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LABOUR COMPENSATION STRATEGIES/PRACTICES OF MARITIME INDUSTRY-DISCUSSION ON CRITICAL CASES

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This study would be significant, especially for Trade Unions and shipping lines, and to make newcomer professionals more aware of the nature and alternatives available for labour compensation. This paper contributes to readers' empirical and practice insights on maritime labour, law and professional practices, including management issues and implications. In addition, professionals involved in maritime labour matters like maritime lawyers, mediators, Insurance professionals and Trade Unions. Practically, this paper is structured as a teaching case study. It provides case-related descriptions, industry practices, legislative frameworks, and fundamental teaching rights facilitating as a teaching material, especially for domains on labour tribunals, maritime law, and labour compensation in related human resource aspects. The following objectives were taken into consideration in this teaching case study paper: to follow and assess the gaps where legislation has to meet to receive compensation for seafarer families; to create awareness of the current situation regarding compensation; to determine the future recommendations to make Union work more strategic. This teaching case study would observe the gap between the legislation and what is occurring in the practical scenario after seafarer recruitment during compensation policies. To present this case study, several relevant institutions, programs and scientific research were considered to increase union efficiency. The main conclusion of this paper highlights the importance of the union and the other programs, policies and strategies that should be adopted to make awareness of these issues.

Keywords: maritime, Union Strategies, compensation, seafarers, maritime accidents.

1.0 Introduction

SEAFARERS (Persons working onboard a ship) constitute one of this country's major industrial groups covered by International Law. According to Kossoris & Zisman (1946), seafaring is a hazardous occupation. In the event of death or long-term disability due to a work-related illness or injury, in most cases, the shipowner provides compensation. This liability starts from the beginning of the employment contract until either the seafarer has been repatriated or he/she can, for example, claim medical benefits under an insurance or compensation scheme. The extent to which ship owners must provide compensation is set out in national law, the employment contract and any CBA, if applicable. Due to the global nature of shipping, seafarers also have special protection under international law in the case of death and injuries at sea. The ILO Maritime Labour Convention 2006 (MLC), in particular, seeks to ensure that seafarers are protected from the financial consequences of sickness, injury or death occurring whilst they have employed onboard a ship. Under the MLC, ship owners must have financial security for compensation in such an event to cover, for example, the expenses of

medical care and treatment, food, accommodation and wages for a specified time or the cost of burial services. From January 2017, this also includes financial security to ensure compensation for contractual claims for death and long-term disability. This means that all ships that are subject to the MLC must have certificates issued by an insurer or other financial security provider confirming that insurance or other financial security is in place to cover the ship owner's liabilities and also for contractual claims arising from seafarer personal injury, long terms disability or death.

1.1 Overview of the maritime industry

The Maritime sector consists of the individual shipping, ports, marine and maritime business services industries that carry out a diverse array of activities each. The marine and shipping industries are the most significant constituent industries in terms of economic activity, contributing £6.5 billion and £4.3 billion in GVA, respectively, and directly supporting around 99,500 jobs and 50,800 jobs, respectively, in 2015, as per Maritime Industry Sector Guide (2022).

In Sri Lanka, we have 16,000 active seafarers who join vessels through the Ministry of Shipping, and the global pool of seafarers is 1.6 million,

NUSS (2022). Regardless of the protections set out in national and international law, there are unique aspects of the working lives of seafarers that place them at a significant disadvantage in their ability to obtain proper compensation.

– According to Zekos (2004), the National schemes for compensating injuries and death, for example, vary widely. Some countries deal with the issue through social security schemes and workers' compensation schemes; in other countries, this is covered by employment contracts or collective agreements negotiated by the unions; in addition, national legislation in some countries provides for remedies in tort and negligence. Therefore, the value of a claim can vary widely depending on the circumstance of the injury or death and where a claim is pursued.

– According to Pendleton (1948), P & I, insurers working on behalf of the ship owners can actively participate (through the use of representatives and lawyers worldwide) at an early stage to prevent claims from being pursued, or they could attempt to settle claims at less than the legal entitlement of the claimant. If the seafarer cannot afford a lawyer, or there is no longer any income because the seafarer is injured or deceased, such tactics might prevail.

