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Crewmen Under Contract to Professional Salvor May Claim Salvage Award—*Nicholas E. Vernicos Shipping Co. v. United States**

Several United States Navy store ships imperiled during a violent squall off the Greek coast were aided by two tugs outfitted with special salvage equipment and owned by Greek companies terming themselves professional salvors. The tug crewmen were the firms' fulltime employees; they were expected to undertake salvage work when available and to engage in ordinary harbor towing between salvage operations. The owners sued the United States on behalf of themselves and their crews to recover compensation for assisting the Navy. The district court, finding that the store ships had been rendered a salvage service, made separate awards to the owners and to each crewman aboard the Greek vessels during the operation.[1] On appeal to the Court of Appeals for the Second Circuit, *held*, affirmed. The crewmen of a vessel owned by a professional salvor who engage in salvage on a regular but non-exclusive basis may receive modest salvage awards when the "conscience of admiralty" is moved to grant them.

A salvage service is any voluntary assistance which is at least partially successful in relieving property upon navigable waters from impending peril.[2] The one who gives aid of this nature is a salvor, and his compensation is a salvage award, payment of which is secured by an automatic lien upon the salvaged property.[3] Because courts have long realized that a general willingness to rescue distressed property at sea is beneficial to the shipping industry, salvage awards have been consistently liberal.[4] Originally only those persons who had physically participated in a salvage venture and had borne the brunt of the hazards involved were entitled to awards. As the vessels from which the salvors worked became more expensive, it seemed advisable to make awards to the owners in order to induce them to risk their capital in salvage operations. At the same time, crew awards were reduced, since the more modern vessels were safer and most of the dangerous phases of an operation were accomplished by machinery. At present the owner's award is generally larger than that of all the crewmen combined.[5] While much salvage is still accomplished by chance rescuers, there are a number of vessels in service today specially outfitted for salvage work, manned by full-

* 349 F.2d 465 (2d Cir. 1965) (hereinafter cited as principal case).

1. Nicholas E. Vernicos Shipping Co. v. United States, 223 F. Supp. 116 (S.D.N.Y. 1963).

2. The Clarita and The Clara, 90 U.S. (23 Wall.) 1 (1874).

3. Jacobson v. Panama Ry., 266 Fed. 344 (2d Cir. 1920).

4. See The Lamington, 86 Fed. 675 (2d Cir. 1898).

5. See generally GILMORE & BLACK, ADMIRALTY §§ 8-11 (1957).

time crews, and kept ready for immediate service. Their owners normally receive generous awards because these craft are unusually efficient.[6]

At issue in the principal case was the right of members of the crew of two such professional salvage vessels to claim a salvage award. The court reviewed the few precedents on the question but dismissed them as inconclusive. In this the court was correct, for a thorough survey reveals that the prior cases contain nothing but conclusions or dicta supported only by misinterpretations of previous cases.[7] The court then attempted to evaluate the equities of the parties.[8] Testimony showed that the wage rate of the tugs' crewmen was lower than that of their counterparts on conventional Greek harbor tugs, even though the former regularly worked at ordinary harbor towage between salvage operations. The court believed, however, that this evidence, even if accurate, could give rise to either of two inferences. A lower pay scale, while possibly indicating the crewmen's expectation of receiving salvage awards, might, on the other hand, merely show their willingness to work for lower compensation.[9] It further appeared that, generally speaking, the risk of physi-

6. See The Lamington, 86 Fed. 675 (2d Cir. 1898).

7. One of the earliest cases bearing on the question of professional crew awards is Bowley v. Goddard, 3 Fed. Cas. 1072 (No. 1736) (D. Mass. 1867), where the court noted in a dictum that, although the crewmen of the salvage vessel involved in the litigation had contracted for specified wages to cover all their services, they still acted voluntarily in assisting the salvaged vessel. In The Camanche, 75 U.S. (8 Wall.) 448 (1869), the Court held that the owner's right to an award did not abate because his professional crew had made no claim. It did not go to the merits of the professional crew award question. Relying upon this decision the court in Browning v. Baker, 4 Fed. Cas. 453 (No. 2041) (E.D. Va. 1875), ruled that the crew's failure to claim a share of the award indicated its concession of the entire award to the owner. In dictum, however, the court suggested that no crew award would have been permissible because the seamen were under contract with the owner.

