

A study on employment or navigational law general essay

[Law](#)



**ASSIGN
BUSTER**

The two statements in the cases of *Portsmouth Steamship v. Liverpool & Glasgow Salvage Association* and *The Hill Harmony* are not contradictory. The statements complement each other, the first setting out the general rule and the second setting out the boundaries of the general rule. The case of *Portsmouth Steamship v. Liverpool & Glasgow Salvage Association* is a case occurred in 1929, whereas *The Hill Harmony* is a recent case, occurred in 2000. There is no conflict between the cases; the first case merely gave the general rule while the second case dealt with a more depth aspect of the rule, as required by the situation given in the case. In the *Portsmouth Steamship v. Liverpool & Glasgow Salvage Association*, it was stated that the shipowner is bound to comply with the instructions of the charterer without undue question, however, still " within the limits of obviously grave danger". The court did not specify what constitutes ' obviously grave danger'. On the other hand, in *The Hill Harmony*, it was stipulated that instructions that exposes danger to the safety of ship, crew, and cargo entitle the shipowner not to comply with the charterer's instructions. This is basically a more detailed explanation to the ' within the limits of obviously grave danger'. After the case of *Portsmouth Steamship v. Liverpool & Glasgow Salvage Association*, there were several other cases that gave the authority for the exception of the general rule that the shipowner has the duty to comply with the charterer's instructions. From several of the cases regarding this matter, [3]it can be concluded that the order of the charterer which the owner has the duty to comply is the order regarding matters of employment, as opposed to matters of navigational. So, in order to discuss about which of the instructions of the charterer that has to be obliged by the shipowner, first

it should be discussed what are employment orders and what are orders that fall into the area of navigational. EMPLOYMENT OR NAVIGATIONAL? In the case of *Larrinaga S. S. Co. v The King*,^[4] Lord Wright gave the definition of employment, which is "'Employment' means employment of the ship to carry out the purposes for which the charterers wish to use her."^[5] Moreover, in the case of *The Hill Harmony*, Lord Bingham and Lord Hobhouse also tried to make an approach to defining 'employment'. Lord Bingham made no attempt in making a proper definition for 'employment', however he did mention it as the charterers' "key right under the contract"^[6] which facilitates the charterers to decide how the vessel will be used.^[7] Lord Bingham did try to put a border on the charterers' right to use the vessel, which is that the right cannot fall into the area of professional maritime expertise of the master, especially when it involves the safety of the ship, crew, and cargo, and also matters concerning the technical operations of the vessel.^[8] Furthermore, Lord Hobhouse made a definition which is "'Employment' embraces the economic aspect – the exploitation of the earning potential of the vessel."^[9] On the other hand, Lord Hobhouse treated navigation as "matters of seamanship".^[10] From the authorities that are available for the definition of 'employment', none of it gives a precise meaning of the word, because it is impossible to do so. In some cases it can be easily distinguished between the matters which concern employment and matters which concern navigation. However, in several other cases, it is difficult to distinguish between the two. Therefore, several examples of authorities for employment orders will be given in the following paragraphs. The first example of an employment order is an order regarding whether the

ship should proceed to another port or remain in a certain port. In the *Temple Steamship v. V/O Sovfracht*,^[11] the master is considered to have done rightfully by obeying the charterer's order by remaining in Murmansk, because the charterer's order consisted of an employment order. However, the charterer was still considered as in breach of the charterparty, because the charterer did not follow the voyage described in the charterparty. In the case of the *Larrinaga Steamship v. The Crown*,^[12] the employment order was the destination of the vessel. In contrast, the matter of when should the vessel proceed to its destination is a matter of navigational. The reason is that the time and condition to travel is a matter that is the area of the master's judgment.^[13] This case shows the distinction between employment orders and navigational matters in terms of whether or not the ship should proceed to the next port. The order of a harbour master on where to discharge a cargo of a ship is also considered as an employment order on behalf of the charterer. In theory, the charterer has the right to give employment orders to a vessel, as to where the ship should load and discharge the cargo. However, in practice, at many ports in the world, the harbour authority is the one who decides the place and time where a vessel should discharge her cargo.^[14] In the case of *The Erechthion*, it was held that the harbour master's order to lighten at the Dawes Island anchorage consisted of an employment order.^[15] On the contrary, the advice of a pilot as to where exactly a vessel should anchor is a matter of navigation.^[16] An instruction from the charterer to follow a certain route to get to the port of destination is also considered as an employment order. However, the degree of compliance is subject to considerations of seamanship and safety.^[17] This

