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Claim for Salvage Award by Member of Crew of Liberty Ship - Drevas v. United States, War Shipping Administration, United States Maritime Service

CLAIM FOR SALVAGE AWARD BY MEMBER OF CREW OF LIBERTY SHIP

Drevas v. United States, War Shipping Administration, United States Maritime Service[1]

Libelant was a member of the crew of the Liberty ship, Matt W. Ransom, which was carrying munitions bound for Casablanca on February 25, 1943. The crew numbered forty-four; the total ship's company was seventy-seven.

On April 11, 1943, the ship was either hit by a submarine torpedo or struck a mine about eighty miles from Casablanca. A hole 14 by 15 feet was torn in the starboard bow. The hole filled with water, and the stern rose up about four feet. The propeller was not out of water and the deck was above water four or five feet. The ship settled. The master than ordered all hands into boats, and the order was obeyed by all. On leaving, the master's orders were to stand by in the boats. Libelant was in the master's boat along with several other crew members. After one half hour the master saw that the ship was no longer sinking and asked the boat's company if they were willing to go back and try to bring the ship into port. The members of four other life boats were not asked to return to the ship. The ship was safely taken to Casablanca. The crew was paid off and the ship repaired. Libelant claimed that he was entitled to salvage. The District Court, following a long line of similar and even stronger cases, found that Drevas was not entitled to such award.

The problem presented by this case is not a new one, but it had never before been raised directly in this jurisdiction. The general rule, that a member of a crew cannot ordinarily recover an award for salvage was reiterated in the *Eastern Shore*.[2] There the question was not, as in the present case, whether the crew member had been discharged from the service of the ship, or whether the ship had been abandoned, but whether libelant was a member of the crew of the particular ship at all. In the *Eastern*

[1] D. C., D. Md., February 9, 1945.
[2] 15 F. (2d) 82, 1926 A. M. C. 899 (D. C., D. Md. 1926).

Shore, the same owner owned two ferryboats. During the summer both were operated. In winter only one crew was employed, and the two boats were operated alternately; the crew being transferred from one to the other. When libelant had returned from a trip on one boat, during the winter, he saw the other afire, and successfully assisted in salving it, claiming salvage therefor. The Court found that the crew was attached to both vessels in such a sense that its members could not recover for salvage services rendered to either.

In order to support a claim for salvage, four prerequisites must be met. There must be (1) maritime property, (2) in peril, (3) successfully salved, and, (4) voluntarily by one under no legal duty.[3]

In cases like the instant one, the first three requirements have been fulfilled. The difficulty lies in drawing the line of demarcation between one who is under a legal duty and one who has either never been under such duty or whose obligation has terminated, by his discharge or by the abandonment of the ship.

The history of the present attitude of the courts toward salvage may be developed by the discussion of a few cases and the resulting legislation.

Before the Act of June, 1872, when a vessel was shipwrecked or otherwise disabled before the termination of the voyage, seamen's wages ceased with the cessation of their service. The hardship wrought by this state of affairs was somewhat alleviated by the general rules providing for the award of lost wages to seamen who, in the event of disaster, returned to the ship and rescued her. It was such a return of lost wages that was given to libelant for service performed in the *Neptune*.[4] Under the old law, the seaman was equally well off financially whether the ship successfully completed her voyage or whether she was shipwrecked and he salved her. In either case, he received his wages or the equivalent, and nothing more.

Under the theory of salvage, he may recover not only his wages, but a further sum. Such a situation is apt to be a temptation to a seaman to place the ship in a position of danger, or to treat lightly his responsibility to safeguard her. As was said in the *Neptune, supra*: "In a salvage case you must take into consideration the quantum of personal danger incurred, the value of property saved, and other circumstances which may influence the demand of salvage,

[3] ROBINSON, ADMIRALTY (1939) 709.
[4] 1 Hagg. Adm. 237.

whereas the rule of wages presents only a stipulated sum which in no case can be exceeded. By the same rule, every temptation to throw the ship into situations of danger with a view to an extravagant salvage is effectually removed; for no increase of danger can bring to the mariner an increase of profit."

