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Ribitzki v. Canmar Reading & Bates, Ltd. Partnership 111 F.3rd 658 (9th Cir. 1997) (Decided April 14, 1997)

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punitive damages, are not available under general maritime law. The court then dismissed the balance of defendant-appellant's arguments as being without merit.

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JONES ACT NEGLIGENCE, UNSEAWORTHINESS AND PRIMARY DUTY RULE

Injured seaman claiming Jones Act negligence and unseaworthiness defeated summary judgment motions by presenting evidence showing that his fall into an open hatch may have been caused by unreasonably cramped and slippery working conditions. Primary Duty rule does not bar seaman's claims when the dangerous condition was not created by the seaman nor it could be controlled or eliminated by him.

Ribitzki v. Canmar Reading & Bates, Ltd. Partnership 111 F.3rd 658 (9th Cir. 1997)
(Decided April 14, 1997)

Seaman Anton Ribitzki ("Ribitzki") was sent by his employer, Piquiniq Service Company ("Piquiniq"), to work aboard the oil drilling ship CANMAR SSDC ("Canmar"). His job was to clean the ship's shale pit by hosing away mud and shale after the Canmar finished hole drilling operations. Ribitzki injured himself while walking toward an open hatch as he uncoiled the hose he used for his cleaning duties. A kink developed in the hose which caused plaintiff to avert his focus away from the open hatch. He then either slipped or stepped into the open hatch. There were no witnesses to the accident. Ribitzki suffered serious knee injuries as a result of the mishap for which he filed a Jones Act negligence claim against his employer, Piquiniq, and an unseaworthiness claim against the vessel and her owners.

The central thrust of plaintiff's claim is that the pitroom where he fell was unreasonably cramped and slippery for the tasks he was assigned to perform. The pit room measured four-feet by sixteen-feet in length; the hatch measured two-feet by two-feet, thus leaving two feet of deck space between the open hatch and pit room bulkhead. In depositions, Ribitzki testified that there was mud near the hatch area that may have caused him to slip. However, he was not certain whether he slipped or just stepped into the open hatch. Defendants aver that there was no mud in the pit room on the day plaintiff fell. They further allege that plaintiff was well aware of the conditions in the pit room and did not exercise proper care in that he should have laid the hose on the ground and walked to the area where the kink developed.

Under these facts, the district court granted summary judgment against plaintiff on both actions. On appeal, the Ninth Circuit reversed.

I. Jones Act Negligence In its de novo review of the facts, the Ninth Circuit found that the evidence, viewed in the light most favorable plaintiff, satisfied all the elements of a Jones Act claim, namely, duty, breach, notice and causation.

Duty: Piquiniq dispatched Ribitzki to work aboard the Canmar and thus had a duty to provide him with a safe work environment while aboard.

Breach: Ribitzki claims Piquiniq breached its duty to provide a safe place to work because the pit room where he was assigned was unreasonably slippery and cramped. The court held that a reasonable jury could find that the two feet of space between the open hatch and the bulkhead was insufficient space to safely perform the work Ribitzki was assigned. Further, even if Ribitzki contributed to the accident through his negligence, it would not act to cancel the employer's negligence, if any. As for whether or not the deck was slippery, the Court of Appeals held that it was settled law that such issues are questions of fact for the jury to determine. *Davilla v. S/S Vercharmian*, 247 F.Supp. 617, 619 (E.D Va. 1965).

Notice: An employer will not be held liable under the Jones Act unless it knew, or should have known, of the dangerous conditions. Constructive notice could be charged, if in the exercise of reasonable care, the employer could have discovered the alleged dangerous condition. Here, there was no actual notice of the dangerous conditions; however, a jury could find constructive notice in that a reasonable inspection would have disclosed to Piquiniq that the pit area was unreasonably cramped and would be unreasonably slippery during clean-up operations.

