

(Jose Antonio) Cabrera Espinal v. Royal Caribbean Cruises, Ltd., Celebrity Cruises, Inc. 253 F.3d 629 (11th Cir. 2001) (Decided June 8, 2001)

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**MODIFICATION OF GENERAL MARITIME LAW IN COLLECTIVE
BARGAINING AGREEMENT**

**Collective Bargaining Agreement, expressly modifying general maritime rule for
maintenance and cure will apply; under CBA employer owed no further duty to
seaman for recuperation after signing off ship**

(Jose Antonio) Cabrera Espinal v. Royal Caribbean Cruises, Ltd., Celebrity Cruises,
Inc.

253 F.3d 629 (11th Cir. 2001)

(Decided June 8, 2001)

Jose Antonio Cabrera Espinal (“Espinal”) filed two separate cases, in successive years, relating to injuries he sustained while employed by, and aboard the vessels of, defendant. In both cases, plaintiff seeks an increase in the amount he was paid for wages, maintenance (a living allowance) and cure (nursing and medical expenses) from that established in the Collective Bargaining Agreement (“CBA”), to one reflective of his average or actual monthly salary. The cases were filed in reverse order of the occurrence of the injuries.

Espinal I

The action filed first, referred to as Espinal I, relates to Espinal’s employment under contract as a tip earning employee with Royal Caribbean Cruises’ (“RCC”) for the period from December 23, 1997 to November 23, 1998. In February of 1998, Cabrera Espinal herniated a lumbar disc and was unable to finish his employment contract due to his work related injury. Pursuant to the Collective Bargaining Agreement (“CBA”), RCC paid him sick wages from the time he became injured for 112 days in the amount of \$766 per month. Espinal brought suit against RCC contending that he is entitled to his average or actual monthly salary (\$1,500 which includes \$1,450 in tips) as sick wages instead of the guaranteed minimum.

The court of appeals states that “[t]he sole question it must answer is whether the district court should have applied general maritime law or the CBA in calculating the amount of unearned sick wages, and the length of time for which those wages are due.” *Cabrera Espinal v. Royal Caribbean Cruises, Ltd.* 253 F.3d 629, 11th Cir. 2001

Although the district court recognized that the CBA had provisions for the calculation of maintenance and cure, it applied case law to reach an amount equal to wages plus average tip income instead. The court of appeals agrees with district courts recognition of the CBA, but distinguishes the cases cited based on the fact that there the wage calculations either excluded tip income entirely, or were not included in the CBA.

The court of appeals recognizes a seaman's ability to bring an action for maintenance and cure *Flores v. Carnival Cruise Lines*, 47 F.3d 1120, 1122, 11th Cir, 1995, that it is among the most pervasive liabilities of a ship owner, and that it should not be defeated by narrow or restrictive distinctions. *Vaughan v. Atkinson*, 369 U.S. 527 1962. The court also recognizes that maritime law may be altered, but not abrogated by collective bargaining agreements. *Frederick v. Kirby Tankships, Inc.*, 205 F.3d 1277, 1291, 11th Cir. 2000 holding that where a CBA fixes a maintenance rate, the term should be enforced, and will be unless contrary to law. *Marshall v. Western Grain Co.*, 838 F.2d 1165, 1168-1170, 11th Cir. 1988.

Concurrently, the court of appeals believes that significant consideration must be given to a collective bargaining agreement as it represents the mutually agreed upon interests of the parties, and that lacking a legal reason, should be enforced. Here they find that the district court erred in not relying on the CBA in calculating the amount due Cabrera Espinal, although it did appropriately rely on it to set the length of time for which those wages should be paid.

Espinal II

The second action filed, referred to as Espinal II, relates to Espinal's employment under contract as a tip earning employee with Celebrity Cruises, Inc., (later purchased by "RCC") for the period from November 4, 1996 to October 3, 1997. While aboard ship Cabrera Espinal developed an eye injury, and although he consulted the ships doctor, he waited until returning to port to seek medical attention. Medical attention was first provided in Miami, and then in Cabrera Espinal's home country of Honduras which resulted in a cure on December 3, 1997. Pursuant to the Collective Bargaining Agreement ("CBA"), RCC paid him sick wages for guaranteed minimum of 63.

In an action similar to that described above in *Espinal I*, Cabrera Espinal brought suit against RCC contending that he is entitled to his average or actual monthly salary (\$1,500 which includes \$1,450 in tips) as sick wages instead of the guaranteed minimum, for the period of his incapacity. Cabrera Espinal is also seeking sick wages for the period of time from the termination date of his employment contract, October 3, 1997 through his recuperation. Relying on the rationale and reasons discussed in *Espinal I*, the appeals court decides that the CBA, and its provisions for the calculations of sick wages, maintenance and cure, should also apply here. Concurrently, the appeals courts states that a ship's obligation to pay maintenance and cure is intended to put a sailor in the same position as he would have been had he continued to work *Flores*, supra at 1127, and that based on this and the provisions of the CBA once Cabrera Espinal's employment contract has expired and he has been repatriated, RCC's obligation to him has ended. The district court's grant of summary judgment was affirmed.

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