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II. Admiralty

in *Tyler* should help clarify that fees and expenses recoverable under the Act include costs associated with agency proceedings as well as costs associated with subsequent civil litigation.[82] The Fourth Circuit's decision in *Tyler* should also serve as a warning to administrative agencies not to pursue litigation unless their claim against a party is substantially justified in law or fact.[83]

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II. ADMIRALTY

Seamen's Wage Compensation: Effect of Discharge Justification Provision in Improper Discharge Statute

Section 594 of Title 46 of the United States Code provides wage compensation under specific circumstances to any seaman improperly discharged from employment.[1] Section 594 compensation consists of one month's regular wages in addition to any wages the seaman may have earned before his discharge.[2] To recover under section 594, a claimant seaman must satisfy three

82. *See supra* notes 61-63 and accompanying text (Fourth Circuit correctly interpreted Act to focus on government's position at whatever level of proceeding a party seeks to recover fees).

83. *See supra* notes 1-3 and accompanying text (Congress passed Act to encourage individuals to resist unreasonable governmental actions).

1. 46 U.S.C. § 594 (1976) (original version at ch. 322, § 21, 17 Stat. 266 (1872)). Section 594 states that any seaman signed on to a vessel for a voyage who is discharged prior to that voyage or prior to earning one month's wages, without the seaman's consent and without fault on his part justifying such discharge, may recover from the shipmaster or shipowner those wages the seaman already earned before his decharge plus the equivalent of one month's wages as compensation. *Id.* A discharge is improper if the discharge is an unjustified breach of the seaman's shipping articles or contractual agreement. United States Steel Products Co. v. Adams (The Steel Trader), 275 U.S. 388, 392 (1928); *see* Newton v. Gulf Oil Corp., 180 F.2d 491, 494 (3d Cir.) (discharge of crew after two weeks of three month contract constitutes improper discharge), *cert. denied*, 340 U.S. 814 (1950); Sergeant v. The O. M. Bernuth, 122 F. Supp. 589, 592 (S.D. Tex. 1954) (early discharge of crew at port not stipulated in shipping articles constitutes improper discharge), *aff'd*, 217 F.2d 704 (5th Cir. 1955); *cf.* Manetas v. International Petroleum Carriers, Inc., 541 F.2d 408, 413 (3d Cir. 1976) (shipowner's discharge of crew because ship unable to continue voyage due to unseaworthy condition of vessel constitutes justifiable discharge); Korthinos v. The Niarchos, 175 F.2d 730, 732 (4th Cir.) (refusal of crew to perform duties and protest strike by crew grounds for proper discharge), *cert. denied*, 338 U.S. 894 (1949); Fiamengo v. The San Francisco, 172 F.2d 767, 768 (9th Cir.) (disobedience of crewmembers grounds for proper discharge), *cert. denied*, 337 U.S. 946 (1949); The S. J. Wilder, 284 F. 728, 728 (S.D. Ala. 1921) (discharge of seaman for unsatisfactory performance and insubordination is proper discharge), *aff'd*, 284 F. 729 (5th Cir. 1922).

2. 46 U.S.C. § 594 (1976); *see supra* note 1 (text of § 594).

requirements.[3] The seaman's discharge must occur prior to the commencement of the seaman's first voyage or before the seaman earned one month's wages.[4] In addition, signed shipping articles must govern the seaman's terms of employment.[5] Finally, the seaman's discharge must not be a result of fault on the seaman's part and must be without the seaman's consent.[6] A primary issue concerning the fault clause is whether a seaman must be blameless before he may recover for early discharge against the shipmaster or shipowner.[7] In *Neathery v. M/V Overseas Marilyn*,[8] the Fourth Circuit considered whether a seaman's fault proximately caused by an initial fault on the part of the shipowner barred the seaman's recovery under section 594 for improper discharge.[9]

Neathery, a merchant seaman, signed shipping articles for work aboard the vessel *Overseas Marilyn* for a voyage between Norfolk, Virginia and the Netherlands.[10] Neathery, however, failed to join the *Overseas Marilyn* in time for the vessel's departure, resulting in Neathery's constructive discharge.[11]

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3. 46 U.S.C. § 594 (1976); *see infra* text accompanying notes 4-6 (listing requirements for § 594 recovery).

