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COVERAGE UNDER THE LONGSHORE AND HARBOR WORKERS COMPENSATION ACT

A Claimant under the Longshore and Harbor Workers Compensation Act claims coverage as a maritime worker when injured working in a clerical position not covered by the Act on the basis of his “status” as a maritime worker because he regularly engaged in covered maritime employment.

Maher Terminals, Inc. v Dir., Office of Workers’ Compensation Programs
United States Court of Appeals for the Third Circuit
330 F.3d 162
(Decided May 29, 2003)

Respondent employee, Vincent Riggio, made a claim for compensation benefits under the Longshore and Harbor Workers Compensation Act, 33 U.S.C.S. § 901 (the “Act”) after injuring his left arm on February 3, 1994. The dispute between respondent and petitioner employer, Maher Terminals, Inc. (“Maher”) arose when Maher asserted that respondent was not covered under the Act because at the time of the injury Respondent was not a maritime employee. Respondent was injured when he fell off a chair during the course of some clerical work he was performing in an office of Maher’s port facilities in Elizabeth, New Jersey.

The first administrative judge held that since respondent was employed as a delivery clerk and said position was excluded from coverage under the Act, (“individuals employed exclusively to perform office clerical, secretarial, security, or data processing work” shall not be considered maritime employees covered by the Act) Respondent was not covered under the act. The Benefits Review Board vacated the administrative judges decision because respondent was not employed “exclusively” as a clerk within the meaning of §902(3)(A). The case was remanded back to an administrative judge who applied a “same day of injury” test. On remand it was held that respondent would have been covered by the Act if he were subject to reassignment to a maritime position in the course of the day the injury occurred. Absent any evidence that respondent was to be reassigned that day, coverage under the Act was denied. On appeal back to the Board the “same day of injury” test was rejected and a new test was applied. Instead of the looking exclusively to the day of the injury, the test was expanded to cover Respondent because “he was assigned to work as a checker” (a maritime position covered by the Act) for Maher on occasion. Although respondent did not work in that capacity on the day of the injury or even the preceding weeks leading up to the injury, to get coverage it was enough that he was subject to assignment as a checker at the time of the injury.

Maher filed a petition to review the Board’s decision to determine if the Board’s interpretation of the Act was “reasonable”.

I. Coverage

A. Description of Coverage Test

The Third Circuit applied the test used in *Sea-Land Serv., Inc. v. Rock*, 953 F.2d 56 (3rd Cir. 1992). They applied a two-part test looking to the “situs” of the injury and the “status” of the injured in determining eligibility under the Act. The “situs” factor is broad because it covers not only injuries that occur on water, but also include areas on land that are connected to maritime activity. Since the “situs” part is so broad the second prong limits the “status” of the injured to be one who is “engaged in maritime employment.” 33 U.S.C. §902(3). It has been determined that checkers are covered under the act as “maritime employees” because they are directly involved in loading or unloading functions of cargo.

The Third Circuit relied heavily on the Supreme Court’s holding in *Northeast Marine Terminal Co. v. Caputo*, 432 U.S. 249 (1977), to distinguish between persons “involved in essential elements of unloading a vessel” and those that are on site, “but are not engaged in the overall process of loading and unloading vessels.” *Id.* at 267. The Supreme Court looked to Congress’ intent in passing the 1972 amendments to the Act, which was to ensure longshoremen were covered for all of their activity. Although the coverage of the Act has significantly been expanded through the implementation of the amendments, the Third Circuit limited the scope of coverage in *Rock*. In *Rock* an employee voluntarily stopped working as a longshoreman and chose to work solely as a driver. The employee worked as a driver for two years prior to the accident; applying the Supreme Court’s interpretation of the Act from *Caputo*, the Third Circuit held a van driver is not “as essential element or ingredient of the loading or unloading process.” *Rock*, 953 F.2d at 67. The issue of whether or not this employee would be reassigned to a position covered by the Act, thus gaining coverage for the time while he was not working in a maritime position, was declined because he voluntarily chose to avoid the dangers associated with being a longshoreman. The holding of *Caputo* is meant to protect employees who are in and out of coverage under the Act throughout their employment, not for employees occasionally subject to reassignment. *Id.* at 67.

