

TRIAL NEWS

WASHINGTON STATE ASSOCIATION
for
JUSTICE

April 2012 Volume 47, Number 8

20

TRIAL NEWS

April 2012

Maritime law

Failure to report injuries within seven days not fatal to maritime claims

by John Merriam

In contracts of employment for fishermen and processors, vessel owners typically include language that requires employees to report injuries immediately. Many contracts go on to state that failure to report injuries within seven days will result in denial of the claim. The seven-day requirement for reporting illness or injury is mandated by 46 U.S.C. §10603. But what happens when seamen do not obey that law? What happens when seamen fail to report any injury because they do not think the injury or illness is as serious as it turns out to be? What happens when the malady is not cured by rest and Father Time, as first hoped by the seaman? (The stigma attached to employee injury claims in the fishing industry, including blacklisting, is beyond the scope of this article.)

Jack Hankin was a deckhand on the catcher boat F/V Traveler. He suffered a minor injury and said he told the Master about it right away. When Mr. Hankin made a claim for maintenance, cure and unearned wages, the fishing company claimed to have had no knowledge of the injury for seven months after it occurred. The fishing company retained counsel and refused to pay any benefits, citing a violation of sec. 10603 by the delay in reporting the injury by seven months, and not within seven days.

Hank filed suit in federal court for maintenance-wages-cure. The defendant fishing company filed a counterclaim for Hankin's violation of §10603. Plaintiff filed a motion to dismiss the counterclaim pursuant to FRCP 12(b)(6), for failure to state a claim that was legally cognizable.

Plaintiff conceded, for purposes of the 12(b)(6) argument only, that Hankin had not reported his injury within the required seven-day period. Even if

Hankin had violated §10603, plaintiff argued, the statute did not provide for a penalty and Congress had expressed no intention to alter the ancient maritime doctrine of maintenance and cure. Although there is some contrary authority, the timeliness of maintenance and cure claims is governed by laches (inexcusable delay plus prejudice to the shipowner). See, *Lightfoot v. Arctis Storm*, 1994 A.M.C. 2460 (W.D. Wash. 1994) (Judge Dwyer).

In opposing the motion, defendant argued that there should be tort liability for violation of the statute, causing delay in the vessel owner's investigation of the claim, with remedies including the "cost of defending the resulting lawsuits." In other words, defendant wanted to tag injured fishermen with attorney fees for having the audacity to wait more than seven days before reporting injury or illness.

Judge Coughenour agreed with the plaintiff and dismissed defendant's counterclaim pursuant to FRCP 12(b)(6), observing that "(if Congress had intended to place such a powerful sword in the hand of vessel owners, it would have indicted that intent."

The case is *Hankin v. F/V Traveler et al.*, 2003 A.M.C. 2099 (W.D. Wash. 2003). Plaintiff was represented by John Merriam. Defendants were represented by Eric McVittie of LeGros, Buchanan and Paul, and Svetlana Spivak (currently with Holmes, Weddle & Barcott).

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