In the *Two Catherines*,[5] libelant was awarded not salvage, but wages based on his successful saving of valuable property after termination of his obligation to that property or cargo. There is, as we have seen, a distinction between an award for salvage, such as that sought in the *Drevas* case, and the recovery of lost wages by the crew under the old law which caused seamen's wages to cease upon total loss of the vessel.

The Act of June 7, 1872,[6] eliminates the problem of the *Neptune* and the *Two Catherines* and leaves the only reward open to seamen that of salvage:

> "No right to wages shall be dependent on the earning of freight by the vessel, but every seaman or apprentice who would be entitled to demand and receive any wages if the vessel on which he has served had earned freight, shall—be entitled to claim and recover the same of the master or owner in personam, notwithstanding that freight has not been earned. But in all cases of wreck or loss of vessel, proof that any seaman or apprentice has not exerted himself to the utmost to save the vessel, cargo and stores shall bar his claim.
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> "In cases where the service of any seaman terminated before the period contemplated in the agreement, by reason of the loss or wreck of the vessel, such seaman shall be entitled to wages for the time of service prior to such termination, but not for any further period. * * *"

Under the theory of the *Neptune* courts have been slow and reluctant to award salvage to crew members. There are a few recognized exceptions to the general rule, which exceptions are discussed fully and in great detail in the *C. P. Minch*.[7] This case arose out of a libel by two members of a crew for salvage. The Court, after reviewing the history of cases of this type, recognized three possible exceptions under which salvage awards might be made to crew members.

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[5] 2 Mason 319, Fed. Cas. No. 14,288 (1821).
[6] U. S. C., Tit. 46, Secs. 592, 593.
[7] 73 F. 859 (1896).

These are (1) where the voyage has terminated by the shipwreck of the vessel; (2) where the vessel has been abandoned by all or by all except the salvors, under circumstances which show conclusively that the abandonment was absolute, without hope or expectation of recovery; or (3) where the seaman has by the master been unmistakably discharged from the service of the shipowner.

It is indeed a rare and exceptional case which has permitted recovery for salvage by a member of the crew of a ship. A leading case cited by libelant in this type of claim is *Hobart vs. Drogan* (*The Hope*).[8] That case was one, not in which a member of the crew claimed salvage, but, rather, where libelant was a pilot, wholly disconnected with the ship as a member of its regular crew, and was merely a temporary member of the crew for a particular purpose. The language used by the Court in *The Hope,* was: "Seamen, in the ordinary course of things, in the performance of their duties, are not allowed to become salvors, whatever may have been the peril or hardships or gallantry of their services in saving the ship and cargo. We say in the ordinary for extraordinary events may occur in which their connections with the ship may be dissolved de facto, or by operation of law, or they may exceed their proper duty, in which case they may be permitted to claim as salvors."

The cases in which the court has considered the above doctrine have been many. The cases which are so extraordinary and unusual as to bring them within the meaning of the exceptions are few. There are four leading cases in which recovery was permitted. All four were based on the theory that the ship had been abandoned, which is the theory libelant based his claim upon in the case under consideration.

It may be clearly seen, by the facts in the following cases, that the abandonment was unquestionable, absolute and complete, as distinguished from the facts of the case now under discussion.

The most recent decision, and the one which may be most effectively contrasted with the *Drevas* case, is the English case of the *San Demetrio.*[9] In the *San Demetrio,* the libel also originated by enemy action in the present war. The chief distinction between that case and this is that the master, in the *San Demetrio,* specifically gave the order to abandon ship, whereas in the *Drevas* case, the

[8] 10 Pet. 108 (U. S. 1836).
[9] Adm. Div. (Jan. 16 & 17, 1941) Lloyd's List Law Rep. Vol. 69, 5.