4. 46 U.S.C. § 594 (1976); *see supra* note 1 (text of § 594).

5. 46 U.S.C. § 594 (1976); *see supra* note 1 (text of § 594). Federal law requires each seaman employed aboard a vessel bound for a foreign port to sign shipping articles with the shipowner's agents. 1B BENEDICT ON ADMIRALTY § 62, at 5-3 (7th ed. 1982); *see* 46 U.S.C. § 564 (1976) (requirements governing nature and content of shipping articles). Each seaman's shipping articles represent an individual contract of employment with the shipmaster. Bunn v. Global Marine, Inc., 428 F.2d 40, 46 (5th Cir. 1970). Shipping articles bind the shipmaster individually as well as the ship and the ship's owner. Aird v. Weyerhaeuser S.S. Co., 169 F.2d 606, 609 (3d Cir. 1948), *cert. denied*, 337 U.S. 959 (1949). Both the shipowner and shipmaster are liable for a seaman's wrongful discharge under § 594. *Id.; see* 46 U.S.C. §594 (1976). *See generally* 1 NORRIS, THE LAW OF SEAMEN § 299 (3d ed. 1970) (discussion of Liability for seamen's wages).

6. 46 U.S.C. § 594 (1976); *see supra* note 1 (text of § 594).

7. *See* Davis v. Delta S.S. Co., 704 F.2d 762, 764 (5th Cir. 1983) (interpreting § 594 to bar seaman's recovery if seaman in any manner at fault); Zimbro v. Lykes Bros. S.S. Co., 1954 A.M.C. 1909, 1911 (E.D. La. 1954) (same). *But see* The Villa y Herman, 101 F. 132, 133 (S.D. Ala. 1900) (single fault on part of seaman not grounds for discharge unless degree of fault justifies discharge). *See supra* note 5 (Both shipowner and shipmaster liable for seaman's wrongful discharge).

8. 700 F.2d 140 (4th Cir. 1983).

9. *Id.* at 143.

10. *Id.* at 141.

11. *Id.* After standing watch aboard the *Overseas Marilyn* at Norfolk, the plaintiff Neathery, in *Neathery v. M/V Overseas Marilyn*, went ashore at 4 p.m. on March 11, 1981 to visit his family. *Id.* Neathery returned to his ship at 7 p.m., an hour before the posted sailing time, to discover that the shipowner's agents had delayed the sailing time by seven hours to 3 a.m. *Id.* In addition, the agents had scheduled a 10:30 p.m. shift from the Norfolk pier to pier 15 at Newport News. *Id.* Neathery returned home, expecting to meet the ship at Newport News at 2 a.m. and sail at the scheduled 3 a.m. departure time. *Id.; see* Brief for Appellant at 4, Neathery v. M/V Overseas Marilyn, 700 F.2d 140 (4th Cir. 1983) (detailing Neathery's plans to meet vessel at Newport News) [hereinafter cited as Brief for Appellant]. While Neathery was on shore, the shipowner's agents changed the sailing time again, announcing departure from Norfolk for offshore anchorage at midnight and cancelling the shift to Newport News. 700 F.2d at 141. Consequently, when Neathery reported to pier 15 at Newport News between 1 and 1:30 a.m., the ship was not alongside. *Id.; see* Brief for Appellant at 4, *supra* (specifying exact time of Neathery's

Neathery filed a complaint in the United States District Court for the Eastern District of Virginia claiming wage compensation under section 594.[12] The district court determined that the shipowner's agents breached Neathery's employment contract by failing to post timely notice of the vessel's departure.[13] The court, however, also determined that Neathery was negligent in not taking adequate steps to locate the *Overseas Marilyn* before its departure.[14] The court interpreted section 594 to require the seaman claiming compensation to be completely without fault.[15] The district court therefore concluded that Neathery's negligence barred any entitlement to section 594 relief.[16]

On appeal, the Fourth Circuit reversed the district court's decision, concluding that the district court improperly interpreted and applied section 594.[17] The *Neathery* court recognized that the district court failed to consider whether Neathery's conduct justified his discharge.[18] The Fourth Circuit noted that the express language of section 594 bars compensation to a discharged seaman only if the seaman's fault justified his discharge.[19] The *Neathery* court referred to the remedial purpose of section 594 to support the interpretation of

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arrival at pier 15). Neathery failed to locate the ship in time for its actual departure for the Netherlands. 700 F.2d at 141; *see infra* note 14 (Neathery's attempts to locate vessel). Both Neathery and the shipowner agreed that Neathery's failure to sail with the *Overseas Marilyn* constituted the reason for Neathery's discharge. 700 F.2d at 143; *see* 1 NORRIS, *supra* note 5, § 467, at 549-50 (discussing effects of seaman's failure to join vessel in time for departure).

