

Identification of the Nature of Individual Seafarer's Labor Relations

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Abstract: The problem of seafarer's labor relations has its particularity and complexity which are different from other labor relations. By defining the employment mode and concept attributes of individual seafarers, this paper analyzes the characteristics of the labor contract relationship between individual seafarers and the labor contract relationship between individual seafarers and the shipping company, and holds that the labor relationship between individual seafarers and the shipping company should be the labor relationship between individual seafarers and the shipping company. However, the general labor legislation is not enough to adjust all aspects of the labor relations of individual seafarers. It is suggested to add relevant provisions to perfect the legislation. In addition, as our country pays more attention to the protection of the rights and interests of seafarers, the labor contract relationship of individual seafarers should be clearly stipulated through legislative interpretation or legal provisions.

Keywords: individual seafarer; labor contract relationship; labor contract relationship; attribute identification

1. Introduction

With the deepening of China's economic system reform, the degree of marketization of seafarer employment is getting higher and higher, and the employment mode of most seafarers in China is changing more and more from long-term permanent workers of shipping companies to individual lancers, and the seafarers' labor dispatching in China is also increasing [1]. However, the current provisions on seafarer labor contract or service contract in China's relevant legislation are not clear, resulting in many differences in the identification of seafarer labor contract in practice, confusing seafarer labor contract and service contract, appearing many disputes on the performance of the contract, and ineffective protection of workers. In particular, there are many disputes about the nature of the contractual relationship between the individual seafarer, the assigned seafarer and the shipping company [2]. In addition, in judicial practice, due to the lack of clear provisions on such issues, many different courts have different opinions on the cause of action, the nature of the contractual relationship and the legal provisions as the basis of the case, which is not conducive to the effective

protection of the rights and interests of Chinese seafarers. This paper mainly analyzes the legal nature of the labor contract for individual seafarers [3,4].

2. Definition of "Individual Seafarer" -- The Theory of Individual Seafarer in the Narrow Sense

The type of seafarer has an important impact on the identification of seafarer's labor relations. There is no explicit provision on the type of seafarer in Chinese laws and judicial interpretations, so there are many different views on the concept and employment mode of individual seafarer in theoretical circles. And it is the key to make clear the definition and employment mode of individual seafarers to solve the dispute between individual seafarers and shipping company on labor contract or labor contract.

Definition of the current our country legal science to individual the seafarer there are different, the first theory is that, individual seafarer is different from the shipping company has its own seafarers, nor the seafarer seafarers service organization itself have (i.e., seafarers employed by the seafarer services), but with the seafarer of the owner or other employer sign a long-term employment contract is engaged in the service of seafarers on the ship. This classification is based on the change in the way of seafarers' employment. Based on this standard, China's seafarers' labor market consists of three types of seafarers owned by state-owned shipping companies, seafarers owned by intermediary companies and individual seafarers. At present, Chinese seafarers working around the world are mainly "individual seafarers".

The second view holds that individual seafarer is a broad concept, including the seafarer who signs employment contract with the shipping company through the intermediary service agency of the seafarer, and also includes the seafarer who is employed by the service agency of the seafarer and receives labor dispatch from the service agency of the seafarer. From the perspective of the relationship between seafarers and their service objects, seafarers can be divided into self-owned seafarers and individual seafarers. In this kind of classification, its own seafarer means belonging to a shipping company or seafarer, the seafarer management company exists between them and the shipping company or the seafarer management company long-term stability of the labor contract relations, confirmed in the norms of the general labor law rights and obligations, regardless of their work

on the ship or on shore vacation, waiting, Their rights and interests can usually be determined and protected through labor contracts. However, individual seafarers are not affiliated to any definite company, and they often rely on the seafarer management company or the seafarer service agency to provide short-term employment opportunities, accept these seafarer management company or the seafarer service agency to dispatch to work on the designated ship, and then have contact with the ship company [2,5].

The third view is that individual seafarer only refers to other seafarer members who have not signed labor contracts with the shipping company or the seafarer service agency, but have directly signed labor contracts with the shipping company. According to the contractual relationship between the seafarer and the shipping company and the seafarer service agency, the seafarer is divided into contracted seafarer and individual seafarer. In this classification, the contracted seafarer includes the self-owned seafarer of the shipping company, as well as the seafarer assigned by the seafarer service agency. Individual seafarers are those who have neither formed labor relations with shipping companies nor dispatched through intermediary companies.