Apparently the leading case for the proposition that a professional crewman can waive his claim to a salvage award is The Cetewayo, 9 Fed. 717 (E.D.N.Y. 1881). The court did not explain the proposition; it did refuse, however, to find a waiver because there was no showing that the crew engaged in salvage on a regular basis. The court in The Celtic Chief, 4 Hawaii Fed. 299 (9th Cir. 1916), suggested that a waiver was not to be implied merely from the fact that a seaman was a professional salvage crewman, and allowed a crew award because no evidence of actual waiver had been introduced. The Arakan, 283 Fed. 861 (N.D. Cal. 1922), cited in the principal case, stated by way of dicta, unsupported by either authority or reasoning, that professional salvage crewmen are ineligible for awards.

8. Admiralty courts have traditionally used broad discretion in determining the amount of salvage awards. See 33 LAW MAGAZINE & REV. 300 (1908). It is not surprising, therefore, that the court in the principal case considered relying upon its sense of fairness when forced to determine eligibility for an award.

9. The court did not suggest why the crews would be willing to accept the lower rate of compensation. In some instances professional salvage crewmen receiving regular wages work at salvage only occasionally, remaining idle between operations. See generally NORRIS, SALVAGE § 81, at 134 n.10 (1958). In the principal case, however, the crewmen worked full time, engaging in harbor towage when salvage work was unavailable. Principal case at 471.

cal injury to any professional salvage crewman is lessened by the specialized equipment on board his vessel.[10]

The court did not find in the evidence before it any overwhelming reason for either allowing or denying a crew award. Nevertheless, it concluded that a modest crew recovery should be permitted in the instant case simply because the "conscience of admiralty" was so disposed.[11] Although salvage claims are usually negotiated or arbitrated,[12] the *ad hoc* nature of the court's decision may lead salvage crewmen, or the owners or insurers of salvaged property, to take future disputes to the federal courts whenever they consider the equities of the particular situation favorable to their position.

Prediction of the outcome of future salvage litigation may be facilitated by a thorough review of the professional salvage crew award question. Such compensation has sometimes been opposed on the theory that the seaman, by becoming a professional salvage crewman, impliedly either abandons any claim to an award in favor of accepting steady employment on a salvage vessel, or else bargains the potential claims away in consideration for his wages.[13] These arguments seem untenable in light of present-day maritime law, which finds admiralty courts playing the role of the seaman's guardian, protecting him from abuse and overreaching by his employer.[14] It seems anomalous that the same tribunals which place upon the shipowner an affirmative burden of showing that a release executed by an injured crewman was signed with full knowledge of the extent of his injuries as well as of his rights to maintenance, cure, and damages[15] should be disposed to hold that a seaman *impliedly* gave up a potential salvage claim—at least without determining whether he knew the nature of his rights and understood that he was foregoing them. A similar paternalism was manifested by Congress in enacting sections 600 and 601 of the Shipping Code,[16] which invalidate

10. In the principal case the salvage vessels towed the distressed ships to a mooring and then, after tying them up, pushed against them to relieve pressure on the mooring lines. The crews' physical efforts played a very small part in the operation. See Nicholas E. Vernicos Shipping Co. v. United States, 223 F. Supp. 116 (S.D.N.Y. 1963).

11. Principal case at 471.

12. Schimski, *Arbitration of Marine Claims at Lloyd's*, 12 ARB. J. (n.s.) 96 (1957).

13. See note 7 *supra*.

14. See Norris, *The Seaman as Ward of the Admiralty*, 52 MICH. L. REV. 479 (1954).

15. *Id.* at 487.

16. REV. STAT. § 4535 (1875), 46 U.S.C. § 600 (1964), reads in part: "[E]very stipulation by which any seaman consents to abandon his right to his wages in the case of the loss of the ship, or to abandon any right which he may have or obtain in the nature of salvage, shall be wholly inoperative." 38 Stat. 1169 (1915), as amended, 46 U.S.C. § 601 (1964), reads in part: "[N]o assignment or sale of wages or of salvage made prior to the accruing thereof shall bind the party making the same." Seamen engaged in the coastal trade are excepted from the coverage of § 600 by the Act of June 9, 1874, 18 Stat. 64, as amended, 46 U.S.C. § 544 (1964).