A labor management agreement governed Neathery's shipping articles and provided that posting of the ship's sailing time would occur at least eight hours before departure. 700 F.2d at 141. The agreement further stipulated that if the shipowner's agents scheduled departure for between midnight and 8 a.m., the agents would make the announcement no later than 5 p.m. *Id.* Evidence indicated that both the first and second sailing time changes occurred after 5 p.m., in contravention of the labor management agreement. *Id.*

12. *Id.* at 140, 142. Neathery's original complaint advanced both 46 U.S.C. § 594 (1958) and general maritime employment contract principles as theories of recovery. *Id.* at 142. The Fourth Circuit did not consider Neathery's second theory because the court's rejection of Neathery's § 594 claim was determinative of the case. *Id.* at 144.

13. *Id.* at 141, 142.

14. *Id.* at 143 n.2. Neathery arrived at pier 15 in Newport News and discovered that the *Overseas Marilyn* was not there. *Id.* at 141. Neathery had the pier manager at Newport News telephone the Virginia State Pilots' office concerning the whereabouts of the vessel, but the Pilots' office erroneously informed the pier manager that the *Overseas Marilyn* had already sailed for Europe. *Id.* Later, Neathery called the ship's tug company, which informed Neathery that the ship was no longer at its pier in Norfolk. *Id.* Neathery made no further attempts to locate the ship. *Id.* The shipowner's agents had hired a taxi company and a launch company to locate and transport to the *Overseas Marilyn* any seamen, unaware of the sailing changes, waiting at pier 15 in Newport News. *Id.* The taxi company sent two cabs, which waited for crew members at pier 14 rather than pier 15. *Id.* Neathery claimed that he did not see these cabs because machinery obstructed the view between piers 14 and 15. *Id.* at 141-42.

15. *Id.* at 143.

16. *Id.* at 142. The district court in *Neathery* utilized a contributory negligence inquiry. *See id.* at 143 n.3. The Fourth Circuit suggested, however, that application of a contractual breach theory, and not a tort theory, was the correct approach to the *Neathery* § 594 issue. *See id.* at 142-43.

17. *Id.* at 143.

18. *Id.; see supra* note 1 (text of § 594).

19. 700 F.2d at 143.

the statute.[20] The Fourth Circuit noted that the district court's interpretation of section 594 countered the statute's remedial purpose by placing on the seaman the burden of mitigating all possible ill effects resulting from a shipowner's initial breach of contract leading to subsequent fault on the seaman's part.[21] The *Neathery* court subsequently reevaluated the factual and legal conclusions of the district court and determined that while Neathery could have employed more effective means to locate the *Overseas Marilyn*, Neathery's actions were not sufficiently incompetent to justify his constructive discharge.[22] The Fourth Circuit ruled that the shipowner improperly discharged Neathery, thereby entitling Neathery to compensation for lost wages on the terms of section 594.[23]

The *Neathery* court's interpretation of section 594 is consistent with federal

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20. *Id.* at 142, 144; *see infra* note 24 (discussion of remedial purpose of § 594).

21. 700 F.2d at 144.

22. *Id.* In response to the shipowner's attempts to erase any fault on its part, the district court in *Neathery* recognized that changes in sailing times in violation of Neathery's labor management agreement constituted a breach of contract by the shipowner's agents. *Id.* The court, however, ruled that efforts by the agents to locate crewmen still ashore at least partially cured the breach. *Id.; see supra* note 14 (discussion of shipowner's agents' attempts to locate crewmen). The Fourth Circuit rejected the district court's conclusion, suggesting that the means of locating missing seamen used by the shipowner's agents was inadequate due to the agents' failure to find Neathery at pier 15 where he was waiting. 700 F.2d at 144; *see supra* note 14 (discussion of Neathery's attempts to locate vessel).

