

The Identification and Legal Regulation of Seafarer Employment Contract

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Abstract

The confusion in the identification of the nature of the seafarer's employment contract aggravates the difficulty in resolving the disputes over the seafarer's employment contract and the difficulty in protecting the seafarer's legitimate labor rights and interests. At present, most of the regulations regulating seafarer relations in China are some administrative regulations made by the Ministry of Communications and its subordinate departments, which focus on the administrative management of seafarer, while the provisions on labor protection with the nature of labor law are scattered in individual regulations, and the provisions are not complete. Through the quantitative analysis of cases and documents, this paper studies the qualitative problems of the seafarer employment contract between seafarer and seafarer service organization, between seafarer and shipowner, and considers to standardize the identification of the nature of seafarer contract from the perspective of perfecting the relevant legal provisions.

Keywords: Seafarer employment contract, seafarer labor contract, seafarer service contract, legal regulation

I. Problem: Judicial Response to the Plight of the Seafarer Employment Contract Disputes.

1.1 Quantitative analysis of dispute cases on seafarer contract.

In this paper, empirical research samples from China net, north Italy and net written judgment. Through the method of combining the typical case to analysis our country judicial practice in qualitative seafarer contract dispute cases and the employment contract, applicable law and other related problems [1]. At the same time, the results of quantitative analysis are presented intuitively through charts, and the causes of the research results are analyzed in combination with typical cases. Based on "the seafarer contract" as the keyword search north Italy, Internet related a total of 275 cases of the written judgment, the judgment, 249, 26 orders. According to the classification of the causes of cases, it was found that there was a total of 258 judicial documents in civil cases, among which 186 were related to disputes over seafarer's labor contract, 15 were related to disputes over seafarer's intermediary contract, 28 were related to maritime and maritime disputes, and 11 were related to other civil disputes [2]. (As shown in Figure 1)

Figure 1:

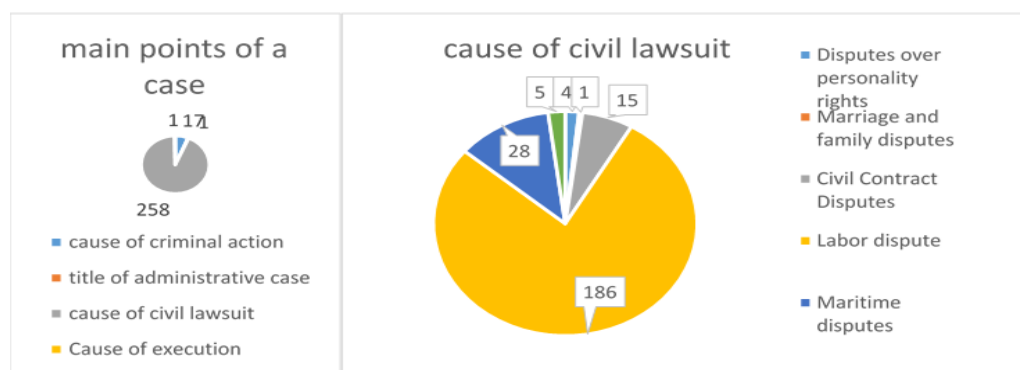


Fig 1: Cause of cases

Based on the sample the referee documents involved in the specific case analysis, the second trial of trial to as a case, a total of 186 valid documents samples are obtained. In these documents, the parties to the seafarer contract relationship properties directly controversial 20 copies of written judgment, including the identification of nature of the court ignored the seafarer contract directly to appeal the referee's nine [3]. At the same time, the court ruled that the contract nature in these documents for the 83 seafarer labor contract relationship (contain court is identified as labor contract relationship but applicable documents 2 copies of "labor contract law", and according to the case, the author think that belongs to the seafarer labor contract relations documents 15), There were 62 cases identified by the court as the seafarer's labor contract relationship (including 35 documents identified by the court as the labor contract relationship but called as the seafarer's labor contract dispute), 9 cases directly ruled on the litigants' right of action by bypassing the nature of the seafarer's employment contract, and 29 cases related to the seafarer's employment contract but not related to the nature of the seafarer's employment contract [4].(as shown in Figure 2)

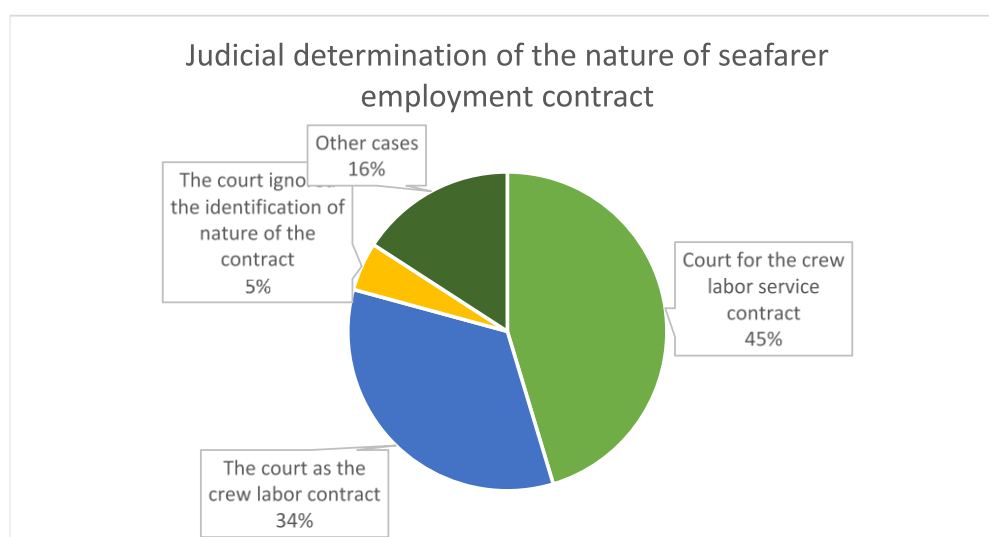


Fig 2: Judicial determination of the nature of seafarer employment contract

Through the quantitative analysis of samples and the study of typical cases, it is concluded that there are three problems in the identification of the nature of seafarers' employment contracts in China:

1.1.1 Escape from entering into labor contracts in labor practice.

Some shipping companies adopt a false company name with the seafarer as employment agreement, and lead to contract name registration basic situation serious domestic enterprises, and the self-consciousness is weak, coupled with the seafarer itself lead to damage because of the evidence is insufficient to prove in the rights and interests, and the shipping company is rather passive, labor relations and cannot get due protection [5, 6].

Some shipping companies and individual ship escrow agreement, both sides are registered as the owner, but and a seafarer of disability and death occurred on business expenses shall be borne by the individual owners, and the individual owner does not belong to the law of the People's Republic of China labor law "regulation of unit of choose and employ persons, so the court to ascertain the seafarer disputes between owners and belongs to the seafarer labor disputes, Both belong to the employment relationship. However, in the opinion of the author, since the shipping company is also the owner of the ship and the seafarer are engaged in labor on the ship of the shipping company, the shipping company should also be the party of the seafarer dispute. Is there an actual labor contract relationship between the seafarer and the shipping company?

There are also shipping companies to establish their own labor dispatch company or the use of other labor dispatch

company's seafarer, and the seafarer to sign a labor dispatch agreement, will be sent to their own all ship work. In this case, between the ship owner and the seafarer is a labor service contract relationship, between the seafarer and the labor dispatch company is a labor contract relationship, in a dispute, the seafarer can only find labor dispatch company, some of the seafarer cannot be guaranteed [7-9].