The individual seafarers in the theory of self-owned seafarers and individual seafarers refers to individual seafarers in a broad sense, including individual seafarers and assigned seafarers. In the theory of contract seafarer and individual seafarer, the definition of individual seafarer as labor seafarer is also open to debate. In addition, Article 22 of the Regulations on the Administration of Seafarer Service stipulates that: "An employer of overseas seafarers shall not directly recruit Chinese seafarers within the territory of the People's Republic of China, but shall go through a seafarers service agency that meets the qualifications of these Regulations." Accordingly, seafarers cannot sign labor contracts directly with overseas employers, but must go through Chinese seafarers' service agencies for assignment abroad (hereinafter referred to as seafarers' service agencies or assignment agencies). Therefore, there is no such thing as individual seafarer signing seafarer labor contract directly with overseas shipping company, but only signing seafarer labor contract with seafarer service agency and accepting its labor dispatch, which is not in line with the definition of individual seafarer.

The author thinks that the seafarers in our country should be divided into three kinds according to the different employment modes: first, own seafarers. Such seafarers get jobs through signing seafarers' labor contracts with our company. There is no great dispute in the theoretical circle about the labor contract relationship between our company and our own seafarers. Second, individual seafarer. Such seafarers may obtain employment by themselves or through seafarers' intermediary agencies by signing employment contracts with shipping companies. Such employment contract relations belong to seafarers' labor contract relations. But what seafarer and seafarer organization sign is "intermediary contract" employment intermediary service contract in the meaning of contract law. Third, dispatched

seafarer (including domestic labor dispatch and overseas labor dispatch). Such seafarers will sign a labor contract with the seafarers management company, and then the seafarers will be dispatched to the shipping company to get a job through the seafarers manning service contract signed with the shipping company. Therefore, individual seafarer only refers to those who are not affiliated with a shipping company or a seafarer management company and sign employment contracts with shipping companies directly or through intermediaries, namely, they are individual seafarer in the narrow sense. According to this concept, two standards can be set for the definition of individual seafarer: first, Chinese seafarer, and the contracted unit is also a domestic shipping company. Second, the seafarer not owned by the shipping company and the seafarer service organization.

3. Confirmation of Contract Relation to Labor Contract Dispute of Individual Seafarers in China

3.1. Theoretical Circles: Disputes over the Relationship between the Labor Contract and the Labor Contract

For individual seafarers, and the general labor contract relationship for the identification of the contractual relationship of the labor contract disputes of individual seafarers, there are two kinds of disputes in the legal theorists of our country: the dispute between the labor contract relations of seafarers and the dispute between the labor contract relations of seafarers and the dispute between the labor contract relations of seafarers and the general labor contract relations.

3.1.1. *The nature of the seafarer contract between the individual seafarer and the shipping company -- the seafarer labor contract rather than the seafarer labor contract*

Some scholars believe that the seafarer individualism on the one hand, is directly with the shipping company to sign the employment contract, on the other hand because of its labor itself has provided great particularity, such as long time of labor, labor time of flight of the dangers of regular, labor and life, without the labor dispute arbitration, directly by litigation, etc., Therefore, the labor contract of the individual seafarer is not subject to the adjustment of the Labor Law of the People's Republic of China (hereinafter referred to as the Labor Law), and the employment contract signed with the shipping company should be a labor contract. The author thinks that this kind of view has not adapted to the development of the present seafarer labor market. At present, the mainstream view in the academic circle is that there is a labor contract relationship between the seafarer and the shipping company, rather than a labor contract relationship between the seafarer, which is gradually reached after the concept of covert employment relationship was proposed by the International Labor Organization. According to the theory of covert employment relationship, it can be concluded that there are four main differences between the seafarer labor contract relationship and the seafarer labor contract relationship. First, the ship company has different

supervision and management efforts on the seafarers. There is only property relationship, that is, economic relationship, between the two parties in a labor contract, and there is no attribute between them. There is no administrative subordination relationship. The laborers provide labor services and the employing units pay labor remuneration, which are independent and equal in status. Since the labor of individual seafarer is maritime labor, which is not as flexible in time and space as that of land labor, shipping companies have greater supervision over individual seafarer, which is more in line with the subordinate relationship of the company to the management of workers in the labor contract relationship. Second, the method of payment is different. In a general service contract, the employer pays the employee a lump sum. However, the individual seafarer works under the control of the shipping company within a certain period of time, and the payment is generally sustained and regular. Third, the duration of labor is different. The labor provided by the individual seafarer has a certain continuity. Generally, as long as the seafarer worker provides labor in accordance with the instructions of the shipowner, the labor task of the day is considered to have been completed regardless of whether there is a definite labor achievement. And many of the labor contract labor contract, to complete the contract for the end of the task. Fourth, the decision of working time and place is different. The labor service provider has great autonomy and flexibility, while the working time, place, way and steps of the individual seafarer are controlled and supervised by the shipowner. The shipowner not only decides "what to do", but also stipulates "how to do" and "when to do". Shipowners arrange the seafarer's working hours, places and schedules, rather than the seafarer's own decisions.