– If a shipowner operates without insurance or another form of financial security, then given the structure of the ownership of most vessels, the prospect of recovering proper compensation is minimal.

– According to Bhattacharya (2012), it might become necessary for the seafarer or their dependents to resort to litigation to get compensation. The unique nature of their profession adds further complexity to this process. Any accident is likely to involve more than one jurisdiction – including the flag law, the law of the place of the accident, and the law governing the seafarer's contract. Therefore, the difficulties of establishing where and when to sue, if necessary to do so, mean that access to justice can be denied by a series of legal doctrines and principles such as limited liability, periods of limitation, forum non-convenience, and other forms of declining jurisdiction.

1.2 Empirical review of labour compensation in the maritime industry

In discussing Union Strategy, the questions 'What is strategy?' and 'How is strategy formed?' do not receive a consistent answer in the business management literature (Whittington, 1993: 1–2). However, there is strong support for the 'strategic choice' perspective, which has important implications for understanding both the content and process of strategic management. This perspective involves defining strategy as a

framework of critical choices about the ends and means of an organisation (Child, 1972; 1997). Choices are critical when they play a decisive role in the success or failure of the organisation (see, e.g. Johnson and Scholes, 1993; Pennings, 1985; Rumelt et al., 1994). Besides 'make-or-break' decisions, choices are also critical when they account for significant variations in the performance of basically viable organisations.

Such a definition means that strategy is distinguished from the process of formal strategic planning (Gardner, 1989). Strategy exists even when strategic planning does not. Research and debate in industrial relations often fail to make this critical distinction. It is a mistake to assume that unions will be more effective if they adopt what are perceived as business-style strategic planning processes. Unions become more effective only if they devise and enact more effective strategies. (For the same argument regarding firms, see Barney, 1991; Porter, 1996). Planning may play a role in this, but so too will political debate and compromise (Child, 1972, 1997), both through and behind the official structure of union meetings and the direct actions of officials and groups of members in their spheres of influence.

It is essential to acknowledge that the extent of strategic choice is variable. In the management literature, it is accepted wisdom that the dominant forces of industry competition much more consistent in some industries and industry segments than in the other industry sectors (Nelson, 1991; Porter, 1980, 1985). The same is true for trade unions. In those contexts where workers readily act in collective ways and where employers can, and will, reach accommodations, unions are best described as 'strategic actors' (Lange et al. 1982: 218), implying a vast realm of strategic choice. Unions that fail in these circumstances are essentially the architects of their downfall and are likely to be replaced by other unions or new expressions of the workforce's latent collectivism.

On the other hand, a union restricted to organising workers in the secondary labour market among hostile employers faces a much less favourable environment. It may still be possible to survive, perhaps through the efficient organisation on a few large sites. Still, some objectives, such as organising low-skilled, vulnerable groups of workers on small sites, may simply be unattainable in the absence of explicit state support.

A crucial part of Child's (1972: 13–16, 1997: 51) conception of strategic choice theory emphasises the role of leading power-holders, the 'dominant coalition', in selecting courses of action. Much of the management literature focuses on how the

chief executive develops a 'strategic agenda' associated with other key actors on the board and within the management hierarchy (see, e.g., Kotter 1982: 60–7). The CEO is entrusted with special leadership responsibilities in the process of strategic management, what Child (1997: 63) calls 'conditions of crisis' that may destabilise a dominant coalition. The consistent failure of a CEO to ensure acceptable firm performance will typically lead to dismissal, a decision that may originate within the board or be forced by a takeover or merger. Sackings of chief executives are commonplace and often signal a commitment to strategic change or 'organisational turnaround' (Whittington, 1993: 122).

