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Murray v. American S.S. Co., 1987 U.S. Dist. LEXIS 15457

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United States District Court for the Eastern District of Michigan, Southern Division

November 11, 1987, Decided

No. 85-74428

Reporter

1987 U.S. Dist. LEXIS 15457 *

ALTON MURRAY, et al., Plaintiffs, v. AMERICAN STEAMSHIP COMPANY, et al., Defendants.

Core Terms

rule requirements, wages, numerosity, unearned, issues, predominate, question of law, purported, collective bargaining agreement, class certification, class action, class member, individuals, maritime

Case Summary

Procedural Posture

Plaintiff seamen filed a motion with the court, for class certification in an action against defendant vessel owners for unearned wages while unfit for duty due to injury. One vessel owner filed a motion to dismiss and contended that the action was based in tort and was therefore time barred under statute of limitations. The seamen argued that the action for maintenance-cure-wages was contractual.

Overview

The seamen filed an action against seven vessel owners to recover maintenance-cure-wages after sustaining injury during the course of their employment which rendered them unfit for duty. The seamen filed a motion for class certification. The vessel owners objected to class certification and contended that the requirements of Fed. R. Civ. P. 23(b)(3) were not met. The court granted the motion and found that the number of seamen exceed 500 individuals located in 18 different states. The court held that joinder was therefore impractical and the numerosity requirement of the rule was satisfied. The court also held that common claims predominated over individual issues where all vessel owners had a uniform practice of not paying unearned wages. The court also denied one vessel owner's motion for dismissal and rejected its argument that the action was barred under a three year limitations period for tort actions. The court held that the action was based in contract and therefore the three year period did not apply.

Outcome

The court denied the vessel owner's motion to dismiss, and granted the seamen's motion for class certification.

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HNA Certification of Classes

Fed. R. Civ. P. 23(b)(3) provides that an action may be certified as a class action if the court determines that questions of law or fact common to the members of the class predominate over any questions affecting only individual members and that a class action is a superior means of adjudicating the controversy. [More like this Headnote](#)

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HN2: Necessary Parties

Joinder is preferable where the number of prospective members is below forty. [More like this Headnote](#)

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HN3: The focus of a court in determining if the numerosity requirement of [Fed. R. Civ. P. 23\(a\)](#) is satisfied is whether the number of individuals in the plaintiff class is so numerous that joinder is impracticable. The impracticability of joinder is also influenced by the geographical location of potential plaintiffs. [More like this Headnote](#)

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HN4: Predominance

The first requirement under [Fed. R. Civ. P. 23\(b\)\(3\)](#) is to determine whether common claims predominate over individual issues. In making this determination, the court must evaluate the relationship between the common and individual issues in this purported class action. Generally, it is said that common claims predominate when common questions represent a significant aspect of the case and they can be resolved for all members of the class in a single adjudication. Furthermore, when one or more central issues in an action are common to the class and can be said to predominate, the action will be considered proper under [rule 23\(b\)\(3\)](#) even though other important matters will have to be tried separately. [More like this Headnote](#)

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Judges: [*1] [FREEMAN](#) >

Opinion by: [RALPH M. FREEMAN](#) >

Opinion

HON. [RALPH M. FREEMAN](#) >

MEMORANDUM OPINION

This matter is before the Court on Plaintiffs' motion for class certification, and Defendant **Cleveland-Cliffs' Motion to Dismiss** Cleveland-Cliffs as a defendant. The purported class is comprised of seamen who sustained injury and/or illness, rendering them unfit for duty, during the course of their employment with various Defendant vessels. The purported class members were paid maintenance benefits but not unearned wages according to the terms of their articles of employment. The Defendants consist of seven different vessel owners who apparently are engaged in Great Lakes maritime trade.

I. Motion to Dismiss Defendant Cleveland-Cliffs

Cleveland-Cliffs requests this court to dismiss it as a defendant in this action on the grounds that the appropriate statute of limitations bars the claim of the acting class representative. Cleveland-Cliffs also argues that it should be dismissed as a defendant due to Plaintiff's failure of proof as to the numerosity, commonality and typicality requirements of [Rule 23](#). The Court notes that these latter arguments will be addressed in conjunction with Plaintiff's motion to [*2] certify the class. Only the statute of limitation argument need be addressed in this section of the opinion.

