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LABOR LAW - SEAMEN - REINSTATEMENT OF SIT-DOWN STRIKERS

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LABOR LAW — SEAMEN — REINSTATEMENT OF SIT-DOWN STRIKERS — While a ship whose home port was Philadelphia was at dock in the port of Houston, unlicensed seamen commenced a strike for union recognition and boarding passes for union delegates. The strikers did not take possession of the ship but remained on the poop-deck and refused to obey all orders. They were never requested to leave. Sufficient steam was maintained for the operation of all the ship's sanitary and safety appliances, and the vessel was never in danger. When upon the ship's return to Philadelphia the steamship company discharged five of the seamen for participating in the strike, the National Labor Relations Board ordered the company to offer reinstatement and back pay to these men. *Held*, the order was affirmed on the ground that the strike was legal. The dissent maintained the strike was unlawful since it violated the law of the sea

and the shipping articles. *Southern S. S. Co. v. National Labor Relations Board,* (C. C. A. 3d, 1941) 120 F. (2d) 505.

When a ship is on the high seas, almost every strike of its crew has been held to constitute mutiny or revolt unless the ship is unseaworthy,[1] or unless the master deviates voluntarily from the voyage described in the shipping articles.[2] But whether there can be a mutiny or revolt when the vessel is at dock in a safe harbor is a controversial question which has received no recent adjudication.[3] It has been held that the refusal of the crew to put to sea or to obey the master's orders while in port amounted to an endeavor to commit a revolt.[4] If the strike is accompanied by acts of violence and the men take possession of the ship, the strike is illegal and the National Labor Relations Board cannot order reinstatement.[5] But three recent cases appear to hold that there can be no mutiny when a ship is safely at dock.[6] However, each of these cases can be distinguished from the principal case,[7] and the really vital question in the prin-

[1] United States v. Ashton, (C. C. Mass. 1834) 24 F. Cas. No. 14,470.

[2] United States v. White, (D. C. N. Y. 1848) 28 F. Cas. No. 16,683.

[3] The statutes, 35 Stat. L. 1146 (1909), 18 U. S. C. (1934), §§ 483-484, defining revolt and mutiny state that they can be committed on a vessel "on the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States." This would of course include all domestic harbors. The language is significant, since the piracy statute, 35 Stat. L. 1145 (1909), 18 U. S. C. (1934), § 481, says that piracy can be committed only "on the high seas."

[4] United States v. Hamilton, (C. C. Mass. 1818) 26 F. Cas. No. 15,291; United States v. Keefe, (C. C. Mass. 1824) 26 F. Cas. No. 15,509; United States v. Gardner, (C. C. Mass. 1829) 25 F. Cas. No. 15,188. These decisions were later followed, after the revision of the mutiny statute, in United States v. Cassedy, (C. C. Mass. 1837) 25 F. Cas. No. 14,745; United States v. Lynch, (C. C. N. Y. 1843) 26 F. Cas. No. 15,648; United States v. Roberts, (C. C. N. Y. 1843) 27 F. Cas. No. 16,173; and United States v. Nye, (C. C. Mass. 1855) 27 F. Cas. No. 15,906. The original mutiny statute, 1 Stat. L. 113 (1790), did not define the crime, but the 1835 revision, 4 Stat. L. 775 (1835), defined it in accordance with Justice Story's decisions (see note 3) and reduced the penalty from death to hard labor. The final revision, in 1909, 35 Stat. L. 1146 (1909), 18 U. S. C. (1934), §§ 483-484, removed the hard labor penalty. But it appears that, contrary to what one might expect, this relaxation of the penalty has not enlarged the scope of the crime.

[5] National Labor Relations Board v. Fansteel Metallurgical Corp., 306 U. S. 240, 59 S. Ct. 490 (1939). Thus the board's reinstatement order was reversed where the crew took possession of the ship, prevented the vessel from sailing, and refused to allow the sanitary arrangements and electric equipment to be used or food to be served to anyone but themselves. Peninsular & Occidental S. S. Co. v. National Labor Relations Board, (C. C. A. 5th, 1938) 98 F. (2d) 411.

[6] See Rothschild, "The Legal Implications of a Strike by Seamen," 45 YALE L. J. 1181 (1936); Sapiro and Frank, "Mutiny at the Dock," 25 CAL. L. REV. 41 (1936).