In contrast, the locus of leadership is more challenging to identify in a union. While unions emerged as voluntary associations of workers who saw some benefit in collaborating, their historical successes and consequent institutionalization have brought about a complicated leadership situation. In Child et al.'s (1973: 77) terms, unions often exhibit conflict between the 'administrative rationality' of an efficient bureaucracy and the 'representative rationality' of an organisation of volunteers. As they grow in size, unions inevitably develop an administrative structure and, thus, experience an ongoing tension between democratic decision-making, to which they are constitutionally committed, and hierarchical control, to which they are practically disposed. Some unions, most of the time, and most unions, some of the time, appear as official led organisations in which members consume a standard diet of services in exchange for their subscriptions. According to Peter G (1988), the dimensions of Union Strategies can be shown as described in Table 1.0. This table summarize the Union techniques that enable the unions to work successfully.

1.4 Case background

Maritime seafarer recruitment in Sri Lanka is organised by crewing agencies (recruitment agencies for seafarers). According to CASA (2022), 136 such crewing agencies operate in Sri Lanka. These crewing agencies are part of a more comprehensive network of agencies located in other countries. After the initial curriculum vitae and professional certificates are given to these recruiting companies in Sri Lanka, they pass these documents along to their mother companies in India, Singapore etc. The foreign agencies take the final decision after they have their selection process through checking all the professional certifications and maybe conducting telecom interviews with the seafarer. The foreign recruitment agency would then send the joining vessel details and all relevant documents to the Sri Lankan company, which would organize on behalf of the seafarer everything that enables the seafarer to join that vessel, for example, visa, tickets to the country, where the seafarer would go onboard etc. The contracts vary depending on the ranks. As a rule, senior management might be onboard for a period of 4 months, Operational Management is onboard for 6 months and supporting staff for a period of 8 months. The tenor of these contracts would depend on the seafarer's company.

From the procedure described above, one may conclude that any crew recruitment company does not bind seafarers, job security is therefore low. It is with the Trade Union that the seafarer could have some sort of job security. There are few Trade Unions in Sri Lanka out of which NUSS (National Union of Seafarer Sri Lanka) is one of the largest. There are affiliated by ITF (International Trade Federation); with this renowned organization the Seafarers' Union

Table 1.0

Dimensions of Union Strategies

Method	Unilateral Regulation	Collective Bargaining	Arbitration	Political Action
Objectives	Control of labour supply	Bargaining Rights	Organizational and jurisdictional protection	Social change and product market control
	Recognition, wages, conditions, employment, job control, job security, procedural fairness, participation, membership, union security, etc.			
Tactics	House of call, mutual insurance, apprenticeship controls, etc. Work bans, rank & file action, workplace meetings etc	Bargaining and negotiating	Registration, Advocacy, legal tactics and resources etc.	Lobbying, demonstrations, political affiliation, concentration etc.
	Strikes, Stop work meetings, publicity campaigns, appeals & demonstrations, coalitions with other groups/actors etc			

Source: Adapted from Peter Gahan, *Union Strategy: A Conceptual Framework* (1998)

Table 2.0

Ranks onboard the vessel

	Navigational Division	Engineering Division	Galley	Contract Period
Management Level (Senior Officers)	Captain			4 Months +
	Chief Mate	Chief Engineer		
	2 nd Mate	2nd Engineer		
Operational Level (Junior Officers)	3 rd Mate	3rd Engineer		6 Months +
	4 th Mate	4th Engineer		
Support Level (Ratings)	Navigational Cadet	Engineering Cadet		6 Months/ 12 Months
	Bosun	Fitter	Cook	8 Months +
	O/S	Oiler	Messman	
	A/B	Wiper		
	Trainee Rating	Trainee Rating		

Source: Adapted by Author

could organize compensation for the seafarers in case of any labour issues in Sri Lanka.

Table 3.0 below shows the rates of compensation that could be claimed by P&I insurance for compensation claims from shipping companies according to MLC Regulations. These amounts are converted to LKR (Today's conversion is 7th April 2022, 1 USD = 300 LKR, Central Bank). Sri Lanka has been a middle-income country whereas per CEIC the Sri Lanka Annual Household Income per Capita reached 1,422.182 USD in Jun 2019. The amounts gained by the compensation would be a considerable amount to the persons concerned. According to the documents in the Union, there are approximately 20-30 compensation cases per year covered by the union, this would provide a large loss of income to the employers. According to Alastair Couper, 2011, ship crews are now multinational and culturally diverse this would provide a challenge to the Unions to statistically unionize these workers.

