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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

of the vessel while in port, are employed as seamen within the meaning of the exemptions. The same may be true of licensed relief engineers employed under the same circumstances whose duty it is to maintain the ship's auxiliary machinery in operation and repair (see *Pratt* v. *Alaska Packers Asso.* (N.D. Calif.) 9 WH Cases 61).

§ 783.36 Barge tenders.

Barge tenders on non-selfpropelled barges who perform the normal duties of their occupation, such as attending to the lines and anchors, putting out running and mooring lights, pumping out bilge water, and other similar activities necessary and usual to the navigation of barges, are considered to be employed as ''seamen'' for the purposes of the Act unless they do a substantial amount of ''non-seaman's'' work (*Gale* v. *Union Bag & Paper Corp.*, 116 F. (2d) 27 (C.A. 5, 1940), cert. den. 313 U.S. 559 (1941)). However, there are employees who, while employed on vessels such as barges and lighters, are primarily or substantially engaged in performing duties such as loading and unloading or custodial service which do not constitute service performed primarily as an aid in the operation of these vessels as a means of transportation and consequently are not employed as ''seamen'' (*McCarthy* v. *Wright & Cobb Lighterage Co.*, 163 F. (2d) 92; *Anderson* v. *Manhattan Lighterage Corp.*, 148 F. (2d) 971, certiorari denied 326 U.S. 722; *Woods Lumber Co.* v. *Tobin*, 20 Labor Cases 66, 640 (W.D. Tenn, 1951), aff'd, 199 F. (2d) 455). Whether an employee is on board a vessel primarily to perform maritime services as a seaman or loading and unloading services typical of such shore-bases personnel as longshoremen is a question of fact and can be determined only after reviewing all the facts in the particular case.

§ 783.37 Enforcement policy for nonseaman's work.

In the enforcement of the Act, an employee will be regarded as ''employed as a seaman'' if his work as a whole meets the test stated in § 783.31, even though during the workweek he performs some work of a nature other than that which characterizes the service of a seaman, if such nonseaman's work is not substantial in amount. For enforcement purposes, the Administrator's position is that such differing work is ''substantial'' if it occupies more than 20 percent of the time worked by the employee during the workweek.

WHAT IS AN ''AMERICAN VESSEL''

§ 783.38 Statutory definition of "American vessel".

The provisions of section 6(b)(2) prescribe special methods for computing minimum wages and hours worked under the Act which are applicable only to seamen who are employed on American vessels. An ''American vessel'', which would appear to signify a vessel of the United States as distinguished from a foreign vessel, ''includes'', under the terms of the definition in section 3(p) of the Act, ''any vessel which is documented or numbered under the laws of the United States.'' The Department of the Treasury, Bureau of Customs and the United States Coast Guard, respectively, are responsible for documentation and numbering of vessels.

§ 783.39 "Vessel" includes all means of water transportation.

Since the Act does not define ''vessel'' it is appropriate to apply the difinition of ''vessel'' as set forth in the United States Code (1 U.S.C. 3). The Code defines ''vessel'' as including ''every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water''. But the Federal Boating Act of 1958, (under which the U.S. Coast Guard is responsible for numbering vessels) and the Documentation Regulations administered by the Bureau of Customs, utilize this basic definition, with the addition of specific exclusions for ''seaplanes'' and ''aircraft'' (46 U.S.C. 527; 19 CFR 3.1(a)).

§ 783.40 "Documented" vessel.

A vessel ''documented * * * under the laws of the United States'' is typically a vessel which has been registered, enrolled and licensed, or licensed by the Bureau of Customs under the laws of the United States (46 U.S.C. 11, 193, 251–