



Arbitration Agreements & Jones Act Seamen

Jones Act employers attempting to enforce arbitration agreements in seamen's personal injury claims have recently been confronted with confusion between federal policies designed to protect seamen and federal policies favoring arbitration. Congress's re-codification of Title 46 and deletion of the venue clause from the Jones Act (46 U.S.C. § 30104) compounded this confusion.¹ Fortunately, the Second Circuit has recently issued a decision striking a reasonable balance between the competing federal policies and re-affirming the Federal Arbitration Act's principal role in determining the validity of arbitration agreements.

Harrington v. Atlantic Sounding Co., Inc., 602 F.3d 113, 2010 AMC 1358 (2d Cir. 2010).

Frederick Harrington worked for Weeks Marine—Atlantic Sounding's parent company—as an Able-Bodied seaman for two years before suffering a back injury. Harrington took leave and eventually applied to Weeks Marine for financial support in addition to his daily maintenance payments. In response, Weeks Marine offered Harrington 60% of his gross wages based upon his earning history in exchange for the execution of a Claim Arbitration Agreement. The Agreement required Harrington to submit to binding arbitration for any claim arising out of his back injury.

The Eastern District of New York concluded the Agreement was unenforceable because it was procedurally and substantively unconscionable under New Jersey law. However, on appeal, the Second Circuit considered the important threshold issue of whether the Agreement was unenforceable on its face as a violation of Sections 5 and 6 of the Federal Employers' Liability Act ("FELA"). To resolve this issue, the Court directly compared the FELA with the Federal Arbitration Act ("FAA").

¹ In *Terrebonne v. K-Sea Transportation Corp.*, 477 F.3d 271, 2007 AMC 442 (5th Cir. 2007), the Fifth Circuit upheld an arbitration agreement in a partial release which covered claims arising from a seaman's re-injury. The *Terrebonne* Court partially justified its conclusion that the venue provisions of the FELA were not controlling because, at that time, the Jones Act had an independent venue provision. After Congress re-codified the Jones Act, this argument was no longer available, forcing a direct show-down between the FAA and the FELA.



ADMIRALTY AND
MARITIME MATTERS

AUGUST 2010

The maritime plaintiff's personal injury bar took up Harrington's cause and enlisted the aid of the American Association for Justice ("AAJ") (formerly the American Trial Lawyers' Association ("ATLA")). Harrington, aided by the AAJ as *amicus curiae*, argued the Agreement violated Sections 5 and 6 of the FELA as incorporated by the Jones Act. Section 5 voids any contract purporting to exempt a common carrier from liability under the FELA. Section 6 provides the FELA's general venue provisions and applies in Jones Act cases, especially now that Congress deleted the independent Jones Act venue provision from the Jones Act when it re-codified Title 46 in 2008. The AAJ's argument relied heavily upon *Boyd v. Grand Truck Western Railroad Co.*, 338 U.S. 263 (1949), where the Supreme Court found a post-injury agreement restricting a railroad worker's choice of venue unenforceable under Sections 5 and 6. The Second Circuit, however, rejected the AAJ's invitation to read *Boyd* so broadly and determined that workers' forum-selection rights must be carefully balanced with the liberal federal policy favoring arbitration agreements under the FAA.

Under the FAA, "an agreement in writing to submit to arbitration an existing controversy arising out of maritime transactions or commerce shall be valid, irrevocable, and enforceable save upon such grounds as exist at law or equity for the revocation of any contract." (9 U.S.C. § 2). Although the FAA expressly excludes "contracts of employment of seamen" (9 U.S.C. § 1), the judicially-accepted view is that "contracts of employment" do not encompass **every** agreement between an employer and a seaman. Thus, independent contracts pertaining to the employment relationship, such as the post-injury arbitration agreements, are subject to the FAA and "**must** be addressed with a healthy regard for the federal policy favoring arbitration."

The Court determined Section 6 of the FELA is inapplicable to arbitration agreements by both its terms and its purpose. When the FELA was first enacted, arbitration was not a commonly used mechanism to adjudicate employees' rights and, therefore, reading Section 6 as a blanket prohibition on arbitration agreements is unreasonable. Instead, the provision was enacted to provide workers with a practical and convenient forum to adjudicate their rights, not to ensure a particular **type** of forum. An agreement to arbitrate does not necessarily raise the geographic venue concerns underpinning *Boyd* and its progeny, and arbitration provides both a practical and convenient forum for seamen's personal injury claims. In other words, seamen do not automatically lose their



ADMIRALTY AND
MARITIME MATTERS

AUGUST 2010

substantive legal rights by submitting their claims to arbitration and courts should give deference to arbitral agreements that comply with the FAA.

The Second Circuit also rejected the AAJ's argument that the proviso in Section 5 bars seamen's arbitration agreements because the language "provides the defendant's sole statutory remedy when it has made advances to an injured seaman" and "does not allow [it] to impose arbitration in exchange for payments." The plain language of Section 5 actually suggests neither. The proviso only ensures that common carriers can set off benefits under certain circumstances.

In light of *Harrington*, Jones Act employers can be more certain of the enforceability of the arbitration agreements they enter into with injured seamen. Neither the re-codification of the Jones Act nor recent attempts to breathe new life into the age-old "wards of the admiralty" doctrine warrants judicial disregard for the FAA or the strong federal policy in favor of arbitration.

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