In *Neathery*, the Fourth Circuit avoided a controversial procedural issue arising on review of the district court's finding of negligence on Neathery's part. *See id.* at 143 n.2 (Fourth Circuit's discussion of rule 52(a) problem). Rule 52(a) of the Federal Rules of Civil Procedure mandates that, in non-jury trials, reviewing courts should not set aside a district court's findings of fact unless those findings are clearly erroneous. FED. R. CIV. P. 52(a). A number of circuits consider a trial court's finding of negligence a finding of fact, and therefore such a finding is final on appeal unless the trial courts' conclusion of negligence is clearly erroneous. *See, e.g.*, Kratzer v. Capital Marine Supply, Inc., 645 F.2d 477, 480 (5th Cir. 1981) (questions of negligence are questions of fact and thus not reviewable unless clearly erroneous); Marcona Corp. v. Oil Screw Shifty III, 615 F.2d 206, 208 (5th Cir. 1980) (in non-jury admiralty proceeding, courts should treat questions of negligence as questions of fact); Glenview Park Dist. v. Melhus, 540 F.2d 1321, 1323 (7th Cir. 1976) (Rule 52(a) governs review of trial court's findings of negligence in admiralty trial), *cert. denied*, 429 U.S. 1094 (1977); Sines v. United States, 430 F.2d 644, 644-45 (9th Cir. 1970) (lower court's finding of negligence is factual finding not reviewable on appeal unless clearly erroneous). *But see* Cleary v. United States Lines, Co., 411 F.2d 1009, 1010 (2d Cir. 1969) (finding of negligence reviewable as matter of law but ordinarily will stand unless lower court manifests incorrect conception of applicable law); Olah v. S. S. Jaladurga, 343 F.2d 457, 458-59 (4th Cir. 1965) (district court's determination of negligence is question of law upon which reviewing courts must apply independent judgment).

The *Neathery* court recognized that the district court ruling disqualifying Neathery from § 594 compensation due to his negligence was not a purely factual finding but involved the application of law to facts. *See* 700 F.2d at 143 n.2 (district court based conclusions of negligence not on findings of fact but on determination that plaintiff's attempts to locate vessel were so inept as to constitute negligence). The Fourth Circuit did not overturn the district court's finding of negligence, but rather, re-evaluated the legal effect of Neathery's attempts to locate the vessel. *Id.* at 144.

23. 700 F.2d at 144.

standards for application of protective statutes like section 594.[24] The Supreme Court has construed section 594 as a remedial, rather than a punitive, statute designed to compensate a seaman for loss of expected wages after an improper discharge that constitutes a breach of shipping articles.[25] Additionally, in *Vlavianos v. The Cypress*,[26] the Fourth Circuit considered the protective nature of section 594 and determined that, in view of the statute's remedial purpose, courts should construe section 594 liberally in favor of the seaman.[27] Likewise, in *Bunn v. Global Marine, Inc.*,[28] the Fifth Circuit noted that section 594

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24. *See id.* at 142, 144 (*Neathery* court's analysis of Neathery's conduct and interests under § 594 in view of protective nature of § 594); *infra* notes 25-31 and accompanying text (discussion of decisions interpreting § 594 to favor seamen's interests).

Section 594 complements a group of statutes providing seamen special rights and remedies. *See* 46 U.S.C. §§ 564, 565, 567, 568 (1976) (seamen's shipping articles requirements); *id.* §§ 592-94, 596, 597, 600, 601, 604 (seamen's wage regulations); *id.* §§ 660-1, 665-67, 669, 673, 678, 688, 712 (seamen's protection and relief for personal injury and distress); *see also* Bunn v. Global Marine, Inc., 428 F.2d 40, 45 (5th Cir. 1970) (§ 594 is one of number of federal statutes protecting seamen); *infra* note 28 (discussion of *Bunn* decision). Congress enacted these statutes upon the theory that seamen needed special legislative protection. *See* Arwine v. Alaska S. S. Co. (The Nizina), 189 Wash. 437, 440, 65 P.2d 695, 697 (1937) (seamen's wage statutes intended to protect seamen and thus warrant liberal construction). The special protection accorded seamen derives from the concept that seamen are wards of admiralty, a concept that remains a current doctrine. *See* Garrett v. Moore-McCormack Co., Inc., 317 U.S. 239, 246 (1942) (merchant seamen are wards of admiralty); Lampsis Navigation, Ltd. v. Ortiz de Cortes, 694 F.2d 936, 936 (2d Cir. 1982) (as wards of admiralty, legislation provides seamen special protection under admiralty law), *In re* Jama, 436 F. Supp. 963, 965 (M.D. Fla. 1977) (as wards of admiralty, seamen require special safeguards for their health and welfare). *See generally* Norris, *The Seaman As Ward of the Admiralty*, 52 MICH. L. REV. 479, 479-80, 491-93 (1954) (general discussion of ward of admiralty characterization and legislative enactments governing seamen's special rights).

