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American Maritime Cases

**MOTHANA A. SAEED, Plaintiff**

v.

**ROUGE STEEL COMPANY, Defendant**UNITED STATES DISTRICT COURT, EASTERN  
DISTRICT OF MICHIGAN (SOUTHERN DIVI-  
SION)

April 25, 1989

No. 87-CV-60067-AA

**DAMAGES - Punitive Damages - PERSONAL  
INJURY - 1415. Refusal or Neglect of Treatment -  
PRACTICE - 1601. To Complaint.**

A seaman-plaintiff's demand for punitive damage is not a separate cause of action that must be separately pled. *Held*: Where plaintiff had been granted leave to amend his personal injury complaint to state a claim for maintenance and cure, this also gave him the right to seek punitive damages based on defendant ship-owner's allegedly callous refusal to make payment.

Dennis M. O'Bryan for Plaintiff

John L. Foster and Paul D. Galea (Foster, Meadows &amp; Ballard) for Defendant

STEVEN D. PEPE, U.S. Magistrate:

Plaintiff Mothana Saeed alleges in his complaint that he injured his back while working on a ship owned by defendant Rouge Steel Company. Plaintiff alleges his injury was caused by defendant's negligent failure to properly light the ship's cargo hold. As amended on

December 28, 1988, plaintiff also asserts that defendant is bound to pay him "maintenance and cure."  
[FN1](#)

[FN1](#). See, e.g., *Vaughan v. Atkinson*, 369 U.S. 527, 1962 AMC 1131 (1962).

Defendant acknowledges that "the concept of maintenance and cure entitles a seaman to recover for any injury or illness suffered without \*2395 his misconduct where said injury or illness arises in the service of the ship." Defendant also acknowledges that it has not paid plaintiff maintenance and cure. Defendant asserts, however, that when plaintiff was discharged in December 1986, he was fit for duty, and that it was not until March 1987 that plaintiff was found, due to a heart condition, to be not fit for duty. Defendant argues that, if plaintiff is now disabled, the disability arose after he was discharged by defendant, and that defendant is therefore not liable for maintenance and cure.

In reply, plaintiff argues his treating physician found him to be disabled in December 1986 due to his back condition, and that it is this impairment - allegedly sustained while in the course of employment on defendant's ship - that rendered him disabled.

The matter is presently before the Court on defendant's January 20, 1988, motion to strike plaintiff's claim for punitive damages. This motion has been referred to the undersigned for hearing and determination pursuant to [28 U.S.C. sec. 636\(b\)\(1\)\(A\)](#). Oral argument was heard on February 11, following which the parties submitted supplemental briefs.

On August 13, 1987, plaintiff moved for leave to amend his complaint by adding a claim for maintenance and cure. The undersigned granted this motion

on November 10, 1987. Defendant did not appeal this order. On December 28, 1987, plaintiff amended his complaint by adding the following paragraph (par. 6):

“Following Plaintiff’s discharge from the vessel in December of 1986, Defendant was under an obligation to provide him with maintenance and cure which obligation Defendant has breached in a callous, recalcitrant and intentional manner, thereby entitling Plaintiff to same, *along with punitive damages*, in addition to the damages listed *infra*.” (Emphasis added.)

Defendant argues that plaintiff was granted leave only to assert a claim for maintenance and cure, not for punitive damages. Plaintiff argues that “punitive damages are a recognized element of recovery in actions for maintenance and cure,” and that, by granting him leave to assert such a claim, the Court implicitly also granted leave to assert “the remedy allowed under the cause of action.”

At the hearing on this motion, defense counsel argued that a claim for maintenance and cure is a separate cause of action than a claim for punitive damages based on a *willful failure* to pay maintenance and ~~\*2396~~ cure. Defense counsel was granted leave to file a supplemental brief to present authority for the proposition that these are in fact two separate causes of action that must be separately pled. Defense counsel has failed to present any such authority.

In his supplemental brief, defendant argues as follows:

“Each of the cases cited by Plaintiff found *first*, that the plaintiff was entitled to maintenance and cure and *second*, that because the defendant’s denial of the maintenance and cure was demonstrative of capriciousness, bad faith and intentional disregard of the claimant’s rights, punitive damages would be allowed. In each of the cases cited, it was incumbent upon the Plaintiff to present a *prima facie* case for his mainte-

nance and cure claim.

“However, if the claimant seeks damages against the Defendant *in addition* to maintenance (living allowance) and cure (medical expense), he must additionally demonstrate that the Defendant’s behavior in denying the maintenance and cure was callous, willful, wanton, intentional or the like.”

While this is certainly correct, it merely states the obvious: that plaintiff would be entitled to punitive damages only upon a showing *at trial* that defendant willfully, capriciously, or intentionally refused to pay maintenance and cure. This is not to say, however, that a demand for punitive damages (based, in this case, on a willful failure to pay maintenance and cure) is a separate cause of action that must be separately pled *in the complaint*. Indeed, the case law is clear that punitive damages and attorney’s fees are simply *remedies* that may be awarded upon a showing that defendant’s refusal to pay maintenance and cure was sufficiently wrongful.