1.1.2 The seafarer services using advantage seafarer's interests.

Seafarer want to get job opportunities, but it usually takes time and effort to contact shipping companies on their own, but they can't get the ideal result. Most of them will get introductions through the seafarer service agencies. However, due to the unequal information and status of both sides, many bad seafarers service agencies will exploit their advantages and even steal the benefits of the seafarer through fraud. In a dispute over a service contract between Yu and a shipping company, the seafarer service agency signed an assignment contract with seafarers when they did not have the qualification for seafarers to be sent abroad. When the dispute occurred later, they tried to evade legal liability by claiming that the employment contract was only an intermediary introduction contract and the non-qualification for dispatch would not affect the shipping company's performance of the contract. There are also cases where the seafarer service agencies cheat the seafarers of large "training fees" by claiming that they should be trained before dispatching. All these indicate the unequal status between the seafarer service agencies and the seafarers, and the seafarers are in a weak position [10].

1.1.3 The seafarer contract dispute cases on judicial practice different qualitative.

In the judicial practice, there are also some although court defines the seafarer disputes as the seafarer labor contract dispute but used the labor law of the People's Republic of China, the phenomenon of the "labor contract law of the People's Republic of China, for example, in guangzhou him shipping co., LTD., parker Liang Jintang and seafarer zhang liability case of personal injury at sea, Court of first instance is that the case for the seafarer labor contract dispute, but for our country law on labor rights protection is also the rules of the seafarer in accordance with the provisions of the 2006 maritime Labour convention [11].

Some courts in accepts the seafarer contract dispute cases although think the seafarer in the case there is a labor contract relationship with shipping company, but it is still called the case the seafarer labor contract disputes. They believe in the Supreme People's Court on the applicable < maritime litigation special procedure law of the People's Republic of China >, the explanation of some issues in article 8 "for the seafarer labor contract dispute directly to the maritime court litigation, the maritime court shall accept" mentioned in the provisions of the seafarer of the labor contract disputes include the seafarer labor contract dispute of labor remuneration payment dispute, Therefore, they are directly referred to as labor contract dispute cases, rather than qualitative according to the actual labor contract relationship [12].

In addition, it can be seen that the seafarer and the shipping company reflected in the case are fully in line with the characteristics of the seafarer's labor contract relationship, but the court deals with the dispute according to the seafarer's labor service contract.

1.2 Conclusion

Maritime justice plays an irreplaceable role in protecting the rights and interests of seafarers. In China's maritime judicial practice, seafarer disputes account for a large proportion. In the recent five years, the number of cases received in maritime courts disputes and personal injury compensation disputes accounted for 30.98%, 21.78%, 17%, 17.95% and 29% of all cases. Seafarer contract disputes mainly include the contractual disputes between the shipping company and self-owned seafarer, individual seafarer and the ship company, individual seafarer and the seafarer service agency, the dispatched seafarer and the dispatching agency and the shipping company. It is easy to identify the labor contract relationship between the self-owned seafarer and the shipping company, but difficult to identify the contractual relationship between the individual seafarer and the shipping company or the seafarer service agency, as well as the seafarer contractual relationship in the case of seafarer labor dispatch. Is there a seafarer service contract

between the individual seafarer and the shipping company? Is there an intermediary introduction contract between an individual seafarer member and a seafarer service agency? Is there a de facto labor contract between the assigned seafarer and the overseas shipping company? What kind of contract is there between a seafarer on assignment and a seafarer service agency? All these puzzles show that the identification of the seafarers' contract still needs further consideration. The legal basis is not clear is an important reason. Due to the inconsistency of relevant laws and regulations on seafarers, judges need to correctly understand the relationship between different laws and regulations when applying laws, which also increases the difficulty for maritime judges to hear seafarers dispute cases.

II. Reasons: The Seafarer Employment Contract Nature of Legal Norms did not Reach a Consensus.

Relevant legal provisions on the nature of seafarers' contracts are mainly analyzed from the aspects of law, regulations and judicial interpretation, (as shown in Figure 3)

Maritime law		There is no provision on the nature of the seafarer contract
Maritime traffic safety law	Article 13	It clearly stipulates that employer should sign labor contracts with seafarers
The seafarer ordinance	Article 23	The seafarer's employer shall sign a labor contract with the seafarer
Special maritime procedure law	Article 6	For ships seafarer labor contract dispute filed lawsuit, the jurisdiction of the maritime court
Contract law		This Law shall apply to disputes over seafarer's labor service contract
Labor contract law		This Law shall apply to cases concerning disputes over seafarers' labor contracts
The Supreme People's Court on whether the domestic seafarer labor contract dispute case should be preliminarily asked for instructions		There is no need for labor arbitration in the case of seafarer labor service contract dispute
Opinions on Several Issues Concerning the Jurisdiction of Labor Contract Disputes and Labor Dispute Cases for Seafarer		The disputes in the present Opinions concerning the seafarer's labor service contract are the contractual disputes concerning special requests.
Administration of overseas assignment of seafarer	Article 23	Ensure that the assigned seafarer sign the labor contract with the unit
Regulations on the Management of Seafarer	Article 17 and Article 18	Seafarer service agencies shall urge the employing units of seafarer to sign labor contracts with seafarer
Measures for the control of working and living conditions of seafarers on board	Article 41 and Article 45	It stipulates that the ship owner should sign a written agreement with the seafarer, but the agreement is not a seafarer contract
Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Cases Involving Disputes concerning Seafarer	Article 1 and Article 2	It is clear that the disputes over the seafarers' labor contract and the disputes over the seafarers' labor service contract are dealt with separately, but there is still no provision on how to identify the disputes.

Fig 3: Relevant legal provisions on the nature of seafarers' contracts

2.1 Legal level: maritime law, marine litigation law (special law); contract law, labor contract law (general law).

The current Maritime Law of China has no explicit clauses on the seafarer contract, and only some maritime claims with maritime liens are stipulated in Article 22, including wages, labor remuneration, social insurance expenses and other claims related to the seafarer contract. The provisions of relevant laws and administrative regulations shall apply to other issues, such as the determination and selection of the nature of the seafarer's contract.

Article 6 of the Special Maritime Procedure Law stipulates that the maritime court has jurisdiction over the litigation brought by disputes over the contract of service of seaborne seafarer. Article 8 of the supporting judicial interpretation of the Special Maritime Procedure Law stipulates that dispute over seafarer's labor service contract can be brought to the maritime court directly without administrative arbitration as stipulated in the Labor Law. However, it can be seen that "disputes over seafarer's labor contract" in this law does not only refer to disputes over seafarer labor service contract with the employer, but also includes disputes over seafarer's labor contract.

Article 13 of the Maritime Traffic Safety Law clearly stipulates that the owner, operator or manager of a Chinese ship shall sign a labor contract with its legally recruited seafarer members. This regulation contains two contents. One is that only the seafarer recruited by the shipping company has the right to ask for a labor contract. Second, ships of restricted Chinese nationality. Although this provides a higher level of legal basis for the determination of the nature of the employment contract for seafarers, it cannot deal with all disputes concerning the nature of the employment contract for seafarers, such as the specific protection of the contractual rights and interests of seafarers in the case of dispatch of seafarers, and the protection of the labor rights and interests of individual seafarers.

