Vanderbilt Journal of Transnational Law

Volume 13
Issue 1 *Winter 1980*

Article 10

1980

Case Digest

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CASE DIGEST

This *Case Digest* provides brief analyses of cases that represent current aspects of transnational law. The digest includes cases that apply established legal principles to new and different factual situations. The cases are grouped in topical categories, and references are given for further research.

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1. ADMIRALTY

DEFINITION OF SEAMAN UNDER THE JONES ACT NEED NOT BE RESTRICTED TO PERSON ASSIGNED TO ONLY ONE VESSEL

An employee of a tugboat company, injured while carrying canned goods from a docked tugboat, brought a negligence suit for damages against the owner of the tugboat company. The defendant's records and payroll listed plaintiff as an officeworker, but plaintiff claimed he was a seaman under the Jones Act since he spent from eighty to ninety percent of his time aboard defendant's various vessels where he was employed painting, running errands, and taking inventory. Although the jury found in the plaintiff's favor, the district court granted a judgment notwithstanding the verdict and in the alternative granted a new trial. The Court of Appeals reversed the judgment notwithstanding the verdict based upon the construction of *Offshore Co. v. Robison,* 266 F.2d 769 (5th Cir. 1959), which allows the permanent assignment of a seaman to more than one vessel. According to the appellate court, the plaintiff could qualify for the status of seaman because he spent a significant amount of time aboard defendant's various tugboats where his duties contributed to the function and maintenance of the vessels. The trial court's grant of a new trial was upheld, however, because the only witness who had supported the plaintiff's story was the plaintiff. *Significance*—This

decision sanctions a very broad definition of seaman under the Jones Act, 46 U.S.C.A. § 688, and does not restrict the definition to a person assigned only to one vessel. *Leo Bazile v. Bisso Marine Co., Inc.*, 606 F.2d 101 (5th Cir. 1979).

FOURTH AMENDMENT DOES NOT BAR WARRANTLESS FISHING VESSEL SEARCHES AUTHORIZED BY THE FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976 TO PROTECT FISHERIES IN THE CONSERVATION ZONE

Warrantless United States Coast Guard officers boarded and inspected a Japanese vessel fishing by license in the conservation zone established under the Fishery Conservation and Management Act of 1976 (FCMA), 16 U.S.C. § 1801-61 (1976). The officers seized the vessel when the inspection revealed that the daily catch was being underlogged in violation of the FCMA. In an action by the United States for forfeiture of the seized vessel, the vessel's owners moved to dismiss on the ground that the warrantless search and seizure violated the fourth amendment. The district court denied the motion, holding that the warrantless searches authorized by the FCMA fall within a carefully defined exception to the fourth amendment prohibition against warrantless searches and seizures. Relying on *United States v. Biswell*, 406 U.S. 311 (1972) and *Colonnade Catering Corp. v. United States*, 397 U.S. 72 (1970), the court found that the exception applies to searches authorized by statute of licensees in industries that are closely regulated and supervised. The court reasoned that the case was within the exception because the fishing industry has traditionally been subject to close supervision due to federal interest in conservation and protection of the livelihood of U.S. fishermen. The court cautioned that such warrantless searches are limited to enforcement of the FCMA and cannot be used to enforce other statutes or discover other criminal activity. Finally, the court noted that in accepting the license to fish in the conservation zone the vessel's owners agreed to the regulations incorporated into the license and were thereby put on notice of the possibility of a warrantless search and seizure. *Significance*—The fourth amendment guarantee of freedom from warrantless searches does not apply to warrantless searches of vessels licensed under the FCMA when such searches are for the purpose of enforcing that act. *United States v. Tsuda Maru*, 470 F. Supp. 1223 (D. Alaska 1979).

2. ALIENS' RIGHTS

PROPERLY EXTRADITED FUGITIVE NOT ENTITLED TO JUDICIAL HEARING CHALLENGING ENLARGEMENT OF ORIGINAL WARRANT OF SURRENDER

A fugitive petitioned for a writ of mandamus to compel the Secretary of State to revoke the consent of the United States to an expansion of its original warrant of surrender which authorized petitioner's extradition to Italy. Petitioner contended that the enlargement of his extradition to include additional crimes without a judicial hearing violated his rights under the United States Constitution, 18 U.S.C. § 3184 (1976), and the relevant treaty. Dismissing the petition, the district court held that petitioner was not entitled to a second hearing after he had been properly extradited. The court noted that the statutory requirement for a hearing dealt only with proceedings prior to the prisoner's surrender. Upon the proper completion of extradition, petitioner has lost the due process rights accorded in the United States. The court limited the judicial role in extradition proceedings to the finding of probable cause and asserted that a judicial review of expansion of the original warrant of surrender would constitute a breach of the separation of powers doctrine. *Significance*—This case of first impression determined that due process safeguards in an extradition proceeding remain in effect only until a fugitive has been properly extradited. *Berenguer v. Vance*, 473 F. Supp. 1195 (D.D.C. 1979).

