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To Be Paid In Full – Promptly

By Marilyn Raia

Life at sea away from family and friends is not always easy for seamen. For their hard work and sacrifices, seamen are entitled to be paid what is due in full in a timely manner. Federal law so provides.

Historically, seamen have been considered in need of special protection by Congress and the courts because of the nature of their employment. Various statutes and regulations have been enacted over the years to provide that protection including laws pertaining to compensation. Indeed, the first statute to give seamen a right to collect their wages was enacted in 1790.

Wage Law Basics

46 U.S.C. § 10313 addresses a seaman's right to receive wages and a double daily wage penalty when the wages are not paid within the time allowed. That section generally applies to seamen working on 1) an American flag vessel on a voyage between an American port and a foreign port or 2) on a vessel of at least 75 gross tons on a voyage between an Atlantic Ocean port and a Pacific Ocean port. It also applies to foreign seamen working on a vessel in an American port.

A similar federal statute applies to seamen on American vessels of at least 50 gross tons on a voyage from one state to another state except an adjacent state. Neither statute applies to a vessel on which a seaman is entitled by custom or agreement to share in the profit earned by the voyage, as is often the case on a fishing vessel.

Federal law at 46 U.S.C. § 10302 requires a vessel owner, charterer, operator, master or person in charge to make a written agreement with the seaman for the seaman's employment aboard a vessel. That agreement is commonly known as "shipping articles." Federal law specifies what type of information must be in the shipping articles. The required information includes: 1) the nature and duration of the intended voyage and the port or country where it ends; 2) the number and description of the crew and the capacity of each seaman; 3) the time the seaman is to be on board to begin work; 4) the wages to be paid; 5) the regulations pertaining to conduct aboard the vessel and the penalties for misconduct; 6) the provisions to be provided to the seaman; and 7) agreements regarding advances and allotments of wages. Federal law also provides a form for the shipping articles at 46 U.S.C. § 10304.

If the shipping articles expire during a voyage, the seaman must continue to work until the vessel reaches an appropriate port if the delay is not due to the fault of the vessel owner or master. However, if the delay is due to the fault of the vessel owner or master, the seaman can demand immediate release from employment on the vessel.

Under federal law, 46 U.S.C § 10313, a seaman is entitled to be paid by the owner or master within 24 hours of the cargo being discharged or four days after the seaman is discharged, whichever occurs first. That statute further provides a penalty of two days' wages for every day the payment is late without sufficient cause.

The statutory right of a seaman to be paid is not dependent on the success of the voyage on which the seaman serves. Nor is the right to be paid dependent on the freight/charterhire collected by the vessel owner. A seaman has a maritime lien for wages against the vessel on which the services were performed. That lien has the highest priority after expenses incurred to keep a vessel in custody after an arrest.



Lack of Written Contract

Significant consequences can follow if the seaman does not have the required written contract. Under 46 U.S.C. § 11107, a seaman's employment contract that does not comply with federal law is void. A seaman hired unlawfully is entitled to leave the service of the vessel at any time and to recover the higher of 1) the highest rate of wages for the position at the port where the seaman was hired; or 2) the amount originally agreed to.

Lack of Timely Payment of Wages

Griffin v. Oceanic Contractors, Inc. 458 U.S. 564 (1982) illustrates quite well what could happen to a seaman's employer who does not pay what is due to the seaman in a timely manner. On February 18, 1976, Griffin signed a contract in the United States to work as a senior pipeline welder on vessels operated by Oceanic in the North Sea. The contract's term was until December 15, 1976 or when the pipeline commitment in the North Sea was fulfilled, whichever came first. The contract provided that Oceanic would pay for the seaman's transportation to and from the worksite. But if the seaman quit before the end of the contract term or was fired for cause, the seaman had to pay the cost of transportation back to the United States. The contract also provided that Oceanic could withhold \$137.50 from each of the seaman's first four paychecks as a "deposit" for the transportation cost back to the United States in case the employee quit or was fired for cause.

On March 6, 1976, Griffin flew from the United States to Belgium to work on Oceanic's vessel berthed at Antwerp for repairs. On April 1, 1976, Griffin was injured while working on the deck of the vessel, getting it ready to go to sea. He was hospitalized and had surgery in Belgium. After he was discharged, he presented a "not fit for duty" slip to Oceanic. Oceanic denied the injury was work-related, declined to pay for the hospital expenses, and declined to pay for Griffin to return to the United States. Oceanic also did not pay the \$412.50 which had been withheld from Griffin's paychecks before he was injured.

Griffin paid for his return to the United States where he recovered from his injury. He was found fit for duty on May 5, 1976 and began working at another company in the North Sea. He sued Oceanic for, among other things, the \$412.50 that had been withheld from his earned wages and not paid to him.

The district court awarded Griffin the \$412.50 that had been withheld from his earned wages plus a double wage penalty for the period April 1, 1976 (date of the injury) to May 5, 1976 (return to work.) for a total award of \$6,881.60. Griffin appealed, contending the award was insufficient. The Fifth Circuit affirmed. It held the district court had discretion to determine the period of time for which the penalty would be awarded, and did not abuse that discretion even though the amount owed was not paid until Sept. 17, 1980.

The United States Supreme Court reversed the Fifth Circuit. It began its analysis by reviewing the history of statutory wage protection for seamen. It noted the first statute enacted in 1790 did not provide a penalty for the failure of a vessel owner to pay the wages that were due to seaman. In 1872, the statute was amended to provide a penalty of "not exceeding two days' wages for every day the wages were not paid for a period not exceeding ten days." The statute was amended again in 1898 to provide a penalty of one day's pay for each day the earned wages were not paid and to remove the "not exceeding 10 days" penalty time period. The statute was amended again in 1915 to provide an increased penalty of two days' wages for



each day the earned wages were not paid, which remains the penalty in 2021.

The Supreme Court held the statutory language was clear, the operative part being: "Every master or owner who refuses or neglects to make payment in the manner hereinbefore mentioned without sufficient cause shall pay to the seaman a sum equal to two days' pay for each and every day during which payment is delayed beyond the respective periods...." It found no indication, given the use of the word "shall," that Congress intended to give the courts discretion on the time period for the calculation of the penalty wages after the 1898 amendment removed the "not exceeding 10 days" language. Accordingly, the Supreme Court held the district court's calculation of Griffin's penalty wages for the April 1 to May 5, 1976 period was erroneous. It also rejected Oceanic's argument that when enacting the statute, Congress could not have intended a disproportionate award in excess of \$300,000 for the withholding of only \$412.50 which would result in Griffin's case. While recognizing a recovery of more than \$300,000 would greatly exceed any damages suffered by Griffin, the Supreme Court noted the statute had more than a compensatory purpose. It had a punitive element intended to deter certain conduct, namely, the failure to timely pay a seaman's wages. The court also commented that "The remedy for any dissatisfaction with the results in particular cases lies with Congress and not with this Court. Congress may amend the statute; we may not." The case was sent back to the lower court for an award consistent with the holding which meant Oceanic paid a very steep price for not paying the seaman what was due when it was due.