In addition to the special provision that part of the right of claim is under the jurisdiction of the maritime court, other rights and obligations in the labor contract and the rights and obligations in the service contract are stipulated in the Labor Contract Law, the Contract Law and other relevant legal provisions respectively. However, the Labor Contract Law does not make special provisions on seafarers' special labor rights such as the right to repatriate, so the law cannot solve all types of labor contract disputes for seafarers.

2.2 Administrative regulations: The seafarer ordinance, regulations on dispatching sailors and regulations on seafarer service.

The seafarer ordinance clearly stipulates that employer should sign labor contracts with seafarers, without mentioning the labor service contract relationship between employers and seafarers and the rights and obligations of both parties in real society.

The Regulations on the Administration of Seafarers' Assignment to Foreign Countries stipulates that the assigned seafarers must sign a labor contract. The object of the contract may be one of the three: the assigned agency, the abroad shipowner, the Chinese shipping company or other relevant industrial units. The assigned agency shall guarantee and promote the signing of the labor contract.

The Regulations on the Administration of Seafarer Service clearly stipulates that the seafarer service agency shall urge the seafarer employer to sign a seafarer labor contract with the seafarer. If the employer does not sign a labor contract with the seafarer, the seafarer service agency shall terminate the provision of seafarer services to the seafarer.

2.3 Judicial interpretation level: the Supreme Court on the seafarer contract dispute cases reply.

It is pointed out in the Reply of the Supreme People's Court on whether the Dispute Case of Domestic Seafarer's Labor Contract Should Preface Labor Arbitration that the seafarer's labor contract includes disputes of domestic seafarer's labor contract, which is different from the general labor contract disputes. The maritime court shall accept the claims for wages, other labor remuneration, seafarer repatriation expenses and social insurance expenses without going through the pre-arbitration procedure. The reply did not clearly distinguish between disputes over the seafarer labor contract and the seafarer labor service contract, but it can be understood that the disputes over the seafarer labor contract in the cost reply include two categories: the seafarer labor contract dispute and the seafarer labor service contract dispute.

Cases The disputes over seafarer's labor contract in these Opinions are contractual disputes concerning special

requests. The seafarer wages and other remuneration, repatriation, social insurance and the cost of life or personal injury compensation seafarer contract dispute singled out as the seafarer labor disputes are stated in the contract, and other types of seafarer labor contract dispute, the seafarer is according to normal procedure to deal with the labor service contract dispute, and no shall be formulated separately. Therefore, the seafarer's labor contract in the opinions is divided according to the dispute points, regardless of whether there is a labor contract or a labor service contract between the seafarer and the employer.

The Supreme People's Court on several issues involved seafarer dispute cases of provisions for the seafarer labor contract dispute, if the board the ship and seafarer, unrelated to work on board a ship, the ship back, namely dispute does not involve the problem of maritime liens, inform the parties in accordance with the law of the People's Republic of China labor dispute mediation arbitration law "regulation, According to the legal procedures of "first adjudication, then adjudication", "one adjudication, two adjudication". The disputes concerning the seafarers' labor service contracts and the labor disputes related to the seafarers' boarding, working on the ship and returning from the ship shall still be accepted by the maritime court having jurisdiction in accordance with Article 2 of the judicial interpretation. However, Article 4 of Interpretation of Dispute Cases Inrelated to Seafarer stipulates that when a ship is attached to a ship, the seafarer has the right to require the attached shipowner to bear the liability of industrial injury insurance in the case that the seafarer has not signed a written labor contract with the shipowner, which is also a protection of the rights and interests of the seafarer's labor contract.

2.4 Conclusion

To sum up, China's current legal norms do not clearly categorize disputes over seafarers' contracts according to the nature of the contracts, and there are even contradictions between each other. For example, in the Law of Maritime Procedure, it is stipulated that the maritime court has jurisdiction over disputes over seafarers' labor contracts. However, in Article 6 of the Opinions of Shanghai High Court on Several Issues Concerning the Jurisdictions of Seafarer Labor Contract Disputes and Seafarer Labor Disputes, it is stipulated that in addition to wages, other labor remuneration, seafarer repatriation expenses and social insurance expenses, And other labor dispute cases or labor contract dispute cases involving seafarer members, such as compensation for personal and property damage occurred during the voyage, shall be accepted by the grass-roots courts according to law. Therefore, seafarer labor contract disputes and seafarer labor service contract disputes are collectively referred to as "seafarer labor dispute" in the Special Procedure Law of Maritime Litigation. The seafarer's regulation is more inclined to "seafarer's labor contract", while the interpretation of compensation for personal injury considers it to be "employment relationship".

The above law and judicial explanation in "labor contract", "labor contract dispute" and "employment" and other words, it shows that the current seafarer for the seafarer members in the legal system in our country the identification of nature of the employment contract did not reach a consensus, this also causes in handling seafarer contract dispute case there is no clear legal basis to the nature of the case involving the seafarer of the employment contract, Therefore, it is more difficult for judges to deal with disputes. At the same time, due to the confusion of the identification of the seafarer employment contract in the relevant laws and regulations, it will further mislead people to identify the nature of the seafarer contract.

The general law cannot cover all the issues of seafarer contract, and the special provisions related to seafarer contract disputes are too messy and the legal level is too low. In fact, the determination of the legal nature of the seafarer contract is of great significance to the settlement of the dispute cases concerning the seafarer contract. From the perspective of procedure, accurately defining the legal nature of the case can reduce the burden on workers and facilitate them to safeguard their own legitimate rights and interests. The seafarer labor contract dispute is a kind of labor contract dispute, can also be applied to deal with general labor contract dispute processing program, the seafarer labor contract dispute happens, can labor arbitration commission for arbitration, the labor authority disaffected within the statutory period can Sue to people court, labor arbitration is front-facing program at this time. Due to the particularity of seafarer's labor contract, it involves the handling procedure of maritime lien. Therefore, seafarer's

labor contract dispute has more options than ordinary labor contract dispute, that is, it can directly Sue the maritime court, and it is not bound by the prefacing procedure at this time. The above two procedures can be chosen, but the litigation costs are different, to the maritime court to Sue the civil case to collect litigation fees, the cost is higher. Disputes over the seafarer's labor contract can only be settled through litigation instead of labor arbitration. Of course, they can also be settled through negotiation between the two parties.

From the point of view of law application, it can solve the irregularity and inconsistency in the application of law between this court and other courts and between this judge and other judges when trying disputes over seafarers' contract. Especially in the aspect of compensation for personal injury to the seafarer, some cases of industrial injury compensation under the labor relations of the seafarer are dealt with either as tort dispute or as insurance contract. At present, the Labor Law and Labor Contract Law are applied to safeguard the legitimate rights and interests of workers in disputes over labor contracts for seafarers. Civil laws and the Contract Law should be applied to deal with disputes over the seafarer labor service contract. Therefore, the accurate nature of the seafarers' labor contract and labor service contract can reduce the work burden of the court, improve the court's case handling efficiency, and accurate the court's case handling accuracy.

III. Clear: Principles and Contents of the Nature of the Employment Contract Concluded that the Seafarer.

3.1 Clarifying the principles for determining the nature of the employment contract for seafarers.

3.1.1 Make it clear that the labor contract relationship of seafarers belongs to special labor contract relationship. The seafarer's labor contract is a special labor contract, which has different characteristics from the general labor contract. First of all, the subject of seafarer's labor contract has its particularity. The subject of the seafarer's labor contract refers to the seafarer and the employer who need to have relevant skills and special qualifications. Compared with land work, sea transportation has greater risks, and the seafarer is the key personnel to determine the safety of sea transportation, so the skill requirements for the seafarer are higher.

