

Admiralty Practicum

Volume 2003
Issue 2 Fall 2003

Article 5

February 2018

Am. Nat'l Fire Ins. Co. v. Yellow Freight Systems, Inc. United States Court of Appeals for the Seventh Circuit 325 F. 3d 924 (Decided April 10, 2003)

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Recommended Citation

Nicole Oversier '06 (2003) "Am. Nat'l Fire Ins. Co. v. Yellow Freight Systems, Inc. United States Court of Appeals for the Seventh Circuit 325 F. 3d 924 (Decided April 10, 2003)," *Admiralty Practicum*: Vol. 2003 : Iss. 2 , Article 5.

Available at: https://scholarship.law.stjohns.edu/admiralty_practicum/vol2003/iss2/5

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boats for purely recreational purposes is insufficient to demonstrate that the pond has a capacity or suitability for commercial transportation.” *Id.* at 84.

The court held that Mohawk Club failed to present a *prima facie* case because it was unable to demonstrate that Lake Mariaville had any historic use of commercial transportation and the lake lacked suitable public access. The Appellate Division, Third Department affirmed the lower court’s denial of plaintiff’s motion.

Ian O’Malley
Class of 2005

APPLICATION OF THE CARMACK AMENDMENT, 49 U.S.C.S. § 14706, TO LAND CARRIERS

A shipper establishes a *prima facie* case when it shows: (1) delivery in good condition, (2) arrival in damaged condition, and (3) the amount of damages. Upon such a showing, the burden shifts to the carrier to show both that it was free from negligence and that the damages to the cargo were due to one of the excepted causes relieving the carrier of liability: (1) acts of God, (2) acts of the public enemy, (3) acts of the shipper himself, (4) public authority, or (5) the inherent vice or nature of the goods. Carmack Amendment, 49 U.S.C.S § 14706.

Am. Nat’l Fire Ins. Co. v. Yellow Freight Systems, Inc.
United States Court of Appeals for the Seventh Circuit
325 F. 3d 924
(Decided April 10, 2003)

Plaintiff, American National Fire Insurance Company (“American National”), subrogee of a cigar manufacturer alleged that a shipment of cigars transported by the defendant, Yellow Freight Systems (“Yellow Freight”), was damaged in transit due to water leakage in the freight carrier’s trailer. Plaintiff brought suit in United States District Court for the Northern District of Illinois, Eastern Division, claiming damages under the Carmack Amendment, 49 U.S.C.S. § 14706. The district court ruled that the plaintiff-subrogee had established a *prima facie* case under the Carmack Amendment. In addition the district court held that the defendant failed to prove that it was free from negligence and that the damage to the cargo was due to one of the excepted causes relieving it from liability. The district court awarded the plaintiff the costs of freight, taxes, and insurance.

The defendant appeals the district court’s ruling that the plaintiff proved a *prima facie* case under the Carmack Amendment, that the defendant did not prove any of the excepted causes, and that the damaged cartons were part of the shipment at issue. In addition, the defendant appeals the district court’s award of freight, taxes, and insurance. The plaintiff cross-appeals the district court’s decision that the date of subrogation, rather than the date of delivery of the damaged goods, should be used to determine the date of accrual for prejudgment interest. In addition, the plaintiff argues that the district court erred in awarding simple rather than compound interest. The United States Court of

Appeals for the Seventh Circuit partially affirmed the district court's ruling, but reduced the award to reflect a determination that only a percentage of the cargo was damaged. The issue of whether to award prejudgment interest rather than compound interest was remanded back to the district court for further examination.

In making this determination, the Seventh Circuit found that the district court was correct in determining that the plaintiff proved that the cargo was in good condition upon delivery to the defendant and was damaged upon arrival to its destination, therefore establishing a *prima facie* case against the defendant. In addition, the court determined that the defendant failed to prove it was free from negligence and that the damage to the cargo was due to one of the excepted causes relieving it from liability. Testimony of the defendant's freight's driver stated that upon delivery to the defendant, some of the cardboard box tops were "crunched," but there was no indication that the cartons were wet or sufficiently damaged. Yet at the time of arrival, testimony showed that the cartons were wet, some of the bottoms were disintegrated, and many boxes were crushed. The court affirmed the district court's ruling that the defendants failed to prove that the damage was caused by the shipper's improper packaging. The defendant argued that the damage was caused by the plaintiff's use of cardboard boxes rather than crates in packaging. The court affirmed the lower court's finding that the shipper had received millions of cigars packed in used cardboard boxes that arrived undamaged.