1.5 Disclaimer of case study description

The author is using the hypothetical name "Mr. Perera" to designate victims of the recruitment companies and the information is provided by NUSS (Ethical confirmation has been provided). The following content provides the case story with obvious information and the time frames are mentioned with some modifications due to ethical matters.

*In July 25, 2020, a bulk carrier ran aground and there was an oil spill. *Mr. Perera, a Sri Lankan, was employed as an Able seaman with a Panama CDC (Continuous Discharge Certificates) onboard the vessel. He as well as most of the crew had been onboard the vessel over a period of 12 months in excess of their contracts, none of the mariners had access to communication to contact their families despite this been assured in their employment agreements. In addition many of the crew had not taken any shore leave since Sep 2019. Combined with the global pandemic that made the future of the sea-*

Table 3.0

Rates of compensation in 2022

Degree of Disability	Rate of Compensation (USD)		
	Percentage (%)	Ratings	Junior Officers
100	108,012	144,015	180,018
75	81,008	108,012	135,013
60	64,807	86,409	108,012
50	54,006	72,008	90,010
40	43,204	57,607	72,008
30	32,404	43,204	54,006
20	21,603	28,803	36,006
10	10,802	14,402	18,002

Source: Adapted from ITF Agreements with Unions, 2021

farers uncertain. One of his fellow crew mates tried to jump overboard to escape the vessel and was seriously injured.

Following the grounding the Master of the vessel and Chief Officer were arrested on 18 Aug 2020 and were charged with endangering safe navigation. The pair had been detained in prison since their arrest and had not been released on bail. The remainder of the crew have been detained under "house arrest" in a local hotel.

The only organization that could help these seafarers would be their union who would stand by them in order to bring them home safely to their families and organize to secure compensation for unjust treatment and violation of their rights.

This teaching case study would be present the big gap between the legislation and what is occurring in the practical scenario after seafarer recruitment during compensation policies. In order to present this case study several relevant institutions, programs and scientific research were considered with impact for increasing union efficiency. The author would follow Mr. Perera's emails to the union and how the immediate response brought the crew home. The main conclusion of this paper highlights the importance of the union and the further programs, policies and strategies that should be adopted to keep the seafarers' lives safe.

1.6 Discussion on case insights

According to Mantoju, (2021), the international maritime industry is one of the primeval and most globalized sectors, with the beneficial ownership of ship and vessel operational jurisdiction often based in different states, referred to as the flag state and the crew onboard are recruited from various countries worldwide. Thus, the jurisdiction problem that is created and the paramount concern of ascertaining flag state responsibilities have been the matter of contention for the maritime industry since the 1950s as per Doumbia-Henry et al., (2006). As per MLC 2006, no seafarer should have to pay to get employment, seafarers should as far as possible, be recruited through a manning agency or RPS, through union or part of CBA. The MLC 2006 gives the seafarers rights regarding recruitment, under the MLC 2006, RPS must not charge seafarers for employment, the RPS must be licensed or operated in a way that promotes seafarers employment rights. The only fees that can be charged from seafarers are for national seaman book, passport or any travel document. The charges adhered to visas or related documentation must be borne by the ship-owners, but in reality, this is not happening according to the Union documentation as many seafarers join

vessels after paying certain amounts to Shipping companies who accept these types of payment and this causes majority of the problems onboard. Mr. Perera who also holds a Panama CDC and therefore not under the country of his nationality is liable to undergo a number of complications in contracts because of this as it had happened in this case as per Union documents. According to the interview held in NUSS by the author and the data from emails sent by Mr. Perera, some mariners underestimate the role and importance of the Seafarers Union because of lack of legal knowledge and information about activities of the Unions in the marine industry.