Secondly, seafarer's occupation has higher risk, hardship and fluidity, and higher requirements for seafarer's occupational security in the labor contract. Despite the rapid development of modern technology, Marine transport is highly affected by the natural weather, so the safety risks to seafarer cannot be balanced with those of land-based work. At the same time, seafaring was much tougher than working on land. According to the latest statistics of the International Maritime Organization (IMO), since the outbreak of COVID-19, 400,000 sailors around the world are still stranded at sea, with a sharp increase in mental and physical pressure. Another 400,000 seafarer members are unable to take over their duties on shore, affecting family incomes. According to the needs of epidemic prevention, all ports around the world have taken different degree of restriction measures on the seafarers' land, resulting in the seafarers are not free to change shifts, which also increases the hardship of seafarers' occupation.

In addition, seafarers' work is more fluid than land-based work, and the highly fluid nature of the work is more dominated by the characteristics of shipping business. Different from ordinary land-based workers, the mobility of land-based work is a free choice made by workers based on their own measurement of labor remuneration. Therefore, compared with land-based workers, seafarers are in a more vulnerable position in the labor contract relationship, for example, seafarers are at risk of being abandoned by shipowners. According to the International Maritime Organization, as of December 17, 2020, there had been 76 cases of seafarers being abandoned around the world, involving more than 1,000 seafarers, and that doesn't include the many incidents that go uncounted.

Thirdly, the seafarers' working places and wages have their particularities. Seafarer members work in a specific place, and work and life can only be limited to the ship. Once on board, even if the rotation rest can only nest in the ship, personal freedom is restricted. The seafarer must obey the arrangement of the shipping company to get on and off the ship. The ship does not dock, even if the seafarer has completed the task, they cannot get off the ship. And with a fixed seafarer and limited entertainment options, life on board was more boring than ordinary work on land.

The wages of the seafarer are generally divided into two parts, namely the wages on board and the wages on land. For seafarers on land leave or assigned work, shipping companies generally pay only an amount close to the minimum average wage. Therefore, if the benefit of the shipping company is not ideal, the seafarer is not assigned to work on the ship. If they stay on land for a long time, they may not even be able to guarantee the basic living requirements. Onshore work does not have this problem.

To sum up, the seafarer's labor contract relationship is different from the ordinary labor contract relationship. If it is completely handled according to the ordinary labor contract relationship, it will not only have the problem of extra-legal space that cannot be solved by the Labor Contract Law, but also violate the principle of fairness, because the seafarer is subject to more restrictions but cannot enjoy more protection of labor rights and interests.

3.1.2 Make clear the principle that the seafarer's labor contract is the main one and the seafarer's labor service contract is the exception.

According to the traditional method of differentiation, the difference between labor contract and labor contract is mainly shown in the following aspects:

First, the types and status of contract subjects are different. The subject of the labor contract is limited to the natural person worker and the employing unit, which mainly includes enterprises, individual economic organizations, private non-enterprise units and other organizations within the territory of China. In some cases, the employing unit also includes state organs, public institutions and social organizations. The subject of labor service contract can be natural person laborer and natural person employer, also can be natural person laborer and labor unit.

In addition, there is a subordinate relationship between the two parties in the labor contract. The worker belongs to the employer, is controlled by the employer and obeys the work arrangement of the employer. If he does not obey the employer, he can take appropriate punitive measures (such as penalty deduction, etc.) or be dismissed. Labor contract pays more attention to the process of providing labor; the labor service contract is concluded by the two parties with equal status, and the two parties have no administrative subordination and management dominance relationship. Labor contracts pay more attention to labor achievements submitted by workers.

Second, the subject is subject to different constraints. The subject of the labor contract is not only bound by the labor contract, but also bound by the mandatory norms of the state on wages, working hours, rest and vacation, insurance and other aspects, which reflects the will of the subject of the contract and the will of the state, with dual attributes. However, the subject of the labor service contract is mainly bound by the content of the contract, which reflects more the agreement of the two parties.

Third, wage payment method and work content belong to be different. The unit of choose and employ persons that labor contract concerns use regular, continuous pay salary to laborer commonly, and besides labor remuneration, laborer still can obtain the pay of the respect such as social insurance, welfare; However, in the relationship of labor service contract, the laborer can only get labor remuneration, and the employer usually pays the wages to the laborer in a lump sum.

In addition, the work that the laborer undertakes in the labor contract relationship belongs to the business scope of the employing unit; the laborer's work in the labor service contract relationship may be unrelated to the business of the employer.

Fourth, the contract risk is different. The risk liability in the process of the performance of the labor contract shall be borne by the employing unit, and the employing unit shall bear no-fault liability for the work-related injury of the laborer. The labor risk liability in the performance of labor service contract is borne by the laborer and the employer according to the principle of fault liability.

Fifthly, the procedure and application of law for the settlement of contract disputes are different. Labor contract disputes should apply the pre-arbitration procedure and the labor law and the labor contract law to deal with them. The dispute of labor service contract does not need arbitration, and it is handled by civil law and contract law.

However, seafarer's labor contract and seafarer's labor service contract are not as easy to distinguish as ordinary contract relations, and they are more and more overlapping in terms of contract subject status and contract content. The principle that the seafarer labor contract is the main one and the seafarer labor service contract is the exception means that the contract is distinguished from the subject of the contract. The nature of the contract between the seafarer and the employer is identified as the seafarer labor contract, while the nature of the contract between the seafarer and the natural person shipowner is identified as the seafarer labor service contract. This is determined by the particularity of the seafarer's profession and is very necessary. There are several reasons to support this view:

3.1.2.1 The establishment of this principle conforms to the development trend of seafarer contract in China. The most obvious difference between ordinary labor contract and labor service contract is whether there is dependency between the laborer and the employer. If the two parties have a dependent and subordinate relationship, it is considered as a labor contract relationship, and if the two parties have equal legal status, it is considered as a labor service contract relationship. However, the relationship between seafarer's labor contract and seafarer's labor service contract cannot be determined according to this. Because the practice of the seafarer is always dominated by unit of choose and employ persons or of the owner, so the seafarer labor service contract is different from general labor service contract relations, general laborers in labor service contract relations work time and work with more freedom, and can work independently on its own technical experience and working conditions; Seafarer members are more dependent on the working conditions provided by shipowners.

Based on the particularity of seafarer career at the same time, the particularity of the particularity of shipping business and maritime law relationships of interaction, even the seafarer labor service contract relations, the relevant international conventions and domestic laws and labor safety and occupational security aspects are put forward for its special requirements, some even are mandatory regulation, as a result, there is less content for the seafarer to negotiate freely with the employer. Therefore, from this point of view, for the contractual relationship between seafarers and employers, it is unnecessary to forcibly distinguish between the seafarers' labor contract relationship and the labor service contract relationship, because no matter the name of the seafarers' contract is "labor contract" or "labor service contract", it is essentially a labor contract relationship.

In addition, in the settlement of disputes over wages and seafarer contract, there is a unified trend in the two kinds of contract relations: seafarer labor contract and seafarer labor service contract. In the general labor service contract relationship, employers generally pay wages to laborers in a lump sum, while in the cases of disputes over seafarer contracts, there are also many cases that the court considers as disputes over seafarer labor contracts, but the shipowner pays wages to the seafarer on a monthly basis.