VISA NUMBERS WRONGFULLY CHARGED AGAINST WESTERN HEMISPHERE QUOTAS ARE REISSUED ACCORDING TO AN HISTORICAL APPROACH RATHER THAN CHRONOLOGICAL ORDER

Visa numbers assigned to Cuban refugees under the Cuban Adjustment Act were wrongfully charged against Western Hemisphere immigration quotas, thereby making those visa numbers unavailable to applicants from Western Hemisphere countries other than Cuba. Western Hemisphere applicants on the visa waiting list instituted a class action suit to require chronological redistribution of the erroneously charged visa numbers without regard to a national origin. The Immigration and Naturalization Service (INS) sought to correct the mistake by reallocating the charged visa numbers in accordance with the historical immigration patterns for the countries involved. The district court found that all class members had standing to sue and ordered reissuance

of the visa numbers according to strict chronological order. A stay was granted pending appeal. The court of appeals reversed and remanded, holding that the INS must reissue the visa numbers based on the historical immigration pattern. *Significance*—The historical approach of reissuance will bypass many of the Mexicans currently at the top of the visa waiting list in favor of non-Mexicans with a lower priority standing. *Silva v. Bell,* 605 F.2d 978 (7th Cir. 1979).

3. CUSTOMS AND TRADE REGULATIONS

PAYMENT OF IRREVOCABLE LETTER OF CREDIT MAY NOT BE ENJOINED ON GROUNDS OF INSTABILITY OF FOREIGN GOVERNMENTS

An Iranian governmental agency, Khuzestan Light and Power, sought to purchase telephone poles from the Dutch corporation KMW, whose principal forestry operations were located in the United States. Khuzestan received an irrevocable letter of credit to guarantee KMW's performance. As Iran's subsequent Islamic revolution raised the question of continuity of contract with the new revolutionary government, KMW sought a preliminary injunction enjoining Chase Manhattan Bank from tendering payment on the irrevocable letter of credit. The District Court granted the injunction. On appeal, the Second Circuit reversed, holding that the circumstances of the Iranian revolution typified the risks and hazards born by a corporation engaged in international trade and such risks were insufficient to release a party from its obligations since the negotiability of an irrevocable letter of credit remains independent from the underlying obligation. The court also reaffirmed the traditional rule that the State Department's decision to recognize the Iranian government could not be overturned by any judicial body. *Significance*—This case indicates the Second Circuit's continued unwillingness to violate traditional commercial law, even in light of the instability of a foreign government. *KMW Int'l v. Chase Manhattan Bank,* 606 F.2d 10 (2d Cir. 1979).

4. JURISDICTION AND PROCEDURE

EXPROPRIATION OF A CONTRACTUAL RIGHT DOES NOT TRIGGER THE HICKENLOOPER AMENDMENT EXCEPTION TO THE ACT OF STATE DOCTRINE

In 1973 Libya nationalized Nelson B. Hunt's fifty year drilling

concession, promising him suitable future compensation and assigning his drilling rights to AGECO, Libya's wholly owned national corporation. Before the specifics of compensation had been determined, AGECO sold petroleum drilled from Hunt's former concession to Coastal States Gas Producing Company and Hunt subsequently sought recovery for conversion of the petroleum. The lower courts held that the Act of State Doctrine prohibited judicial inquiry into the expropriation related question. The Texas Supreme Court affirmed, holding that a contract does not constitute a claim of title or other right to property, and hence does not fall within the statutory exception to the Act of State Doctrine provided in 22 U.S.C. § 2370(e)(2), popularly known as the Hickenlooper Amendment. Despite a vigorous dissent that demonstrated Congress' intent to include contractual rights to property within the Amendment, the Court found that the governing Libyan concession granted only drilling rights and not title to the petroleum itself. *Significance*—The instant case manifests the continued vigor of the Act of State Doctrine, and specifically indicates that future courts will define the property rights exception of the Hickenlooper Amendment very narrowly. *Nelson Bunker Hunt et al v. Coastal States Gas Producing Company,* 22 Tex. S. Ct. J. 424 (June 1979).

5. LABOR RELATIONS

MULTIPLE-USER DOCK OWNED BY THIRD PARTY MAY BE A PRIMARY PICKETING SITUS IF PICKETING DOES NOT INTERFERE WITH OTHER EMPLOYERS

In a union strike against plaintiff's storage facility on the Gulf of Mexico, the union picketed at the main entrance to the facility, at the access road to an abutting dock, and in the surrounding waters. Plaintiff and two other employers used the dock, which was owned by a third party. The picketing did not interfere with the other employers' activities. Plaintiff claimed, *inter alia,* that defendant's actions constituted secondary picketing on a common situs in violation of NLRA §§ 8(b)(4)(i), (ii)(B). On appeal from an NLRB dismissal, the court of appeals held that when a dock is used by several employers but strikers picket only when employers unrelated to the strike are absent, the dock is not a common situs and any such picketing is primary activity. Analogizing the dock facility to the third-party-owned, multiple-user railroad spur in *United Steelworkers v. NLRB (Carrier Corp.),* 376 U.S. 492

(1964), the court found both that vessels at the dock performed work related to plaintiff's normal business, and that the dock was not a common situs due to to the following factors: (1) the dock was contiguous to plaintiff's property and was leased by plaintiff, (2) no attempt was made to interfere with the other businesses, (3) no other place was suitable to publicize the strike, (4) the dock was the vessels' entrance to plaintiff, and (5) the situs was related to plaintiff's everyday business activity. *Significance*—This decision extends the *Carrier Corp.* primary situs rational to access-road and boat picketing of docks. *Anchortank, Inc. v. National Labor Relations Board,* 601 F.2d 233 (5th Cir. 1979).