

The Nature and Legal Application of Maritime Employment Assistance

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Abstract. Employment assistance is a form of rescue activities that often appears in modern maritime rescue activities. While, there is no clear nature determination under the framework of existing maritime laws and international rescue conventions, which makes it difficult to determine the applicable law of employment assistance when it comes to judicial practice. And this indicates that unlike the widespread application of employment assistance in international maritime rescue activities, it has not received the necessary attention in legal stage. It is foreseeable that this situation has brought certain obstacles to the legitimate interests of the parties involved in the employment rescue activities. So, in order to help solve the problems in the legal nature and application of employment assistance, this article is going to start by explaining the unique nature of employment assistance and discuss the rationality of bringing employment assistance under the jurisdiction of contract law in conjunction with the 2016 Gabriel ship shipwreck salvage contract dispute case.

Keywords: Employment assistance, shipwreck rescue, nature of rescue, application of law.

1. Introduction

Rescue in a maritime distress usually refers to the act of rescuing or providing assistance to property and personnel in distress at sea by relying on external forces other than the rescued person [1]. As one of the important means to protect the safety of people's lives and property in the process of fishing, transportation, navigation and other activities at sea, rescue at sea has long been widely valued by the international community because of its prominent role in promoting the exchange of commercial and trade personnel from all over the world and promoting the development of the world economy. Today, the maritime laws of countries deeply involved in international trade have perfect institutional provisions on rescue acts at sea. However, the author believes that if the existing system provisions of various countries on maritime rescue behavior want to play a better role, it is still necessary to conduct further discussions on some prominent issues, among which what is the legal nature of employment rescue in maritime distress rescue, and how employment rescue should be applied legally will undoubtedly be an important issue.

Shipwreck rescue has a long history, and its large-scale emergence should not be later than the ancient Roman period, and in the long process of development, it has formed many internationally recognized behavioral principles. One of them is that when encountering property or personnel in distress at sea, if they have certain rescue capabilities and the rescue behavior will not pose serious harm to their own property and personnel, it has become the common obligation of all countries to participate in the rescue of property or personnel in distress at sea. For this reason, although before the 15th century, the major participants in international trade did not clearly define the ownership of rescued property in distress at sea [1]. However, the act of rescue at sea itself has always been regarded as voluntary or governed by obligations by the rescuer, and generally should not be required to pay remuneration for the rescue act from the rescued. In modern times, with the continuous prosperity and development of maritime trade, in order to encourage maritime rescue and ensure the safety of maritime property and personnel, countries allow rescuers to request payment of the expenses incurred by rescue acts from the rescued party after the rescue is completed, but there are still many restrictions on whether and under what circumstances the rescuer can request the rescued party to pay reasonable remuneration other than the expenses incurred by the rescue act [2]. With the emergence and rapid development of the form of employment rescue, more and more maritime rescue

acts are carried out under the premise of the two parties entering into an employment rescue contract, and after the rescue is completed, both parties tend to pay or receive remuneration for the rescue act in accordance with the contract concluded. There are even companies that specialize in such bailouts for remuneration. Nowadays, most of the maritime rescue in the world adopts the form of employment assistance, but because the employment rescue and employment rescue contracts actually break through the principle of "invalidity and no remuneration" in the field of maritime salvage, there are certain conflicts and contradictions with the current relevant maritime laws not only at the theoretical application level, but also in the payment and collection of contract remuneration. Therefore, the author believes that analyzing and studying the nature and legal application of employment rescue and employment rescue contracts in maritime rescue will provide some help to solve this problem.

2. The Nature of Employment Assistance

There are three basic forms of modern maritime rescue, namely voluntary rescue, compulsory rescue and contract rescue, in order to illustrate the unique nature of employment rescue in maritime rescue, it is necessary to briefly introduce the basic forms of the above three types of maritime rescue.

2.1. Voluntary Assistance

Voluntary rescue, which usually refers to the active participation of the salvaging party in the rescue of property or persons in distress at sea without its own legal and contractual obligations, is a unilateral legal act [2]. Because the rescuer bears its own risk in the process of participating in the rescue at sea, and generally can only request the rescued person to pay the necessary expenses for the implementation of the rescue when the rescue is successful, and does not include the remuneration for participating in the rescue activities, this form of rescue has been rarely used in modern times, but the maritime rescue system of modern countries is developed on the basis of the basic form of voluntary rescue [3].

