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workers was to limit the scope of the exemption which excluded all employees employed as seamen from application of the minimum wage and overtime provisions. This it did by extending the minimum wage provisions of the Act to one employed as a seaman on an American vessel (section 6(b)(2)), by adding to the language of section 13(a)(14) to make the exemption applicable only to a seaman employed on a vessel other than an American vessel, and finally by the addition of a new exemption, section 13(b)(6), relieving employers of overtime pay requirements with respect to those employees employed as seamen who do not come within the scope of the amended section 13(a)(14). (H. Rep. No. 75, 87th Cong., 1st sess., pp. 33, 36; Sen. Rep. No. 145, 87th Cong., 1st sess., pp. 32, 50; Statement of the Managers on the part of the House, H. (Cong.) Rep. No. 327, 87th Cong., 1st sess., p. 16.) In view of the retention in the 1961 amendments of the basic language of the original exemption, ''employee employed as a seaman'', the legislative history and prior judicial construction (see § 783.29) of the scope and meaning of this phrase would seem controlling for purposes of the amended Act.

WHO IS ''EMPLOYED AS A SEAMAN''

§ 783.31 Criteria for employment "as a seaman."

In accordance with the legislative history and authoritative decisions as discussed in §§ 783.28 and 783.29, an employee will ordinarily be regarded as ''employed as a seaman'' if he performs, as master or subject to the authority, direction, and control of the master aboard a vessel, service which is rendered primarily as an aid in the operation of such vessel as a means of transportation, provided he performs no substantial amount of work of a different character. This is true with respect to vessels navigating inland waters as well as ocean-going and coastal vessels (*Sternberg Dredging Co.* v. *Walling*, 158 F. 2d 678; *Walling* v. *Haden*, 153 F. 2d 196, certiorari denied 328 U.S. 866; *Walling* v. *Great Lakes Dredge & Dock Co.*, 149 F. 2d 9, certiorari denied 327 U.S. 722; *Douglas* v. *Dixie Sand and Gravel Co.*, (E.D. Tenn.) 9 WH Cases 285). The Act's provisions with respect to seamen apply to a seaman only when he is ''employed as'' such (*Walling* v. *Haden*, supra); it appears also from the language of section 6(b)(2) and 13(a)(14) that they are not intended to apply to any employee who is not employed on a vessel.

§ 783.32 "Seaman" includes crew members.

The term ''seaman'' includes members of the crew such as sailors, engineers, radio operators, firemen, purs-ers, surgeons, cooks, and stewards if, as is the usual case, their service is of the type described in § 783.31. In some cases it may not be of that type, in which event the special provisions relating to seamen will not be applicable (*Sternberg Dredging Co.* v. *Walling*, 158 F. 2d 678; *Cuascut* v. *Standard Dredging Co.*, 94 F. Supp. 197; *Woods Lumber Co.* v. *Tobin*, 199 F. 2d 455). However, an employee employed as a seaman does not lose his status as such simply because, as an incident to such employment, he performs some work not connected with operation of the vessel as a means of transportation, such as assisting in the loading or unloading of freight at the beginning or end of a voyage, if the amount of such work is not substantial.

§ 783.33 Employment "as a seaman" depends on the work actually performed.

Whether an employee is ''employed as a seaman'', within the meaning of the Act, depends upon the character of the work he actually performs and not on what it is called or the place where it is performed (*Walling* v. *Haden*, 153 F. 2d 196; *Cuascut* v. *Standard Dredging Corp.*, 94 F. Supp. 197). Merely because one works aboard a vessel (*Helena Glendale Ferry Co.* v. *Walling*, 132 F. 2d 616; *Walling* v. *Bay State Dredging & Contracting Co.*, 149 F. 2d 346), or may be articled as a seaman (see *Walling* v. *Haden*, supra), or performs some maritime duties (*Walling* v. *Bay State Dredging & Contracting Co.*, 149 F. 2d 346; *Anderson* v. *Manhattan Lighterage Corp.*, 148 F. 2d 971) one is not employed as a seaman within the meaning of the Act unless one's services are rendered primarily as an aid in the operation of the

