MIKE ADOLFO, Plaintiff, vs. CARNIVAL CORPORATION, d/b/a CARNIVAL CRUISE LINES, INC., Defendant.

CASE NO. 02-23672-CIV-HUCK/TURNOFF

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

2003 U.S. Dist. LEXIS 24143

March 17, 2003, Decided
March 17, 2003, Filed

DISPOSITION: [*1] Defendant's Motion to Compel Arbitration granted, and Plaintiff's Motion to Remand denied. All other pending motions denied as moot.

CORE TERMS: removal, employment contract, Jones Act, arbitration, seamen, compel arbitration, arbitrate, removable, arbitration clause, legal relationship, originally filed, signatory, falling, vessel, seaman, collective bargaining agreement, exclusive jurisdiction, arbitrator, superceded

COUNSEL: For MIKE ADOLFO, plaintiff: Paul M. Hoffman, Fort Lauderdale, FL.

For CARNIVAL CORPORATION dba Carnival Cruise Lines Incorporated, defendant: John Fitzgerald Billera, Carnival Cruise Lines, Miami, FL.

JUDGES: Paul C. Huck, United States District Judge.

OPINIONBY: Paul C. Huck

OPINION: ORDER GRANTING DEFENDANT'S MOTION TO COMPEL ARBITRATION AND DENYING PLAINTIFF'S MOTION TO REMAND

THIS CAUSE came before the Court on Defendant, Carnival Corporation's Motion to Compel Arbitration [DE # 4] and Plaintiff, Mike Adolfo's Motion to Remand [DE # 6]. By its Motion, Carnival Corporation ("Carnival") asks this Court to enforce the arbitration clause in its employment contract with the Plaintiff, Mike Adolfo ("Adolfo"), and to require Adolfo to arbitrate the claims asserted in this case in his home country of the Philippines. By his Motion to Remand, Adolfo asks this Court to send his case back to state court.

Adolfo originally filed his suit [*2] in the Circuit Court in and for the Eleventh Judicial Circuit, Miami-Dade County, Case No. 02-30948, asserting claims for Jones Act negligence, unseaworthiness and maintenance and cure arising out of his employment as a seaman aboard one of Carnival's vessels. Carnival removed the case to this Court pursuant to 9 U.S.C. §§ 202, which permits removal of actions arising under the laws of the United States and relating to an arbitration agreement falling within the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("Convention"), 9 U.S.C. §§ 201 *et. seq.* Carnival now seeks to compel arbitration pursuant to the Convention and the parties' employment contract. Adolfo argues that arbitration is not appropriate for this Jones Act case, that removal was wrongly obtained, and that his claims should be tried in state court where they were originally filed. For the reasons discussed below, Carnival's Motion to Compel Arbitration is GRANTED and Adolfo's Motion to Remand is DENIED.

Motion to Compel Arbitration

Federal law strongly favors agreements to arbitrate, particularly in international commercial transactions. *See*

WWW.NEWYORKCONVENTION.ORG

[*3] *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 41 L. Ed. 2d 270, 94 S. Ct. 2449 (1974). In *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 87 L. Ed. 2d 444, 105 S. Ct. 3346 (1985), the Supreme Court held:

> Concerns of international comity, respect for the capacities of foreign and transnational tribunals, and sensitivity to the need of the international commercial system for predictability in the resolution of disputes all require enforcement of ... [arbitration in Japan], even assuming a contrary result would be forthcoming in a domestic context.

Id. at 629 (parenthetical added). "Questions of arbitrability must be addressed with a healthy regard for the federal policy favoring arbitration ... any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." *Id.* at 626.

