NICHOLAS M. LONG

v.

DIAMOND JO CASINO

United States District Court, Northern District of Illinois (Western Division),
June 30, 2000
No. 98 C 50377

PERSONAL INJURY — 13147. Miscellaneous Persons — Casino Workers — PRACTICE — 1253. Collateral Estoppel — SEAMEN — 114. Miscellaneous Employments — Casino Work.

The employer is collaterally estopped to contend in a Jones Act suit that a blackjack dealer on a riverboat casino is not a seaman after his claim has been dismissed by the state workers compensation commission, in a proceeding to which the employer was a party, for lack of jurisdiction because he is a seaman.

Dennis M. O'Bryan and Kirk E. Karamanian (O'Bryan Baun Cohen) *for Nicholas M. Long*

George M. Vercich (Belgrade and O'Donnell) *for Diamond Jo Casino*

PHILIP G. REINHARD, D.J.:

Introduction

Plaintiff Nicholas M. Long has filed a one-count complaint against defendant Diamond Jo Casino ("Diamond Jo") asserting claims of negligence and maintenance and cure under the Jones Act, 46 U.S.C. app. §688, and claims of unseaworthiness, negligence, and maintenance and cure under general maritime law. Diamond Jo has filed a motion for partial summary judgment pursuant to Fed.R.Civ.P. 56, on the basis that Long is not a "seaman" as defined by the Jones Act and, therefore, is not entitled to assert any Jones Act claims. Long argues Diamond Jo is collaterally estopped from raising this issue because Long's seaman status was previously resolved in an Iowa Industrial Commission Workers' Compensation proceeding. Alternatively, Long argues he qualifies as a seaman under the Jones Act. This court has jurisdiction pursuant to 28 U.S.C. §1331, 1333(1). Diamond Jo admits venue is proper as it conducts business in this district and division.

Facts[1]

Long, a resident of Dubuque, Iowa, was employed by Diamond Jo as a blackjack dealer on a riverboat casino from May 1994 to January 1998.

1. Diamond Jo has denied many of the facts asserted in Long's LR56.1(b) statement of additional facts, but its denials are not supported by citations to the record. Under Local Rule 56.1, Long's properly supported facts are deemed admitted.

The *Diamond Jo* typically cruises between April 1st and October 31st each year, although the vessel has sailed beyond November 30th to complete the one hundred cruises required by the Iowa State Racing and Gaming Commission to maintain her gaming license.

Long alleges he was injured while at work on March 26, 1997. He initially filed a workers' compensation claim with the Iowa Industrial Commission regarding this injury. During the workers' compensation proceeding, Long argued he was not a Jones Act "seaman" on the date of his alleged injury and instead, he was covered by Iowa's workers' compensation statute. The Iowa Industrial Commission dismissed Long's claim, finding it did not have subject matter jurisdiction over Long and that "the Jones Act is the exclusive remedy." Long then filed a lawsuit in this court.

Discussion

An injured maritime worker faces a bewildering array of statutes by which to pursue remedies that in substantive theory are mutually exclusive but in practice seem to frequently overlap each other. *Simms v. Valley Line Co.*, 1984 AMC 2986, 2989, 709 F.2d 409, 411 (5 Cir. 1983). For example, the Jones Act and the Longshore and Harbor Workers' Compensation Act ("LHWCA"), 33 U.S.C. §901 *et seq.*, each provide a remedy to the injured maritime worker, but each covers different maritime workers. *Southwest Marine, Inc. v. Gizoni*, 502 U.S. 81, 86, 1992 AMC 305, 308 (1991). An injured maritime worker can also seek compensation under a state's workers' compensation act. *See, e.g., Ceres Terminals, Inc. v. Industrial Comm'n of Ill.*, 1995 AMC 2141, 2145, 53 F.3d 183, 185-86 (7 Cir. 1995) (Congress has not occupied the field of workers' compensation for maritime employees; on the contrary, the Industrial Commission regularly adjudicates compensation claims arising in "the twilight zone"). Here, Long, a black-jack dealer aboard the vessel M/V *Dubuque Diamond Jo* at the time of the alleged injury, initially chose the state route. He filed a workers' compensation claim before the Iowa Industrial Commission. During this proceeding he filed a motion for summary judgment to establish the commission's jurisdiction, arguing *Diamond Jo* was not in navigation on the date of his alleged injury and consequently, that he did not satisfy the seaman test under the Jones Act. The commission, relying on a previous decision, ruled that it did not have subject matter jurisdiction over claims made by casino boat employees "and that the Jones Act is the exclusive remedy." The commission then dismissed Long's claim.

