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Admiralty - Exclusive Coverage by Longshoremen's and Harbor Workers' Act of Railway Employer's Liability to Employee for Accident on Car Float

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RECENT DECISIONS

ADMIRALTY — EXCLUSIVE COVERAGE BY LONGSHOREMEN'S AND HARBOR WORKERS' ACT OF RAILWAY EMPLOYER'S LIABILITY TO EMPLOYEE FOR ACCIDENT ON CAR FLOAT—Respondent, a freight brakeman employed by petitioning railroad at its Jersey City yards, was injured while releasing the hand brakes on a freight car which was being pulled off a car float docked in navigable waters. He brought suit under the Federal Employers' Liability Act,[1] alleging that his injury was caused by a faulty brake mechanism maintained in violation of the Safety Appliance Acts.[2] The suit was dismissed in the district court[3] on the ground that the Longshoremen's and Harbor Workers' Act[4] applied exclusively, because the injury occurred on navigable waters. The court of appeals reversed, holding that this act did not apply, since respondent's employment was not maritime in nature.[5] *Held*, on certiorari, such a case is within the exclusive coverage of the Harbor Workers' Act. Four justices dissented. *Pennsylvania R. Co. v. O'Rourke*, 344 U.S. 334, 73 S.Ct. 302 (1953).

The decision in the principal case is the latest addition to the ever-growing body of case and statute law which owes its existence to the ruling of the *Jensen* case.[6] There the Supreme Court held that a state workmen's compensation act could not be applied to a stevedore engaged in unloading a ship if the injury took place on navigable waters, because application of the local law would prejudice the uniformity required of maritime law by the constitutional grant of admiralty and maritime jurisdiction to the federal courts.[7] After several unsuccessful attempts to bring Jensen and workers with similar jobs under state compensation coverage,[8] Congress in 1927 passed the Longshoremen's and Harbor Workers' Compensation Act. This legislation provides the injured worker an exclusive remedy against his employer,[9] but coverage is limited to those cases where the state law cannot be applied because of the Jensen doctrine.[10] The act also excepts the master and crew members of vessels, who are

[1] 35 Stat. L. 65 (1908), as amended, 45 U.S.C. (1946) §51 et seq.

[2] 27 Stat. L. 531 (1893), as amended, 45 U.S.C. (1946) §1 et seq.

[3] O'Rourke v. Pennsylvania R. Co., (D.C. N.Y. 1951) 99 F. Supp. 506.

[4] 44 Stat. L. 1424 (1927), as amended, 33 U.S.C. (Supp. V, 1952) §§901 to 950.

[5] O'Rourke v. Pennsylvania R. Co., (2d Cir. 1952) 194 F. (2d) 612.

[6] Southern Pacific Co. v. Jensen, 244 U.S. 205, 37 S.Ct. 524 (1917).

[7] For a discussion of the impact of this doctrine and its subsequent history see ROBINSON, ADMIRALTY 99 et seq. (1939).

[8] In Knickerbocker Ice Co. v. Stewart, 253 U.S. 149, 40 S.Ct. 438 (1920), the Supreme Court held that the Jensen doctrine of uniformity required the invalidation of an amendment which added to the saving-to-suitors clause of the statute dealing with admiralty jurisdiction the words, "and to claimants the rights and remedies under the workmen's compensation law of any state." 40 Stat. L. 395 (1917), as amended, 28 U.S.C. (1946) §§41(3), 371. A later congressional attempt to accomplish the same result under a different guise met a similar fate in State of Washington v. Dawson & Co., 264 U.S. 219, 44 S.Ct. 302 (1924).

[9] "The liability of an employer prescribed in section 904 of this title shall be exclusive and in place of all other liability of such employer to the employee. . . ." 44 Stat. L. 1426 (1927), 33 U.S.C. (1946) §905.