A party's request to compel arbitration of a dispute pursuant to the Convention must be granted where 1) there is an agreement in writing to arbitrate the dispute; 2) the agreement provides for arbitration in the territory of a signatory to the Convention; 3) the agreement to arbitrate arises out of a commercial [*4] legal relationship; and 4) there is a party to the agreement who is not an American citizen. 9 U.S.C. §§§§ 201-208; *Francisco v. Stolt Achievement MT*, 293 F.3d 270, 272 (5th Cir. 2002); *Amon v. Norwegian Cruise Lines, Ltd.*, 2002 U.S. Dist. LEXIS 27064, Case No. 02-21025-Civ-Huck (S.D. Fla. 2002). Here Carnival's request for arbitration must be granted because the subject agreement meets all four criteria.

At the time that Adolfo, a Philippine citizen, suffered the injuries alleged in his suit, he was working for Carnival as a crewmember under the terms of the standard Philippine Overseas Employment Administration (POEA) Contract of Employment (the "Employment Contract"), which incorporated the Standard Terms and Conditions Governing the Employment of Filipino Seafarers On Board Ocean-Going vessels (the "Standard Terms"). Section 29 of the Standard Terms states as follows:

> If the parties are not covered by a collective bargaining agreement, the parties at their option submit the claim or dispute to either the original and exclusive jurisdiction of the National Labor Relations Commission (NLRC), pursuant to Republic Act (RA)8042 otherwise known as the Migrant Workers [*5] and Overseas Filipinos Act of 1995 or to the original and exclusive jurisdiction of the voluntary arbitrator or panel of arbitrators.

Therefore, under the specific terms of the POEA, Adolfo must either submit his claims to the NLRC or agree to voluntary arbitration. If his claims are submitted to the NLRC, Section 10 of RA 8042 requires that disputes be resolved by arbitration. *See Francisco*, 293 F.3d at 271, n. 1. Thus, under either choice, Adolfo is required to arbitrate his claims.

The Philippines is a signatory to the Convention, satisfying criterion two. *See* 9 U.S.C. §§ 201; *Amon*, 2002 U.S. Dist. LEXIS 27064, [slip op.] at 4.

Adolfo's employment with Carnival, pursuant to the POEA Contract of Employment, constitutes a commercial legal relationship for the purposes of the Convention. *See Francisco*, 293 F.3d at 273-274; *Amon*, 2002 U.S. Dist. LEXIS 27064, [slip op.] at 4; *Lejano v. K.S. Bandak*, 705 So.2d 158 (La. 1997).

Based on the foregoing, it is apparent that, absent a valid reason not to enforce the Employment Contract, the POEA and the Convention require arbitration of Adolfo's claims.

The fact that Plaintiff is not a party to a collective bargaining agreement has [*6] no bearing on the enforceability of his Employment Contract. Plaintiff's interests were ably represented by the Tripartite Technical Working Group, consisting of three interest groups which negotiated the standard employment agreements which are uniformly applicable where Philippine seamen, such as Adolfo, are hired by foreign vessel operators, such as Carnival. The Tripartite Technical Working Group represents the respective interests of the seamen, the maritime employers and the Philippine government. Thus, the standardized POEA employment agreement is the product of this diverse representation, not of a foreign employer's dictates. Moreover, the standard POEA

WWW.NEWYORKCONVENTION.ORG

employment contract is ultimately the product of the POEA. *See Amon*, 2002 U.S. Dist. LEXIS 27064, [slip op.] at 4. That Philippine governmental agency has the obligation to protect the interests of Philippine workers, including seamen, in their employment relationships with foreign employers. *Cruz v. Chesapeake Shipping, Inc.*, 932 F.2d 218, 221 (3rd Cir. 1991); *Lejano*, 705 So.2d at 167-68.

Adolfo argues that because his claim arises under the Jones Act it is neither removable nor subject to the Employment Contract's arbitration [*7] clause. In essence, Adolfo contends that the Jones Act, which allows the seamen to maintain his claim in state court, trumps the Convention, which allows removal to federal court. The Court does not accept Adolfo's contention because when a case is removed, pursuant to the Convention, as here, the removal is not governed by the general removal statute, but rather by §§ 205 of the Convention. *York Hannover Holding A.G. v. American Arbitration Ass'n*, 794 F. Supp. 118 (S.D.N.Y. 1992).