In holding that the Jones Act applied to Long, the Iowa Industrial Commission necessarily found he was a Jones Act seaman, as the Jones Act applies only to a seaman. *See, e.g., Gizoni*, 502 U.S. at 86, 1992 AMC at 308. Thus, contrary to Diamond Jo's assertion, the Iowa Industrial Commission directly addressed the issue of whether Long was a seaman under the Jones Act, and found that he is.

The next issue is whether Diamond Jo can collaterally attack the Iowa Industrial Commission's order. The court holds it cannot. Collateral estoppel (also called issue preclusion) applies when: (1) the issues decided in the prior adjudication are identical to issues presented for adjudication in the current proceeding; (2) there was a final judgment on the merits; and, (3) the party against whom estoppel is asserted was a party or in privity with a party in the prior action. *Kalush v. Deluxe Corp.*, 171 F.3d 489, 493 (7 Cir. 1999).

There is some confusion regarding whether an agency's determination of a maritime employee's claim under the LHWCA has preclusive effect on a subsequent determination as to whether the employee qualifies for benefits under the Jones Act. *Compare Papai v. Harbor Tug and Barge Co.*, 1995 AMC 2888, 2895, 67 F.3d 203, 207 (9 Cir. 1995), *rev'd on other grounds*, 520 U.S. 548, 1997 AMC 1817 (1997) (although plaintiff's LHWCA claim was fully litigated before an administrative law judge, the agency determination did not bar a subsequent Jones Act claim);[2] *with Sharp v. Johnson Bros. Corp.*, 973 F.2d 423, 426, 1995 AMC 912 [DRO] (5 Cir. 1992) (formal award of LHWCA benefits barred injured worker from subsequently pursuing Jones Act claim), *cert. denied*, 508 U.S. 907 (1993); *see also Simms*, 1984 AMC at 2990, 709 F.2d at 412 n.5 (uncertainty regarding extent to which collateral estoppel will be applied to Jones Act suit following formal Board finding of non-seaman status and award of benefits); Steven Reilly, *A New Era in Seaman Status Issues*, 10 U.S.F. L. REV. 1, 13-25 (1997).

The court finds the above line of cases inapposite to the current dispute. Here, the court is faced with a state agency determination as to its own jurisdiction. Such a decision, whether right or wrong, cannot be attacked collaterally. *Mike Hooks, Inc. v. Pena*, 1963 AMC 355, 360, 313 F.2d 696, 699 (5 Cir. 1963). In an analogous situation, the Seventh Circuit came to the same conclusion when confronted with a claim under the Federal

2. Although the Supreme Court did not reach this issue on appeal, the dissent noted it agreed with the Ninth Circuit's analysis on this issue. *Papai*, 520 U.S. at 563, 1997 AMC at 1828 n.2.

Employers' Liability Act (''FELA''), 45 U.S.C. §51 *et seq. Landreth v. Wabash R. Co.*, 153 F.2d 98 (7 Cir.), *cert. denied*, 328 U.S. 855 (1946). In *Landreth*, 153 F.2d at 99, the Industrial Commission of Illinois (''the Commission'') had previously held the plaintiff at the time of his alleged injuries was operating under and subject to the provisions of Illinois' Workers' Compensation Act. According to the Seventh Circuit, by finding the parties were subject to Illinois' Workers' Compensation Act, the Commission had necessarily found both parties were engaged in intrastate commerce, a necessary requirement for a state workers' compensation claim, and not interstate commerce, a necessary requirement for a FELA claim. *Id.* at 100. The Seventh Circuit held this finding estopped plaintiff from arguing, in support of his FELA claim, that he had been working in interstate commerce at the time of his alleged injuries.

So, too, here, the parties and the issues are identical. The issue as to whether Long was a ''seaman'' within the meaning of the Jones Act was at issue and, therefore, was fully litigated before the Iowa Industrial Commission. As in *Landreth*, under traditional principles of collateral estoppel, Diamond Jo is estopped from arguing the Jones Act is inapplicable. *See also Bergeron v. Atlantic Pacific Marine*, 899 F.Supp. 1544, 1546-48 (W.D. La. 1993) (court held it was bound by Department of Labor's ruling denying employee LHWCA benefits, even though it appeared to court employee should have been accorded benefits, since his injury allegedly occurred on a vessel in navigable waters). Under these circumstances, any other result would run the risk of leaving Long with no benefits, a result Congress clearly did not intend. *Sharp*, 973 F.2d at 427.

Conclusion

For the reasons set forth above, Diamond Jo's motion for partial summary judgment is denied.