25. *See* United States Steel Products Co. v. Adams (The Steel Trader), 275 U.S. 388, 392 (1928) (construing R.S. § 4527, predecessor to § 594, as remedial statute). In *The Steel Trader*, the Supreme Court determined that Congress intended § 4527 to provide seamen with a means of establishing and enforcing damages for an improper discharge in breach of the seaman's contract of employment. *Id.* at 391-92. The Court noted that an employer's breach of a seaman's contract was an invasion of a seaman's rights, and that for an invasion of a particular right, an appropriate remedy exists. *Id.* at 391. *The Steel Trader* Court defined the appropriate remedy as compensation, and concluded that § 4527, as a compensatory statute,was remedial in nature. *Id.* at 392. *The Steel Trader* Court, however, did not mandate explicitly a liberal construction of § 4527 in ruling that the statute was remedial. *See id.*

26. 171 F.2d 435 (4th Cir. 1948), *cert. denied*, 337 U.S. 924 (1949). In *Vlavianos*, the Fourth Circuit considered the § 594 compensation claim of a group of crew members discharged prior to a voyage, although the seamen's contracts made payment of wages contingent on actual completion of the planned voyage. *Id.* at 438-39. The *Vlavianos* court reversed the district court ruling that § 594 was inapplicable to lump sum agreements. *Id.* at 439. The *Vlavianos* court determined that § 594 does not distinguish between periodic wage payment contracts and lump sum payment contracts. *Id.* The Fourth Circuit stated that because § 594 does not distinguish between wage payment methods in providing a one month wage remedy, the court would construe § 594 liberally in view of the statute's remedial purpose to allow the claimant seamen one month's wages at a customary rate rather than to preclude recovery altogether. *Id.; see supra* note 1 (text of § 594).

27. 171 F.2d at 439.

28. 428 F.2d 40 (5th Cir. 1970). In *Bunn v. Global Marine, Inc.*, the claimant seaman, a ship's cook, signed aboard the *Glomar Challenger* through an individual employment contract

is one of a number of federal statutes designed to give seamen, as wards of admiralty,[29] unusual rights and remedies with respect to wages.[30] The *Bunn* court suggested that because section 594 is a remedial statute, courts should construe the terms of the statute broadly to produce a reasonable result beneficial to the seaman.[31]

The early decisions of a number of courts determining section 594 issues involving discharge justification reflect the flexible application of the statute suggested in *Vlavianos* and *Bunn*.[32] In *Trent v. Gulf Pacific Lines*,[33] the United States District Court for the Southern District of Texas considered the case of a seaman discharged by the shipmaster after the seaman refused to comply with the shipmaster's order.[34] The seaman claimed compensation under section 594 on the grounds that his insubordination did not justify his discharge.[35] The district court determined that the seaman had engaged in conduct subject to discipline but found the shipmaster at fault for failing to maintain a proper air of authority on board the vessel.[36] The court noted that the shipmaster's fault was the major factor contributing to the seaman's insubordination.[37] The *Trent* court concluded that, in light of the shipmaster's fault, the seaman's conduct did not justify his discharge.[38] The *Trent* court thus permitted the seaman to receive section 594 compensation for wrongful discharge.[39]

In *The Alice Blanchard*,[40] the United States District Court for the Northern

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for two 60-day legs of the vessel's trial voyage. *Id.* at 44. The shipmaster discharged Bunn without justification more than one month into Bunn's term of employment. *Id.* at 43. At trial, the shipowner sought to apply § 594 against Bunn, thereby limiting him to one month's wages when the employment contract actually entitled Bunn to at least four month's wages. *Id.* The *Bunn* court ruled that to apply § 594 to limit Bunn's recovery would produce an unreasonable result. *Id.* In addition, the *Bunn* court noted that courts should not apply a remedial statute like § 594 to the substantial disadvantage of a member of the class for whose especial benefit Congress designed the statute. *Id.* The Fifth Circuit subsequently determined that, under the circumstances, application of § 594 would not advance the remedial purposes of the statute, and awarded Bunn four month's wages under the employment contract rather than the one month's wages recoverable under § 594. *Id.* at 47-48.

