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Jurisdiction in Longshoremen's Injuries

Richard E. Hendricks*

THE DECISION in *Southern Pacific Co. v. Jensen*¹ that state law does not apply to injuries occurring on navigable waters, began a series of jurisdictional questions which continue today. This decision initially deprived some 300,000 longshoremen and harbor workers in dangerous occupations of a compensation remedy,² but it paved the way for a federal statute providing them with compensation coverage.³ Longshoremen and harbor workers are today protected under state or federal law, depending on whether their injuries occur on land⁴ or "upon navigable waters."⁵ They may be eligible for coverage under both federal and state law.⁶

Early Development and Enactment

In the *Jensen* case, the dependents of a stevedore, who had been fatally injured while working on a gangway extending from vessel to dock, were denied a remedy under state law. State law was in conflict, in this case, with the general maritime law which constitutes part of federal law under Article III, Section 2 of the United States Constitution.⁷ The employee's work was maritime, the contract maritime, the injury maritime, and the employee's rights and liabilities were in maritime jurisdiction.⁸ Allowance of state coverage would destroy the uniformity of maritime law which Article III, Section 2 of the Constitution was intended to establish.⁹ The constitutional limits of federal maritime authority were not spelled out in *Jensen*, nor

* B.A. in Political Science, Gettysburg College (Pennsylvania); Claims Examiner, U. S. Department of Labor; Second-year student at Cleveland-Marshall Law School of Baldwin-Wallace College.

¹ 244 U. S. 205 (1917).

² Comment, the Federal Longshoremen's and Harbor Workers Act, 43 Yale L. J. 640-7 (1934).

³ 33 U. S. C. 901-950; Paone, Admiralty: Concurrent Federal and State Workmen's Compensation Coverage for Amphibious Workers, 48 Cornell L. Q. 534 (1963).

⁴ *Industrial Commission v. Nordenholt*, 259 U. S. 263 (1922); *Swanson v. Marra Bros.*, 328 U. S. 1 (1946); *Minnie v. Port Huron Terminal Co.*, 295 U. S. 647 (1937).

⁵ 33 U. S. C. 903(a).

⁶ *Davis v. Department of Labor and Industries*, 317 U. S. 249 (1942); *Calbeck v. Travelers Insurance Co.*, 370 U. S. 114 (1962).

⁷ *Southern Pacific Co. v. Jensen*, *supra* n. 1 at 212; Huttenbrauch, *Maritime Personal Injury Cases—The Twilight Zone*, 32 *Ins. Counsel J.* 92 (1965).

⁸ Huttenbrauch, *op. cit. supra* n. 7.

⁹ *Southern Pacific Co. v. Jensen*, *supra* n. 1, at 215.

did the case show how far state jurisdiction could extend; it merely held that for workers on navigable waters, state law could not apply.¹⁰

This decision caused serious difficulties in application,¹¹ and in its wake were several legislative attempts to provide state coverage for the workers. These laws were held to be unconstitutional.¹² Congress had the power to revise or amend maritime law, and could enact a general employer liability law, but could not delegate such power to the states.¹³

The Longshoremen's and Harbor Worker's Act¹⁴ was enacted pursuant to the judicial suggestion in *Dawson*,¹⁵ and was sponsored by the International Longshore Association and the unions.¹⁶ Passage of this law prevented a case by case creation of ad hoc exceptions to the *Jensen* decision,¹⁷ and Section 903 (a) of the Act codifies that decision's dividing line between state and federal jurisdiction.¹⁸ The Senate Judiciary Committee, considering the Act, noted that injuries in loading and unloading are not covered unless they occur on the ship or between the wharf and ship so as to bring them within maritime jurisdiction.¹⁹

Clarification

After the Act became law, the dock worker knew he was covered, but could not be sure of the law which applied.²⁰ In any given day these workers may pass between jurisdictions because of the nature of their work.²¹ Questions of conflict cannot be solved by the full faith and credit provisions, as one side has pre-eminent federal maritime jurisdiction.²² The beginning of a solution to this impasse was the development of the "twilight zone" concept.²³ The concept was exceedingly broad²⁴ and de-

¹⁰ Paone, *op. cit. supra* n. 3, at 533-534.

¹¹ *Michigan Mutual Liability Co. v. Arrien*, 233 F. Supp. 496, 498 (S. D. N. Y. 1964).

