Michigan Law Review

Volume 55 | Issue 7

1957

# Admiralty - Jones Act - Applicability to Dredge Employees as Seaman

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# RECENT DECISIONS

ADMIRALTY — JONES ACT — APPLICABILITY TO DREDGE EMPLOYEES AS SEAMEN — Petitioner, a laborer, was employed by respondent on a canal digging project. His duties were those of a handyman on respondent's dredge, which was temporarily attached to shore, and his work consisted of carrying supplies from shore to the dredge, cleaning the dredge, and doing errands ashore. The employee was not a member of a maritime union, but was a member of a laborers' union. He lived at home, worked on an eight hour shift, and brought his meals to his place of employment. He was not subject to the supervision of the officer of the dredge but received his orders from the labor foreman in charge of the construction project, who worked on shore. Petitioner had no duties connected with moving the dredge, and testified that he was never on it when it was pushed from one location to another. While in the course of his employment on shore, petitioner was injured and brought an action under the Jones Act against respondent in the city court. The court rendered judgment for the employee, and the corporation appealed. The Illinois appellate court reversed the judgment on the ground that there was insufficient evidence to support the jury's finding that petitioner was a member of a crew.[1] The Illinois Supreme Court denied a petition for appeal, and the United States Supreme Court granted certiorari. *Held,* reversed and remanded. There was sufficient evidence to sustain the jury's finding that petitioner was a member of the dredge's crew. *Senko v. La Crosse Dredging Corp.*, 352 U.S. 370 (1957).

The Jones Act[2] provides a cause of action for any seaman who shall suffer personal injury in the course of his employment. Initially the word "seaman" was construed broadly enough so as to include within the provisions of the act stevedores who were injured while temporarily on board ship.[3] However, Congress later set forth separate protection for stevedores by passing the Longshoremen's and Harbor Workers' Compensation Act,[4] and as a result the Supreme Court held that the Longshoremen's Act, by implication, restricted the benefits of the Jones Act to members of the crew of a vessel.[5] Thus in the instant case petitioner had to place himself in the status of a crew member in order to recover under the Jones Act.[6] The court pointed out that it was not a controlling factor that the dredge was connected to shore since an employee may still retain his status as a

1 7 Ill. App. (2d) 307, 129 N.E. (2d) 454 (1955).

2 41 Stat. 1007 (1920), 46 U.S.C. (1952) §688.

3 International Stevedoring Co. v. Haverty, 272 U.S. 50 (1926). See ROBINSON, ADMIRALTY §40, p. 318 (1939).

4 44 Stat. 1424 (1927), 33 U.S.C. (1952) §901.

5 Swanson v. Marra Bros., 328 U.S. 1 (1946).

6 The court did not pass upon whether another requirement for the application of the Jones Act was met, i.e., whether the dredge to which the employee was attached was in fact upon navigable waters.

crew member while the vessel is anchored or berthed,[7] nor was it controlling that the injury to petitioner occurred on land, so long as the employee of the vessel was engaged in the course of his employment at the time of the injury.[8] In a previous decision[9] the Supreme Court had held that an employee's status as a crew member for purposes of the Jones Act turned on questions of fact and that if the jury's finding had evidence to support it, such finding was to be conclusive. The majority in the principal case explained this holding as meaning that the jury is to have the same discretion in determining that fact question as with any other, and that the jury's decision is final, if supported by evidence, regardless of whether or not the reviewing court agrees with the jury's estimate. Upon reviewing the evidence in the record, the majority felt that there was sufficient evidence to support the finding that petitioner was a member of the dredge's crew. The minority, however, felt that there was not sufficient evidence to support the jury's finding and relied on previous cases which had held that for an employee to be a crew member, he must have some connection, more or less permanent, with a ship and ship's company, and that he be naturally and primarily on board to aid in navigation.[10] There is much merit to the dissent's point of view. To say under the facts of this case that petitioner's duties were naturally and primarily in aid of navigation is to stretch these words to an extreme limit.[11] Admittedly, in these days of technical development and specialization, it becomes increasingly more difficult to categorize a vessel's employee as being naturally and primarily on board to aid in navigation, but in those cases in the "twilight area" wherein the courts have held the employee to be a seaman, the employee did have a connection with a ship and ship's company.[12] In the principal case, however, petitioner's connection appeared not to be with the vessel but with the laboring gang ashore, especially since he was under the direct supervision of the foreman

[7] But if the vessel has been withdrawn from navigation for the winter season, the seaman will lose his crew member status. Carumbo v. Cape Cod S.S. Co., (1st Cir. 1941) 123 F. (2d) 991; Antus v. Interocean S.S. Co., (6th Cir. 1939) 108 F. (2d) 185; Desper v. Starved Rock Ferry Co., 342 U.S. 187 (1952).

[8] O'Donnell v. Great Lakes Dredge and Dock Co., 318 U.S. 36 (1943).

[9] South Chicago Coal and Dock Co. v. Bassett, 309 U.S. 251 (1940).

[10] South Chicago Coal and Dock Co. v. Bassett, note 9 supra, (laborer on coal refueling barge, who aided in fueling other vessels but who had no duties while barge was in motion, held not a crew member); Desper v. Starved Rock Ferry Co., note 7 supra, (seasonal crew member of vessel held not a crew member during winter season while working on repair of vessels).

[11] The term "navigation" has already been somewhat "stretched" in this regard. "But navigation is not limited to 'putting over the helm.' It also embraces duties essential for other purposes of the vessel. Certainly members of the crew are not confined to those who can 'hand, reef and steer.'" Norton v. Warner Co., 321 U.S. 565 at 572 (1944).

[12] The employees in the following cases were held to be seamean and presumably would be crew members for the purposes of the Jones Act: a cook, The James H. Shrigley, (N.D. N.Y. 1892) 50 F. 287; a bartender, The J. S. Warden, (S.D. N.Y. 1910) 175 F. 314; a woman telephone operator, Keefe v. Matson Nav. Co., (W.D. Wash. 1930) 46 F. (2d) 123; a member of a ship's orchestra, The Sea Lark, (W.D. Wash. 1926) 14 F. (2d) 201.

ashore. Under such a test it would appear that petitioner should not be considered a crew member entitled to the benefits of the Jones Act but should be left to his remedy under the state workmen's compensation act.

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