29. *See supra* note 24 (discussion of seamen as wards of admiralty).

30. 428 F.2d at 45.

31. *Id.* at 47.

32. *See infra* text accompanying notes 33-51 and notes 33, 44 & 51 (cases applying § 594 with emphasis on justification clause); *supra* text accompanying notes 26-31 and notes 26 & 28 (*Vlavianos* and *Bunn* courts suggest liberal application of § 594).

33. 42 F.2d 903 (S.D. Tex. 1930). In *Trent v. Gulf Pacific Lines*, the shipmaster ordered the ship's cook to hand over the keys to the freezer room, but the cook refused to follow the order. *Id.* at 903. The shipmaster made no further attempts to enforce his order, and instead decided to discharge the cook after the cook's disobedience to the initial order. *Id.* In determining that the cook was entitled to § 594 compensation, the *Trent* court noted that a shipmaster cannot discharge crew members for any minor infraction of discipline. *Id.* at 904.

34. *Id.* at 903.

35. *Id.*

36. *Id.* at 903-904.

37. *Id.* at 904.

38. *Id.*

39. *Id.*

40. 92 F. 519 (N.D. Cal. 1899).

District of California likewise considered a discharge justification issue.[41] In *The Alice Blanchard*, a seaman signed articles requiring the seaman to report for duty on a specific day.[42] The shipping articles, however, did not specify any particular hour on that day as the reporting time.[43] The shipmaster ordered the seaman to report at a certain hour, but the seaman did not join the vessel until after the specified time.[44] The shipmaster discharged the seaman and the seaman subsequently claimed compensation for improper discharge.[45] The district court held that the seaman substantially complied with the shipping articles in reporting for work on the day specified.[46] The court suggested that if the shipmaster required his seamen to report at a particular hour, then the shipmaster should have included that provision in the seamen's articles.[47] *The Alice Blanchard* court concluded that the shipmaster was not justified in discharging the seaman and awarded wage compensation.[48]

The *Trent* and *The Alice Blanchard* decisions suggest that justification for a seaman's discharge is necessary before a seaman is barred from section 594 recovery.[49] These cases thus implied that the mere fact that the seaman

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41. *Id.* at 520.

42. *Id.* at 519.

43. *Id.*

44. *Id.* In *The Alice Blanchard*, the shipmaster orally ordered the claimant seaman, the ship's cook, to be on board in time to prepare breakfast. *Id.* The cook replied that he probably could not join the vessel at that early time. *Id.* The shipmaster warned the cook that if the cook was not on board by breakfast time, the shipmaster would discharge the cook. *Id.*

45. *Id.* at 520.

46. *Id.* at 521.

47. *Id.* at 520.

48. *Id.* at 521.

49. *See* Trent v. Gulf Pacific Lines, 42 F.2d 903, 904 (S.D. Tex. 1930) (shipmaster cannot discharge crewmembers for any slight infraction of discipline); *supra* note 33 and text accompanying notes 33-39 (discussion of *Trent* decision); The Alice Blanchard, 92 F. 519, 521 (N.D. Cal. 1899) (seaman's fault not justification for discharge under totality of circumstances); *supra* text accompanying notes 40-48 (discussion of *The Alice Blanchard* decision); *accord* The Kentra, 286 F. 163, 164 (E.D. N.Y. 1922) (seaman's fault not justification for discharge in light of shipmaster's breach of shipping articles); *infra* note 51 (discussion of *The Kentra* decision); *see also* The Villa y Herman, 101 F. 132, 133 (S.D. Ala. 1900) (seaman's discharge not justified unless seaman's fault is highly aggravated); The Topgallant, 84 F. 356, 357 (D. Wash. 1898) (seaman's fault must justify his discharge); The Idlehour, 63 F. 1018, 1019 (N.D.N.Y. 1894) (same); Marsland v. The Yosemite, 18 F. 331, 333 (S.D.N.Y. 1883) (single fault on part of seaman not justification for discharge without compensation).

