to the fuel quantity piston error.

The Funing is currently being towed back to Singapore which is expected to take around 40 days.

FV Jubilee

The owners of the FV Jubilee were fined \$46,000 and also ordered to pay \$737,325.25 in reparation to the families of the deceased, sending a clear message to vessel owners and operators that health and safety is as much their responsibility as it is that of skippers and crew.

The Jubilee, a 16-metre, steel-hulled fishing trawler, sank south of Banks Peninsula in the early hours of October 18, 2015, resulting in the deaths of the three crew onboard. The accident is thought to have been caused by a flooded fish hold that destabilised the vessel.

Due to the lack of a high water alarm, the sleeping crew would have been unaware their vessel was filling with water. They issued a mayday call at 4.20am announcing they were sinking, but no further communication was received. The bodies of the three men were later recovered from the vessel, which lies on the sea bed off the Rakaia River mouth. The men were found in the wheelhouse, which indicated they were unable to escape the vessel in time.

Following an investigation, MNZ filed charges in the District Court under the Health and Safety in Employment Act (1992).

MNZ's investigation also found that the training and induction for skippers and crew was insufficient and that there were no scheduled maintenance or safety meetings.

There were no formal emergency drills and inadequate hazard identification onboard the Jubilee.

The sump for the pump in the fish room was known to block up with fish scales and needed frequent cleaning. There was no alarm system installed to alert crew members to flooding. The owners did not check whether regular safety drills were conducted to see if the escape hatches allowed crew to safely exit the vessel in an emergency.

Finally, Ocean Fisheries Ltd did not monitor days at work, hours of sleep, illness or other factors contributing to fatigue. It had no formal procedures in place to manage fatigue and no training provided in relation to fatigue management.

Hamish Fletcher
Chairperson, MLAANZ New Zealand Branch Committee
p +64 3 548 4136, m +64 27 220 5122
hamish@oceanlaw.co.nz

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