

**CREW ON BOARD AFTER ARREST OF SHIP**

The Sheriff or the Marshal owes no duty to the crew on board as such. The relationship of the Sheriff or the Marshal to the crew will depend upon the circumstances as they affect the discharge of the Sheriff or the Marshals duty to retain custody of, and to preserve the ship.

The arrest of a ship does not operate to determine the employer/employee relationship between the owners or demise charterers and the master and crew. Nor does it follow that the issue of a writ/ warrant against the ship by the master or crew to recover outstanding wages automatically determines the employment relationship. It will be a question of fact in each case whether or not there is conduct on the part of the owner amounting to repudiation of the employment contract, for example, failure to pay wages and allowances which are owing, which is accepted by the crew as terminating the relationship.

If the employment relationship is terminated, then crew members may seek to recover wages up until the termination and thereafter damages for breach of contract calculated by reference to the wages lost, the cost of sustenance for a reasonable time at the place of termination pending repatriation to their home port, and the cost of repatriation. Such a claim ranks after the Sheriff or the Marshals claim against the ship, substitute security, or proceeds of sale for the Sheriff or the Marshals charges and expenses, the plaintiffs costs of the action, and other claims having priority.

If the crew continue in employment after arrest, the ongoing liability for wages reduces the value of the ship or proceeds of sale to satisfy claims which have lesser priority than the claims of the master and crew. Although the continued engagement by the owner of the crew will give them a right to wages and entitlements, accommodation on board and the right to

sustenance, those rights are not enforceable against the Sheriff/ Marshal. However, the Sheriff or the Marshal may, if the Sheriff or the Marshal considers it is necessary to the safety of the ship or to preserve it, pay wages and provide accommodation and sustenance to the crew on board for such time following arrest of the ship as the Sheriff or the Marshal considers is necessary. With leave of the court the Sheriff or the Marshal may also provide minimal sustenance in order to avoid hardship to the crew.

The presence of the crew on board is justifiable only for so long as it does not interfere with the ship or the Sheriff or the Marshals custody of it and does not increase the Sheriff or the Marshals costs of maintaining custody of the ship and preserving it. For example, if a ship can conveniently be laid up as a dead ship pending trial or the provision of security, a crew will not be permitted to remain on board where that would involve unnecessary expense in providing power or access to the ship to enable the crew to live on board.

What happens if the crew refuse to leave or prevent the Sheriff or the Marshal from laying up the ship if that is the appropriate course to follow in the circumstances? Such conduct is prima facie contempt of court for interfering with the Sheriff or the Marshals custody of the ship. However, the cases do not suggest that crew members are lightly dealt with for contempt.

A refusal by the master or crew to leave a ship is not uncommon. This is particularly so when a ship needs to be moved within the port or to another port or where the ship is to be sold *pendente lite*. In both cases, there is an attempt to force the Sheriff or the Marshal or some other party to pay the outstanding claims for the master and crew and their costs of repatriation. In the case of a sale *pendente lite*, there is often the hope that a purchaser will re-engage the crew and thus will provide them with continuity of employment. How the issue of an obdurate crew is resolved can have significant consequences upon the fund ultimately available to satisfy the plaintiff's costs and claim and the claims of others against the ship.