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United States District Court, E.D. Louisiana.
Mercedel W. MILES, Individually and as Administratrix of the Succession of Ludwick Adam Torregano,
v.
Clifford A. MELROSE, Apex Marine Corporation, West-Chester Marine Shipping Company, Inc., and ABC Insurance Company.

Civ. A. No. 85–4728.
September 8, 1987.

HEEBE, District Judge.

***1** This cause came on for hearing on a previous day on the motion of defendant and third party defendant, Seafarers International Union, Atlantic, Gulf, Lakes and Inland Waters District, AFL–CIO for: 1) an order dismissing all claims against it by the third party plaintiffs, Apex Marine Corporation and Westchester Marine Shipping Co., Inc., and 2) an order dismissing all claims against it by the plaintiff, Mercedel Miles, individually and as administratrix of the succession of Ludwick Adam Torregano.

The Court, having heard the arguments of counsel and having studied the legal memoranda submitted by the parties, is now fully advised in the premises and ready to rule. Accordingly,

IT IS THE ORDER OF THE COURT that the motion of defendant and third party defendant, Seafarers International Union, Atlantic, Gulf, Lakes and Inland Waters District, AFL–CIO, for an order dismissing all claims against it by the third party plaintiffs, Apex Marine Corporation and Westchester Marine Shipping Company be, and the same is hereby, GRANTED.

IT IS THE FURTHER ORDER OF THE COURT that the motion of defendant and third party defendant, Seafarers International Union Atlantic, Gulf, Lakes and Inland Waters District, AFL–CIO, for an order dismissing all claims against it by Mercedel W. Miles, individually and as administratrix of the succession of Ludwick Adam Torregano, be, and the same is hereby, GRANTED.

REASONS

Ludwick Torregano was allegedly attacked and killed by a fellow crewmember, Clifford Melrose, aboard the M/V ARCHON in July of 1984. Mercedel Miles, the personal representative of the deceased, initially brought suit against Apex Marine Corp., ('Apex'), Westchester Marine Shipping Company, Inc., ('Westchester'), and Aeron Marine Company, ('Aeron'), as the owners/operators of the M/V ARCHON, and against Clifford Melrose. By amendment, Miles brought suit against the alleged assailant's union, Seafarers International Union, Atlantic, Gulf, Lakes and Inland Waters District, AFL–CIO ('Union').

The plaintiff added the Union as a primary defendant alleging that the 'Union was negligent in failing to adequately determine the background of perspective seaman [sic] before directing them to serve on board vessels under the Union contract'. [Plaintiff's First Supplemental and Amending Complaint, para. XVII A]. The plaintiff further alleged that the Union 'knew or should have known, of the existence of the violent nature of Clifford Melrose and failed despite this knowledge to protect other seaman [sic] by directing Clifford Melrose to serve aboard vessels'. [Plaintiff's First Supplemental and Amending Complaint, para. XIX].

Apex and Westchester[FN1] brought a third party complaint against the Union seeking indemnity or contribution for certain alleged negligence on the part of the Union. According to the first memorandum filed in opposition to the Union's motion to dismiss,[FN2] '[t]he third-party complaint asserts a general claim against the S.I.U., in tort and

contract, under any and all possible theories under which defendants may obtain recovery [over] against the S.I.U.' [p.2, Memorandum in Opposition to Third-Party Defendant's Motion to Dismiss].

***2** Apex, Westchester, and Miles, in subsequent briefs and at oral argument upon the motion, indicated that it was their position that a 'special relationship' existed between the Union and themselves such as would give rise to a duty of care on the part of the Union. Specifically, Apex, Westchester, and Miles assert that because of this special relationship, the Union owed a duty to screen its members for dangerous habits or characteristics. If the Union were to discover such characteristics, it had the subsequent duty to relay this information to employers with whom it (the Union) would place members for employment. The plaintiff and the third party complainants submit that the Union knew or should have known of the violent propensities of Clifford Melrose[FN3]. They further assert that the Union failed to protect Apex, Westchester and the crew of the M/V ARCHON, including the plaintiff's decedent, by not warning of Melrose's violent propensities.

In essence, the Union is faced with one allegation that it owed a duty to the owners and/or operators of the M/V ARCHON and another allegation that it owed a similar duty to the crew members of the M/V ARCHON. Neither party treated these allegations as separate causes of action, nor did they argue that different standards should apply or that different analyses are necessary to rule on this motion.

