DISCIPLINARY RESPONSIBILITY OF MARITIME TRANSPORT EMPLOYEES

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ABSTRACT

The article, on the basis of the analysis of the norms of Russian labor legislation, considers topical issues of disciplinary responsibility of maritime transport employees. Some outdated norms and approaches are shown, as well as theoretical and practical features of the draft law on the discipline of maritime employees and safety of navigation are thoroughly investigated. The author concludes, in particular, that the proposal of the draft law to provide the employer with the authority to «discharge from work duties» employees for up to one year, similar to the powers of an inquirer, an investigator, a prosecutor and court for suspension from work (position) due to commission of a crime, is incompatible with the legal status, what an employer has.

Keywords: disciplinary responsibility, maritime transport employees, article 189 of the Labor Code of the Russian Federation, Charter on Discipline, judicial practice.

Background. *In accordance with Article 189 of Labor Code of the Russian Federation (hereinafter – LC RF) the particular statutes and discipline regulations established by federal laws apply for certain categories of employees.*

Federal laws, regulations and discipline regulations provide for increased requirements for certain categories of employees. Violations of the discipline, if labor activity is connected, in particular, with the use of sources of increased danger, can entail grave and (or) dangerous consequences.

Disciplinary responsibility under the discipline statutes differs from disciplinary responsibility under LC RF in the following:

1) range of employees to whom it applies;

2) broader concept of disciplinary offense;

3) a list of disciplinary actions;

4) officials and bodies vested with disciplinary authority;

5) a procedure for application of disciplinary action and appeal.

Such disciplinary responsibility is established not only for violation of labor (official) duties, but also for violations equivalent to disciplinary offense.

It is important to bear in mind that Section XII is provided for in LC RF, which regulates the labor of certain categories of employees. Despite the peculiarities of disciplinary offense (Article 336, etc.), penalties follow under the rules of LC RF.

Thus, the rules on disciplinary responsibility of certain categories of employees are enshrined either in a statute or incorporated into LC RF.

Objective. *The objective of the author is to consider disciplinary responsibility of maritime transport employees.*

Methods. *The author uses general scientific methods, comparative analysis, legal analysis.*

Results.

I.

The areas of activity in which disciplinary responsibility has been introduced according to the statutes on discipline seem to be quite broad.

According to Article 330 of LC RF, the discipline of employees whose work is directly connected with movement of vehicles is governed by LC RF and provisions (statutes) on discipline established by federal laws.

The Charter on Discipline of Maritime Transport Employees was developed on the basis of the Code on Labor Laws of the Russian Federation and in accordance with the Merchant Shipping Code of the Russian Federation and approved by the Decree of the Government of the Russian Federation No. 395 of May 23, 2000 (hereinafter referred to as Charter No. 395).

The Charter includes chapter IV «Disciplinary penalties», which contains rules on disciplinary responsibility.

According to Article 13 of the Charter No. 395, a disciplinary offense is recognized as a violation by an employee of maritime transport of labor discipline on board a ship, in official premises and on the territory of organizations of maritime transport.

For commission of a disciplinary offense, the following types of disciplinary action may be applied to an employee:

a) remark;

b) reprimand;

c) severe reprimand;

d) warning of incomplete service compliance;

e) dismissal.

For each disciplinary offense, only one disciplinary sanction may be imposed on a maritime transport employee (Article 15 of the Charter No. 395).

Any disciplinary action is announced in the order, with which a maritime transport employee, subjected to disciplinary sanction, must be familiarized against signed receipt in a three-day period (Article 17 of the same Charter).

In a practical context, the norm of Article 16 of the Charter No. 395, that the warning of incomplete service compliance applies in the following cases, is considered positive:

a) systematic non-fulfillment of official duties and orders of the head;

b) repeated disciplinary offenses;

c) violations of laws and other regulatory legal acts on the issues of ensuring the safety of navigation, preserving property at sea, preventing situations that threaten life and health of people, protecting and preserving the marine environment.

Article 18 of the Charter No. 395 provides that the heads apply disciplinary sanctions in accordance with the rights granted to them in the following order:

a) a captain of a self-propelled vessel with a crew of at least 10 people has a right to impose disciplinary sanctions on the members of the vessel's crew in the form of a remark, reprimand and severe reprimand.