Judicial practice, regardless of the contractual relationship between the seafarer and owner, will be involved in contract disputes of the maritime liens belongs to jurisdiction of the maritime court, may not be bound by labor arbitration front, which is based on the particularity of professional seafarer of consideration, so as to simplify the seafarer rights protection program, to enhance the efficiency of the seafarer contract dispute cases. The seafarer's labor contract will also provide more options for the seafarer in a weak position. For the seafarer's labor contract dispute cases involving maritime liens, the seafarer can choose to directly Sue the maritime court for settlement, or choose the procedure of arbitration before trial. For cases with clear facts, the choice of labor arbitration procedure can also save litigation costs, because China's labor arbitration does not charge arbitration fees, but litigation is required litigation costs. However, according to the provisions of China's Labor Dispute Mediation and Arbitration Law, if the worker is not satisfied with the arbitration award, he may file a lawsuit to the people's court within 15 days from the date of receiving the arbitration award. Therefore, the termination of most seafarers' labor contract

cases in the labor arbitration procedure can achieve a certain degree of case separation, so as to relieve the working pressure of the court and improve the efficiency of dispute resolution.

Although the new employment mode of network platform appears in the current society, fundamentally speaking, this employment mode cannot break through the characteristics of the traditional labor contract. On the contrary, because the contract is too "free", it cannot be guaranteed reasonable rights and interests when disputes occur. Therefore, as for the new employment mode of "online seafaring" that may appear in the future, seafarers should be given appropriate freedom of choice while adhering to the bottom line of seafarers' labor contract. However, freedom does not mean unlimited indulgence. The seafarers themselves are in a weak position in the job market and it is not easy to protect their rights. If the "freedom of contract" is used to avoid the "protection of rights and interests", the author thinks it is an act of neglecting the essential. Therefore, "legal paternalism" should be applied to the signing of seafarers' employment contracts, so as to protect the interests of the parties by restricting the partial freedom of the parties, that is, to guide the seafarers to choose more secure employment methods with legal provisions. Therefore, even if the future free seafarer chooses to work for a shipping company through the network platform, the relationship between the seafarer and the shipping company or the network platform cannot be regarded as only the contract relationship of seafarer labor service or intermediary service.

According to Article 66 of the Labor Contract Law, the employment form of Chinese enterprises should be based on labor contract employment and supplemented by labor dispatch employment. The Regulations on Seafarers, as a special legal provision that stipulates the rights and obligations of seafarers, clearly stipulates that employer should sign labor contracts with seafarers, although it is more about the management of seafarers. This shows that the principle of taking the seafarer's labor contract relationship as the main one and the seafarer's labor service contract relationship as the secondary one is in line with the legislative purpose.

Of course, the seafarer labor contract does not negate the establishment of seafarer labor service contract between seafarer and natural person shipowner. Compared with the employer, the natural person shipowner is obviously in a weak position in the ability to perform the contract, and does not meet the requirements for the establishment of the seafarer's labor contract.

3.1.2.2 The establishment of this principle conforms to the development requirements of international seafarers' work. The Maritime Labour Convention 2006 sets out requirements for seafarers in respect of workplace, working conditions, social insurance, health protection, medical treatment and welfare. In accordance with standard A2.1 of the Convention, seafarers working on ships flying their flags shall have a seafarers' employment agreement signed by both seafarers and the shippers or on behalf of the shippers. The "seafarer's employment agreement" here includes seafarer's labor contract, seafarer's labor service contract, seafarer's embarkation agreement, collective agreement and other terms of agreement that satisfy seafarer's decent working life. It is also stipulated that the "employment agreement for seafarers" should include seafarers' posts, agreement term, salary, leave, repatriation, health allowance and social security, etc., which is almost the same as the essential content of labor contract in China's Labor Contract Law. The provisions of the Rules of this Convention and Part A of the Code are clearly provided for in the Convention as mandatory.

The 2006 Maritime Labor Convention has come into force in China since November 12, 2016. Therefore, the employment contract of seafarers in China should comply with the relevant provisions of the Convention, which also indicates that the content of seafarers' labor contract will be more and more unified with that of seafarers. The principle that the seafarer's labor contract is the main one and the seafarer's labor service contract is the exception is also helpful to the protection of seafarer's labor rights and interests.

3.2 Specific identification of the nature of the employment contract for seafarers.

3.2.1 Classification of employment contracts for seafarers.

The seafarer employment contract includes the collective agreement and the individual contract of seafarer employment, and the individual contract of seafarer employment is divided into labor contract and labor service contract. At the same time, based on the particularity of seafarer employment, the seafarer boarding work should also be equipped with a boarding agreement under certain circumstances. (As shown in Figure 4).

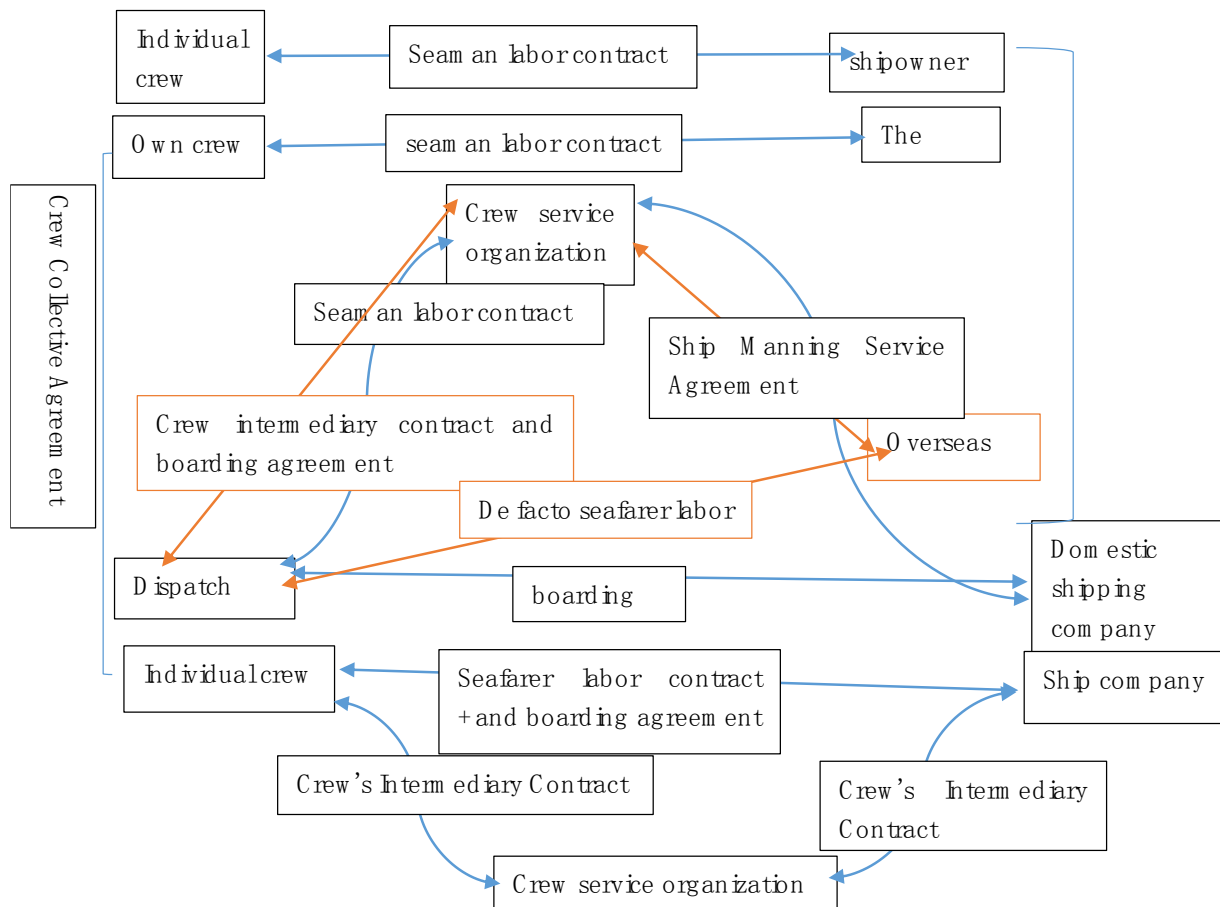


Fig 4: Classification of employment contracts for seafarers.