B. Application of Coverage Test

The dispute between respondent and petitioner centers on the “status” of Respondent, the second prong of the test. Respondent puts forth the following two arguments: 1) his job as a delivery clerk, which he was performing on the day of the accident, is a covered form of employment; and 2) since he occasionally worked for Maher as a checker, and subject to assignment as a checker on any day by Maher, he is covered.

The Third Circuit rejected the first argument since it is well established that clerical jobs are not covered by the Act. *Maher Terminals, Inc. v. Farrell*, 548 F.2d 476 (3d Cir. 1977) (holding a delivery clerk as not being covered under the Act).

The second argument he put forth asserts the rule established in *Caputo* and a broad interpretation of the 1972 amendments. Respondent wants protection under the Act because he worked as a checker half of the time and he was subject to assignment as a checker. He argues the court should not test whether or not at the time of injury he was not engaged in maritime activity, but instead look to his employment as a whole and whether he was engaged in maritime employment.

Maher argues that the decision in *Farrell* is analogous to this case because the employee in *Farrell* was also injured in an office. The Third Circuit distinguished this case from *Farrell* because unlike the employee in *Farrell*, Respondent actually left the office, whereas the employee in *Farrell* did not engage in activity in the pier or yard, and he did not act as a checker on the dock.

Respondent cited *Levins v. Benefits Review Board*, 724 F.2d 4, 7 (1st Cir. 1984) where the court looked at the “*actual* nature of the employee’s regularly assigned duties as a whole” emphasizing the need to examine the totality of employee’s job. Respondent also cited *Caputo* where coverage was granted to workers that spend “at least some of their time in indisputably longshoring operations.” *Caputo*, 432 U.S. at 273. The Third Circuit also considered the approach followed by other courts, where coverage was granted to an employee who spent anywhere from two and a half to five percent of his time performing longshore activities. *Boudloche v. Howard Trucking Co.*, 632 F.2d 1346 (5th Cir. 1980).

The Third Circuit found that respondent’s employment was similar to that of the employees in *Levins* and *Boudloche* because he spent 50% of his time employed in a position covered by the act. The Third Circuit concluded the proper analysis would be to use the test in *Levins* requiring the court to look at the “regular portion of the overall tasks to which the claimant could have been assigned as a matter of course” (*Levins*, 724 F.2d at 9), in conjunction with the rule from *Caputo*, to assess whether the employee works ‘at least some of the time in indisputably longshoring operations.’ *Caputo*, 432 U.S. at 273. The Third Circuit held that respondent was in fact covered under the Act due to the amount of time spent working as a checker in addition to his overall duties including the subjection to assignment as a checker even though at the time of the injury respondent was not working in his capacity in a maritime employee.

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Class of 2005

PROPORTIONATE SHARE APPROACH DISALLOWS CONTRIBUTION CLAIMS

A defendant in an admiralty tort action who settles with the plaintiff cannot bring a contribution suit against a non-settling defendant who has not been released from liability to the plaintiff by the settlement agreement.

Murphy v. Fla. Keys Elec. Coop. Ass'n
United States Court of Appeals For The Eleventh Circuit
329 F.3d 1311
(Decided May 9, 2003)

Shortly after midnight on July 25, 2000, Raymond Ashman IV (“Raymond”) and his two friends Brendan and Steven Murphy went out in a boat owned by Raymond’s father to take advantage of the start of annual lobster mini-season. The voyage came to an abrupt end. The boat, piloted by Raymond, crashed into an “electric pole abutment support structure” owned by defendant, Florida Keys Electric Co-op Association, Inc.