[7] In Black Diamond S. S. Corp. v. National Labor Relations Board, (C. C. A. 2d, 1938) 94 F. (2d) 875, the strikers did not remain on board but left the ship. In Bidwell v. Abbott, [1926] Queensland St. Rep. 196, a conviction was sustained for wilful disobedience under the Merchant Shipping Act, and no mention was made of mutiny. But since only one defendant was charged and not the entire crew, no prosecution for mutiny would have been possible without proving cooperation between

cipal case is not whether the strike constituted a mutiny but whether it was illegal, since the National Labor Relations Board is powerless to order reinstatement, not only after a mutiny, but after any illegal sit-down strike. Several tests have been suggested for determining the legality of strikes on shipboard in the absence of violence or dispossession of the ship. The line might be drawn between strikes at sea and in port, between strikes in ports of safety and of refuge,[8] between strikes in the home and in other ports,[9] between strikes in domestic and in foreign ports, or between strikes where the ship is safe and those where it is unsafe without the obedience of the crew.[10] Only by employing the broad and general test of safety can all the modern cases be reconciled; yet this is the most difficult standard to apply and would necessarily entrust to the biased strikers themselves the task of estimating that security and safety. A test of pure safety is objectionable also because it takes into account only the immediate and present security of lives and cargo, whereas the ultimate safety of the boat requires discipline at all times; for "A master who cannot control his crew in port is not likely to be able to control it at sea." [11] Since the element of safety to passengers, as opposed to mere inconvenience to consumers, is present in seamen's strikes, all such strikes will continue to receive more criticism than the ordinary industrial strike,[12] despite the present legislative trend toward enhancing the right to strike in general. The policy of the modern federal statutes restricting the master's power [13] is to impose penalties on the master and employer rather than encourage an extension of the right of seamen to strike.

two or more members of the crew. Further, to say that one of the seamen is guilty of wilful disobedience is not to say that the entire crew is not guilty of mutiny. In Weisthoff v. American-Hawaiian S. S. Co., (C. C. A. 2d, 1935) 79 F. (2d) 124, the court held wages not to be forfeited by participation in a strike. But wages are not forfeited for all mutinies except at common law, the mutiny statute providing other remedies. See 23 CORN. L. Q. 302 (1938). Only the statute, 38 Stat. L. 1167 (1915), 40 U. S. C. (1934), § 701, on the offense of "wilful disobedience *at sea*" provides for forfeiture of wages in all cases.

[8] Thus it was held to constitute an endeavor to commit a revolt in Hamilton v. United States, (C. C. A. 4th, 1920) 268 F. 15, where the crew struck three miles from the dock in Hamilton harbor, a port of refuge where the ship was being repaired.

[9] The economic leverage applied by a strike is far greater when the ship is in a foreign port because of the added factor of wharfage charges which must be paid there. And since the company officers are at the home port, it is exceedingly difficult to negotiate with strikers two thousand miles away or to end the strike with any speed.

[10] E.g., in Rees v. United States, (C. C. A. 4th, 1938) 95 F. (2d) 784, a conviction was sustained when a strike occurred in the port of Montevideo, where the ship was not moored to a dock or at anchor in a safe harbor but in such a position that obedience of the crew to the master's orders was essential to her safety.

[11] 23 CORN. L. Q. 302 at 306-307 (1938).

[12] One court held that "the maritime safety laws are paramount to the National Labor Relations Act wherever the Board's proposed orders may increase the danger which the long established safety legislation of Congress seeks to prevent or lessen." Texas Co. v. National Labor Relations Board, (C. C. A. 9th, 1941) 120 F. (2d) 186 at 187-188.

[13] 46 U. S. C. (1934), §§ 541-713. These statutes regulate provisions, medical treatment, living accommodations, clothing, heating, ventilation, etc.

The existence of these safe and adequate statutory remedies against the master and the employer would seem to make seamen's strikes even less excusable today than in the past.[14]

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[14] The two opinions in the principal case illustrate the conflicting approaches of the Department of Labor, which looks on strikes by seamen as no different from any other strikes [see Sapiro and Frank, "Mutiny at the Dock," 25 CAL. L. REV. 41 (1936)] and the Department of Commerce, which is primarily concerned with the safety of American vessels, and which still considers lack of discipline the main cause of unsafety [see the Maritime Commission report, Economic Survey of the American Merchant Marine, p. 43, H. Doc. No. 392, 75th Cong., 2d sess. (1937)]. In McCrea v. United States, 294 U. S. 23, 55 S. Ct. 291 (1935), the Supreme Court suggested that it is not discipline but better working conditions that are needed for safety. But it was observed in 18 ORE. L. REV. 128 (1939) that in none of these cases were the strikes instigated to gain improved conditions of employment. But it is submitted that this is a short-sighted view, since the ultimate goal of all strikes is better working conditions, jurisdictional strikes and strikes for union rights merely having as their immediate goal the acquisition of a more efficient means of obtaining the same.