A head of a dredging caravan and a head of an expedition on the sea haul of vessels are given a right to impose disciplinary sanctions on all crew members of vessels belonging to a dredging caravan or expedition on the sea haul of vessels;

b) a head who has a right to hire a maritime transport employee may impose on him all types of disciplinary sanctions;

c) a head may impose penalties in the form of a remark, reprimand and severe reprimand on those subordinate maritime transport employees who are appointed to the position by the supervisor if such

right is granted to him in the prescribed manner, and unless otherwise provided by the legislation of the Russian Federation.

In the absence of relevant heads, disciplinary sanction is imposed by officials who officially perform their duties.

The head is obliged before applying a disciplinary action to a maritime transport employee personally comprehensively and objectively to understand the causes and motives of the disciplinary offense.

A disciplinary sanction is imposed no later than one month from the day of discovery of the offense, not counting the time of illness of the employee, being on vacation or time of using the summed days of rest.

In all cases, a disciplinary sanction cannot be imposed after six months (for crew members of long-distance vessels – one year) from the date of the offense. This period does not include the time of the criminal proceedings.

Disciplinary action must be consistent with the degree of fault of the maritime transport employee and severity of the committed disciplinary offense. In determining the type of a disciplinary action, the nature of the disciplinary offense, the harm caused by it, the circumstances and motives for its commission, as well as the employee's prior behavior and attitude to work are taken into account.

The head is obliged to request a written explanation from the employee who committed the disciplinary offense before applying the disciplinary sanction.

Refusal to give a written explanation does not release the guilty employee from disciplinary responsibility (Article 21–24 of Charter No. 395).

II.

As noted, this Charter is developed on the basis of the Code of Labor Laws of the Russian Federation. In this regard, some of its norms are outdated.

So, Article 18 of the Charter No. 395 provides that heads apply disciplinary sanctions provided for by this Charter and the labor legislation of the Russian Federation.

Disciplinary sanctions provided for by the Charter may be appealed in the manner and time established by the labor legislation of the Russian Federation (Article 25 of Charter No. 395)[1].

From the standpoint of modern labor legislation (Article 193 of LC RF), certain provisions of the Charter No. 395 are hardly justified, in particular:

1) the rights to impose disciplinary sanctions belonging to one or another head are held by all superiors in relation to them, unless otherwise provided by the legislation of the Russian Federation (Article 19);

2) if, taking into account the severity of a disciplinary offense, it is necessary to impose a disciplinary sanction that exceeds the scope of the rights granted to the supervisor, then he petitions about it to the supervisor (Article 20).

For practice, including judicial, overly non-specific rules are inappropriate. So, Article 14 of the Charter No. 395 establishes that the use of a disciplinary sanction does not exempt an employee who has committed the offense from any other responsibility provided for by the legislation of the Russian Federation.

In accordance with Article 55 of the Constitution of the Russian Federation, Article 330 and Part 5 of Article 189 of LC RF it is proposed:

1) to adopt a federal law on the discipline of labor of maritime transport employees, taking into account all the innovations of modern labor legislation of the Russian Federation;

2) another option: to adopt a federal law approving the charter on the discipline of labor of maritime transport employees.

At the same time, in any case, to provide for a chapter or section on disciplinary responsibility of employees.

III.

In connection with the aforementioned theoretical and practical interest, there are legal positions on the draft federal law No. 52133-5 «Charter on discipline of maritime transport employees», many aspects of which are difficult to disagree with.

Thus, adoption of a new charter is due to Article 330 of LC RF, according to which the discipline of employees whose labor is directly connected with movement of vehicles is regulated by LC RF and the provisions (charters) on discipline established by federal laws.

In accordance with Article 330 of LC RF, the draft law proposed the action of the Charter on discipline of maritime employees to extend only to crew members of vessels and other maritime transport employees whose activities are directly related to navigation.

However, in paragraph 1 of Part 1 of Article 4 of the draft law it was proposed to provide for application to members of crews of vessels and other employees of maritime transport, whose activities are directly related to ensuring safety of navigation and vessel traffic, a disciplinary penalty in the form of a warning of incomplete service compliance.

The application of such a disciplinary sanction to employees of maritime transport, a necessary condition for whose professional activity is their full compliance with the established qualification requirements, has no legal and rational basis.