Cleveland-Cliffs argues that a three year statute of limitations applies to Plaintiff's claims because "what plaintiff (sic) alleges is clearly a tort claim, not one sounding in contract." Defendant Cleveland Cliffs states that the appropriate maritime statute of limitations for a tort action is three years under 46 USC § 763(a). Plaintiffs, however, argue that the appropriate statute of limitations is six years for contractual obligations and that the six year time period has not yet run for the class representative of Cleveland-Cliffs.

The Court agrees with Plaintiffs that this action for maintenance-cure-wages is of a contractual nature. *Runyan v. Great Lakes Dredge & Dock Co.*, 141 F. 2d 396, 397 (6th Cir. 1944). Therefore, the three year statute of limitations for tort actions does not apply. Accordingly, the motion to dismiss Cleveland-Cliffs as a defendant is DENIED.

II. Motion for Class Certification

In a previous Memorandum Opinion dated July 31, 1986, this Court discussed the prerequisites for a class action under [Rule 23\(a\)](#) and [*3] [Rule 23\(b\)](#) of the Federal Rules of Civil Procedure. The Court found that the commonality and typicality requirements of [Rule 23\(a\)](#) were satisfied because a common question of law existed and the legal theory advanced in this case is common to all the named representatives and purported class members. The common question of law presented by this case is "whether seamen on the Great Lakes are entitled to unearned wages beyond the point of discharge from the vessel to the termination of the contractual period of employment or the end of the Great Lakes sailing season or to the end of the pay period when rendered unfit for duty due to illness or injury during the course of their employment." (Mem. Op. July 31, 1986, p. 6). The Court also concluded that there is nothing to suggest that the adequacy of representation

requirement of Rule 23(a) has not been satisfied. However, at the time of issuance of the July 31, 1986 opinion, the Court had no evidence before it from which a determination as to the numerosity requirement of Rule 23(a) could be made. The Court directed the parties to conduct further discovery on this issue. The Court also directed the parties to conduct further discovery [*4] on the issues relating to certification under Rule 23(b)(3).

HN1 Rule 23(b)(3) provides that an action may be certified as a class action if the Court determines that questions of law or fact common to the members of the class predominate over any questions affecting only individual members and that a class action is a superior means of adjudicating the controversy. In its previous memorandum opinion, the Court concluded that once discovery revealed whether there is a uniform practice among the Defendants in this case in dealing with claims for unearned wages, the issues of manageability of the proposed class as well as the requirements of Rule 23(b)(3) could be addressed. Thus, in deciding Plaintiffs' motion for class certification, this Court need only address two issues: 1) whether the numerosity requirement of Rule 23(a) is met; and 2) whether the requirements of Rule 23(b)(3) are met. The problem of "manageability" is included within the evaluation of the requirements of Rule 23(b)(3). Herm v. Stafford, 461 F. Supp. 508 (D.C. Ky. 1978).

A. Numerosity

Through discovery Plaintiffs obtained the following totals of individuals being counted in this action: [*5]

AMERICAN STEAMSHIP COMPANY	404
CLEVELAND-CLIFFS IRON COMPANY	46
INTERLAKE STEAMSHIP COMPANY	23
ROUGE STEEL COMPANY	51
CLEVELAND TANKERS, INC.	14
HURON CEMENT, DIVISION OF	10
NATIONAL GYPSUM COMPANY	

Plaintiffs have indicated that Defendant Bob-Lo Division of Automobile Service Club of Michigan did not respond to requests for admissions. Plaintiffs therefore assumed, through admission by default, that the total number of persons who were paid maintenance benefits by Bob-Lo amounted to 117.

Five of the defendants responded to Plaintiffs' motion. Bob-Lo, Interlake Steamship, Cleveland Tanker, Cleveland-Cliffs and Rouge Steel responded to Plaintiffs' motion for class certification. Each Defendant denied that numerosity was met. Each Defendant focused on the number of persons employed by each Defendant and concluded that the number was not sufficient to satisfy the numerosity requirement of Rule 23(a). Defendants cite numerous cases in which courts have held that HN2 joinder is preferable where the number of prospective members is below forty. See e.g., FNH v. Monarch Wines Co., Inc., 73 FRD 131 (EO NY 1977); Muscarelli v. Stamm, 288 F. Supp. 453, 463 (EO NY 1968). [*6]

