Admiralty Practicum

Volume 1995
Issue 1 *Fall 1995*

Article 4

February 2018

Gizoni v. Southwest Marine Inc., CA9, 56 F.3d 1138, 6/7/95

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Jones Act Seamen

FLEET DOCTRINE APPLIES TO SHORE-BASED RIGGER WORKING ON BARGE

Asserting the fleet doctine, where permanent assignment to group of vessels under common ownership can be shown, allows a rigger working on floating platforms to acquire seaman status in a Jones Act action.

(Gizoni v. Southwest Marine Inc., CA9, 56 F.3d 1138, 6/7/95)

Byron Gizoni (Gizoni), shore-based rigger and rigging foreman, was injured when he stepped into a hole on the deck of Southwest Marine Inc.'s (Southwest's) floating pontoon barge or floating platform during repair of a U.S. Navy ship. The pontoon was secured to a floating dry dock being used to repair the ship's rudder.

Southwest, Gizoni's employer, was sued under the Jones Act, 46 U.S.C. app. § 688, on the claim that Gizoni was a seaman because of his work aboard the barges and watercraft owned by Southwest Marine. Although the Jones Act provides an injured seaman a cause of action in negligence, it does not define seaman for purposes of the Act.

The district court found Gizoni to be a harbor worker and therefore precluded from suing under the Act, granting Southwest summary judgment. The court of appeals reversed. The appeals court found that the lower court had erred in its instructions to the jury on the definition of "seaman." In its remand for a new trial, the appeals court held: (1) that the fleet doctrine instruction should have been given; (2) evidence that Gizoni had been employed on a vessel in navigation was not misleading; (3) the court's instruction defining a vessel was erroneous; but that (4) the "permanent connection" instruction was correct.

Gizoni, the ninth circuit noted, had to show, by a preponderance of the evidence, that he was a "seaman." According to the *Bullis* test, to prove one is a seaman, he must be (1) employed on a vessel that is in navigation; (2) permanently connected to that vessel; and (3) contributing to the function of the mission of the vessel. *Bullis* v. *Twentieth Century-Fox Film Corp.*, 474 F.2d 392, 393 (9th Cir. 1973).

Gizoni claimed that the district court had erred by not instructing the jury on the fleet sea doctrine. The fleet doctrine, created by the fifth circuit to lower the requirement that a seaman had to be permanently assigned to a vessel, allows one to acquire seaman status through permanent assignment among multiple vessels under one common ownership. *Campo* v. *Electro-Coal Transfer Corp.*, 970 F.2d 51, 52 (5th Cir. 1992), *cert. denied*, 113 S.Ct. 1261, 122 L.Ed.2d 659 (1993). The appellate court determined that the fleet doctrine was a reasonable extension of Jones Act precedent. The court considered evidence that Gizoni had worked on a variety of barges for Southwest. The fleet doctrine was also applicable, ironically, because Southwest, in its closing argument, focussed on the fact that Gizoni could not prove that he was "more or less permanently attached" to a particular barge. Therefore, the district court clearly erred in not giving the instruction.

The district court, argued Gizoni, also erred by instructing the jury that Gizoni had to prove that the situs of the accident occurred on a vessel in navigation. Under the Jones Act, a seaman may recover for any injury that occurred in the course of employment. *O'Donnell* v. *Great Lakes Dredge & Dock Co.*, 318 U.S. 36, 63 S.Ct. 488, 87 L.Ed. 596 (1943). Thus, whether or not the injury occurred on a vessel is irrelevant. Yet, in contrast, the judge's instruction to the jury implied Gizoni had to establish that he was employed on a vessel in navigation to recover.

Further, said Gizoni, the district court *clearly erred* in instructing the jury with the following: "If the transportation function, if any, of the floating platform was merely incidental to its other functions, the floating platform cannot be found to be a vessel. * * * [T]o be a vessel, the purpose of the floating platform must, to some reasonable degree, be the transportation of passengers, cargo or equipment from place to place across navigable waters." *Gizoni* v. *Southwest Marine Corp.*, 56 F.3d 1138, 1142 (9th Cir. 1995).

The court of appeals stated in previous decisions that unusual-looking craft, whose purpose is not the transportation of persons or things, can be considered vessels under the Jones Act. *Estate of Wenzel* v. *Seaward Marine Services*, 709 F.2d 1326 (9th Cir. 1983). Hence, the district court's instruction regarding the transportation function was also erroneous.

Finally, the plaintiff contended that, when the district judge instructed the jury, "[Gizoni] had to establish that he had a more or less permanent connection with the vessel * * *[,]" that this implied that he was required to spend most of his time on that particular barge. The appeals court did not find this statement misleading. According to the United States Supreme Court, "the key to seaman status is employment-related connection to a vessel in navigation." *McDermott Int'l* v. *Wilander*, 498 U.S. 337, 111 S.Ct. 807, 112 L.Ed.2d 866 (1991).

The purpose of the connection requirement is not intended to allow an individual who works for an isolated period protection under the Jones Act, but to protect the seaman who serves aboard one particular vessel for a brief time. THOMAS J. SCHOENBAUM, ADMIRALTY AND MARITIME LAW § 6-9, at 263 (2d ed. 1994).

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Collision

IYRR YACHTING REGULATIONS PREEMPT COLREGS

In yacht collision case, findings of International Jury preempt U.S. court's application of Articles 12 & 13 of the Convention on International Regulation for the Prevention of Collisions at Sea (COLREGS).

(Juno SRL v. S/V Endeavour, CA1, 58 F.3d 1, 6/9/95)

On October 3, 1992, two vessels, the *Charles Jourdan* and the *Endeavour*, were racing in the La Nioulargue Regatta in and around the Bay of St. Tropez. Although the yachts were racing on separate courses, the