¹² Act of October 6, 1917, C. 97, 40 Stat. 395, in *Knickerbocker Ice v. Stewart*, 253 U. S. 149 (1920); Act of June 10, 1922, C. 216, 42 Stat. 634, in *Washington v. Dawson*, 264 U. S. 219 (1924).

¹³ *Washington v. Dawson*, *supra* n. 12; *Huttenbrauch, op. cit. supra* n. 7.

¹⁴ 33 U. S. C. 901-950.

¹⁵ Comment, *op. cit. supra* n. 2.

¹⁶ *Michigan Mutual Liability Co. v. Arrien*, 344 F. 2d 640 (2d Cir. 1965).

¹⁷ Paone, *op. cit. supra* n. 3.

¹⁸ The Supreme Court, 1961 Term (Longshoremen's and Harbor Workers Compensation), 76 Harv. L. Rev. 95 (1962).

¹⁹ *Michigan Mutual v. Arrien*, *supra* n. 16.

²⁰ Case Note, Has the Jensen Case been Jettisoned? 2 Stanford L. Rev. 536 (1950).

²¹ 2 Larson, *Workmen's Compensation Law*, 408 (3rd ed. 1965).

²² *Ibid.*

²³ *Davis v. Department of Labor*, *supra* n. 6; The Supreme Court, 1961 Term, *op. cit. supra* n. 18.

²⁴ *Michigan Mutual v. Arrien*, *supra* n. 11.

signed to cover those workers in shadowy areas of doubt.²⁵ It evolved a "first come, first served" rule.²⁶ When a state claim was made, the traditional presumption of constitutionality was to be invoked to sustain jurisdiction; the federal administrative decision (when and if federal claim initiated) was to be accorded administrative finality.²⁷ When a claim was made first under the Federal Act, an award could be upheld by reason of the provision (33 U. S. C. 920 (a)) that jurisdiction is to be preserved in the absence of substantial evidence to the contrary.²⁸

The "twilight zone" concept was an attempt to solve the hardship cases,²⁹ but it must first be shown that the employee comes within the area of doubt as to jurisdictional status. Congress made clear its purpose to permit state protection whenever possible.³⁰ For example, federal law applies if a longshoreman falls into the water and drowns when transferring cargo from a barge to a ship.³¹ In such cases, the federal law is an exclusive compensation remedy.³²

The principle that certain fringe area waterfront workers may be covered under both state and federal law was further clarified, and the administration of maritime compensation law much liberalized,³³ in *Calbeck v. Travelers Insurance Co.*³⁴ The appeals court denied coverage under federal law, because a worker on an uncompleted vessel on navigable water could validly be covered under state law.³⁵ The Supreme Court, however, awarded federal compensation. Congress had invoked its Constitutional power, when the Act was passed, so as to provide compensation for all injuries sustained by employees on navigable water, whether or not a particular injury might also have been within the constitutional reach of a state law.³⁶ The Act was designed to insure that a compensation remedy existed for all injuries on navigable waters, and to avoid uncertainty as to the source—state or federal—of that remedy.³⁷ The federal law

²⁵ Case Note, *op. cit. supra* n. 20.

²⁶ *Ibid.*

²⁷ The Supreme Court, 1961 Term, *op. cit. supra* n. 18.

²⁸ *Davis v. Department of Labor*, *supra* n. 6.

²⁹ *Paone*, *op. cit. supra* n. 3.

³⁰ *Davis v. Department of Labor*, *supra* n. 6; *U. S. Casualty Co. v. Taylor*, 64 F. 2d 521, 524 (4th Cir. 1933); *Travelers Insurance Co. v. McManigal*, 139 F. 2d 949, 951 (4th Cir. 1944).

³¹ *Noah v. Liberty Mutual Insurance Co.*, 267 F. 2d 218 (5th Cir. 1959).

³² *Reasonover, Workmen's Compensation—Longshoremen's and Harbor Workers Act—"Twilight Zone,"* 34 *Tulane L. Rev.* 233.

³³ *Michigan Mutual v. Arrien*, *supra* n. 11.

³⁴ *Calbeck v. Traveler's Ins. Co.*, *supra* n. 6.

³⁵ *Travelers Insurance Co. v. Calbeck*, 293 F. 2d 52 (5th Cir. 1961).

³⁶ *Calbeck v. Travelers Insurance Co.*, *supra* n. 6, at 117.