With regards to the defendant's complaint that a comparison of the inventory of the plaintiff's adjuster, the original packing lists shows that 45 of 59 damaged cartons were not a part of the 118 cartons at issue. The defendant claims that the original packing list noted two types of cigars and two lengths, while the plaintiff's adjuster showed multiple types and lengths of cigars. The Seventh Circuit concluded that, despite the argued discrepancies, the defendant neglected to submit evidence to prove this allegation.

However, with respect to the defendant's argument that the district court erred in awarding the plaintiff recovery for taxes, fees, freight charges, and insurance for the entire shipment, the court noted that under the Carmack Amendment shippers can "recover for actual losses to their property caused by the carrier." Under Carmack, the ordinary measure of damages is the difference between the market value of the property had it arrived undamaged and the market value in the condition in which it did arrive. Under this measurement, the shipper is not entitled to recover freight costs because that cost is figured into the market price. The lower court did not follow the ordinary market cost measurement of damages and instead awarded plaintiff damages based on the cost to the shipper of the cigars damaged. The lower court also awarded plaintiff taxes, broker's fees, freight and insurance paid for the entire cigar shipment. The Seventh Circuit reversed holding that plaintiff should be awarded freight, taxes, insurance, and fees for only fifty-five percent of the shipment was not destroyed. If awarded the cost for the undamaged cigars, the court stated that the plaintiff would be recovering twice.

The court affirmed the district court's award of prejudgment interest accruing from the date that the plaintiff-subrogee paid the shipper. In affirming the district court's opinion, the Court noted that the plaintiff was only entitled to recover the money it had actually paid to the shipper; which was the interest from the point it actually paid the shipper, not from the date that the carrier delivered the damaged cargo to its destination.

Finally, the court questioned the district court's decision to change its award from compound to simple interest. While the court did not specifically condemn this decision,

it remanded the issue back to the district court for an explanation of the lower court's rationale.

Nicole Oversier
Class of 2006

**THE PROPRIETY OF AN ADMINISTRATIVE LAW JUDGE CONSIDERING
AN INDIVIDUAL'S MOTION FOR MODIFICATION OF A DISABILITY
CLAIM**

A claim of mistake in a motion to modify disability benefits based on medical reports created after the initial decision is a factual, rather than legal issue. Thus it is proper for an Administrative Law Judge to consider the motion.

Norfolk Shipbuilding & Drydock Corp. v. Campbell
United States Court of Appeals for the Fourth Circuit
59 Fed. Appx. 568
(Decided March 11, 2003)

In 1987, appellee Terry Campbell injured his head, neck, and back while working for appellant Norfolk Shipbuilding and Drydock Corporation ("Norshipco"). After the incident, Campbell continued to work for Norshipco from May 1987 to January 1993 receiving differing amounts of disability compensation. In response, Campbell filed a claim for temporary total disability under the Longshore and Harbor Worker's Compensation Act ("LHWCA"). After reviewing Campbell's claim, the Administrative Law Judge ("ALJ") concluded that: (1) Campbell was not fired in retaliation for filing a disability claim, (2) suitable alternate employment existed despite Campbell's limitations, and (3) Campbell was fired from the suitable alternate employment for willful misconduct. Accordingly, the ALJ rejected Campbell's claim for temporary total disability.

Campbell filed a request for modification pursuant to Section 22 of the LHWCA, which allows a compensation decision to be modified based on a change of condition or a mistake of fact. Campbell alleged a change in condition and a mistake of fact with regard to his ability to perform the light duty employment offered by Norshipco. After a second hearing, the ALJ concluded that there had been no change in condition nor had there been a mistake of fact. Campbell appealed this decision to the Department of Labor's Benefits Review Board ("BRB"). The BRB affirmed the ALJ's decision that there had been no change in condition, but remanded for further consideration on the issue of whether there had been a mistake of fact regarding the alternate employment offered to Campbell. On remand, the ALJ concluded that the alternate work offered by Norshipco was outside Campbell's abilities and awarded him permanent partial disability benefits. After subsequent appeals by Norshipco to the BRB, the ALJ issued a final order awarding limited benefits to Campbell. After the BRB affirmed this decision, Norshipco appealed to the Fourth Circuit.