None of this legislation could be binding in the principal case because the crewmen and the owners of the salvage vessels were Greek nationals, the vessels were of Greek registry, and the events giving rise to the litigation occurred outside the juris-

certain express attempts by seamen to abandon or assign their salvage rights prior to accrual. This legislation would certainly seem to suggest a national policy against a court's finding an *implied* relinquishment of the same rights.

In the principal case, however, the United States appears not to have argued any type of renunciation theory. Instead, it maintained that the crewmen did not act "voluntarily" toward the naval vessels, since they were regularly employed for the purpose of saving distressed property. This contention goes to the question of whether a particular person has rendered a salvage service as defined by admiralty law,[17] rather than to the eligibility of one admittedly a salvor to receive an award.

The flaw in the Government's argument lies in giving too narrow a definition to the word "voluntary." The mere hope of gain, for example, does not render service to distressed property involuntary,[18] nor does the fact that the rescuer was motivated by the instinct of self-preservation.[19] In fact, previous cases indicate that a salvage claimant's service is "involuntary" only if he has a pre-existing duty to either the imperiled property or the community to lend assistance. A crewman, for example, cannot ordinarily become the salvor of his own ship, for he has contracted to serve the craft at all times irrespective of the hazard involved.[20] Public policy is also furthered by this rule, since one ineligible for a reward is not tempted to allow his ship to become imperiled so that he can salvage her.[21] In theory, at least, passengers cannot be salvors, since they have an obligation, albeit an extremely limited one, stemming from their contract of carriage, to help their ship in distress.[22] A duty to the public at large

diction of the United States. Principal case at 467. See generally Lauritzen v. Larsen, 345 U.S. 571 (1953).

The scope of this note does not embrace the questions which may arise when a professional salvage crewman expressly agrees to forego any salvage claim which may accrue to his benefit.

17. See text accompanying note 2 *supra*.

18. See NORRIS, *op. cit. supra* note 9, § 69. There is authority suggesting that a professional salvage crewman can act voluntarily toward the distressed vessel. Bowley v. Goddard, 3 Fed. Cas. 1072 (No. 1736) (D. Mass. 1867).

19. The Lomonosoff, [1921] P. 97 (dictum).

20. *E.g.*, The Tashmoo, 48 F.2d 366 (E.D.N.Y. 1930); The Neptune, 1 Hagg. 227, 166 Eng. Rep. 81 (Adm. 1824). Under unusual circumstances where the crew has acted beyond the call of duty, the crewmen may receive a salvage award. The Mary Hale, 16 Fed. Cas. 985 (No. 9213) (S.D. Fla. 1856). One author summarizes these situations as follows: where their ship was absolutely abandoned without hope of recovery, where she was totally lost by shipwreck and either went to the bottom or "left her bones on the shore," where she was taken by a hostile power and later recaptured by the crew, or where the crew was mistakenly discharged from service prior to salvage. NORRIS, *op. cit. supra* note 9, § 52.

21. See Elrod v. Luckenback S.S. Co., 62 F. Supp. 935 (S.D.N.Y. 1945).

22. The Vrede, Lush. 325, 167 Eng. Rep. 143, 144 (Adm. 1861) (Lushington, J.). The passenger's duty to his ship, of course, is much less exacting than that of the crew. He may desert the vessel at any time. Furthermore, he is thought to be acting above the

for whom he works makes "involuntary" the assistance rendered by a government servant in the usual scope of his employment. Thus, harbor firemen or Coast Guardsmen bound by law, regulation, or the nature of their offices to rescue distressed property at sea cannot normally be salvors.[23] Another policy is thereby implemented: the conduct of public servants will remain untainted by the hope of personal reward.[24] Professional salvage crewmen, however, are not bound by contract to the distressed vessel, nor have they agreed to do the public's bidding. Indeed, it is anomalous to say that these seamen had an obligation to either the imperiled craft or the community which would make their assistance "involuntary," when the owner of their tug, by whose will their activities were governed, had no similar obligation.[25]

