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Seaman's Maintenance Rate

Must Reflect Current Costs

By Frederick B. Goldsmith

Employees who spend 30% or more of their work time as members of the crew of commercial vessels in navigation are generally considered "seamen" under the federal statute called the Jones Act. Under this law, seamen (or their survivors) are entitled to bring a negligence claim in a lawsuit against their employer if they are injured or killed due to their employer's negligence. Under the "general maritime law," seamen are also entitled to assert in a lawsuit an "unseaworthiness" claim against the owner of the vessel upon which they are working. This is a strict liability claim and if the seaman proves the vessel was unseaworthy, or "not reasonably fit for its intended purpose," and this condition caused the seaman's injuries, then the seaman will prevail. The damages the seaman may recover under either of these claims include past and future lost earnings and earning capacity; medical expenses; and pain, suffering, disability, and disfigurement.

Apart from their ability to bring negligence and unseaworthiness-based claims for damages, if seamen become ill or injured while in service of their ship, they are automatically entitled (without having to bring a lawsuit) under the general maritime law from their employer to "maintenance and cure." "Maintenance" is reasonable and necessary food and lodging expenses. "Cure" means medical expenses actually incurred with the providers of their choosing. Maintenance and cure are, with a few exceptions, payable by the employer to the seaman until the seaman has reached "maximum medical improvement," which means the point when they are cured or healed, or further care will not improve their function or will simply be "palliative," or intended to relieve pain.

While maintenance and cure are similar to workers compensation benefits, in that the seaman need not show anyone was at fault to receive maintenance and cure, seamen are not covered by any state or federal workers' compensation act. The collective bargaining agreements of unionized seamen often specify a maintenance rate. Many courts enforce these bargained-for maintenance rates, although some do not. In the absence of a collective bargaining agreement-specified maintenance rate, though, is it legal for an employer to pay a standard maintenance rate, perhaps a rate the employer and many other maritime employers in the region have been paying for years? It depends, but the answer is "likely not."

In the recently-decided case of Borders v. Abdon Callais Offshore, LLC, Judge Lance M. Africk of the U.S. District Court for the Eastern District of Louisiana held the employer acted arbitrarily and capriciously in paying its injured seaman a standard maintenance rate of $15.00/day, a rate the Court found was standard in the 1970s and early 1980s. The Court awarded the seaman a $40.00/day maintenance rate, retroactively, and also his attorney's fees for his efforts in securing the higher rate.

The Court explained the methodology for calculating a seaman's maintenance rate, as follows:

First, the court must estimate the seaman's actual costs of food and lodging, as well as the reasonable cost of food and lodging for a single seaman in the locality where the seaman lives. To recover maintenance, the seaman must produce evidence to allow the court to estimate his actual costs. In determining the reasonable costs of food and lodging, the court may consider evidence of the seaman's actual costs, evidence of reasonable costs in the locality or region, union contracts stipulating a rate of maintenance or per diem payments for shoreside food or lodging while in the service of a vessel, as well as maintenance rates awarded by courts in other cases in the same region. A seaman's burden of production in establishing the value of maintenance is "feather light." This means the seaman's testimony alone as to reasonable cost of room and board in his community is enough. Lodging includes those

expenses necessary for the provision of habitable housing, including utility costs. A seaman need not present evidence of the reasonable rate; a court can take "judicial notice" of the prevailing rate in the region. After calculating the seaman's actual costs and the reasonable costs in the region, the court then compares the two. If actual costs exceed reasonable costs, the court awards reasonable costs. Otherwise, it awards actual costs.

In the Borders case, the seaman testified he paid $1,200 per month to a third party for food and lodging for a few months, and also proffered an affidavit stating that after he moved into a mobile home, he paid $1,200/month for food and lodging, plus $400 to $500/month for utilities, for total food and lodging expenses of up to $1,700/month or $56.66/day pro-rated for a 30-day month.

The seaman's employer challenged the seaman's claimed expenses, arguing that because the seaman had not produced invoices or receipts for electric, water, gas, or food, he should not be believed. The judge was not swayed by this argument. He noted the seaman's burden of producing evidence of expenses is "feather light," and that applicable law entitled him to award reasonable expenses, even if the seaman fails to conclusively prove the precise amount of his actual expenses. Judge Africk also found that "[i]f a seaman would incur the lodging expenses of the home even if living alone, then the entire lodging expense represents the seaman's actual expenses."

The Court discussed how the employer's own evidence in this case showed it should be paying $330/month for food, $375/month for lodging, and on average $400/month for utilities, or $1,105/month or about $37/day over a 30-day month. Considering the seaman's actual expenses and recent awards by courts in the region in the $30-40/day range, the Court found

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the seaman's requested $40/day maintenance rate reasonable, and since the seaman's actual expenses did not exceed reasonable expenses, it held the seaman was entitled to a $40/day maintenance rate.

Finally, the Court described how an employer is liable for punitive damages and the seaman's attorney's fees if its failure to pay maintenance and cure is "callous and recalcitrant, arbitrary and capricious, or willful, callous, and persistent." The Court found this employer arbitrary and capricious in failing to pay a reasonable maintenance rate, a rate which was standard in the late 1970s and early 1980s. While conceding the employer may have legitimately questioned the seaman's claimed $40/day rate, the Court wrote the employer "offers no evidence whatsoever" to show the rate it is currently paying, $15.00 per day, is currently reasonable. "In fact," the Court wrote, "the minimum reasonable rate for a seaman in plaintiff's locality based purely on the defendant's figures - $11.00 per day for food, $11.00 per day for rent ($330 prorated over 30 days), and no allotment for utilities - would be $22.00 per day, nearly 50% more than what defendant actually paid plaintiff." The Court went on to find the employer "unjustified in making maintenance payments at a rate that was standard thirty years ago," and the seaman entitled to attorney's fees occasioned by the "underpayment of maintenance."

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