

## **Article 22 of the Constitution of the ILO**

Report for the period 1 May 2005 to 10 April 2010  
made by the Government of New Zealand on the

### **Continuity of Employment (Seafarers) Convention 1976 (No.145)**

(ratification registered on 11 January 1980)

#### **Section I-II:**

The Employment Relations Act 2000 provides for continuity of employment through the operation of an employment relationship between the employer and the employee. This relationship based on good faith. The Immigration Act 2009 restricts immigration to New Zealand, balancing the interests of New Zealand workers, employers and individuals seeking to immigrate to New Zealand. The Social Security Act 1964 (sections 88A to 123D) provides an unemployment benefit for New Zealand residents that are not in full-time employment, but willing, available and able to undertake it and has taken reasonable steps to find full-time employment.

#### **Section III:**

The Employment Relations Act 2000 and the Immigration Act 2009 are administered by the Department of Labour. The Social Security Act 1964 is administered by the Ministry of Social Development.

#### **Section IV:**

No decisions of this nature have been given.

#### **Section V:**

New Zealand seafarers are employed on full-time contracts, not on single-voyage agreements. Therefore, general employment law provides for continuous and regular employment.

#### **Section VI:**

Copies of this report have been forwarded to the following representative organisations of employers and workers:

Business New Zealand  
The New Zealand Council of Trade Unions

## **Response to the Observation of the Committee of Experts on the Application of Conventions and Recommendations (CEACR) on Convention 145**

*The Committee notes the Government's latest report, as well as the observations made by the New Zealand Council of Trade Unions (NZCTU) and the Government's response to these observations.*

*Article 2, in conjunction with Article 3, paragraph (a), of the Convention. Contracts or agreements providing for continuous or regular employment with a shipping undertaking or shipowners' association. With respect to the Committee's previous request for information on provisions in collective agreements concerning continuous or regular employment for seafarers, the Government indicates that there are currently no collective agreements classified in the database under the codes relating to Convention No. 145.*

*The Committee notes with interest that the new Part 6A of the Employment Protection Act (ERA), as amended in 2004, aims at providing protection for employees in case of "restructuring", i.e. when their work is contracted out, or when the business is sold or transferred. Seafarers are covered by sections 69K to 69O of Subpart 2, according to which "employment protection provisions" shall be included in every newly concluded collective agreement and individual employment agreement, as well as in every existing collective agreement and individual employment agreement within a given time. "Employment protection provisions" shall contain: (i) a negotiation process about the restructuring to be followed by the employer with the new employer to the extent that it relates to affected employees; (ii) the relevant matters to be negotiated, including whether the affected employees will transfer to the new employer on the same terms and conditions of employment; and (iii) the procedure to determine the entitlements, if any, of employees who do not transfer to the new employer.*

***Please supply samples of individual employment agreements, or collective agreements (if any), incorporating such employment protection provisions.***

### Government Response

The Government is still unable to determine the number of seafarers covered by an employee protection provision due to technical reasons.

One example of a collective agreement incorporating an employment protection provision is as follows:

#### *13.3 Restructuring/employment Protection*

*Where the Company proposes to sell, merge, outsource or transfer the whole or any part of our business to another employer and as a result the new employer will undertake the work currently undertaken by the employee(s), the company will meet with the employee(s) to discuss and provide information about that proposal and give the employee(s) an opportunity to provide feedback and comment on that proposal. Where such a proposal is confidential and not in the public arena the company will remind the employee of the employee's obligations under the Confidential Information section of this agreement.*

*The Company will negotiate with the new employer, including whether the employee(s) will transfer to the new employer on the same terms and conditions as this agreement and the Company will use best endeavours to secure their*

agreement to an offer of employment being made to the employee(s) where possible the company will attempt to provide an opportunity for the employee(s) to meet and discuss employment opportunities with that new employer.

If no offer of employment is made to the employee(s), or if the employee(s) choose not to accept an offer to transfer to the new employer, the redundancy provisions of this agreement shall apply.

**Furthermore, the Committee asks the Government to indicate by what means it is ensured that periods of employment are sufficient to enable a seafarer to qualify for unemployment benefit or assistance during periods of unemployment.**

### Government Response

New Zealand's social security system is funded from general taxation. Eligibility to social security benefits is not conditional on a period of prior employment and/or individual contributions. A seafarer who is a New Zealand citizen (or holds a residence permit) and ordinarily resident in New Zealand, and who meets the eligibility criteria will be entitled to the unemployment benefit regardless of the length of employment. Access to the unemployment benefit is subject to a stand down (wait period) of one or two weeks. In situations where a person has left their employment without good reason or has been dismissed for serious misconduct, a 13 week non-entitlement period is applied.

*Article 2, in conjunction with Article 3, paragraph (b). Arrangements for the regularization of employment through registers of qualified seafarers. The NZCTU claims that the Government policy does not encourage continuity of employment for seafarers as required under this Convention, since the Government no longer maintains a register of seamen available for work. This has led to a situation where some employers approach the union for crew, but others employ directly and go straight to Maritime New Zealand for validation of qualifications, thus bypassing unemployed qualified seafarers who live across the country. According to the NZCTU, it is important that a register of available seafarers with all statistical information concerning unemployment of seafarers be established. The NZCTU therefore recommends that the Government take responsibility for re-establishing the register of seafarers available for employment to implement this Convention.*

*The Government claims that the establishment and maintenance of a seafarer register database would go beyond the scope of existing functions and resourcing of Maritime New Zealand, and that it is not clear that there is a specific need for such measures, or that they could achieve more than might be gained through the assistance made available by Maritime New Zealand to seafarers seeking employment (e.g. use of Maritime New Zealand's office space; service of recording the names of persons seeking employment and passing them on to prospective employers). The NZCTU states that, in practice, the maritime unions are not aware of the possibility of seamen using such a service, as the information has not been communicated to their national offices. It feels that the availability of this service would be of great assistance to seafarers, if it could be electronically accessed at different ports and employers were made aware of it.*

*The Committee refers to Article 3, paragraph (b), which recommends arrangements for the regularization of employment by means of establishing and maintaining registers or lists, by categories, of qualified seafarers. There is no register of seafarers available for work in New Zealand. While the establishment of a register of seafarers is not explicitly required under the Convention, it is*

*identified as one of the possible means to achieve a national policy encouraging continuous or regular employment for qualified seafarers. Measures other than those explicitly mentioned in Article 3 are acceptable as long as they are conducive to the attainment of the overall goal set out in Article 2. The Government believes that the use of Maritime New Zealand office space, and the service of recording the names of persons seeking employment and passing them on to prospective employers, represent means as efficient in terms of assisting seafarers to find employment as would be the establishment and maintenance of a register.*

***The Committee requests the Government to indicate whether: (i) recorded seafarers have priority of engagement for seafaring (Article 4, paragraph 2); (ii) all occupational categories of qualified seafarers are included (Article 4, paragraph 1); and (iii) the list of recorded names is periodically reviewed (Article 5, paragraph 1). In particular, the Committee asks the Government to take all necessary measures, in the near future, to ensure that detailed information on the facilities and services offered by Maritime New Zealand is communicated to all parties concerned, i.e. associations of shipowners and seafarers, as well as generally publicized among seafarers and employers.***

#### Government response

Maritime New Zealand is not in a position to provide employment services and has no statutory authority to do so. Seafarers and shipowners can make use of the services provided by the Ministry of Social Development, a government agency that provides employment services and social security benefits for those looking for work, throughout New Zealand.