



Are unearned wages and maintenance payable beyond maximum cure?

by John Merriam

Maintenance and cure (including unearned wages) is payable only to the point of maximum cure. *Farrell v. United States*, 336 U.S. 511 (1949) That's black-letter law, right? Maybe not.

In *Warren v. United States*, 1949 A.M.C. 170, 75 F.Supp. 836 (D. Mass. 1948), the injured seaman was held to be entitled to maintenance and unearned wages past the point of maximum cure -- possibly for as long as the voyage lasted -- while the seaman looked for alternate employment.

The obligation [maintenance and cure and wages] may run beyond the time the seaman is physically well and until he can get suitable employment . . . provided, of course, in the case of wages that those periods do not extend beyond the end of the voyage and in the case of maintenance that those periods do not extend beyond a reasonable time for medical treatment. The reason is that the seaman ought not be left in the lurch during the time that he has been assured a job. . . . [This is] consistent with the rationale of the contract that the seaman's right may extend beyond the point when he is completely well. It may include a space of time when he is looking for suitable employment . . .

Id. Even though this decision was written in 1948, prior to the Supreme Court's ruling in *Farrell, supra*, in 1949, *Warren* is still cited as good law. Indeed, the above excerpt from the

Warren case was copied from Force and Norris, *The Law of Seamen* sec. 26:34 (5th ed. 2003).

In 1954, the Washington state Supreme Court followed this line of reasoning in *Kalinowski v. Alaska Steamship Co.*, 44 Wn.2d 475. Edward Kalinoski was the Third Assistant Engineer on a freighter off Japan just after the Korean War started. He developed a gum infection and was evacuated in Yokohama on September 30, 1950 and flown to Seattle. Kalinoski was 'cured' by October 12th. His unearned wages and maintenance (\$6/day) stopped on that date. The foreign voyage that he'd signed articles for ended in Raymond, Washington on January 13, 1951. Kalinoski got another job on February 28, 1951. The trial court awarded him unearned wages to January 13th and maintenance to February 28, 1951.

The state Supreme Court affirmed the trial court with a slight modification, ruling that the seaman was not entitled to maintenance past January 13th when the voyage ended. "Kalinowski had a right to the continuance of wages and to maintenance after cure until he secured or could have secured suitable employment, but not beyond the termination of the voyage." 44 Wn.2d at 480. (As an aside for old-timers reading this article, it is noted that Kalinoski was represented by Levinson & Friedman. Alaska Steamship was represented by Bogle, Bogle & Gates.)

Another case holding that unearned wages should be paid after maximum cure, during the contemplated period of employment when the seaman is actively looking for another berth, is *Lamont v. United States*, 613 F.Supp. 588

(S.D.N.Y. 1985). *Contra, Puzzo v. Grace Line, Inc.*, 1955 A.M.C. 119, 1954 WL 73065 (N.D. Cal. 1954) (not otherwise reported) (“A seaman’s right to unearned wages does not extend beyond the end of the voyage, or his recovery, whichever is the earlier date.”) *Lamont* is explicit in ruling that unearned wages should sometimes be paid beyond maximum cure, so long as the voyage continues, but is vague about whether maintenance should be similarly extended. *But see*, Schoenbaum, *Admiralty and Maritime Law* (5th ed. 2011):

The obligation to pay maintenance may continue after cure is reached in order to give the seaman time to find employment. (fn 14)

Id. at sec.6-33. (The authority cited in footnote 14 is *Lamont v. United States.*)

All of the cases discussed above involve merchant ships. The U.S. merchant marine is shrinking, almost to the point of extinction. What is left is a legacy of *stare decisis* that helps commercial fishermen and processors on factory vessels, who are also ‘seamen’ and governed by the same law. If you have a client who recovers quickly from illness or injury suffered on a fishing vessel, look to the length of the contracted period of employment to see if he or she is entitled to unearned wages and maintenance beyond maximum cure.

John Merriam is a former merchant seaman, now a sole practitioner at Seattle’s Fishermen’s Terminal, who limits his practice to the representation of maritime claimants for wages and injury.