Collective agreement is signed by China Seafarer Construction Union on behalf of Chinese seafarers and China Shipowners Association on behalf of Chinese shipowners, which is the basic requirement of seafarers' labor contract and ship agreement. If the ship on which the seafarer works is owned or managed by a member of the China Shipowners Association, the contents of the labor contract and the boarding agreement signed by the seafarer shall not be less than the requirements of the collective agreement. According to the requirements of the Collective Agreement for Seafarers (Class A), the shipowner shall sign the seafarers' labor contract and the embarkation agreement with the seafarers; In the case of seafarer labor dispatch, the shipowner shall ensure that the seafarer signs a seafarer labor contract with a qualified seafarer service agency or relevant unit. The collective agreement stipulates the conclusion and termination of the seafarers' labor contract, labor remuneration, social insurance and welfare, working hours, rest and vacation, occupational safety and medical treatment, and living conditions on board.

There are two situations for signing a boarding agreement. One is that in the case of seafarers' assignment to other countries, the seafarers' assignment agency shall sign a boarding agreement with the seafarers before they get on board the ship. Second, the shipowner shall sign the seafarer labor contract and the embarkation agreement with the seafarer in accordance with the relevant laws and regulations. In practice, the embarkation agreement is closely related to the seafarer's labor contract. When there is a seafarer's labor contract with the shipowner, the embarkation

agreement is a supplementary agreement to the labor contract, and it is a refinement of the work and life on board in the seafarer's labor contract. When there is no written labor contract between the seafarer and the shipowner, the ship agreement has the attribute of labor contract.

The seafarer labor contract is a contract based on the labor relationship between the seafarer and the shipping company or the seafarer service organization. According to the Labor Contract Law, a labor contract shall include information of the parties, contract term, work content and location, working time, rest and vacation, labor remuneration, social insurance, labor protection, labor conditions and occupational hazard protection, etc. The seafarer's labor contract should not only contain the provisions of the Labor Contract Law, but also provide for the seafarer's special labor rights such as the right to repatriate.

The seafarer labor service contract is generally signed between the individual seafarer and the shipowner. At present, the main body of the seafarer labor service contract in China includes not only the seafarer and the natural person shipowner, but also the seafarer and the labor unit. But the author thinks that the nature of the contract between individual seafarer and enterprise shipowner should be regarded as seafarer labor contract.

To sum up, although there are four forms of seafarer employment contract, the identification of the nature of seafarer employment contract is still focused on the distinction and identification between seafarer labor contract and seafarer labor service contract. In the new era, seafarer labor contract and seafarer labor service contract tend to be unified. In this case, it is also necessary to expand the coverage of seafarer's labor contract in China.

3.2.2 Determination of the nature of the employment contract for seafarers.

According to the different employment modes of seafarers, they can be divided into three categories: self-owned seafarers, individual seafarers and dispatched seafarers. Self-owned seafarers refer to the regular employees of the shipping company. The personnel files and labor manuals of such seafarers are in the charge of the shipping company, and the shipping company is responsible for their social insurance matters. China's large shipping companies, such as COSCO, China Shipping, China Shipping, etc., have a large number of their own seafarer; Individual seafarers need to pay social insurance by themselves and have great job mobility. Such seafarers will sign employment contracts with shipping companies by themselves or through seafarers' intermediary agencies. There have been many hidden dangers in the protection of labor rights and interests of individual seafarers. In practice, many shipping companies sign labor outsourcing agreements with seafarers in order to avoid taking labor legal responsibilities. However, seafarers' daily work is under the control of shipping companies, and they cannot enjoy the protection of labor rights and interests when disputes arise. This kind of "fake labor and real labor" employment pattern is common. As for the individual seafarer, although from the appearance of a single labor pay is higher than the ship company's own seafarer, the job choice is freer. But in fact, compared with the seafarers who have signed the seafarers labor contract, the self-owned seafarers who have signed the seafarers labor service contract with the shipping company are more vulnerable to exploitation and even fraud. The dispatch of the seafarer is required by the ship manning service agreement between the seafarer service agency and the shipping company to dispatch the seafarer to work on the ship. The identification of the nature of the employment contract for dispatched seafarers should be considered separately in the cases of domestic dispatch and overseas dispatch (as shown in Figure 4). The specific expression is as follows:

3.2.2.1 The labor contract relationship between the self-owned seafarer and the shipping company is the seafarer labor contract relationship.

The ship company and its own seafarer are voluntarily bound by the Labor Protection Law, and the nature of the employment contract between them is seafarer's labor contract, which is beyond doubt.

3.2.2.2 The contract relationship between individual seafarer and natural person ship owner is seafarer labor service, and the contract relationship between individual seafarer and ship company is seafarer labor contract.

Under the tripartite relationship of seafarer intermediary, the relationship between individual seafarer and seafarer

intermediary service company is seafarer intermediary service contract relationship, the relationship between individual seafarer and domestic shipping company is seafarer labor contract relationship, and the relationship between individual seafarer and overseas shipping company is actual seafarer labor contract relationship, and the seafarer service agency shall bear the supplementary joint and several liability

Individual seafarers generally have three ways of employment, one is direct contact with natural person ship owner or ship company to obtain employment opportunities; The second is to obtain employment opportunities through mediating referrals of seafarer service agencies; The third is to obtain employment opportunities through the labor dispatch of the seafarer service organizations. The identification of the nature of the employment contract for individual seafarers under the third employment mode will be discussed in the part of dispatching seafarers.

For the first way of employment, the "employer" in China's Labor Contract Law includes enterprises, individual economic organizations, private non-enterprise units and other organizations, and natural person shipowner does not meet the requirements of the subject of the labor contract. In addition, compared with the enterprise shipowner, the natural person shipowner is deficient in the ability to perform the contract and bear the responsibility. Therefore, the employment contract between the individual seafarer and the natural person shipowner should be identified as the seafarer labor service contract relationship. According to the principle that the labor contract is the main form of employment, the nature of the employment contract between the seafarer and the enterprise shipowner should be identified as the seafarer's labor contract if the seafarer does not directly contact the enterprise shipowner to obtain employment opportunity through the seafarer intermediary service agency.