vessel as a means of transportation, as for example services performed substantially as an aid to the vessel in navigation. For this reason it would appear that employees making repairs to vessels between navigation seasons would not be ''employed as'' seamen during such a period. (See *Desper* v. *Starved Rock Ferry Co.*, 342 U.S. 187; but see *Walling* v. *Keansburg Steamboat Co.*, 162 F. 2d 405 in which the seaman exemption was allowed in the case of an article employee provided he also worked in the ensuing navigation period but not in the case of unarticled employees who only worked during the lay-up period.) For the same and other reasons, stevedores and longshoremen are not employed as seamen. (*Knudson* v. *Lee & Simmons, Inc.*, 163 F. 2d 95.) Stevedores or roust-abouts traveling aboard a vessel from port to port whose principal duties require them to load and unload the vessel in port would not be employed as seamen even though during the voyage they may perform from time to time certain services of the same type as those rendered by other employees who would be regarded as seamen under the Act.

§ 783.34 Employees aboard vessels who are not "seamen".

Concessionaires and their employees aboard a vessel ordinarily do not perform their services subject to the authority, direction, and control of the master of the vessel, except incidentally, and their services are ordinarily not rendered primarily as an aid in the operation of the vessel as a means of transportation. As a rule, therefore, they are not employed as seamen for purposes of the Act. Also, other employees working aboard vessels, whose service is not rendered primarily as an aid to the operation of the vessel as a means of transportation are not employed as seamen (*Knudson* v. Lee & Simmons, Inc., 163 F. 2d 95; *Walling* v. *Haden*, 153 F. 2d 196, certiorari denied 32 U.S. 866). Thus, employees on floating equipment who are engaged in the construction of docks, levees, revetments or other structures, and employees engaged in dredging operations or in the digging or processing of sand, gravel, or other materials are not employed as seamen within the meaning of the Act but are engaged in performing essentially industrial or excavation work (*Sternberg Dredging Co.* v. *Walling*, 158 F. 2d 678; *Walling* v. *Haden*, supra; *Walling* v. *Bay State Dredging & Contracting Co.*, 149 F. 2d 346; *Walling* v. *Great Lakes Dredge & Dock Co.*, 149 F. 2d 9, certiorari denied 327 U.S. 722). Thus, ''captains'' and ''deck hands'' of launches whose dominant work was industrial activity performed as an integrated part of harbor dredging operations and not in furtherance of transportation have been held not to be employed as seamen within the meaning of the Act (*Cuascut* v. *Standard Dredging Corp.* 94 F. Supp. 197).

§ 783.35 Employees serving as "watchmen" aboard vessels in port.

Various situations are presented with respect to employees rendering watchman or similar service aboard a vessel in port. Members of the crew, who render such services during a temporary stay in port or during a brief lay-up for minor repairs, are still employed as ''seamen''. Where the vessel is laid up for a considerable period, members of the crew rendering watchman or similar services aboard the vessel during this period would not appear to be within the special provisions relating to seamen because their services are not rendered primarily as an aid in the operation of the vessel as a means of transportation. See *Desper* v. *Starved Rock Ferry Co.*, 342 U.S. 187. Furthermore, employees who are furnished by independent contractors to perform watchman or similar services aboard a vessel while in port would not be employed as seamen regardless of the period of time the vessel is in port, since such service is not of the type described in § 783.31. The same considerations would apply in the case of members of a temporary or skeleton crew hired merely to maintain the vessel while in port so that the regular crew may be granted shore leave. On the other hand, licensed relief officers engaged during relatively short stays in port whose duty it is to maintain the ship in safe and operational condition and who exercise the authority of the master in his absence, including keeping the log, checking the navigation equipment, assisting in the movement