[10] 44 Stat. L. 1426 (1927), 33 U.S.C. (1946) §903(a).

left to their traditional admiralty remedies.[11] The court's task in marking out these jurisdictional boundary lines has been difficult. In deciding whether the state act may be validly applied in a particular case, two factors must be considered: (1) the locus of the injury, and (2) the character of the employment of the injured worker. If the duties of the worker do not relate to commerce or navigation but are "local" in character, his remedy is under the state act even though the injury takes place on navigable waters. This is the "maritime-but-local" doctrine, a limitation on the rule of the *Jensen* case.[12] The real dispute in the principal case concerns the significance of the character of the employment when the problem is choosing between the Federal Employers' Liability Act and the Harbor Workers' Act rather than between a state compensation act and the Harbor Workers' Act.[13] The majority did not feel that the character of the duties of the particular employee injured was significant. Their reasoning was that by its own terms[14] the statute applies to accidents on navigable waters whenever the employer has any employees engaged in maritime service, irrespective of the nature of the duties of the particular worker injured. An earlier Supreme Court decision, *Nogueira v. New York, N.H. & H. R. Co.*,[15] was relied on by both the majority and the dissent. In that case it was held that a railroad employee injured while loading freight into a railroad car resting on a car-float came under the Harbor Workers' Act. From the standpoint of maritime employment, the Court said it made no difference whether freight was loaded into the hold of a vessel or into a freight car resting on top of a vessel; therefore, the *Jensen* case was directly controlling.[16] The four dissenting

[11] Ibid.

[12] Thus, it was held that a carpenter injured while engaged in construction of a vessel could recover under the state act. Grant Smith-Porter Ship Co. v. Rohde, 257 U.S. 469, 42 S.Ct. 157 (1922). It has been suggested by at least one case that there may be a twilight zone rather than a boundary line between state and federal coverage, and that either act may apply to accidents occurring within this zone. Davis v. Dept. of Labor and Industry of Washington, 317 U.S. 249, 63 S.Ct. 225 (1942).

[13] "The Compensation Act in Sections 903(a) and 902(4), by indirection at least, provides that employment in maritime service and injury upon navigable waters are the bases of coverage." O'Rourke v. Pennsylvania R. Co., note 5 supra, at 614. "The Court of Appeals, we think, is in error in holding that the statute requires, as to the employee, both injury on navigable water and maritime employment as a ground for coverage by the Compensation Act." Principal case at 340.

[14] "The term 'employer' means an employer any of whose employees are employed in maritime employment, in whole or in part, upon the navigable waters of the United States (including any dry dock)." 44 Stat. L. 1425 (1927), 33 U.S.C. (1946) §902(4).

[15] 281 U.S. 128, 50 S.Ct. 303 (1930).

[16] Later lower court opinions dealing with similar fact situations and following the Nogueira case looked almost exclusively to the locus of the injury when faced with a choice between the Federal Employers' Liability Act and the Harbor Workers' Act. See Buren v. Southern Pac. Co., (9th Cir. 1931) 50 F. (2d) 407, cert. den. 284 U.S. 638, 52 S.Ct. 20 (1931); Richardson v. Central R. Co. of New Jersey, 233 App. Div. 603, 253 N.Y.S. 789 (1931); Job v. Erie R. Co., (D.C. N.Y. 1948) 79 F. Supp. 698; Gussie v. Pennsylvania R. Co., 1 N.J. Super. 293, 64 A. (2d) 244 (1949), cert. den. 338 U.S. 869, 70 S.Ct. 145 (1949). A contrary case is Zientek v. Reading Co., (D.C. Pa. 1950) 93 F. Supp. 875, but the result is based on a misreading of the 1939 amendment to the Federal Employers' Liability Act. See Job v. Erie R. Co., supra.

justices in the principal case said the only question was whether respondent was engaged in maritime employment at the time of his injury. The duties of a railroad brakeman stamp his employment as "railroad" and not "maritime," the dissent argued, and therefore the case is distinguishable from the *Nogueira* case.[17] The dissent does not explain the basis for its assumption that the duties of the particular employee must be maritime rather than railroad. The position of the majority seems partly a reflection of a fear expressed by the dissent in the court of appeals that the courts would be heading into a "chartless morass"[18] if it were necessary to determine in every case whether the injured railway workman's duties were railroad or maritime in order to decide under which act he must seek his remedy against the employer. Placing the emphasis on the locus of the injury provides a much more workable test for drawing the line between the two federal acts. Whether or not the result is justified as a matter of policy is another matter, since it is somewhat difficult to understand why a railroad brakeman's remedy against his employer should change so drastically when the freight car on which he is riding moves from the car-float onto the dock.

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[17] "The nature of the employment is certainly not maritime. It was an ordinary railroad chore, done by an ordinary railroad workman." Principal case at 343.

[18] O'Rourke v. Pennsylvania R. Co., note 5 supra, at 616.