For the identification of the nature of the employment contract between individual seafarers, seafarers service agencies and shipping companies under the second employment mode, China's Regulations on the Administration of Seafarers Service has made clear provisions. According to Article 17 of the Regulations on the Administration of Seafarer Service, if the seafarer service agency provides the ship manning service to the seafarer employer, the seafarer employer shall sign a labor contract with the seafarer. If the employer fails to sign a labor contract with the seafarer, the seafarer service agency shall refuse to provide the seafarer. It also stipulates that if the seafarer service agency itself is an employer, it shall sign a labor contract with the seafarer. It can be seen that when the seafarer service agency provides intermediary services for the seafarer, the shipping company should sign a seafarer labor contract with the seafarer. When the seafarer service agency provides the shipping company with its own seafarer, the seafarer service agency is equivalent to the labor dispatch agency. At this time, the seafarer and the seafarer service agency have the labor contract relationship, while the seafarer and the shipping company only have the employment relationship.

As a result of the "labor contract law" in China will "unit of choose and employ persons" of enterprise organization, such as limited to the territory of China and foreign labor contract law for the seafarer employment contract is not done and the division of labor contract, so the seafarer services intermediary service effect only when the seafarer with overseas employment relationship between shipowners shall be deemed to be the fact that the seafarer labor contract relationship. At the same time, the seafarer service agency has the obligation to urge the shipping company to sign the labor relationship with the seafarers. Therefore, if the shipowner delays in performing or fails to perform the obligations of signing the labor contract with the seafarers, and the seafarers' rights and interests are damaged, the seafarer service agency shall bear the supplementary joint and several liability.

3.2.2.3 The relationship between the dispatching seafarer and the dispatching seafarer service agency shall be considered as the contract relationship between the dispatching seafarer and the shipowner, the employment relationship between the dispatching seafarer and the shipowner, and the ship manning service agreement relationship between the dispatching seafarer and the shipowner.

According to China's "Labor Contract Law", labor dispatch units should sign a fixed term labor contract with the dispatched workers for more than two years. Therefore, for domestic seafarer labor dispatch, the seafarer service

agency shall sign a seafarer labor contract with the dispatching seafarer, and the seafarer service agency shall sign a labor dispatch agreement with the domestic shipowner. There is only employment relationship between the seafarer and the domestic shipowner without signing a contract.

The legal and contractual relationship among the seafarer, the seafarer service agency and the overseas shipowner in the case of seafarer assignment is a hot issue in the theoretical field. Theoretical bound basically has a heavy labor relation to say and double labor relation to say two kinds of view. The first theory of labor relationship holds that the relationship between dispatching sailors and the seafarer service agency of the employing unit is the seafarer's labor contract relationship, the relationship between dispatching sailors and the overseas shipping company of the employing unit is the employment relationship, and the ship manning service agreement is between the seafarer service agency and the overseas shipping company. On the other hand, the theory of dual labor relationship holds that there are labor contract relations between dispatching sailors, seafarer service agencies and overseas shipowners. According to China's Regulations on the Administration of Seafarers' Assignment to Foreign Countries, the seafarers' service agencies have the obligation to ensure that the seafarers signed seafarers' labor contracts with their own agencies, overseas shipowners or other shipping units in China. The provisions can be understood as follows: first, the seafarer service agency dispatches its own seafarers who have a seafarer labor contract relationship with itself to work on the ships of overseas shipowners. In this case, the nature of the employment contract between dispatching seafarer and seafarer service agency is seafarer labor contract, the relationship between dispatching seafarer and overseas shipowner is employment relationship, and the relationship between seafarer service agency and overseas shipowner is ship manning service agreement. Second, if the seafarer services only has the nature of the intermediary services, it shall guarantee to send sign the labor contract of the seafarer and the foreign ship owners, but because of foreign ship owners do not meet the requirements of the main body of the labor contract in our country, therefore when sending the seafarer of the employment contract relationship between foreign ship owners and do not meet the requirements of our country was established in the form of a labor contract, It should be concluded that there exists the actual seafarer labor contract relationship between the two. In this case, the seafarer service agency shall be obligated to review the contents of the contract between the overseas shipowner and the seafarer to ensure that it will not damage the seafarer's legal labor rights and interests. If the overseas shipowner is negligent in performing or failing to perform the obligation to protect the lawful labor rights and interests of the seafarer, the seafarer service agency shall bear supplementary joint and several liabilities. Third, if the seafarer service agency provides overseas shipowners with seafarers who have labor contract relations with other shipping enterprises in China, it shall notify the shipping enterprises to which the seafarers belong and immediately supervise the implementation of the protection of the seafarers' labor rights and interests.

In general, in addition to the contractual relationship between the seafarer and the natural person shipowner, in other cases it is necessary to ensure that the seafarer is protected by at least one contract of Labor. When the seafarer service agency provides only intermediary services, there is a de facto seafarer labor contract relationship between the seafarer and the overseas shipowner, for which the seafarer service agency shall be jointly and severally liable. If the overseas shipowner fails to perform or is negligent in performing the obligations under the seafarer's labor contract, the seafarer may request the seafarer service agency to assume the obligations under the seafarer's labor contract. The seafarer service organization may seek compensation from the overseas shipowner for the losses incurred after the seafarer service organization has borne the losses. In the case of seafarer labor dispatch, the seafarer service agency shall sign a seafarer labor contract with the seafarer dispatched, or ensure that there exists a seafarer labor contract relationship between the seafarer dispatched and other shipping companies within the territory of China.

IV. Countermeasures: Improve the Seafarer Contract Nature of Related Legal Norm System Suggestion

Therefore, the author thinks that the legal and normative system for the identification of the nature of the seafarer contract should be improved from three aspects:

4.1 Reaching consensus on regulating existing legal norms

To sum up, with regard to the determination of the nature of the seafarer contract, China's existing legal norms should have a unified understanding, simply consider the complex issues, and solve the problem of the inconsistency of the existing legal provisions. The employment contract between the shipping company and its own seafarer should be regarded as the seafarer labor contract; the employment contract between individual seafarer and natural person shipowner should be regarded as seafarer labor service contract, and the employment contract between individual seafarer and ship company should be regarded as seafarer labor contract. If the seafarer service agency only provides intermediary seafarer services, the employment contract between the seafarer and the shipping company of the employer should be regarded as the seafarer labor contract, and the employment contract between the seafarer and the overseas shipping company should be regarded as the actual seafarer labor contract relationship. In the case of seafarer labor dispatch, the employment contract between the seafarer and the seafarer service agency shall be regarded as the seafarer labor contract, and there is an employment relationship between the seafarer and the shipowner at home and abroad.

4.2 The Seafarers law clearly stipulates the distinction and identification of contractual relationships among seafarers

Due to various particularities of seafarers' occupation, seafarers' labor relations are different from ordinary labor relations. Japan, South Korea, Denmark and other countries separate seafarers' labor relations from general labor relations and bring them into the adjustment scope of independent seafarers' law.

Japanese legislation on seafarers began in 1875, and the first seafarers' law was enacted in 1899. However, the Seafarer Law of 1899 is more about the management of the duties of seafarer, and less about the protection of the labor rights and interests of seafarer and related welfare benefits. For matters not stipulated in the seafarer law, the commercial law shall still be applied. However, Japan's Seafarer Law in 1937 separated the labor protection of seafarers from the commercial law. Later, Japan's Seafarer Law, which came into effect in 1947, also adapted to the economic development. After several revisions, the seafarers' labor contracts, wages and remuneration, working hours, paid vacations and other aspects were included. In addition, the seafarer health insurance law, seafarer occupational security law and other supporting separate laws have finally formed a relatively complete seafarer labor protection legal system in Japan.

