



The United States Fifth Circuit Court of Appeals clarifies Jones Act seaman status

The Jones Act, United States federal legislation enacted a century ago, provides significant remedies for those who can establish “seaman” status. Our personal injury specialist, Art Gribbin, takes us through the recent Fifth Circuit Court of Appeals decision in *Sanchez v. Smart Fabricators of Texas*, that further clarified the Jones Act requirements in the context of contracted work in the offshore industry.

Published 06 May 2020

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Under U.S. maritime law, persons who claim the status of “seaman” under 46 U.S. Code § 30104, commonly referred to as the “Jones Act,” have access to special rights not accorded to other workers. In particular, and with regard to their employers, a seaman injured in the service of the ship has a cause of action for negligence against his/her employer, entitling the seaman to damages where the employer’s fault can be proven. Persons who cannot claim seaman’s status, on the other hand, are generally limited to statutory workers’ compensation benefits for work related injuries and are precluded from suing their employers.

In *Sanchez v. Smart Fabricators of Texas*, LLC, 952 F.3d 620 (5th Cir. March 11, 2020), the United States Court of Appeals for the Fifth Circuit recently revisited the test for determining Jones Act seaman’s status. The Court provided some additional guidance on the application of the second prong of the test – addressing whether a person’s connection to a vessel is substantial in nature.

The plaintiff was a welder working for Smart Fabricators of Texas, LLC on board jacked-up offshore drilling rigs. Smart is a contractor in the business of steel fabrication and equipment repair.

The plaintiff was injured when he tripped on a pipe welded to the deck of one of the rigs and subsequently filed a Jones Act negligence action against Smart in state court. Smart removed the case to the U.S. District Court for the Southern District of Texas, challenging plaintiff’s status as a Jones Act seaman.

In *Chandris v. Latsis*, 515 U.S. 347 (1995), the U.S. Supreme Court established a two-prong test to determine Jones Act seaman’s status:

1. the person’s duties must contribute to the function or mission of a vessel; and
2. the person must have a connection to a vessel (or fleet of vessels) in navigation that is substantial in terms of both duration and nature.

Smart conceded the first prong of the test, and the district court easily found that plaintiff had a substantial connection to a fleet of vessels in terms of duration – spending 65 of his 67 workdays on the rigs.

It was the *nature* of the plaintiff’s connection to the vessel that Smart contested. The second prong of the *Chandris* test is designed “to separate the sea-based maritime employees who are entitled to Jones Act protection from those land-based workers who have only a transitory or sporadic connection to a vessel in navigation.” *Chandris*, at 368. Therefore, “the inquiry into the nature of the employee’s connection to the vessel must concentrate on whether the employee’s duties take him to sea.” *Harbor Tug & Barge*, 520 U.S. 548, 555 (1997).

As the district court found, and the Fifth Circuit affirmed, the plaintiff's duties did not take him to sea in the sense contemplated by the Jones Act. The plaintiff worked on the rigs only when they were jacked-up on the ocean floor, with the body of the rigs out of the water and not subject to waves, tides, or other movement. The plaintiff's workplace was stable, flat, and well above the water. And the plaintiff did not perform tasks related to the operation or navigation of the rigs. The plaintiff was a welder, and he was injured when he tripped on a pipe welded to the deck, a circumstance unrelated to any perils of the sea. The only time the plaintiff's work might have taken him to sea in the sense contemplated by the Jones Act was during the four days when the rig he was injured on was under tow—and even then, he was treated as a passenger, not as a member of the crew.

In so holding, the Fifth Circuit made a point of distinguishing this case from its prior pronouncement on Jones Act seaman's status in *Naquin v. Elevating Boats, LLC* 744 F.3d 927 (5th Cir. 2014). There, plaintiff was a repair supervisor working on board lift-boats manufactured by his employer while the lift-boats were either moored, docked, or jacked-up in a shipyard canal. The distinction being that even though the lift-boats almost never ventured beyond the immediate area of the canal, they were found to be subject to the "vicissitudes" of a navigable waterway. Further, the plaintiff did perform tasks related to the operation of the lift-boats, including operating the vessels' cranes and jack-up legs, and his injury occurred while he was operating one of the lift-boat's cranes. In rejecting the argument that the plaintiff's work did not take him to sea, the Fifth Circuit emphasized that workers involved in operating vessels near the shore "still remain exposed to the perils of a maritime work environment" and therefore fall within the ambit of the Jones Act.

The moral of this story: the determination of Jones Act seaman's status remains extremely fact intensive.