

part. Of course, if an employee is not “employed as” a “seaman” within the meaning of this term as used in the Act, these exemptions and section 6(b)(2) would have no relevancy and his status under the Act would depend, as in the case of any other employee, upon the other facts of his employment, (§§ 783.18 through 783.20).

LEGISLATIVE HISTORY AND JUDICIAL
CONSTRUCTION OF THE EXEMPTIONS

§ 783.28 General legislative history.

As originally enacted in 1938, section 13(a)(3) of the Fair Labor Standards Act exempted from both the minimum wage and overtime pay requirements “any employee employed as a seaman” (52 Stat. 1050). In 1949 when several amendments were made to the Act (63 Stat. 910), this exemption was not changed except that it was renumbered section 13(a)(14). In the 1961 amendments (75 Stat. 65), a like exemption was retained but it was limited to one employed as a seaman on a vessel other than an American vessel (section 13(a)(14)); an overtime exemption was provided for all employees employed as seamen (section 13(b)(6)), and those employed as seamen on an American vessel were brought within the minimum wage provisions (sec. 6(b)(2)).

§ 783.29 Adoption of the exemption in the original 1938 Act.

(a) The general pattern of the legislative history of the Act shows that Congress intended to exempt, as employees “employed as” seamen, only workers performing water transportation services. The original bill considered by the congressional committees contained no exemption for seamen or other transportation workers. At the joint hearings before the Senate and House Committees on Labor, representatives of the principal labor organizations representing seamen and other transportation workers testified orally and by writing that the peculiar needs of their industry and the fact that they were already under special governmental regulation made it unwise to bring them within the scope of the proposed legislation (see Joint Hearings before Senate Committee on Education and Labor and House Committee on Labor

on S. 2475 and H.R. 7200, 75th Cong., 1st sess., pp. 545, 546, 547, 549, 1216, 1217). The committees evidently acquiesced in this view and amendments were accepted (81 Cong. Rec. 7875) and subsequently adopted in the law, exempting employees employed as seamen (sec. 13(a)(3)), certain employees of motor carriers (sec. 13(b)(1)), railroad employees (sec. 13(b)(2)), and employees of carriers by air (sec. 13(a)(4), now sec. 13(b)(3)).

(b) That the exemption was intended to exempt employees employed as “seamen” in the ordinary meaning of that word is evidenced by the fact that the chief proponents for the seamen’s exemption were the Sailors Union of the Pacific and the National Maritime Union. The former wrote asking for an exemption for “seamen” for the reason that they were already under the jurisdiction of the Maritime Commission pursuant to the Merchant Marine Act of 1936 (Joint Hearings before the Committees on Labor on S. 2475 and H.R. 7200, 75th Cong., 1st sess., pp. 1216, 1217). The representative of the latter union also asked that “seamen” be exempted for the same reason saying * * * “We feel that in a general interpretation of the whole bill that the way has been left open for the proposed Labor Standards Board to have jurisdiction over those classes of workers who are engaged in transportation. While this may not have an unfavorable effect upon the workers engaged in transportation by water, we feel that it may conflict with the laws now in effect regarding the jurisdiction of the government machinery now set up to handle these problems” (id. at p. 545). And he went on to testify, “What we would like is an interpretation of the bill which would provide a protective clause for the ‘seamen’ ” (id. at p. 547).

(c) Consonant with this legislative history, the courts in interpreting the phrase “employee employed as a seaman” for the purpose of the Act have given it its commonly accepted meaning, namely, one who is aboard a vessel necessarily and primarily in aid of its navigation (*Walling v. Bay State Dredging and Contracting Co.*, 149 F. 2d 346; *Walling v. Haden*, 153 F. 2d 196; *Sternberg Dredging Co. v. Walling*, 158 F. 2d 678). In arriving at this conclusion the courts