The subject of the labor contract can be signed between legal persons and organizations, or between individual citizens or between citizens and legal person organizations. Generally, it is not a special limitation and has universality. At the same time, both sides fully comply with the market rules, equal status. Both parties shall sign the contract in accordance with the principle of fairness in the Contract Law. However, the relationship between the individual seafarer and the shipping company is more inclined to the relationship of labor contract. Therefore, the nature of the contract signed between the individual seafarer and the shipping company is the seafarer labor contract rather than the seafarer labor contract.

3.1.2. The attribute of the contract between the individual seafarers and the shipping company is the labor contract relation of the seafarers, which is different from the general labor contract relation

In my opinion, in a narrow sense between the individualdom of the seafarer and ship company contract should be regarded as the seafarer labor contract relationship, but the seafarer labor contract relationship is different from general labor contract relations, "labor law" and "labor contract law" as adjustment of labor relations law generally, provisions of the rights and obligations of general workers. Its legal nature and task, also can't be this

special workers to special industry ing out the regulation, the length and the nature of the law does not allow complete regulations, laborer rights and interests of the special industry should have its exception rules so unable to adjust all the seafarer labor relations, the situation on the individualdom of the seafarer labor contract is mainly in three aspects: First, the protection of the right of repatriation of individual seafarers is not possible. Seafarer's right of repatriation refers to the right of seafarer members to be sent back to their home country or to the port of their employment or the port from which the ship sails during or upon the expiration of their employment. It is normally the responsibility of the shipowner to arrange the repatriation of the seafarer through suitable and expedient means, and the usual mode of transport should be by air. Corresponding seafarer repatriation expenses shall also be borne by the shipowner. The right of repatriation is the special labor rights and interests of seafarer and laborer. It is impossible and unnecessary to stipulate in such detail in the general labor law. Second, some special rights of individual seafarer members to live on board cannot be protected. The wages of sailors are also different from those of land-based workers. Shipowners are obliged to provide convenience to meet the demands of sailors' wages by mail. If the ship needs to sail to or pass through a war zone or an epidemic area or to transport toxic or harmful substances, the employing unit of the seafarers shall provide special personal and health insurance and corresponding protective measures for the seafarers working on the ship. These special labor rights cannot be covered by the Labor Contract Law and must be stipulated by special laws. Third, the right of individual seafarer to complain cannot be guaranteed to the maximum extent possible. Due to the special working environment of the seafarers, they are confined to the ship and far away from the supervision and management of labor and social security or the supervision and management of maritime agencies, which is not conducive to the timely settlement of the seafarers' labor disputes, and it is a great obstacle to the realization of the seafarers' right to appeal. This requires the special design of the seafarer during the ship also has a convenient way to appeal, in order to protect the seafarer workers appeal and dispute settlement rights. This cannot be stipulated in the Labor Contract Law.

Individual the seafarer employment contract with the shipping company belongs to the seafarer labor contracts, individual seafarer labor contract relationship between the seafarer and the ship company, but the seafarer as a special industry is different from the way of work, the seafarer labor contract has many common labor contract legislation can't adjust, unique items, seafarer labor contract relationship is special labor contract relationship. Therefore, the author thinks that special provisions should be made on the seafarer's labor contract relationship.

3.2. Judicial Practice: the Contractual Relationship between Seafarer Members in Court Judgments is not of the Same Nature

Across most of the seafarer contract disputes in our

country by the maritime court trial, the author from north Italy education channel stacks of Chinese referee in the seafarer of the parties, the contract for the keyword, extracting decision time on January 1, 2015 to December 31, 2015 seafarer members with a total of 748 cases of contract disputes, and statistical analysis. In the process of analysis, the author found that in the case of the name, the maritime court in the judicial practice in China for the seafarer contract disputes are referred to as the seafarer labor contract disputes, and no seafarer labor contract disputes and seafarer labor contract disputes, can search to the seafarer contract dispute case not all of them are the seafarer labor contract disputes, Including most of the seafarers labor contract dispute cases. In individual seafarer contract relationship with shipping company determination and judgment on the basis of respect, the vast majority of the court or not admit that labor contract relationship between the parties, but the related labor law provisions shall be applicable, and still as a seafarer labor contract dispute, or court is characterised as the seafarer labor contract dispute, and in accordance with the civil law, contract law, but according to the case the truth, The author thinks that it should be regarded as the seafarer's labor contract dispute and handled in accordance with labor law and labor contract law.

Through the above data collection and practical analysis, the author believes that it is very necessary and urgent to clearly identify the seafarer contract relationship between the individual seafarer and the shipping company in the laws and regulations, which is not only conducive to the rapid settlement of the labor dispute cases of the individual seafarer in China, but also can reduce the judicial burden of the maritime courts around the country.