Causation: A seaman, to survive summary judgment on the issue of causation, is only required to show that the employer's alleged negligence played a role, however slight, in causing his injury. Herein, Ribitzki produced sufficient evidence for a jury to find that his employer's negligence, if proved, played some role in causing his injury.

II. Unseaworthiness - The court found that plaintiff established all four elements necessary to overcome summary judgement in his unseaworthiness claim against the Canmar and its owners:

1) Ship owners have an absolute duty to furnish seaman with a safe place to work or live. Actual or constructive knowledge of unseaworthiness is not required. Here plaintiff was a seaman aboard the Canmar so this element is satisfied.

2) The injury must be caused by ship's equipment or appurtenant appliances. Plaintiff was injured by Canmar equipment, to wit, the open hatch attached to the Canmar.

3) A seaman, though not entitled to a perfect place to work, is entitled to a *reasonably* safe place to work. Evidence viewed in the light most favorable to plaintiff permits an inference that the pit room was unreasonably slippery and cramped for its intended use so as to defeat a summary judgment motion.

4) Causation is established by showing that the unseaworthy condition was a *substantial* factor in causing the injury. Here sufficient evidence was provided to permit a reasonable jury to find that the cramped and slippery conditions were a substantial factor in causing plaintiff's injuries.

III. Primary Duty Rule - Under this rule, a seaman may not recover for an injury caused by his own failure to perform a duty imposed on him by his employment. Defendant here argues that Ribitzki's injury was caused by his failure to properly clean the pit room. Thus, defendant contends he should be precluded from recovery. The court, however, recognized an exception to this rule in that when a plaintiff is injured by a condition he did not create nor could control, the primary duty rule does not apply. Thus, the court held that because Ribitzki did not create the cramped or slippery conditions, nor could he have controlled or eliminated them, the primary duty rule was not applicable.

The Court of Appeals thus reversed the district court by finding that Ribitzki presented sufficient evidence to defeat defendant's summary judgment motions. The case was remanded to the district court for further proceedings.

Steve Stavridis, Class of 1998

SUBJECT MATTER JURISDICTION

The intentions of the parties, prior courses of dealing and trade usage are controlling in determining whether a “mixed” contract qualifies for admiralty jurisdiction.

Transatlantic Marine Claims Agency, Inc. v. Ace Shipping Corp., Division of Ace Young Inc.,
109 F.3d 105, 1997 A.M.C. 1772 (2nd Cir. 1997)
(Decided March 13, 1997)

In March 1994, Daewoo Automotive Components, Ltd. ("Daewoo") contracted with defendant-appellant Ace Shipping Corp. ("Ace") for the transport of automobile parts from New York to Korea. Six bills of lading for the transportation of the parts from New York, via Seattle, to Pusan, Korea were executed, and served as contracts of carriage.

Ace is classified as a non-vessel-owning common carrier ("NVOCC"). As such, Ace arranges for shipment of cargo, but does not itself own a ship. Ace arranged for shipment with Hyundai Intermodal, Inc. ("Hyundai"), which placed the cargo on a train from New York to Seattle. Enroute to Seattle the train derailed which caused severe damage to the cargo and significantly lessened its value. The cargo was insured by the plaintiff-appellee Transatlantic Marine Claims Agency ("Transatlantic"), which paid Daewoo and brought this action in admiralty as a subrogee of Daewoo. Ace, Hyundai, Burlington Northern (the rail carrier), and Conrail were named as defendants.

Ace failed to respond to the complaint and Transatlantic prevailed on a motion for default judgment, and was awarded \$51,753.86 against Ace. Transatlantic entered into a stipulation with the remaining defendants, discontinuing its case against them. Ace then appealed the default judgment entered in the district court, claiming the court lacked subject matter jurisdiction. In the complaint Transatlantic invoked only admiralty jurisdiction, probably due to the fact that the original claim failed to meet the amount in controversy required by the *Federal Rules of Civil*