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Louisiana Maritime Attorney Comments on Jones Act Arbitration Decision

Seaman's Post-Injury Agreement to Arbitrate Claims against Employer was not Void as a Matter of Law

By James D. Bercaw

In *Harrington v. Atlantic Sounding Co., Inc.*, No. 07-4272-cv (2nd Cir. Apr. 16, 2010), a divided panel of the U.S. Second Circuit concluded that an agreement executed by a seaman and his employer after a work-related incident to arbitrate any claims arising out of the seaman's alleged injury was not void, as a matter of law. The public policy of the Federal Arbitration Act, 9 U.S.C. § 1 et seq., which strongly favored the arbitration of disputes, and the absence of any countervailing policy in either the Jones Act, 46 U.S.C. § 30104, or the Federal Employers' Liability Act, 45 U.S.C. § 51 et seq., provided the jurisprudential anchor for the Second Circuit's decision. Although Section 1 of the Federal Arbitration Act exempted from its scope arbitration clauses in "contracts of employment of seamen," 9 U.S.C. § 1, the arbitration agreement at issue was executed after the seaman's personal injury claim arose, and thus, was distinct from the seaman's employment contract. The Harrington decision is consistent with the U.S. Fifth Circuit's decision in *Terrebonne v. K-Sea Transp. Corp.*, 477 F.3d 271 (5th Cir. 2007), which also enforced a post-injury agreement between a seaman and his employer to arbitrate their disputes.

The *Terrebonne* and *Harrington* decisions indicate that the courts are inclined to enforce arbitration clauses in agreements between seamen and their employers under circumstances where the agreement is not part of the "contract of employment of seamen." For example, if an employer requests its seamen to execute a dispute resolution agreement containing an arbitration clause and if the seamen's refusal to sign the agreement does not affect the seamen's employment status or workload, then these factors would provide a court with evidence that the dispute resolution agreement was not part of the "contract of employment of seamen," and thus the FAA's strong federal policy in enforcing arbitration agreements would be applicable. In contrast, if the employer requests its seamen to execute the dispute resolution agreement or risk losing their job or face reduced hours, then this would provide a court with evidence that such agreement was part of the "contract of employment of seamen," therefore falling within the exception of Section 1 of the FAA, with the result that there is no strong federal policy favoring arbitration of that dispute resolution agreement.

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