2.2. Compulsory Bailouts

Compulsory rescue refers to the rescue activities that the rescuer should carry out on property or personnel in distress at sea in accordance with the law, which is a kind of statutory rescue, mainly including basic types such as rescue of life at sea and mutual rescue after a collision between ships [2]. According to the spirit of humanitarianism, compulsory assistance, like voluntary assistance, generally does not support the request of the rescuer to be paid for participating in the rescue activity.

2.3. Contractual Bailouts

Contractual rescue refers to the rescue of the rescued party's property or personnel in distress at sea in accordance with the contract or agreement signed with the rescued party [2]. Some domestic scholars have argued that contractual relief should include two categories: relief under "invalid and unpaid" contracts and assistance under employment contracts, but the author believes that it should be controversial whether the rescue under employment contracts can be classified as a type of contractual relief.

First of all, according to the current four major requirements for determining the act of rescue at sea, namely: the subject matter of the rescue activity must be the subject matter recognized by law; The subject matter to be rescued was in danger at the time of the rescue activity; The rescue must be a voluntary act, including the voluntary intention of the rescuer to provide the rescue service and the rescued party to accept the rescue service, where the voluntary can be understood as the rescuer has no obligation to rescue the property or persons in distress at sea; Rescue activities must achieve beneficial results, and if there is a fact of rescue but no rescue effect, there is no rescue at sea [4]. It can be concluded that in order for an act to become a salvage act recognized by law, two conditions need to be met: first, whether the act constitutes an act of salvage, and special attention should be paid here to distinguish it from common general contractual acts, such as towing contracts, contracts

of carriage of goods by sea, etc., for example, only hiring a ship to tow a burning freighter out of the port without involving extinguishing the fire or rescuing the goods or persons in distress on board does not constitute an act of salvage, but only a contractual act [5]. Second, the purpose of the act is to obtain the rescue remuneration stipulated by law and obtain the necessary expenses for participating in rescue activities [6].

In view of the first condition mentioned above, since in reality there is often no clear and effective distinction between salvage acts and contractual acts, it is generally not regarded as a decisive condition for determining whether an act is an act of salvage in distress, but more consideration is given to whether the purpose of the act is to obtain salvage remuneration as stipulated by law.

The employment assistance contract signed in the employment assistance is an actual cost contract, which refers to the contract signed between the rescue party and the rescued party based on the manpower, material resources, time, etc. invested by the rescue party in the rescue activities, and does not necessarily require the rescue activities to achieve beneficial results, and the rescue party has the right to request payment of contract fees from the rescued party [7]. This is a breakthrough in the principle of "invalid and unpaid", and it is also a major reason why the author believes that employment rescue should not be classified as contractual rescue, but as shipwreck rescue, that is, the purpose of employment rescue is to obtain contract expenses incurred in the process of rescue, rather than salvage remuneration under the guidance of the law under the guidance of the principle of "invalid and unpaid". Therefore, the author believes that employment assistance is closer in nature to a contractual act than an act of rescue.

3. The Law of Employment Assistance Applies

For example, the 1989 Salvage Convention only defines salvage operations in Article 1 (a) as follows: "Salvage operations means acts or activities to rescue ships or any other property in danger in navigable waters or any other waters [6]." This leaves the question of the legal application of employment assistance and its relief contracts uncertain. On the one hand, the act of hiring rescue meets the definition of rescue operation, so employment rescue is widely recognized as a kind of rescue in a sea distress; On the other hand, in determining the specific nature of the act, the employment rescue and its rescue contract cannot be recognized as shipwreck rescue because they conflict with the principle of "invalidity and no remuneration". Conflicting determinations will make it inconvenient to deal with cases involving employment assistance and their employment contracts. For example, in 2016, the Supreme People's Court of the People's Republic of China tried a dispute between the South China Sea Rescue Bureau and the "Gabriel" steamship rescue contract, and the relevant provisions of the Contract Law of the People's Republic of China were applied to the determination of the nature of the salvage contract signed by the two parties, while the relevant provisions of the Contract Law of the People's Republic of China were applied to the determination of contract fees and payment methods, which is a typical way of segmentation [2]. Although this method can reflect the particularity of employment assistance, it cannot fundamentally solve the problem of unclear application of employment assistance laws. If effective adjustments cannot be made, it will first adversely affect the protection of the legitimate rights and interests of the rescuer in the employment assistance.