On the other hand, there are cogent reasons for allowing a modest award to professional salvage crewmen. Salvage awards are made in the hope that the prospect of compensation will encourage those in a position to do so to engage in salvage operations and to carry them out as efficiently as possible.[26] While the professional salvage crewman will no doubt be prompted by the contract with his employer to lend aid as the latter directs, the expectation of remuneration over and above his usual wages will motivate him to expend his utmost effort. A crew award also serves the best interests of the salvage vessel's owner, for the greater the value of the salvaged property the larger his own compensation is likely to be.[27] Furthermore, the owner faces the possibility of receiving little or no award if the value of the property is lessened through the crew's negligence or intentional misconduct.[28] Presumably a crew award would be computed on the basis of the same considerations used to assess the owner's. The risk of losing all or part of their own award would provide the crewmen with an added incentive to perform carefully and diligently, thereby lessening the chance of the owner's award being diminished because of their misfeasance.

Although there are good reasons for allowing professional salvage crew awards and no convincing arguments for prohibiting them,

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call of duty and, thus, eligible for a salvage award, when he does more to assist than simply operate the ship's machinery. See The Connemara, 108 U.S. 352 (1883); Towle v. The Great Eastern, 24 Fed. Cas. 75 (No. 14,110) (S.D.N.Y. 1864).

23. The Lyman M. Law, 122 Fed. 816 (D.C. Me. 1903) (dictum) (Coast Guardsman); Davey v. The Mary Frost, 7 Fed. Cas. 14 (No. 3592), *affirming* 7 Fed. Cas. 11 (No. 3591) (E.D. Tex. 1876) (fireman).

24. Thornton v. The Livingston Roe, 90 F. Supp. 342 (S.D.N.Y. 1950).

25. It is clear that the owner of a professional salvage vessel is entitled to an award. See, *e.g.*, The Camanche, 75 U.S. (8 Wall.) 448 (1869). The government did not contend that the *owners* of the tugs in the principal case were not volunteers.

26. Mason v. The Blaireau, 16 Fed. Cas. 1009 (No. 9230) (D. Md. 1803).

27. See The Blackwall, 77 U.S. (10 Wall.) 1 (1869).

28. See Danner v. United States, 99 F. Supp. 880 (S.D.N.Y. 1951).

these seamen are paid by their employers for engaging in salvage operations and should not be compensated twice for the same effort.[29] To avoid double remuneration, the court should deduct from the amount it would allow each crewman were he not under contract with his employer, computed with reference to the same considerations traditionally taken into account when setting the amount of a chance rescuer's award,[30] a sum equal to the value of the contractual benefits each has received attributable to the particular salvage operation.[31] In this way the crewman's reward will approximate the value of his service over and above that expected of him in his daily dealings with his employer—the very service which a professional salvage award is designed to encourage.

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29. See Slone v. Udle, 6 Newf. Sup. Ct. 217 (1880); *cf.* text accompanying notes 26 & 27 *supra*. However, the amount of compensation apart from the award seems irrelevant in determining whether a salvage claimant was a volunteer. See The Tashmoo, 48 F.2d 366 (E.D.N.Y. 1930); note 7 *supra*.

30. "Courts of admiralty usually consider the following circumstances as the main ingredients in determining the amount of the reward to be decreed for a salvage service: (1). The labor expended by the salvors in rendering the salvage service. (2). The promptitude, skill, and energy displayed in rendering the service and saving the property. (3). The value of the property employed by the salvors in rendering the service, and the danger to which such property was exposed. (4). The risk incurred by the salvors in securing the property from the impending peril. (5). The value of the property saved. (6). The degree of danger from which the property was rescued." The Blackwell, 77 U.S. (10 Wall.) 1, 13-14 (1869).

31. A particular crewman's regular benefits may include more than just the amount of wages paid him during the time he was actually engaged in a particular operation. For example, a seaman may receive a monthly wage from the professional salvor but be expected to engage solely in salvage work and, of course, only when it is available. See note 9 *supra*. Assuming that he were called to work an average of only one time per month, a court could well determine that a full month's pay and fringe benefits are properly attributable to each salvage operation.