is apparent from the case of *The Hill Harmony*,^[18] where the charterer ordered the vessel to go to Japan through the shorter northern Great Circle route, but instead the master insisted on going through the more southerly rhumb line route. It was held that the master was in breach; one of the reasons was because of not complying with the charterer's order to follow the shorter route. The choice of route affects the commercial interest of the charterer, and in consequence, it is considered as an employment order. However, matters of seamanship and safety should also be considered. Heavy weather cannot be considered as a danger to the ship, crew, and cargo; ships are meant to be able to sail in a heavy weather.^[19] Hence, in this case the reason being heavy weather did not justify the conduct of the master to follow the longer route. The instruction given by the charterer to load a particular cargo is also considered as an employment order. In the case of *Royal Greek Government v Minister of Transport*,^[20] an explosion occurred on the ship as a result of the explosive atmosphere that came from the repairing of the water tanks combined with the cargo of coal. It was held that an order to load a particular cargo is an employment order and therefore the owner should receive an indemnity for following the order.^[21] However, in this case the explosion did not result directly from the cargo; it resulted from the combination of the methane gas from the coal with the sparks from the repairs.

ORDERS WHICH THE MASTER DOES NOT HAVE TO OBEY

Besides the orders of the charterer being restricted to employment orders, there are other orders that limit the compliance of the master. As stated in *The Hill Harmony*, the master remains responsible for the safety of the ship, crew, and cargo. In other words, there are several

orders that the master has a right or duty to refuse to follow. The order must not be in conflict with the terms of the charter. If an order is given that is inconsistent with the terms of the charter, the master has a right not to obey. This means that the master may still obey it and usually the master may be indemnified according to the terms of the charterparty. Order to go to an unsafe port Normally, a charterparty will contain a warranty clause stating that the vessel will not be sent to an unsafe port. If the charterer ordered the vessel to go to an unsafe port, the master is not obliged to follow the order. Even if there is no warranty clause in the charterparty, the master is still not obliged to follow the order. In the case of *Kodros Shipping Corp. v Empresa Cubana de Fletes (The Evia (No. 2))*,^[22] the test was given to determine whether the destination port is safe or not. First, the port should be safe when the order is given. Second, if the port becomes unsafe after the order has been given, then the charterer must change his order and order the vessel to go to a safe port if there is time. Third, if the port becomes unsafe when the vessel is at the port, then the vessel should be ordered to leave immediately.^[23] Order to carry unlawful or dangerous goods Basically, the charterer has to notify the master if the cargo is generally safe, but can be dangerous in certain circumstances.^[24] Moreover, if the charterer orders the master to carry a dangerous goods, or unlawful goods specified by the law of the charter, or the ship's flag, or discharge port.^[25] In addition, an order to ship cargo that is excluded in the charterparty also do not have to be followed.^[26] Order the vessel outside the agreed trading limits An order to send the vessel outside the agreed trading limits is also considered as a breach of contract and the master does not have to follow the order, unless

the parties agree otherwise.[27]The order must not consist of a tortious or unlawful actThe master does not merely have the right to refuse to obey; he has a duty to refuse an order that consists a tortious or unlawful act, because the indemnity of the charterer will be unacceptable in this matter.

Order to sign a bill of lading containing material misrepresentationThe master must not sign the bill of lading if it contains any material misrepresentation. If the charterer provides a bill of lading stating that the goods are in apparent good order and condition, while the fact is the goods are not in apparent good order and condition, then the master has a duty to refuse to sign the bill of lading.[28]Emphasis should be made on the word 'apparent', as only the apparent defect that gives the master the duty to refuse.[29]Furthermore, if the master has no knowledge on the goods and consequently cannot be certain as to the condition of the goods, the master can still sign the bill of lading as in apparent good order and condition.

[30]The same rule applies if the bill of lading is antedated.[31]Order to deliver the goods to party not entitled to receive itThe master of a chartered vessel has a duty to refuse an order to deliver the goods to the person that is not entitled to receive it. If the master follows such order, then the master will be liable for the tort of conversion. It was held in *The Sagona* that: "...by doing so the owners, and their master as joint tortfeasors, would be liable for the tort of conversion, whether or not they would also be liable to Z for breach of contract." [32]Order to deliver the goods without the production of bill of ladingAlthough a delivery is made to the person who is entitled to receive it, a production of the bill of lading by that person should also be made. In *The Houda*, it was held that " A shipowner who delivers without the

production of a bill of lading does so at his peril." [33] Such conduct would not be tortious, but would have involved a breach of the bill of lading contract and so such order could not be given. [34] CONCLUSION In conclusion, the two statements in both cases are not in conflict; the first gave a general rule without any detail, and the second case which is a recent case, gave a more depth authority on the duty of the master. It is impossible to make a strict definition of an employment order, however there are several authorities governing several circumstances which are considered as employment orders. (2146 words).