In the Gabriel ship salvage contract dispute, a dispute arose between the salvage party and the rescued party over whether the employment salvage expenses could be apportioned in general average. The salvage party claimed that the employment rescue was not a salvage at sea but a contract of labor services at sea, so the contract cost could only be paid by Party A, the steamship company to which the "Gabriel" steamship belonged at the time of signing the contract, and could not be required to share among the beneficiaries of the rescue activities. The rescued party argues that the employment assistance fee is a kind of rescue remuneration and should be shared by the beneficiaries of the rescue activity. we know that , the Supreme People's Court of China applied the relevant provisions of China's maritime law when determining the nature of the contract signed by the parties in this case,

which means that the Supreme Court of China "recognized" employment rescue as a form of rescue in a maritime distress. According to the convention, the salvage costs of salvage at sea are generally apportioned among the beneficiaries of the salvage activities as general average, and in this case, the beneficiaries of the salvage activities refer to the steamship company to which the "Gabriel" belongs and the owner of the cargo on board [2]. However, there should be an underlying condition for such a decision, that is, the rescue activity must be effective, and the rescue activity must have a beneficiary, otherwise the basis for apportioning the rescue cost will be lost. In other words, if the rescue fails, Party B of the employment assistance contract will not be able to receive the remuneration stipulated in the contract, which is contrary to the reality and requirements of the employment assistance. Therefore, employment assistance should not have been recognized as a form of rescue at sea. In order to protect the legitimate rights and interests of the rescuer in the Gabriel case, the Supreme Court of China finally ruled that the relevant provisions of the Contract Law were used in the payment of rescue expenses in this case, and the owner company of the "Gabriel" steamship should pay all the remuneration and interest of nearly 6.6million. The author believes that the Supreme Court of China's practice of applying the law in sections in the "Gabriel" round case has achieved a relatively fair and equitable judgment in this case under the existing legal framework, but through this case, the existing relevant laws and treaties cannot effectively deal with the issue of employment assistance; Lack of specific legal provisions or processes to regulate employment assistance; The difficulty of protecting the legitimate rights and interests of all parties in the employment rescue, especially the rescuer, has not been effectively resolved, and it is necessary to pay sufficient attention to it.

Under the existing legal framework, as the general average regime is difficult to apply to employment assistance, when rescuers decide to use employment assistance to participate in a rescue operation at sea, they cannot enjoy the protection of priority rights in the ship when it requests contractual remuneration. The reason is that the salvage does not meet the narrow definition of salvage in distress under current law, and the salvage party of the hired salvage cannot claim to the court as a participant in the salvage of the shipwreck that the ship is auctioned and paid in priority. As a de facto form of rescue with rapid development in recent years, employment assistance has been widely used in the practice of ensuring the safety of maritime transportation and navigation, such as excluding employment assistance according to the existing requirements for determining maritime rescue, which will adversely affect the protection of the legitimate rights and interests of the hired rescue party, and is also not in line with the original intention of the maritime laws and international treaties of various countries to promote and encourage the development of maritime rescue.

4. Analysis of the Reasonableness of Bringing Employment Assistance under Contract Law

As mentioned above, as a new, rapidly developing, de facto maritime rescue, employment rescue has not been recognized as a form of maritime rescue by the current maritime law and international treaties because of its particularity, and the result is not only that the rescuer in the employment rescue party encounters considerable difficulties in protecting its legitimate rights and interests, but also may discourage the enthusiasm of individuals or groups around the world to participate in maritime disaster rescue, which we do not want to see. Therefore, domestic scholars have conducted extensive discussions on the nature and application of employment assistance, but most of the existing discussions have focused on whether employment assistance should be recognized as a form of rescue in distress and applied according to the maritime laws and international rescue conventions of various countries. Considering the particularity of employment assistance and the relevant laws in force, the author believes that it is more conducive to solving the current problems by recognizing employment assistance as a contractual act and incorporating it into the jurisdiction of contract law.

It is reasonable to include employment assistance in the jurisdiction of contract law, which is a conclusion drawn from the characteristics of employment assistance as a contractual act and the continued adherence to the principle of "invalidity and no remuneration" in the field of salvage at sea.