South Korea also has an independent and unified seafarer code, namely the Korean seafarer law. In addition, Korea "protect send employee act" in the regulation, use unit of work some send employee to exceed 2 years or break the law of this act regulation, this use unit of work should this send employee to use the employee of unit of work directly hire, this sends employee to enjoy the same labor treatment as other ordinary employee of unit of work. It can be seen from this that the regulation of transforming the labor relationship between dispatcher and employer into labor relationship treatment also reflects that South Korea is more inclined to protect the labor relationship of seafarers. The United States did not make the seafarer act alone, the protection of rights and interests of the seafarer is in the Jones act and the journal of the American merchant ship seafarer protection and relief act, plus about unseaworthiness, feed and medical case law, the protection of rights and interests of the seafarer would stretch, make American seafarer method to the evolution of labor protection of the seafarer.

The proposal of enacting "Seafarer Law" in China has a long history. The enactment of "Seafarer Law" can not only promote the development of shipping industry, but also have a far-reaching impact on the whole national economy. China should speed up the formulation of the seafarer law, so as to better protect the legitimate rights and interests of seafarers, rectify the order of seafarer market. In addition, China's current Regulations on Seafarers consists of eight parts, namely, General Provisions, Registration and Qualification of Seafarers, Duties and Responsibilities of Seafarers, Occupational Security of Seafarers, Training and Service of Seafarers, Supervision and Inspection of Seafarers, Legal Liabilities of Seafarers and Supplementary Provisions. It is not difficult to see from the content that although the Regulations on Seafarers are more specific and detailed, they are mainly about specific technical or

professional provisions such as seafarers' qualifications, seafarers' training and seafarers' responsibilities. Secondly, the Regulations on Seafarers are administrative regulations and their effectiveness is lower than that of laws. In the absence of "seafarer law" in China, the special labor norms for seafarers are all adjusted by low-level administrative laws and regulations, which has been proved unsuccessful in judicial practice for many years and does not meet the requirements of international maritime labor conventions. Compared with the Regulations on Seafarers, the Seafarers Law has a higher legal rank. In order to adapt to the strategic goal of China's maritime power, it is the trend of The Times to upgrade the Regulations on Seafarers to the Regulations on Seafarers, which also helps to accurately locate the legal application and compliance of disputes over seafarers' contracts.

A seafarer's law is not far off. On December 8, 2020, the Ministry of Transport publicly issued the Opinions of the Ministry of Transport on Improving the Comprehensive Traffic Law System, which incorporated the formulation of the Seafarers Law into the plan. The Seafarer Law (to be formulated) mainly adjusts and regulates the management of seafarer and the labor security of seafarer. The Opinions make it clear that the drafting of the seafarers' law will be completed and submitted to the State Council before 2035.

The department law of the seafarer law can only be labor law. Separating the content of seafarer's labor protection from the Labor Law, Labor Contract Law and Civil Law and specifying it in the seafarer law can not only solve the problem of relatively confusing legal provisions, but also improve the efficiency of resolving disputes over seafarer contracts and promote the steady development of the shipping industry.

4.3 Improve the efficiency of safeguarding the rights and interests of seafarer -- make practical versions of legal norms on the protection of rights and interests of seafarer

As can be seen from the 2019 Report on the Development of Chinese Seafarers, in 2019, 10,552 students majoring in navigation registered to take the competency examination, of which 5,015 were undergraduates, accounting for 47.5%; 4848 junior college students, accounting for 45.9% of the total number; 428 students of other types, accounting for 6.6% of the total number. This suggests that current our country under the new generation of bachelor's degree in the seafarer staff still accounts for more than half the number, and the seafarer career more on practical experience, so in the past for seafarer selection are easy to ignore the demands of cultural level, and the level of knowledge and to some extent represents the level of the ability of self-rights, so the current seafarer, Most people have a weak awareness of safeguarding labor rights and their ability to protect labor rights. At the same time, due to the consumption of financial resources and energy, the enthusiasm of sailors to protect labor rights is also not high. In 1991, the Supreme People's Court promulgated the Specific Provisions on Compensation for Damages in Cases of Foreign Injuries and Personal Injuries Abroad to promote the correct and timely hearing of cases of compensation for damages of foreign maritime personal injuries and injuries so as to protect the legitimate rights and interests of the parties concerned. On June 24, 2020, the Supreme People's Court issued a typical case on safeguarding the legitimate rights and interests of seafarers. Based on a full summary of China's maritime trial experience, the Supreme People's Court provided guidance in the form of issuing a typical case. The publication of typical cases is an echo of the Civil Code's full protection of relevant civil rights and interests of civil subjects, including seafarers, and encourages all sectors of society to pay more attention to the protection of legitimate rights and interests of seafarers. On September 27, 2020, the Supreme People's Court issued the Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Seafar-related Dispute Cases, which is scheduled to come into force on September 29. To some extent, it fills in the gap of legal application in the settlement of disputes concerning seafarers in China, and reflects the judicial attention to the protection of seafarers' rights and interests. It is also the basic value of fully protecting civil legitimate rights and interests based on the people embodied in the Civil Code. Our country has been improving the consciousness of safeguarding the rights of seafarers, simplifying the procedure of safeguarding the rights of seafarers, saving the cost of safeguarding the rights of seafarers and so on, and has achieved some results.

Although China has already made the plan of enacting the Seafarer Law, there is still some time to go before the

official publication of the Seafarer Law. Therefore, it is necessary to make a practical booklet to improve the seafarers' awareness of law-abiding and safeguarding their rights and to guide the seafarers' path of safeguarding their rights and interests, that is, a practical version of the legal norms on the protection of seafarers' rights and interests. This practical booklet summarizes the contents of seafarers' labor rights and interests in the existing laws and regulations, clarifies in a simple and understandable way the contents of seafarers' employment contract, seafarers' labor supervision and seafarers' rights protection path, and issues to seafarers at the same time when they receive the seafarers' certificates. Teaching a man to fish is better than teaching him to fish. Practical instincts make it convenient for seafarers to clarify their own labor rights and interests and obligations, identify the nature of the seafarers' employment contract, and make clear the path to protect their rights, so as to improve the seafarers' ability to protect their rights and interests.

V. Conclusion

Seafarer members are the unsung heroes of the global economy. The sudden emergence of COVID-19 in 2020 has brought a major impact on the global economy, and also highlighted the risk of many jobs. The "Diamond Princess" cruise ship incident reflects the globality of seafarers' profession and the diversity and uncertainty of the legal environment seafarers face, which makes seafarers vulnerable to unfair treatment in law. The resolution adopted at the 75th session of the UN General Assembly on December 1, 2020 called on countries around the world to classify seafarers as key staff members and take measures to ensure decent working and living conditions and human rights for seafarers. Compared with the legislation on seafarers abroad and international seafarers, in China's seafarers' legislation, the regulations on the management of seafarers appear earlier in various legal norms and rules and regulations, and are relatively sound. But the regulation that concerns labor protection, social security sex appears relatively late, and the quantity is little, the content is not enough system, comprehensive. Therefore, the analysis and determination of the legal nature of seafarer employment contracts and regulation of relevant legal norms can not only improve the efficiency of resolving disputes over seafarer contracts, but also contribute to the healthy and stable development of China's shipping industry.

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