In enacting § 594, the United States adoped § 167 of the British Merchant Shipping Act of 1854 with minor changes as considered necessary for adaptation to American admiralty law. 1B BENEDICT, *supra* note 5, § 65, at 5-15; *see* 11 TEMPERLEY, BRITISH SHIPPING LAWS § 162, ¶ 302, at 111-12 (6th ed. 1963) (text of British Merchant Shipping Act); ch. 322, § 21, 17 Stat. 266 (1873) (text of original version of § 594). Commentary on the English version of § 594 emphasizes that mere proof of a seaman's negligence is not enough to warrant a discharge without compensation. 11 TEMPERLEY, *supra*, § 162, ¶ 303 n.4, at 112. Temperley, in support of its emphasis on the justification provision in the improper discharge statute, cited two early cases upon which Parliament based the statute. *See id.*; The Blake, 166 Eng. Rep. 500 (1839) (deciding seaman's wage claim after discharge); The Exeter, 165 Eng. Rep. 309 (1799) (determining degree of seaman's act necessary to justify discharge). In *The Exeter*, the English High Court of Admiralty ruled

was at fault was not *per se* justification for the seaman's discharge.[50] Like the *Neathery* court, the *Trent* and *The Alice Blanchard* courts determined that a single fault on the part of a seaman was not sufficient to justify the seaman's discharge when the seaman's improper conduct was the reasonable result of the shipmaster's or shipowner's initial fault.[51]

In *Davis v. Delta Steamship Co.*,[52] however, the Fifth Circuit reached a different result when the court considered a seaman's discharge resulting from the seaman's fault alone.[53] In *Davis*, the shipmaster discharged the seaman, a ship's officer, when the seaman went ashore to purchase navigational aids after being denied authorization to leave the vessel.[54] The district court determined that because the seaman failed to prove that his discharge was improper, the seaman's fault barred him from section 594 compensation.[55] On appeal to the Fifth Circuit, the seaman claimed that his fault was too minor to justify his discharge.[56] The Fifth Circuit, however, refused to recon-

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that a single act committed in port is not conclusive proof of fault justifying discharge, and that acts justifying discharge must amount to habitual inattention to the ordinary duties of the seaman. 165 Eng. Rep. at 310. The High Court of Admiralty in *The Blake* held that a shipmaster could not withhold wages in cases of discharge for misconduct not of a nature rendering discharge absolutely necessary to preserve the safety of the vessel. 166 Eng. Rep. at 501.

50. *See supra* note 49 (cases discussing requirement for justification of discharge).

51. *See* 700 F.2d at 144 (initial breach of contract by shipowner's agents caused seaman's failure to join vessel, thus allowing seaman § 594 recovery); Trent v. Gulf Pacific Lines, 42 F.2d 903, 904 (S.D. Tex. 1930) (shipmaster's fault proximate cause of seaman's fault, and thus seaman's discharge not justified); The Alice Blanchard, 92 F. 519, 521 (N.D. Cal. 1899) (shipmaster's failure to provide certain terms in shipping articles resulted in seaman's fault, and thus seaman's discharge not justified); *accord* The Kentra, 286 F. 163, 164 (E.D.N.Y. 1922) (shipmaster's breach of articles proximate cause of seaman's fault, and thus seaman's discharge not justified). In *The Kentra*, the United States District Court for the Eastern District of New York considered the § 594 claim of a seaman discharged after the seaman refused to proceed with the vessel's planned voyage. 286 F. at 164. The seaman's shipping articles contained a clause empowering the shipmaster to order the vessel to sail to any port in the world. *Id.* In 1915, the shipmaster announced that the vessel would travel into the European war zone. *Id.* at 164. The seaman refused to proceed with the voyage on the basis of the vessel's sailing plans and received a discharge. *Id.* The seaman claimed § 594 compensation, arguing that the vessel's entry into European waters during a state of war constituted a breach of the seaman's shipping articles, since at the time the parties signed the articles, neither party had contemplated the possibility of war. *Id.* The district court agreed with the seaman and held that the seaman's refusal to sail with the ship into the war zone did not disqualify him from § 594 recovery due to the initial breach of the shipping articles by the shipmaster. *Id.*

52. 704 F.2d 762 (5th Cir. 1983).