According to NUSS (2022), a large number of seafarers hold CDC (Continuous Discharge Certificates) of other countries instead of the country of their origin when these seafarers apply to work onboard though recruiting companies, they do so without registering with the Ministry of Merchant Shipping and therefore not covered under any law in Sri Lanka so when they get into any trouble onboard it would be difficult for them to claim compensation. In this case it is only the Union that could guide them to a suitable P&I company and help them in getting compensation. The lack of understanding of contracts is quite common among seafarers therefore some misunderstanding happens due to the contracts even the unions will be incapable to help as the seafarer has already signed the agreements.

As per the narratives described, Unions have utilized the following strategies in order to assist seafarers and their families in reaching out to correct parties for compensation.

1. **Collective Bargaining:** Collective bargaining is the process in which working people, through their unions, negotiate contracts with their employers to determine their terms of employment, including pay, benefits, hours, leave, job health and safety policies, ways to balance work and family, and more. Collective bargaining is a way to solve workplace problems. As in the case of Mr. Perera, the union had to utilize this method in order to bring him home. Indeed, through collective bargaining, working people in unions have higher wages, better benefits and safer workplaces.

2. **Arbitration:** Arbitration is a form of dispute resolution. Unlike mediation or conciliation, for which a third party assists disputing parties in finding common ground, arbitration involves ending a dispute through a binding decision. In arbitration, the parties hand over the power to decide the issues to the arbitrator. The parties involved in a dispute agree with the arbitrator's decisions. In a unionized workplace, arbitration means resolv-

ing disputes that occur in the interpretation or application of a collective bargaining agreement between a union and an employer. In the absence of a union, however, employers may use arbitration to resolve workplace disputes through the drafting of a contract, handbook, or policy and in this, the MLC 2006 is the document that is utilized. In all the narratives finally, this method had to be utilized to bring attention to the parties concerned.

According to the documents of the NUSS, the effectiveness of the Union work remains at 70% with more than 20-30 different cases handled every year.

1.7 Implication of teaching and learning

Despite the immense volume of industrial relations literature, progress has been slow in the conceptualization of strategic management in trade unions. The literature generally fails to make the basic distinction between strategy and strategic planning and to identify those aspects of union-management that are (a) fundamental to survival, and (b) predictive of greater success. The strategic choice perspective can be used to place the emphasis where it belongs: on those critical, enacted decisions that have major consequences for union effectiveness. Formal processes for strategic review may play a role in the making of these choices, but a large part of the union strategy is 'emergent' (Mintzberg, 1973), informally and forcefully shaped by the direct actions of union actors: members, officials or some coalition of the two. Modifications should be made to fill the currently existing gaps in the laws to provide a safer environment for the maritime sector.

The importance of learning the gaps in the recruitment system would ensure that future professionals are aware of the problems that might occur in this field. This would ensure more job security for those who would be joining on board.

The future research that could be carried out in this might include the importance of Unions taught at Maritime schools to create awareness and proper information about Union work in social media. Another method for creating awareness among seafarers would be to provide a Union Guidebook for the seafarers having information on how compensation would be covered. A positive outcome for the seafarers should be provided. This would enable better and more efficient Union work to be carried out.

1.8 Guide for the teaching note

The author is calming this paper has a suitable teaching guide depending on empirical explanations and specific case related contents discussed. Accordingly, the author encourages the following to comply with a suitable protagonist who is responsible like Trade Unions and Maritime law professionals and policymakers of the maritime industry. Accordingly, effective case study training for HR academic programs such as maritime professional programs and other executive programs for maritime industry professionals could be organized as undermentioned.

1. Circulate the case study and supply related additional literature reviews on maritime compensation for readiness to do the pre-learning activities.

2. Organize classroom activities with group discussions to make learning partners explain the insights among group members.

3. Next, organize the classroom in a debate format where one team defends the rights of the employee as the trade union and the other acts as the shipping line policies in place.

4. Organise a separate session with the same learning partners to critically assess the key points that emerged as of the debate session and prepare a common repartition compensation for practices as a future guideline for the professional of the industry.

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