According to the plaintiff and the third party plaintiffs, the duty allegedly owed to Apex, Westchester and Torregano by the Union does not flow from the collective bargaining agreement. The Union, however, argues that such a duty, if one exists, does emanate from the collective bargaining agreement.[FN4] The importance of whether the duty does or does not flow from the collective bargaining agreement is relatively straightforward. If the collective bargaining agreement addresses the issue of the Union's purported obligation to screen its members and then to warn their employers, then Section 301 of the Labor Management Relations Act of 1947 [29 U.S.C. § 185] would pre-empt any such state law tort claim. Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 211 (1985); International Brotherhood of Electrical Workers, AFL–CIO, et al v. Sally Hechler, —— U.S. ——, 107 S.Ct. 2161 (1987); Textile Workers v. Lincoln Mills, 353 U.S. 448 (1957).

Justice Blackmun, writing on behalf of a unanimous Court, held in Allis-Chalmers, that:

We do hold that when resolution of a state law claim is substantially dependent upon analysis of the terms of an agreement made between the parties in a labor contract, that claim must either be treated as a 301 claim . . . or dismissed as pre-empted by federal labor-contract law. (Emphasis added, citations omitted).

471 U.S. at 220.

Because of the pre-emptive force of § 301, it is imperative that '[t]he threshold inquiry for determining if a cause of action exists, is an examination of the contract [collective bargaining agreement] to ascertain what duties were accepted by each of the parties and the scope of these duties.' International Brotherhood of Electrical Workers, AFL–CIO, et al v. Sally Hechler, 107 S.Ct. at 2167.

***3** Apex and Westchester have alleged that the Union owed an independent duty—that is, a duty not rooted in the collective bargaining agreement existing between them. However, the Court is of the opinion that the relationship between the Union and Apex/Westchester was controlled by the collective bargaining agreement, that is, the third party complaint failed to articulate an independent tort claim.

Article I, Section 2 of the New Standard Freight Ship/Passenger Agreement states in pertinent part:

The Union agrees to furnish the Company with capable, competent and physically fit persons when and where they are required, and of the ratings needed to fill vacancies necessitating the employment of unlicensed personnel in ample time to prevent any delay in the scheduled departure of any vessel covered by this agreement . . .

And, Article I, Section 10 states:

The Union shall protect and indemnify the companies parties to this Agreement in any cause of action based on improper application by the Union of the employment provisions of Article 1 of this Agreement. The Company shall protect and indemnify the Union in any cause of action based on improper application by the Company of the employment provisions of Article 1 of this Agreement.

Under the terms of the Collective Bargaining Agreement 'the Union's obligation is to refer individuals who have the proper licenses and documents to perform the required work.' Hartsfield v. Seafarers International Union, 427 F.Supp. 264, 269 (S.D. Ala. 1977). There is no authority or precedent in the law for holding a labor union liable because an individual referred to employment by it later committed an act of violence.' Id. at 269. The only source of the Union's duty to screen workers referred through the hiring hall lies in the parties' contractual relationship, which is, of course, tied to the Collective Bargaining Agreement existing between them.

Because the relationship between the Union and Apex/Westchester is governed by the collective bargaining agreement, and not by virtue of some special relationship purported to exist between them, the claims of the third party plaintiffs are preempted by § 301 of the Labor Management Relations Act.

As to the relationship between the plaintiff's decedent and other members of the crew of the M/V ARCHON and the Union, the Court is of the opinion that the plaintiff's claim is sufficiently independent of the collective bargaining agreement to be spared the pre-emptive effect of § 301. Like the operator/owner of the M/V ARCHON, the plaintiff alleges that the Union's purported duty to discover and warn stems from a special relationship between the crew and the Union. The plaintiff analogizes this 'special relationship' duty to the duty of a physician to warn or protect hospital personnel or other patients from patients with a propensity for violence, and the duty of innkeepers to warn or protect its guests from criminal activity of another guest. [Opposition #4, p.3]

***4** The parties are in agreement that jurisdiction for this cause of action is under the Jones Act and the General Maritime Law. As the court stated in Stoot v. D&D Catering Service, Inc., 618 F.Supp. 1274, 1277 (W.D. La. 1985):

It is a fundamental principle of the maritime law of the United States that it is to be uniform throughout the country. All of those cases brought under the General Maritime Law in which recovery has been awarded to a seaman for injuries sustained as a result of an assault by a fellow crewmember have been had only against the vessel owner or operator, usually involving a finding of unseaworthiness of the vessel as a result of the unfit nature of the crewmember perpetrating the assault. (Emphasis added) See, e.g. Clevenger v. Starfish & Oyster Co., 325 F.2d 397 (5th Cir. 1963).