³⁷ *Id.* at 124.

reached all those injuries as to which the *Jensen* decision³⁸ had rendered questionable the availability of a state compensation remedy. All such injuries were covered by federal law whether or not state law might apply.³⁹

The *Calbeck* decision implies a need for certainty in the compensation coverage to longshoremen and harbor workers.⁴⁰ Injured workers have an option when the injury occurs in former state law areas and in the "twilight zone,"⁴¹ and they may elect to recover under federal or state law when it is difficult to ascertain proper jurisdiction.⁴²

Admiralty Extension to Land Injuries

The courts have been careful to recognize that some waterfront workers perform their daily chores in jobs overlapping state and federal boundaries, and guidelines have been provided for applying the federal Act to these cases. Equal care has been taken to avoid extending federal jurisdiction in compensation matters onto land. This resistance might seem inappropriate at first blush, in view of the Admiralty Extension Act of 1948,⁴³ which provides in part:

The admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land.

Construing the Extension Act in *Revel v. American Export Lines, Inc.*,⁴⁴ the courts pointed out that the legislative history indicates it was not intended to affect remedies which may exist, against other parties involved, by existing law in any appropriate forum. The Extension Act did not extend federal compensation law to an employee injured while working on a pier.⁴⁵ By denying compensation in this case, the court re-affirmed the *Nordenholt* principle⁴⁶ that the federal compensation law did not extend to injuries on land. The Extension Act of 1948 did not amend the Longshoremen and Harbor Workers Act; indeed, it made no reference to the field of compensation law.⁴⁷

³⁸ *Southern Pacific Co. v. Jensen*, *supra* n. 1.

³⁹ *Calbeck v. Travelers Insurance Co.*, *supra* n. 6, at 126.

⁴⁰ *Michigan Mutual v. Arrien*, *supra* n. 11.

⁴¹ The Supreme Court, 1961 Term, *op. cit. supra* n. 18.

⁴² *Calbeck v. Travelers*, *supra* n. 6.

⁴³ 46 U. S. C. 740, hereinafter referred to as the Extension Act.

⁴⁴ 162 F. Supp. 279 (E. D. Va. 1958); *affd.* 266 F. 2d 82 (4th Cir. 1959).

⁴⁵ *Ibid.*

⁴⁶ *Industrial Commission v. Nordenholt*, *supra* n. 4.

⁴⁷ *Revel v. American Export Lines*, *supra* n. 44.

In *Michigan Mutual Liability Co. v. Arrien*,⁴⁸ the Extension Act was viewed by the district court as extending federal compensation to injuries on land. It was recognized that the compensation law was not expressly amended in 1948, but the court felt that longshoremen were to be protected to the fullest possible extent. An award to a worker injured on a temporarily fixed skid extending over navigable water was held sustainable on the basis of the Extension Act.⁴⁹ The award of federal compensation was affirmed on other grounds on appeal.⁵⁰ No decision was made by the appeals court on whether the award was sustainable by reason of the Extension Act.⁵¹

The argument that Section 903 (a) of the federal compensation law was amended by the Extension Act received favorable treatment in *Interlake S. S. Co. v. Nielsen*.⁵² In what appears to be dictum, the court stated that the Admiralty Extension Act made it clear that admiralty jurisdiction could extend to damage caused on land by maritime events.⁵³ The trend in case law, the Admiralty Extension Act, and the effect of *Calbeck* point to expanding boundaries of admiralty jurisdiction toward land.⁵⁴ This case is not authority for the proposition that a land injury is compensable under the federal law.⁵⁵ *Interlake* specifically held that the situs of injury (the employee died when his car landed upside down on a frozen lake after driving off the dock) was clearly within admiralty jurisdiction, even though the impetus which propelled him onto the ice had a land-based origin.⁵⁶

In *Atlantic Stevedoring Co. v. O'Keeffe*,⁵⁷ a case which was handled in the courts much like *Michigan Mutual*,⁵⁸ the employee was working on a dock and became caught up with some material. He was lifted from the dock by a ship-based boom. In district court, it was urged that the Extension Act enlarged and extended the federal compensation law. This argument was rejected, because the Extension Act was intended only to extend maritime jurisdiction to a class of torts from which the federal courts had heretofore been excluded.⁵⁹ The decision denying

⁴⁸ *Michigan Mutual Liability Co. v. Arrien*, *supra* n. 11.

⁴⁹ *Id.* at 502.