In *Francisco v. Stolt Achievement MT*, the Fifth Circuit held that federal courts have original jurisdiction over actions falling under the Convention, notwithstanding the saving to suitors clause applicable to Jones Act claims, and that Convention related cases are removable under 9 U.S.C. §§ 205. *Francisco*, 293 F.3d at 272. The Court accepts the reasoning and holding in *Francisco* and finds it applicable here.

Adolfo also argues that he signed a Seafarer's Agreement contained in a standard Seafarer Manual which superceded his POEA Employment Contract. However, Adolfo admits that he does not have a copy of the superseding agreement. However, [*8] Adolfo has submitted a copy of his Employment Contract, signed by him, to the Court.

In response, Carnival denies that Adolfo signed a Seafarer's Agreement while working for Carnival. In support of its denial, Carnival has submitted evidence that it is not Carnival's practice to allow Philippine seamen to sign a Seafarer's Agreement. This is because the POEA employment contracts provide that they are the exclusive controlling agreements between Philippine seamen and foreign employers and, thus, if Adolfo had signed a Seafarer's Agreement it could only have been executed by mistake.

Moreover, Carnival offers evidence that it has conducted a good faith search for any Seafarer's Agreement signed by Adolfo and has found no indication that he ever signed one. Carnival has established that there is no copy of any such Seafarer's Agreement in Adolfo's personnel files, there is no indication in any records that such an agreement was signed, and Carnival has no reason to believe that such an agreement would have been, or was, signed by Adolfo. In addition, Carnival argues that if Adolfo had signed such a Seafarer's Agreement, it would be void as inconsistent with and prohibited by the terms [*9] and conditions of the POEA contracts and the hiring regulations of the Philippine government. Based on the evidence presented, the Court finds that the Employment Contract has not been superceded by a signed Seafarer's Agreement.

The Court concludes that Adolfo's Employment Contract, including its arbitration clause, is enforceable and that Adolfo must arbitrate the claims he raises here as required by his Employment Contract. Accordingly, Carnival's Motion to Compel Arbitration is GRANTED.

Motion to Remand

In support of his Motion to Remand, Adolfo argues that under well established precedent, seaman actions brought in state court under the Jones Act are not removable to federal court. *See Romero v. International Terminal Operating Co.*, 358 U.S. 354, 372 n. 29, 3 L. Ed. 2d 368, 79 S. Ct. 468 (1959); *Pate v. Standard Dredging Corp.*, 193 F.2d 498 (5th Cir. 1952). Adolfo argues that *Francisco* was incorrectly decided and application of its principle here would remove his "claim from the purview of the Jones Act and contradict the result mandated by" binding precedent, including *Szumlicz v. Norwegian America Line, Inc.*, 698 F.2d 1192 (11th Cir. 1983). [*10]

Carnival counters that this case was removed pursuant to the Convention, and is, therefore, not governed by the general removal statutes. Carnival argues that, because removal pursuant to the Convention is wholly independent of limitations prescribed by the general removal statutes, the Court should look only to the requirements of the Convention to determine whether removal was proper. Carnival relies on *Francisco*.

As indicated above, the Court accepts the Fifth Circuit's holding in *Francisco* and will apply it here. Accordingly, the Court concludes that a Jones Act claim may be removed to federal court pursuant to the

WWW.NEWYORKCONVENTION.ORG

Convention. The Motion to Remand is DENIED.

Because Adolfo's claims will be arbitrated and not litigated in this Court, this case is administratively closed and all other pending motions are denied as moot.

DONE AND ORDERED in Chambers, Miami, Florida this 17th day of March, 2003.

Paul C. Huck

United States District Judge

Your use of this service is governed by **Terms and Conditions.** Please review them.
Copyright ©©2004 **LexisNexis Group** a division of Reed Elsevier (UK) Ltd. All rights reserved

WWW.NEWYORKCONVENTION.ORG