53. *Id.* at 764.

54. *Id.* at 763. In *Davis v. Delta S.S. Co.*, the claimant seaman had orders to complete a log book for the voyage just completed. *Id.* The seaman asked the chief mate for permission to go ashore to purchase navigational aids. *Id.* The chief mate told the seaman that the seaman had to complete the log book before he could go ashore. *Id.* The seaman went ashore without first completing his work aboard the vessel and consequently received a discharge. *Id.* In addition, the evidence presented at trial indicated that the means by which the seaman obtained the navigational aids was improper and unauthorized. *Id.*

55. *Id.* In *Davis*, the district court found that Davis had disobeyed an order. *Id.* at 763. The district judge determined that disobedience is a justification for discharge. *Id.*

56. *Id.*

sider the district court's decision because the district judge's finding of fault on the seaman's part was not clearly erroneous.[57] Thus, the Fifth Circuit sanctioned a section 594 interpretation barring wage compensation whenever the seaman's fault occasioned his discharge, with no consideration of whether the fault in fact justified the discharge.[58]

Like *Davis*, most section 594 actions involve a discharge resulting from either the seaman's fault or the shipowner's fault.[59] *Neathery*, however, involved a complex set of facts leading to a trial court determination that the shipowner and the seaman were mutually at fault.[60] Because *Neathery* involved mutual fault, the Fourth Circuit necessarily compared the conduct of both parties, with the remedial purpose of section 594 as a major consideration.[61] Presented with a seaman's claim under a statute requiring liberal application in favor of seamen, the Fourth Circuit correctly interpreted and applied section 594 to allow a seaman the greatest benefit possible within the express wording of the statute.[62] Accordingly, the *Neathery* court determined that, in a mutual fault situation, a seaman's fault must be sufficiently serious to justify his discharge before that fault acts to bar section 594 compensation.[63]

Cases involving seamen's fault alone arguably may not fall within the *Neathery* ruling, particularly considering the Fifth Circuit's *Davis* decision.[64] Nonetheless, the decisions of a number of courts declaring that minor fault is not *per se* justification for discharge are significant.[65] Thus a likelihood exists that the *Neathery* decision will affect not only accidental discharges like that in *Neathery* but discharges resulting from negligence or insubordination on the part of the seaman alone.[66] The Fourth Circuit decided *Neathery* primarily on the basis of the express wording of section 594, which requires justification for a seaman's discharge.[67] Based on the *Neathery* court's statutory

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57. *Id.; see* FED. R. CIV. P. 52(a) (reviewing court should not set aside trial judge's findings of fact unless those findings are clearly erroneous); *supra* note 22 (discussion of rule 52(a)).

58. 704 F.2d at 764 (practical effect of *Davis* judgment precludes inquiry into whether seaman's fault justifies discharge); *supra* note 1 (cases demonstrating that proper or improper discharge contingent upon breach of articles by either seamen or shipmaster); *supra* text accompanying notes 52-58 (discussion of *Davis* decision).

60. *See* 700 F.2d at 141, 142 (discussion of facts and trial court decision in *Neathery*).

61. *See* 700 F.2d at 144 (*Neathery* court's evaluation of seaman's conduct and ramifications of district court decision in view of remedial purpose of § 594); *supra* note 24 (discussion of protective nature of § 594).

62. *See* 700 F.2d at 144 (*Neathery* decision requiring seaman's fault to justify discharge); *supra* note 1 (text of § 594); *supra* note 24 (discussion of protective nature of § 594).

63. 700 F.2d at 144.

64. *See* 704 F.2d at 764 (*Davis* holding that action for wages under § 594 requires seaman to prove absence of fault in his discharge); *supra* text accompanying 52-58 (discussion of *Davis* decision).

65. *See supra* note 49 (discussion of cases and authorities requiring justification for discharge in § 594 proceedings).

66. *See* 700 F.2d at 141 (*Neathery* court's characterization of case facts as comedy of errors); *supra* note 1 (cases involving fault of seaman alone in justifiable discharge situations).

67. *See* 700 F.2d at 143 (*Neathery* court's determination that district court misinterpreted § 594); *supra* text accompanying notes 17-19 (*Neathery* decision and Fourth Circuit's reasoning); *supra* note 1 (text of § 594).