⁵⁰ *Michigan Mutual v. Arrien*, *supra* n. 16.

⁵¹ *Id.* at 646.

⁵² 338 F. 2d 879 (6th Cir. 1964).

⁵³ *Id.* at 882.

⁵⁴ *Id.* at 882, 883.

⁵⁵ *Johnson v. Traynor*, 243 F. Supp. 184, 195 (D. Md. 1965).

⁵⁶ *Interlake S.S. Co. v. Nielsen*, *supra* n. 52; accord, *Thomson v. Bassett*, 36 F. Supp. 956 (W. D. Mich. 1940).

⁵⁷ 220 F. Supp. 881 (S. D. Ga. 1963).

⁵⁸ *Michigan Mutual Liability Co. v. Arrien*, *supra* n. 11; n. 16.

⁵⁹ *Atlantic Stevedoring Co. v. O'Keeffe*, *supra* n. 57.

compensation was reversed on appeal;⁶⁰ however, the appeals court made no decision as to the applicability of the Extension Act. Compensation was awarded because the employee was off the dock and upon navigable waters when injured; it is the place where the injury occurs which determines jurisdiction.⁶¹

The most comprehensive discussion to date of the Extension Act and its relation to federal compensation law is contained in *Johnson v. Traynor*.⁶² The injuries occurred on a pier, but federal compensation was claimed. It was urged, among other things, that the Extension Act, by embracing within admiralty and maritime jurisdiction certain shoreside injuries, had extended the federal Act to land injuries.⁶³ Compensation under the Longshoremen's and Harbor Workers Act was denied, because the specific jurisdictional requirement of the Act—that injuries must occur on navigable waters to be compensable—had not been repealed by the Extension Act.⁶⁴ The legislative history strongly negates any Congressional intention to repeal or reenact Section 903 (a) of the Act; Congress merely extended traditional admiralty jurisdiction to include damage by a vessel on land.⁶⁵ The Extension Act does not strike down the distinction previously made between land and water injuries, and to adapt the phrase "upon navigable waters" to fit wharves, piers, and the like would be to sanction judicial legislation.⁶⁶ The courts lack this authority.⁶⁷ It would be necessary for Congress to amend the federal compensation law in order to recognize the view that the Admiralty Extension Act expanded federal jurisdiction to land injuries.⁶⁸

Conclusion

Since stepping into the field of maritime workmen's compensation in 1917, the courts have held rather consistently that a jurisdictional boundary can be drawn. There is little difficulty today if the employee is injured on or in navigable water, or on temporary devices over navigable water. The injuries are federal, whether or not state law might also apply. It is equally clear that land injuries are solely within state competence. The courts may from time to time evolve concepts such as the

⁶⁰ *O'Keeffe v. Atlantic Stevedoring Co.*, 354 F. 2d 48 (5th Cir. 1965).

⁶¹ *Id.* at 50.

⁶² *Johnson v. Traynor*, *supra* n. 55.

⁶³ *Ibid.*

⁶⁴ *Id.* at 197.

⁶⁵ *Id.* at 192-193.

⁶⁶ *Id.* at 191.

⁶⁷ *Kolbilkin v. Pillsbury*, 103 F. 2d 667 (9th Cir. 1939); *affd.* 309 U. S. 619 (1940).

⁶⁸ *Johnson v. Traynor*, *supra* n. 55, at 188.

"twilight zone" to cover transient problems, but have not shown any serious interest in applying the Admiralty Extension Act of 1948 to change the law.

Decisions in the last several years have been none too clear with regard to the applicability of the Extension Act, however, with some lower courts favorably inclined and others rejecting any extension of federal jurisdiction. *Revel*⁶⁹ and *Johnson*⁷⁰ contain the better reasoned statements, with the latter case holding out perhaps the ultimate suggestion—that only by amendment could the Extension Act be validly applied to the field of compensation law.

There has not been any decision by the Supreme Court as to whether admiralty jurisdiction in compensation law extends to land by reason of the Extension Act. With this in mind, we can say that land injuries still belong under state law. However, "we know by now that nothing written in this field is the last word. All it can be is the latest word."⁷¹

⁶⁹ *Revel v. American Export Lines, Inc.*, *supra* n. 44.

⁷⁰ *Johnson v. Traynor*, *supra* n. 55.

⁷¹ *Travelers Insurance Co. v. Calbeck*, *supra* n. 35, at 60.