



Date: August 26<sup>th</sup>, 2020

Mr. Franck Butzerlaar,

Chief Executive Officer, Seaspan Marine Transportation

2 Pemberton Avenue North Vancouver, BC, Canada V7P 2R2

### **Via E-mail**

Mr. Butzerlaar,

### **RE: *Canada Labour Code, Part II – determination of master as employee representative***

The purpose of this letter is to advise you that Transport Canada Marine Safety and Security (TCMSS), on behalf of the Labour Program of Employment and Social Development Canada (ESDC-Labour), has determined that tug master of Seaspan is considered as an employee representative under Part II of the Canada Labour Code (CLC).

A thorough analysis of both party submissions of information on the [roles and responsibilities of master](#), members of the Canadian Merchant Service Guild (CMSG), was used for the outcome of this determination. Please note that the analysis has been completed taking into consideration the mandatory subsection 135.1(1) of CLC and section 4 of the OHS committees regulation, which stipulates that an employee representative shall not exercise managerial functions and the employer representative shall exercise managerial functions. The criteria used are described in the ESDC-Labour Interpretations, policies and Guidelines (IPG): Selection of S & H Committee Members and of Representatives using "Managerial Functions" as a criterion - 907-1-IPG-006.

These *criteria* along with our analysis are summarized as follows:

- a. *a certain amount of decision-making authority in financial, operational, personnel and policy matters*: CMSG members are to follow Seaspan's processes, procedures and protocols that are in place and may only deviate from it in case of emergency. CMSG members are not included in management decisional structure of Seaspan and they do not manage budgets or funds nor do they participate in negotiating contracts.



We further noted that the designated Port Captain on Call (not the master of the vessel) is authorized to,

- deploy spill response;
- carry out investigations;
- review process for incidents;
- prepare voyage planning; and
- address refusals to work.

- b. *whether the employee in question has the power to make decisions or effective recommendations that materially affect the conditions of employment of others:* only making a recommendation for a promotion and assess work performance is insufficient;
- c. *the power to hire, fire, suspend, demote, transfer or otherwise discipline employees:* only making a recommendation for a promotion and assess work performance is insufficient;
- d. *whether the person acts as a step in the grievance procedure:* CMSG members do not have the authority to proceed and manage grievances; they are excluded from that process and can only issue a verbal warning;

Therefore, TCMSS with the review of ESDC-Labour, has determined that Seaspans' CMSG members who act as masters do not carry sufficient responsibilities defined as managerial function and remain employee's representative on OHS committees.

Sincerely,

Masoud Jahani  
Health and Safety Officer,  
Official delegated by the Minister of Labour

cc. President, Seaspans Marine  
CMSG National President - Ottawa  
ESDC-Labour, Senior investigator  
TCSMM- National Advisor