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Article 3

Miles v. Melrose United States Court of Appeals, Fifth Circuit, 11 September 1989 882 F.2d 976

Jules F. Vallay '90

Brittain v. U.S. Lines *(Cont.)*

ANALYSIS: The Second Circuit rejected the seamen's first contention that the banks somehow precipitated the arrest of the vessels in a jurisdiction where their liens would have priority over the seamen's liens observing that there was no factual proof to support this allegation. The court then declared that the seamen could not challenge the validity of the July 27 order on the grounds that they did not receive notice of the request for its entry. The court observed that even if the seamen were entitled to notice, their lack of notice did not result in any adverse consequences and therefore they could not object to the order on this grounds. *See In re Photo Promotion Associate, Inc.*, 53 Bankr. 759 (S.D.N.Y. 1985).

Additionally, the seamen could not object to the order which permitted the parties to pursue their claims in the Singapore proceeding, since the seamen would not have been obliged to enforce their liens in the Singapore action had there not been a bankruptcy proceeding. Furthermore, the seamen had no grounds to object to the post-petition financing promised by the banks, since the banks' liens, even prior to the order which approved post-petition financing, far exceeded the amount of money derived from the sale of the ships. The court emphatically acknowledged that the seamen should be "distressed that Singapore law accords the banks' lien a priority higher than their own, whereas the reverse situation would have applied ... [in a] Bankruptcy Court," but noted that this court was in no position to remedy this inequity since the law of the forum administering the *res* governs the priority of the liens. *See Gulf Oil Trading Co. v. Creole Supply*, 596 F.2d 515, 521 (2d Cir. 1979).

Peter M. Corrigan '90

MILES v. MELROSE
United States Court of Appeals, Fifth Circuit, 11 September 1989
882 F.2d 976

A union has a duty under the general maritime law to warn a shipowner or operator with whom it has a collective bargaining agreement of the known propensities of a member sent to work on the vessel.

FACTS: On July 5, 1984, Clifford Melrose was sent by his union to join the crew of the M/V Archon, replacing another cook in a three man galley. The seamen serving on Archon were hired pursuant to a collective bargaining agreement. On July 18, 1984, Melrose provoked an argument with James Jackson, the chief steward/baker. Jackson believed Melrose to be under the influence of alcohol, hostile and angry. Shortly after this confrontation, Jackson went to Ludwick Torregano's cabin. Torregano was the assistant steward and the third man in the galley. Jackson found Torregano dead.

The coroner's report indicated that Torregano had been stabbed or cut at least 62 times. Jackson testified at Melrose's murder trial that after discovering the body, he saw Melrose standing naked and wet with a blood stained towel wrapped around his arm. Melrose's blood alcohol level was .19%. Melrose was convicted of second degree murder.

Mercedel Miles, Torregano's mother and administratrix of his estate, asserted that she is entitled to damages as a result of the vessel's unseaworthiness under general maritime law and for negligence under the Jones Act 46 U.S.C.A. §688. The shipowners sought indemnity from the union for the union's failure to warn the shipowners of Melrose's violent propensities.

The district court dismissed the defendant's third party complaint against the union for failure to state a claim.

ISSUES: (1) Was the M/V Archon rendered unseaworthy as a matter of law due to the unfittness of Melrose?

(2) Does a union have a duty under general maritime law to warn a shipowner or operator with whom it has a collective bargaining agreement of the known violent propensities of a member sent to work on the vessel?

ANALYSIS: In order to find a vessel unseaworthy, a plaintiff must prove that a crew member was "not equal in disposition and seamanship to the ordinary men in the calling." *Clevenger v. Star Fish and Oyster Co., Inc.*, 325 F.2d 397, 402 (5th Cir. 1963). General maritime law requires an absolute duty of the shipowner to provide the members of the crew with a seaworthy vessel. Not only will a damaged hull render a ship unseaworthy, but so will a seaman not reasonably fit. While this standard requires a fact-specific inquiry, the Fifth Circuit has previously held that where an assault is extremely violent, this in and of itself can be sufficient evidence that the assailant is not equal in disposition and seamanship to the ordinary men in the calling. *Clevenger, supra.*

Under the facts of the case at bar, the coroner's report stated that the victim had suffered 62 stabbings or cuts. There was no evidence to contradict the coroner's analysis of the savagery of the attack thereby confirming Melrose's extremely violent disposition. Melrose failed to measure up to the standard of this calling and the Fifth Circuit held that the vessel was thereby rendered unseaworthy as a matter of law.

As to the issue of indemnification, the court stated that in order to decide whether the claim for indemnification from the union for the tort claim of failure of duty to warn, is cognizable, the court must assume that the alleged negligence can be proved - that the union knew a worker had a violent propensity, that the union could foresee that he might injure the other crew members and that the union's failure to warn the shipowner was in fact the legal cause of the injury.

In order to determine whether the union owes a duty to warn the shipowner of the violent propensities of a referred member, the court noted §314 of the Restatement of Torts (Second) that provides that where a force is within the actor's control, his failure to control it is treated as though he were actively directing it. Thus, by referring Melrose when it knew that he was dangerous, the union was no longer a mere bystander, but rather was in control of the process that presented the evil. The shipowner is dependent on the union contractually for its workers and the union is in a unique position to prevent the harm.

The court noted that where two parties stand in a relationship of dependence, the law may impose a duty to exercise reasonable care to protect the dependent party from injury. To allow the union to refer a seaman known to have violent propensities and fail to warn the shipowner would contravene maritime law principles. The seaman's safety can best be promoted by " '[plac-[ing] liability on the party who was truly at fault and who should mend his negligent ways to prevent further injury.' " *Flunker v. United States*, 528 F.2d 239, 243 (9th Cir. 1975). The court stressed that the owner/operator still warrants the vessel's seaworthiness. The union is not charged with any warranties as to the dispositions of the crew or an independent duty to investigate if a member is violent, but rather is only required to exercise ordinary care when it knows that a worker is likely to harm other crew members. The court reversed the district court's dismissal of the third party complaint and reinstated the shipowner's claim for indemnification or contribution.

Jules F. Vallay '90