master ordered the crew to stand by in life boats. The *San Demetrio* was a stronger case on its facts, also. There, one-fourth of the total crew returned to the ship, which was carrying petrol, and which had been in flames for hours. These discharged crew members worked tirelessly for seven or eight days, one of their number lost his life, and the others assumed extreme risks. As a result, they succeeded in salving almost the entire cargo of petrol. In granting an award to the salvors, the Court said: "This class of salvage is, necessarily, of a rare character. It is not often that seamen are called upon to salve their own vessel. The law on the matter was laid down with great strictness as long ago as the time of Dr. Lushington, and the law is not in doubt. Four requisites laid down by Dr. Lushington,[10] have to be fulfilled before seamen can be allowed to claim salvage in respect of their own vessel. The chief of these requisites is that the ship was properly abandoned under the orders of her master. In the present case there has never been the slightest shadow of a doubt that all four requisites have been adequately fulfilled. The abandonment of this ship was not only a wise and proper act, it was the only possible course that could have been adopted by the master. Moreover, it is clear that at the time when the vessel was abandoned no one had the slightest hope of returning to her; in fact, no one had the smallest expectation of seeing her again."

In the *Florence*,[11] the ship was abandoned by order of the master. The crew boarded a steamer, landed, were put by the British Consul aboard another steamer bound for England. Subsequently they met up with the derelict. Some of the crew volunteered to return to her, and succeeded in bringing her into port. The Court, in that situation, found that there had been such unconditional abandonment as would justify a recovery for salvage.

In the *Triumph*,[12] the vessel was in a collision off Cape Cod. The master and all the crew except the cook rushed onto another vessel. The cook had been asleep and awoke too late to be rescued. He stayed aboard rigged the pump, found the leak, patched it up and managed to navigate the vessel until help arrived. The Court there found that the cook was entitled to salvage.

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[10] *Florence* (1852) 16 Jur. 572: Abandonment must (1) take place at sea and not upon a coast; (2) be sine spe revertendi; (3) be *bona fide* for the purpose of saving life; and (4) be by order of the master, in consequence of danger by reason of damage to the ship and the state of the elements.

[11] *Ibid.*

[12] 1 Spr. 428, Fed. Cas. No. 14,183 (1858).

In the *Georgiana,*[13] a fishing vessel ran aground. The crew left and the master told them "it was all off". Three of the crew later returned to the vessel and kept her afloat, thereby enabling her to be rescued and returned to port in reparable condition. The Court, in its opinion, said: "But, as soon as the members of such a crew are discharged from their agreed service, whether formally or expressly, or by implication from the circumstances, and have been thus released from any obligation to exert themselves for the benefit of the vessel, or property on board her, their previous connection with the vessel does not prevent their becoming salvors in respect of any such exertions. The District Court has found that this vessel was finally abandoned when her master and crew left her aground * * * and that the men on board were thereafter released from further obligation to her."

The majority of cases which have arisen subsequent to the passage of the acts entitling seamen to wages, have denied any further award. One of the strongest cases is the *Tashmoo.*[14] There libelant was a workaway, who, through his skill as a radio operator, saved the ship from disaster. The Court denied salvage, on the theory that even though libelant was a workaway, he was a member of the crew for the purpose of that trip, and was therefore under a duty to exercise the utmost diligence. Salvage was also denied in situations similar to that of Drevas in the cases of the *Warrior,*[15] the *Macona,* [16] the *Mary M.,*[17] the *C. F. Bielman,*[18] and the *Elk.*[19]

This decision, arising under wartime conditions, when acts of heroism far beyond line of duty are being performed by members of all the armed services, as well as by seamen, seems particularly justifiable. It would be manifestly inequitable to permit seamen additional compensation for acts beyond line of duty, when such awards are denied to members of the armed forces, and when the seamen are adequately provided for by legislation, unless the acts are so obviously exclusive of the seaman's duty to his ship that there can be no possible doubt as to his meriting an additional reward, as was clearly indicated by the facts in *San Demetrio, supra.*

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[13] 245 F. 321 (C. C. A. 1st, 1917).
[14] 48 F. (2d) 366, 1931 A. M. C. 48 (1930).
[15] Lushington's Rep. 476, 167 Eng. Repr. 214 (1862).
[16] 269 F. 468 (1920).
[17] 1938 A. M. C. 1237 (1938).
[18] 108 F. 878, 121 F. 540 (1901).
[19] 1938 A. M. C. 714 (1938).