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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

OFFSHORE SANDBLASTER NOT PERMANENTLY ASSIGNED TO HIS VESSEL IS NOT A SEAMAN UNDER THE JONES ACT

An offshore platform sandblaster, injured during a fall from a ladder on the platform, sued his employer under the Jones Act, 46 U.S.C.A. § 688 (1975). Although the employee was quartered aboard a vessel and had even helped clean and unload it, the district court found that he was not a seaman for Jones Act purposes and granted the employer's motion for summary judgment. The court of appeals affirmed, holding that the employee was not a crew member since he did not satisfy either of the alternative requirements for part one of the test established by *Offshore Company v. Robinson*, 266 F.2d 769 (5th Cir. 1959), that is, the performance of a substantial part of his work onboard or permanent assignment. The court found that the employee's work onboard had been only incidental and fortuitous. Since the employee might have been quartered on any one of several vessels during any fourteen day shift, the court concluded that he was not permanently assigned. The court distinguished *Davis v. Hill Engineering, Inc.*, 549 F.2d 314 (5th Cir. 1977), noting that in that case the worker had a more substantial connection with his vessel since he had been assigned to it for an expected duration of 20 to 30 days and, absent his resignation, would have been quartered there for several months. *Significance*—By barring an offshore sandblaster from recovery under the Jones Act, this case narrowly applies the *Robinson* test in determining whether an employee is a seaman under the Act. *Kirk v. Land & Marine Applicators, Inc.*, 555 F.2d 481 (5th Cir. 1977).

FREIGHT FOR A PARTIAL SHIPMENT OF CARGO WHICH HAS BEEN LOADED ABOARD A VESSEL IS SUBJECT TO MARITIME GARNISHMENT

A creditor served writs of garnishment on April 30 and May 9, 1975, for freights and effects due a carrier by a shipper after approximately one third of the cargo had been loaded. A strike prevented the remainder of the cargo from being loaded and the shipper and carrier agreed to a freight of approximately one third the original charge. The bills of lading, dated April 30, 1975, were signed and surrendered on May 12, 1975. The district court held for the garnishees, who claimed that at the time the writs were served the contract was still executory. The court of appeals reversed and remanded, holding that, as of May 9, the contract was partially executed and the writ effectively garnished the freight for the loaded cargo even though the bills of lading had not yet been surrendered and the debt was unmatured. The court stated that the partial delivery of cargo was sufficient to constitute partial performance of the contract. *Significance*—This decision allowed partial delivery of the cargo prior to the surrender of the bills of lading to constitute partial performance sufficient to maintain a maritime garnishment. *Iran Express Lines v. Sumatrop, AG*, 563 F.2d 648 (4th Cir. 1977).

COMPENSATION AWARDED TO SHIPBUILDING EMPLOYEE INJURED AT SHIPYARD DURING MAINTENANCE WORK ON PREVIOUSLY UNUSED CRANE

Employee of plaintiff-shipbuilding company was injured while performing maintenance work on a crane prior to its use in shipbuilding activities. Employer appealed an order granting benefits by the Benefits Review Board of the United States Department of Labor under the Longshoremen's and Harbor Workers' Compensation Act. The court of appeals affirmed the order, citing the legislative intent that the compensatory purpose of the Act be liberally construed and the residual law requiring affirmation of Board rulings which have a reasonable legal basis. *Cardillo v. Liberty Mutual Insurance Co.*, 330 U.S. 469 (1947). The court deemed reasonable the Board's finding that the injured worker was "directly involved" in an essential aspect of shipbuilding so as to fall within the definition of a covered employee under § 902(3) of the Act. *Jacksonville Shipyards v. Perdue*, 539 F.2d 533 (5th Cir. 1976). The court held that liberal construction of the Act denies any distinctions between injuries occurring while the crane was in operation and while it was in a disassembled state, or between a new crane and one previously in use, on the basis that "the essential nature

of the work performed is unaltered." *Ayer Steamship Co. v. Bryant*, 539 F.2d 533 (5th Cir. 1976). The court rejected plaintiff's contention that the statute unconstitutionally extended the traditional boundaries of admiralty jurisdiction, noting that jurisdiction has historically changed in response to new conceptions of maritime concerns. *Detroit Trust Co. v. The Thomas Barlum*, 293 U.S. 21, 52 (1934). *Significance*—This case refines the definition of "employees" directly engaged in maritime activities compensable under the Longshoremen's and Harbor Workers' Compensation Act and expands the circumference of the "situs" limitation on coverage of maritime-related injuries. *Alabama Dry Dock and Shipbuilding Co. v. Kininess*, 554 F.2d 176 (5th Cir. 1977).

2. JURISDICTION AND PROCEDURE

A FOREIGN CORPORATION MUST ENGAGE IN SUBSTANTIAL, CONTINUOUS BUSINESS OPERATIONS WITHIN STATE TO SATISFY THRESHOLD TEST OF LOCAL BUSINESS UNDER ARIZONA QUALIFICATION STATUTE

A Tennessee advertising agency sued an Arizona radio station for breach of contract. The radio station contended that because the agency failed to register as a foreign corporation under the Arizona qualification statute, contracts made prior to qualification were rendered void by the statute. The district court granted summary judgment for the radio station ruling that the advertising agency was transacting business within the state as a matter of law. The court of appeals vacated the judgment and remanded, holding that, for purposes of transacting business under the Arizona statute, a foreign corporation must be engaged in a substantial, continuous business within the state. Whether a foreign corporation transacts local business is a question of fact not resolved by stipulations that all parties executed a contract within the state or that state law governs the contract's validity. *Significance*—By narrowing the definition of engaging in local business, this case enables foreign corporations to undertake contractual obligations without being hampered by local law. *Pepper & Tanner, Inc. v. Shamrock Broadcasting, Inc.*, 563 F.2d 391 (9th Cir. 1977).