A warning about incomplete compliance is recognized as an established fact of incomplete compliance of an employee with the qualification requirements for his position or work performed. If we proceed from the increased qualification requirements for crew members of vessels and other employees whose activities are directly related to safety of navigation, recognition of incomplete compliance with their position or work performed is equivalent to recognizing the inability of these employees to hold this position or perform this work in full.

In addition, the draft law in this part has a direction opposite to the objectives of ensuring safety of navigation, since, in fact, it proposes to legitimize the ability to perform safety functions of navigation by persons who are unable to perform such functions due to their «incomplete compliance».

In paragraph 2 of Part 1 of Article 4 of the draft law it was proposed to provide for application to maritime

[1] According to Article 57 of the Merchant Shipping Code of the Russian Federation, along with the grounds to terminate an employment contract initiated by the employer, established by labor law, an employment contract with a person allowed to work on a vessel, can be terminated during a period when a person is considered to be subject to punishment because of an administrative offense related to consumption narcotic drugs or psychotropic substances without prescribing a doctor or new potentially dangerous psychoactive substances, as well as if the person has not passed a medical examination in the established manner // The official internet-portal of legal information. [Electronic resource]: https:// www.pravo.gov.ru.

transport employees of a disciplinary sanction in the form of «exemption from performance of labor duties directly related to ensuring safety of navigation and traffic» for up to one year.

From Articles 4 and 6 of this draft law followed that a disciplinary sanction in the form of «exemption from performance of labor duties» reduces, in fact, to removal of the employee from work and subsequent transfer of the employee with his consent to another job for up to one year. Thus, the draft law linked the application of disciplinary action by the employer or a person authorized by him with obtaining the consent of the employee. This is contrary to the right of the employer to bring employees for non-performance of their job duties to disciplinary responsibility (article 22, 192 of LC RF), which does not depend on the consent of the employee to apply a disciplinary penalty to him. Such a legal construction does not correspond to the nature of the disciplinary sanction as a means of forcing an employee to comply with his labor discipline.

The provision of Part 4 of Article 6 of the draft law on the relationship between «exemption from performance of labor duties» and the «consent» of an employee to his transfer to another job is a legal fiction. The inclusion of legal fictions in the laws is unacceptable, because a fictitious legislative norm cannot be a regulator of real public relations and itself needs judicial interpretation.

Since the content of the disciplinary sanction in the form of «exemption from the performance of labor duties» implemented by transferring to another job, is endowed by the draft law with signs inherent to forced labor (the employee is forcibly released from performance of labor duties stipulated in the employment contract, as a result of which the employee's consent to transfer to another job is neither his free choice of work in general, nor his free consent to a new job in particular; forcing the employee to transfer to another job for a period of up to one year is established as a means of labor discipline).

Legislative consolidation of disciplinary action in the form of forcing an employee to transfer to another job for a period of up to one year violates the provisions of Part 1 and 2 of Article 37, Part 2 of Article 55 of the Constitution of the Russian Federation, Part 1 of Article 6 of the International Covenant on Economic, Social and Cultural Rights of December 16, 1966, Article 1 of ILO Convention No. 105 «On the Abolition of Forced Labor» of June 25, 1957[2], Article 4 of LC RF.

Conclusion. *The draft law proposed to include in the subject field of labor legislation relations depriving an employee of the right to occupy certain positions or engage in certain activities, giving them signs of criminal punishment (Part «b» of Article 44 of the Criminal Code of the Russian Federation).*

Depriving a particular person to occupy certain positions or engage in certain activities can only be carried out by a court sentence. Giving the employer this kind of authority cannot be considered legitimate.

[2] Ratified by the Federal Law of March 23, 1998 No. 35-FZ // Official Internet portal of legal information [Electronic resource]: https://www.pravo.gov.ru.

The proposal of the draft law to provide the employer with the authority to «discharge from work duties» of employees for up to one year, similar to the powers of an inquirer, an investigator, a prosecutor and court for suspension from work (position) due to commission of a crime, is incompatible with the legal status, what an employer has in a democratic state[3].

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[3] See: Conclusion of the Public Chamber of the Russian Federation and Conclusion of the State Duma Committee on Labor and Social Policy on draft federal law No. 52133-5 «Charter on discipline of maritime transport workers» // Official Internet portal of legal information [Electronic resource]: https://www.pravo.gov.ru.

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