Admiralty Practicum

Volume 2007
Issue 2008 *Fall 2007*

Article 3

Dextel Terrebonne v. K-Sea Transportation Corp. United States Court of Appeals for the Fifth Circuit 477 F.3d 271 (Decided January 26, 2007)

Thomas Ficchi, Class of 2009

JONES ACT VENUE PROVISIONS SUPERSEDE THOSE OF FEDERAL EMPLOYERS' LIABILITY ACT.

The venue provisions of section 6 of the FELA, which are protected by section 5 of the FELA, do not apply to Jones Act cases, since the Jones Act's own venue provisions supersede those of the FELA.

Dextel Terrebonne v. K-Sea Transportation Corp.
United States Court of Appeals for the Fifth Circuit
477 F.3d 271
(Decided January 26, 2007)

In November 2000, appellant Dextel Terrebonne, worked for appellee K-Sea Transportation Corp. ("K-Sea"), as a crewmember aboard its tug MARYLAND. On November 3, Terrebonne suffered injuries as a result of overexerting himself while lifting a pump in the tug's port propeller shaft alleyway. He was diagnosed with a left inguinal hernia, and underwent hernia repair surgery on December 11, 2000. On March 12, 2001, Terrebonne and K-Sea, while in New York, executed a written "Partial Release and Claims Arbitration Agreement" whereby Terrebonne reserved the right to seek recovery for damages that might develop after the date of the agreement that are related to the alleged incident, but agreed to arbitrate any such future claims in New York.[1] Additionally, Terrebonne agreed to "submit any claims related to the alleged incident . . . for damages that develop after the date of [the] agreement, arising under the theory of unseaworthiness, Jones Act . . . to arbitration in New York pursuant to the Commercial Arbitration Rules of the American Arbitration Association (AAA)."[2] Terrebonne reported a recurrence of his prior hernia on April 26 or 27, 2001, while working on the tug.

Terrebonne instituted this action against K-Sea in which he demanded a trial by jury alleging that it was filed under the Jones Act,[3] to recover damages for negligence, and under General Admiralty and Maritime Law for unseaworthiness, maintenance, care and wages. The complaint next alleged that K-Sea's acts caused or contributed to Terrebonne's injuries. K-Sea moved to stay further proceedings pending the completion of the arbitration of Terrebonne's claims pursuant to the March 12, 2001, agreement. Terrebonne opposed this motion arguing that the April 2001 injury was a separate injury from his prior hernia. He further argued that the arbitration agreement was unenforceable under section 1 of the Federal Arbitration Act ("FAA") since it involved a seaman's employment contract; and that the Jones Act, by virtue of its incorporation of section 5 of the Federal Employers' Liability Act ("FELA"),[4] voided the agreement. The district court granted K-Sea's motion to compel, reasoning that the March 12, 2001 agreement was "clearly separate and independent from Terrebonne's employment contract" and that Terrebonne's FELA-based argument was unsupported by case law and further undermined by the fact that the agreement did not exempt K-Sea from liability.[5] Terrebonne then agreed to an arbitration hearing whereby the panel dismissed all of his claims, but awarded him arbitration costs in the amount of $9,123 to be paid by K-Sea. On August 5, 2005, K-Sea moved to reopen and dismiss the lawsuit with prejudice. Terrebonne filed an opposition to K-Sea's motion on August 12, 2005, and further moved to set aside the district court's order, arguing that the agreement violated FELA § 5. On December 15, 2005, the district court granted K-Sea's motion with prejudice and Terrebonne appealed.

---

[1] Terrebonne v. K-Sea Transp. Corp., 477 F.3d 271, 274 (5th Cir. 2007).
[2] *Id.* at 274.
[3] 46 U.S.C. § 688 (2000) (repealed 2006).
[4] 45 U.S.C. § 55 (2000).
[5] *Terrebonne*, 477 F.3d at 275.

On appeal, the United States Court of Appeals for the Fifth Circuit first addressed Terrebonne's FAA § 1 claim. Section 1 of the FAA "compels judicial enforcement of a wide range of written arbitration agreements." However, the FAA explicitly states that it does not "apply to contracts of employment of seamen."[6] Terrebonne contended that this exclusion applied to the instant case because the March 2001 agreement was subsumed into his employment contract. The Fifth Circuit Court of Appeals disagreed with Terrebonne because prior case law clarified that maintenance and cure is "an intrinsic part of the employment relationship, separate from the actual employment contract."[7]

The Court of Appeals next addressed the FELA § 5 claim. "In passing the Jones Act, Congress did not specifically enumerate the rights of seamen, but extended to them the same rights granted to railway employees."[8] Section 5 of the FELA states that "[a]ny contract, rule, regulation, or device whatsoever, the purpose or intent of which shall be to enable any common carrier to exempt itself from any liability created by this chapter . . ." is invalid.[9] Terrebonne relied on *Boyd v. Grand Trunk Western R. Co.*, which held that FELA § 5 voided a railroad worker's settlement agreement and as a result excluded that venue provided for in FELA § 6.[10] The Court of Appeals was not persuaded by Terrebonne's reliance on *Boyd* because, unlike *Boyd*, the Jones Act is applicable in the instant case and has its own venue provision contained in § 688(a). Therefore, the court concluded that the venue requirements under the FELA were not controlling because to hold so would negate the plain language of the venue provisions of the Jones Act. After holding that the venue provisions of FELA § 6 are inapplicable to Jones Act cases, the court continued to hold that FELA § 5 was equally inapplicable to Jones Act disputes. Therefore, the current arbitration agreement was held to be valid.

Terrebonne then argued that requiring arbitration of a seaman's Jones Act claim is contrary to public policy. The court disagreed and noted that the policy of the FAA is to favor arbitration. Additionally, while the burden was on Terrebone to show a contrary and compelling public interest, the court concluded that he failed to do so. The district court's decision was affirmed.

Thomas Ficchi
Class of 2009

---

[6] 9 U.S.C. § 1 (2000).
[7] *Terrebonne*, 477 F.3d at 279 (quoting *Wood v. Diamond M Drilling Co.*, 691 F.2d 1165, 1170 (5th Cir. 1982)).
[8] *Id.* at 280 (quoting *Withhart v. Otto Candies, L.L.C.*, 431 F.3d 840, 843 (5th Cir. 2005)).
[9] 45 U.S.C. § 55 (2000).
[10] 338 U.S. 263 (1949).