4.1. Employment Assistance Has the Characteristics of Contractual Acts

First, the establishment of employment assistance is usually accompanied by the creation of an employment assistance contract. In an employment rescue contract, Party B designates an individual or group or organization as the rescuer of this rescue activity, and promises to pay remuneration according to the cost of manpower, material resources and time invested by the rescuer regardless of whether the rescue activity is effective or not. Party A, as the rescue party, shall undertake to obey the arrangements of the rescued party during the rescue process, and shall not transfer Party A's obligations stipulated in the contract to others to perform on behalf of the rescued party without the consent of the rescued party before the end of this rescue activity. The establishment of employment assistance and the creation of an employment assistance contract require a clear indication of the intention of both parties before or at the time of the rescue activity, so the request of the rescuer who voluntarily participates in the rescue activity to conclude the contract after the fact and receive remuneration accordingly will not be supported [8]. Second, the purpose of hiring the rescue party is to obtain contractual remuneration calculated in terms of the various costs of the input, not the rescue remuneration, and the calculation of such contractual remuneration is not conditional on the effectiveness of the rescue activity. This makes the employment rescue contract substantially closer to the maritime labor contract, while the employment rescue is a rescue act based on the obligations stipulated in the contract. In this regard, some scholars take the sea towing contract as an example, pointing out that the essential difference between the act of employment rescue and general maritime labor contract is that the purpose of employment rescue is to relieve the danger at sea [5]. Therefore, employment assistance cannot be equated with contractual acts. In the author's view, the above views do not represent the common intention of the parties to the employment assistance contract. It is true that both parties wish to remove goods or persons in distress from danger at sea through the rescue activities provided for in the contract, but this should clearly not be the primary purpose of hiring a salvage party, whose primary purpose is to obtain contractual remuneration. Accordingly, it should be reasonable to regard employment assistance as a contractual act. In fact, when Party A of a general labor contract at sea takes some actions in the course of operation to protect goods or personnel from dangers at sea, the general labor contract at sea may also be transformed into an employment rescue contract [9]. This further shows that there is no essential difference between the act of general labor contract at sea and the employment rescue.

4.2. The Need to Uphold and Maintain the Principle of "Ineffectiveness and No Remuneration"

The fact that the job of employment assistance has the character of a contractual act does not constitute the ultimate reason for bringing it under contract law, but merely an elaboration of its possibility. The author believes that the ultimate purpose of bringing employment assistance into the jurisdiction of contract law is to continue to uphold and uphold the general principles of international maritime salvage such as "invalidity and no remuneration". The reasons are as follows:

First of all, as one of the common basic principles of international maritime disaster rescue, the principle of "invalidity and no remuneration" has effectively maintained the basic order of international maritime disaster rescue for a long time, and the basic forms of maritime disaster rescue such as voluntary rescue, compulsory rescue and contract rescue regulated by it occupy an important position in modern maritime disaster rescue activities [10]. Undermining the principle of "ineffectiveness and no remuneration" will have a very negative impact on the development of modern maritime disaster rescue activities. Therefore, as a rescue act that has developed rapidly in recent years by breaking through the principle of "invalidity and no remuneration", if it is incorporated into the current maritime laws of various countries and international rescue conventions under the guidance of the principle of "invalidity and no remuneration", the existing laws and principles will face major changes, and countries will pay huge legal costs to achieve these necessary changes. Secondly, employment rescue is essentially a contractual act of pursuing profits, and the inclusion of employment rescue contracts in the scope of maritime rescue is regulated by the maritime laws of

various countries and international rescue conventions, which will make the essence of maritime rescue as a humanitarian act be impacted, in order to maintain the humanitarian nature of maritime rescue and the principle of "invalidity and no remuneration", the law applicable to employment assistance should be separated from the relevant provisions in maritime law. Thirdly, under the current maritime laws and international rescue conventions of various countries guided by the principle of "invalidity and no remuneration", it is difficult to obtain the same legal status as the basic forms of maritime rescue under the current principle of "invalidity and no remuneration", so it is impossible to obtain many legal protections from existing maritime laws and international conventions.

5. Conclusion

It is certain that employment assistance has not been clearly identified in nature under the framework of existing maritime law and international rescue conventions, and employment assistance is excluded from shipwreck rescue in accordance with the principle of "invalidity and no remuneration", and courts in some countries do not exclude employment assistance as a type of rescue in distress in practice, and apply relevant laws and regulations for adjudication. The author believes that this situation will lead to a decline in the authority of existing maritime laws and international rescue conventions, and the courts will also lack clear and effective nature determination when dealing with such cases, which will be full of pressure. Therefore, considering the characteristics of contractual acts inherent in employment assistance, the author suggests that employment assistance be included in the jurisdiction of contract law in order to maintain the stability of the existing maritime law and the framework of international rescue conventions.

However, it must be recognized that as a separate special law, the inclusion of employment assistance in the jurisdiction of contract law may weaken the status of maritime law to a certain extent and limit its scope of application, so the impact of such adjustment on the existing maritime law framework will be a question worth studying.

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