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**Harper v. United States Seafoods L.P. 278 F.3d 971 (9th Cir. 2002)**  
**(Decided January 29, 2002, cert. denied 154 L.Ed. 2d 134, 123**  
**S.Ct. 79, 2002 U.S. LEXIS 6444 (2002))**

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**CREWMEMBER AGREEMENT INVALID WHEN SIGNED BY PERSON OTHER THAN MASTER**

**46 U.S.C. § 10601 unambiguously requires that fishing agreements with each seaman contain certain substantive provisions, including a concrete requirement that the vessel master sign the agreement.**

Harper v. United States Seafoods L.P.

278 F.3d 971 (9th Cir. 2002)

(Decided January 29, 2002, cert. denied 154 L.Ed. 2d 134, 123 S.Ct. 79, 2002 U.S. LEXIS 6444(2002))

On January 11, 2000, Joe Harper (“Harper”) signed a contract with United States Seafoods, L.P. (“United States Seafoods”), to work as a processor aboard its fishing vessel “the Seafreeze.” The employment agreement was signed, on behalf of the employer, by the company’s recruiting and hiring agent in Seattle. The vessel’s master did not sign this contract.

Harper completed his contractual duties with United States Seafoods on April 28, 2000. Thereafter, United States Seafoods paid Harper per the terms under his contract. However, Harper filed suit alleging that the contract itself was invalid, because it did not meet the specific requirements outlined under 46 U.S.C. § 10601, and that he was entitled to additional wages, to be calculated by awarding the highest rate of pay for seamen of similar rating out of the same port of hire under 46 U.S.C. § 11107. This action was filed against United States Seafoods *in personam*, and against the vessel “the Seafreeze” *in rem*, claiming that the employment contract was defective.

Harper moved for partial summary judgment on the issue of the validity of the employment contract with United States Foods. Relying on the unambiguous, plain meaning of 46 U.S.C. § 10601 in granting the motion, the district court held that the contract was invalid because the statute required the ship’s master to sign the employment agreement. United States Seafoods then filed an interlocutory appeal, which represents the instant issue before the Court. *Royal Ins. Co. of America v. Southwest Marine*, 194 F.3d 1009, 1013 (9<sup>th</sup> Cir. 1999) (quoting *Kesselring v. F/T Artic Hero*, 30 F.3d 1123 (9<sup>th</sup> Cir. 1994) (stating, “Ordinarily, interlocutory orders are not appealable, but 28 U.S.C. § 1292 (a)(3) creates an exception to the final judgment rule for orders determining the rights and liabilities of the parties to admiralty cases.”)).

The Court, reviewing *de novo*, stated that to affirm a grant of summary judgment the question becomes one of pure statutory interpretation. The Court affirmed, holding that 46 U.S.C. §10601, relating to employment agreements for fishing vessels, clearly requires the master's signature in order to make the agreement valid. In evaluating the statute, the Court conducted a three-tier interpretation including historical backdrop, language, and comparison with additional admiralty statutes.

The Court took into account all prior statutory provisions related to §10601. It noted that statutory protection of the seafarer's right to a written contract dates back to one of the first acts of Congress. Cases under such predecessor acts refer to the master's signature, suggesting that a similar interpretation of the successor statute §10601 is consistent with the historical interpretation. The Court further concluded that the requirement of the master's signature was assumed necessary in prior case law under these predecessor acts. *United States v. Atkins*, 24 F.Cas. 885 (D. Mass. 1856); *Crowell v. United States*, 6 F.Cas. 912, 913 (C.C. Mass. 1856).

The text of § 10601 was then examined. The Court considered the language of the statute to be clear and unambiguous, thereby making the text controlling. The requirement in § 10601(a) that the master and the seamen "make a fishing agreement in writing" clearly requires both parties to sign the agreement. The Court noted that the statute's second paragraph required that "the agreement shall be signed also by the owner of the vessel." 46 U.S.C § 10601(b). The Court reasoned that to give "also" effect in subsection (b), it must be concluded that subsection (a) imposes a signing requirement of the master and seaman. The Court held that this interpretation of the statute was neither absurd nor impracticable and that such a requirement, that the contract bear both the signatures of master and owner, is neither unwieldy nor unworkable.

United States Seafoods argued that § 10601 should be read only to require the fisherman's, and not the master's, signature. This strained reading of the statute was rejected. United States Seafoods also argued that such "technical deficiencies" should not be considered as a breach of the statute. The Court interpreted this as an argument for the excuse of a violation under § 10601 where there has been "substantial compliance." The Court, after noting that the Ninth Circuit has frequently rejected substantial compliance arguments, rejects the argument here as well, arguing that the master did nothing even arguably equivalent to signing the contract to raise a valid substantial compliance argument.