4. The Reference of American Seafarer-Related Contract Legislation to Our Country -- the Clarity of the Labor Contract Relationship of Individual Seafarers

4.1. China's Current Legislation on Seafarers

4.1.1. Relevant provisions of the Maritime Law

The provisions on seafarers in China's current Maritime Law are mainly contained in Chapter III, which includes two sections of "General Provisions" and "Master": In the "General Provisions" of Section 1, Article 31 mainly summarizes the concept of seafarers, Article 32 and Article 33 mainly cover the requirements of seafarers' qualification certificates, and Article 34 is the quasi-applicable rule of the applicable law for seafarers. In the second section, "Captain", it mainly stipulates the powers and responsibilities of the captain, mostly obligatory provisions. In addition, the Maritime Law does not contain any other contents concerning the rights and interests of seafarers, such as labor contracts and social security.

In China, the Maritime Law is generally regarded as a special law of civil law. Where there are provisions in the Maritime Law, priority shall be given to the application. Where there are no provisions in the Maritime Law, civil law shall apply. The author believes that although the Maritime Law is a law with maritime and maritime

characteristics, the seafarers, as an important part of the maritime and maritime legal relations, also have their particularity, and the contents related to the protection of their rights and interests, especially those related to the seafarers' labor relations, should also be reflected in the Maritime Law.

4.1.2. Relevant provisions of the Seafarers Regulations

China's current "Regulations on Seafarers" are divided into eight chapters. The first chapter, "General Provisions", is a summary. The second chapter, "Seafarer Registration and Qualification", is mainly the procedural requirements of seafarer qualification. The third chapter, "Seafarer's Responsibilities", is mainly the obligatory content of the seafarer, and more reflected in the provisions about the captain's responsibilities. In Chapter IV "Seafarers' Occupational Security",

4.2. U.S. Legislation on Seafarer Contracts

In the United States, laws and regulations related to employment are composed of a two-track system, one is the employment law, the other is the labor law. The Employment Law establishes minimum employment standards for employees, including minimum wages, safety and health standards, old-age assistance, unemployment insurance, workers' compensation, protection of minors, sick leave and provisions relating to minimum employment standards. These elements actually fall within the scope of the adjustment of Labour law that is commonly discussed. Since the standard of work set by employment law is minimum, employees can raise this standard through individual or collective negotiation. So in the United States, labor law is primarily used to create mechanisms for collective bargaining and other forms of collective action that employees may take. In other words, unionized employees derive their collective bargaining rights from labor law, while ununionized individual employees derive their rights from employment law. It can be said that labor law and employment law are the classification of seafarer labor legislation based on the different roles and applicable objects, and their substantive contents are similar.

Thus, unionized employees derive their collective bargaining rights from labor law, while ununionized individual employees derive their rights from employment law. By comparison, it can be seen that when the state's intervention in employment relationship has penetrated into almost every aspect of employment law, employment relationship and labor relationship may lose the basis of essential difference (that is, whether public power intervenes or not). In the United States, with unions playing a shrinking role in collective bargaining, some scholars have even asserted that the distinction between employment law and labor law may disappear in the future. Unlike the individual seafarer and dispatch seafarer, they are not in a complete management system, but relatively unsupported. China can learn from the legislative model of the United States and clearly stipulate the existence of the seafarer labor contract relationship between individual sailors and shipping companies through legislation. For

example, it can be clearly stipulated through legal interpretation or laws and regulations, so as to increase the intervention of the state in the seafarer labor contract relationship and better safeguard the legitimate rights and interests of individual sailors.

5. Conclusion

To sum up, there should be two standards for the definition of individual seafarer: first, Chinese seafarer, and the contracted unit is also a domestic shipping company. Second, the seafarer not owned by the shipping company and the seafarer service organization. The contractual relationship between the individual seafarers and the shipping company does not belong to the seafarer's labor contract relationship, but should be the seafarer's labor contract relationship. In addition, the seafarer labor contract belongs to the special labor contract relations, the laws and regulations of our country ordinary labor contract relationship cannot be completely adjust all of its content, there are two kinds of perfecting Suggestions: first, in our country "maritime law", the seafarer regulations existing seafarer was added in the laws and regulations such as the seafarer labor contract relationship and the content of the concrete; Second, a special provision on seafarer's labor contract should be added in China's Labor Contract Law,

in particular, the specific rights and interests of seafarer should be clearly protected. Finally, the confusion between seafarers' labor contract disputes and labor contract disputes has long existed, and the identification of the two should be clarified in Chinese legislation. For example, through legal interpretation or laws and regulations to make clear provisions to improve the judicial practice of these two types of cases to solve the efficiency.

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