The cases cited by Defendants are distinguishable from the instant case. In the cases cited by Defendants, the total number of prospective class members did not exceed forty individuals and there was only one defendant in each case. In the present case, there are seven defendants and the total number of employees of all defendants who allegedly fall within the class exceeds five hundred individuals. HN3 The focus of a court in determining if the numerosity requirement of Rule 23(a) is satisfied is whether the number of individuals in the Plaintiff class is so numerous that joinder is impracticable. The impracticability of joinder is also influenced by the geographical location of potential plaintiffs. Glover v. McMurray, 361 F. Supp. 235 (SD NY 1973) (rev'd on other grounds) 487 F.2d 403 (2nd Cir). The Court concludes that, in a case such as this where there are over five hundred potential plaintiffs and they are located in eighteen different states, joinder is impracticable even though with respect to certain individual Defendants, the number of potential plaintiffs does not exceed forty individuals. Therefore, Plaintiffs have satisfied the numerosity [*7] requirement of Rule 23(a).

B. Rule 23(b)(3) Requirements

1. Whether Questions of Law or Fact Predominate Over Questions Affecting Only Individual Members

HN4 The first requirement under Rule 23(b)(3) is to determine whether common claims predominate over individual issues. In making this determination, the court must evaluate the relationship between the common and individual issues in this purported class action. Generally, it is said that common claims predominate when:

common questions represent a significant aspect of the case and they can be resolved for all members of the class in a single adjudication

7A Wright & Miller, Federal Practice and Procedure, § 1778, p. 528. Furthermore, "when one or more central issues in an action are common to the class and can be said to predominate, the action will be considered proper under Rule 23(b)(3) even though other important matters will have to be tried separately." Id. at 529.

All the defendants argue that unique questions of law and fact exist with respect to each defendant. Each defendant apparently has different shipping articles which govern the employment contract between the defendants and purported [*8] class of plaintiffs. Also, some of the defendants note that they are subject to collective bargaining agreements with different unions, including the National Maritime Union, the Seafarer's International Union and the United Steel Workers of America. Each collective bargaining agreement presumably has differing provisions with respect to accident and illness benefits as well as pay periods. Therefore, defendants argue that common claims do not predominate over unique questions of law or fact. Alternatively, Defendants argue that, should the court certify Plaintiffs as a class, each defendant should be separated from the other defendants and treated as a sub-class.

Plaintiffs have submitted some evidence, in the form of answers to interrogatories, which indicates that all Defendants have a uniform practice of not paying unearned wages. The Court finds that the question of whether such practice is permissible under general principles of maritime and admiralty law predominates over defendants' individual claims that a particular collective bargaining agreement or shipping article controls the practice of paying wages. Defendants may be able to establish at trial that the uniform [*9] practice of not paying unearned wages is permissible in light of the collective bargaining agreements and shipping article governing the employment contract. In other words, the existence of collective bargaining agreements and shipping articles may be a defense to a claim that maritime and admiralty law requires the payment of unearned wages. However, before Defendants can argue their individual defenses, they must resolve the common threshold issue of whether any labor contract can abrogate a seaman's right to unearned wages. Despite the potential for varying individual defenses, the right to payment of unearned wages is a significant aspect of this case and can be resolved in a single adjudication rather than several adjudications. The first requirement of Rule 23(b)(3) is therefore satisfied.

2. Whether a Class Action is a Superior Means of Adjudicating the Controversy

The Court concludes that a class action is a superior means of adjudicating the issue in this case. A single class action would be less burdensome to the courts than several hundred individual law suits. Also multiple suits might not be feasible as a practical matter since the individual amounts involved [*10] are relatively small. Finally, this is not a case in which sub-classes would be appropriate. There is but a single issue in this case and the interests of the purported class members are neither divergent nor antagonistic. See generally, 7B Wright & Miller, *Federal Practice and Procedure*, § 1790, (sub-classes may be necessary where noncommon issues are inextricably entangled with common issues or where class members have divergent or antagonistic interests).

Accordingly, and for the above reasons, Plaintiffs have satisfied the prerequisites of Rule 23 and their motion for class certification is GRANTED. Cleveland-Cliffs' motion to dismiss Cleveland-Cliffs as a defendant is DENIED. Plaintiffs shall submit an appropriate order.

RALPH M. FREEMAN ✎, United States District Judge

Date: November 11, 1987



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