This Court has found only one case where the complainant was alleging that a Union had a duty to investigate and warn fellow crewmembers of an individual's violent propensities. In the case of Hartsfield v. Seafarers International Union, 427 F.Supp. 264 (S.D. Ala. 1977), the personal representative of a fatally assaulted seaman brought suit against the labor union which had assigned the alleged assailant to the vessel upon which the decedent was also a crew member. The representative alleged that the Union breached a duty imposed upon it by its relationship to the crew. Specifically, the representative alleged that the Union breached a duty to screen individuals who it knew or should have known had violent tendencies, and further breached its duty by

failing to warn the crew of the vessel upon which it placed such an individual. Id. at 265–266.

The Court in Hartsfield held that a labor union was not vicariously responsible for an assault by one of its members who had used the Union's referral service to obtain a job on a vessel. '[A] labor organization is not charged with safeguarding crew members from violence while they are at sea, nor is a union in any position to supervise or discharge a crew member'. Id. at 269.

There is no authority or precedent in the law for holding a labor union liable because an individual referred to employment by it later committed an act of violence. Inasmuch as a union has neither authority nor opportunity to supervise and monitor the actions of crew members at sea, it has not and should not be found to have a duty to protect the crew. The union cannot reasonably foresee that an individual crew member will become violent and cannot insure itself for such a contingency. The crew member is not an agent or employee of the labor union. If unions are called upon to respond in tort for injuries to seamen, unions will in effect be given the duty of providing a safe and seaworthy vessel.

Id. at 269.

Such a finding, however, does not preclude an assaulted seaman or his personal representative from maintaining an action against the owner or operator of the vessel upon which he sailed. As the court in Hartsfield noted:

***5** A seaman who is assaulted may, under proper circumstances, recover damages for breach of the warranty of seaworthiness. Boudoin v. Lykes Bros. Steamship Co., 348 U.S. 336, 75 S.Ct. 382 99 L.Ed. 354 (1955). However, recovery in such a case may be had only against the vessel owner or operator. The history of litigation arising out of an assault by a fellow crewmember, whether the theory of liability has been unseaworthiness, negligence or respondeat superior, has dealt with the liability of shipowner to the injured seaman. (Emphasis added)

Id. at 268.

The Fifth Circuit stated in Clevenger v. Starfish and Oyster Co., 325 F.2d 397, 402 (5th Cir. 1963), that 'when the action for unseaworthiness is available, its notion of liability swallows up any notion of maritime negligence, no matter how leniently conceived. (Emphasis added)

It is the opinion of this Court that the Union did not owe a duty to the plaintiff's decedent or to the M/V ARCHON'S owners and operators to screen potential members for violent propensities and/or warn the crew and/or the owners and operators of the vessel to which they assigned those individuals. The Union is under no obligation to warrant the disposition of the crew or other factors bearing upon the seaworthiness of the vessel. Viewing the allegations of the complaint in a light most favorable to the plaintiff, the Court finds that there was no duty to screen owed by the Union to plaintiff's decedent and/or the owners and operators of the M/V ARCHON. Accordingly,

IT IS THE ORDER OF THE COURT that the motion of the Seafarers International Union, Atlantic, Gulf, Lakes and Inland Waters District AFL–CIO, for an order dismissing the claims against it by the third party plaintiffs, Apex Marine Corporation and Westchester Marine Shipping Company, be, and the same is hereby, GRANTED.

IT IS THE FURTHER ORDER OF THE COURT that the motion of the defendants and third party defendants, Seafarers International Union, Atlantic, Gulf Lakes and Inland Waters District AFL–CIO, for an order dismissing all claims against it by Mercedel W. Miles, individually and as administratrix of the succession of Ludwick Adam Torregano, be, and the same is hereby, GRANTED.

FN1 Apparently, although added as a de-

fendant, Aeron Marine Company never joined in the third party complaint against the Union.

FN2 Thus far, counsel for Apex and Westchester has filed four memoranda in opposition to the motion to dismiss and counsel for the Union has filed four in support. Hereinafter reference to these memoranda will be as follows: Opposition #1, Opposition #2, etc., or Support #1, Support #2, etc. The numbers refer to the chronological date of filing.

FN3 Melrose allegedly stabbed Torregano 64 times, apparently during an altercation aboard the M/V ARCHON.

FN4 A collective bargaining agreement entitled 'New Standard Freight Ship/ Passenger Agreement' was entered into between the Union and Apex and Westchester ('the contracted companies'). This agreement was in effect at the time of the attack upon Torregano. The agreement regulated the working relationship between the Union and the contracted companies.

E.D.La., 1987.
Miles v. Melrose
Not Reported in F.Supp., 1987 WL 16822 (E.D.La.)

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