Both parties agree that the seminal case is [Vaughan v. Atkinson](#), 369 U.S. 527, 1962 AMC 1131 (1962). *Vaughan* held that plaintiff was entitled to an award of attorney’s fees because defendants

“were callous in their attitude, making no investigation of libellant’s claim. As a result of that recalcitrance, libellant was forced to hire a lawyer and go to court to get what was plainly owed him under laws that are centuries old. The default was willful and persistent.” [Id.](#) 369 U.S. at 530-31, 1962 AMC at 1134. ~~\*2397~~

The dissent agreed:

“[I]f the shipowner’s refusal to pay maintenance stemmed from a wanton and intentional disregard of the legal rights of the seaman, the latter would be entitled to exemplary damages in accord with tradi-

tional concepts of the law of damages. McCormick, *Damages*, sec. 79“ [Id., 369 U.S. at 540](#), 1962 AMC at 1141.

Nowhere did *Vaughan* state that plaintiff's demand for attorney's fees was a separate cause of action that needed to be separately pled in the complaint. Instead, the Court justified the award of attorney's fees as an exercise of its power to “grant equitable relief.”

In *Breese v. AWI, Inc.*, 1989 AMC 108 , [823 F.2d 100 \(5 Cir. 1987\)](#), plaintiff sought maintenance and cure after suffering a heart attack aboard defendant's vessel. The district court declined to award punitive damages and attorney's fees. In reversing, the Fifth Circuit stated:

“It is well-settled that '[a] shipowner who arbitrarily and capriciously denies maintenance and cure to an injured seaman is liable to him for punitive damages and attorney's fees.' [Yelverton v. Mobile Laboratories, Inc., 782 F.2d 555, 558 \(5 Cir. 1986\)](#). It is also clear that awards of punitive damages and attorney's fees in cases involving the failure to pay maintenance and cure are grounded on the same standards. 'Both awards must be grounded on the same type of egregious shipowner conduct exhibiting wanton and intentional disregard of a seaman's rights.' [Harper v. Zapata Off-Shore Co., 1985 AMC 979 , 981, 741 F.2d 87, 88 \(5 Cir. 1984\)](#).”

“Although '[n]o bright line separates the type of conduct that properly grounds an award of punitive damages. from the type of conduct that does not support a punitive damages award,' [citation omitted], it is clear that laxness in investigating a claim that would have been found to be meritorious will subject a shipowner to liability for attorney's fees and punitive damages. “ [Id. 1989 AMC 111 -113, 823 F.2d at 103-104](#).”

In *Hines v. J. A. LaPorte, Inc.*, 1988 AMC 1721 ,

1723, [820 F.2d 1187, 1189 \(11 Cir. 1987\)](#), the court held “that both reasonable attorneys' fees and punitive damages may be legally awarded in a \*2398 proper case.”<sup>FN2</sup> See also, *Sample v. Johnson*, 1986 AMC 2621 , 2628, [771 F.2d 1335, 1347 n.12 \(9 Cir. 1985\)](#) (“Punitive damages are awardable, in some circumstances, to a seaman where payment for maintenance and cure is wrongfully denied”).

<sup>FN2</sup>. Hines cited the following cases in support of this rule: *Holmes v. J. Ray McDermott & Co.*, 1985 AMC 2024 , [734 F.2d 1110 \(5 Cir. 1984\)](#); [Tullos v. Resource Drilling Inc., 750 F.2d 380, 388 \(5 Cir. 1985\)](#); *Harper v. Zapata Off-Shore Co.*, 1985 AMC 979 -981, [741 F.2d 87, 88 \(5 Cir. 1984\)](#); [Robinson v. Pocahontas, Inc., 1973 AMC 2268 , 477 F.2d 1048 \(1 Cir. 1973\)](#).

The case law is clear that a plaintiff who is entitled to maintenance and cure may also be entitled to attorney's fees and punitive damages if defendant has withheld these payments in callous disregard for plaintiff's rights. While the burden is on plaintiff to prove such callousness at trial, defendant has shown no authority for the proposition that plaintiff's demand for punitive damages is a separate cause of action that must be separately pled. To the contrary, the above-cited cases clearly indicate that plaintiff's demand for punitive damages is subsumed within his claim for maintenance and cure. Because plaintiff has been granted leave to amend his complaint to assert such a claim, he is, upon a proper showing, entitled to seek appropriate damages - including punitive damages.

Plaintiff indicated both in his motion for leave to amend, and in his amended complaint, that he intended to seek damages for defendant's failure to pay maintenance and cure. Paragraph 4 of his motion to amend states: “Defendant has refused, neglected, or otherwise not paid Plaintiff the maintenance, cure and unearned wages to which he is entitled in the premis-

es.“ At pages 4-5 of the motion plaintiff prayed for “leave to file a First Amended Complaint, alleging wrongful deprivation of maintenance-wages-cure.” These statements sufficed to put defendant on notice that plaintiff was seeking damages for the alleged failure to pay maintenance and cure. Thus, defendant cannot argue that he has been prejudiced in this regard. It is also noteworthy that at the hearing on this motion, defense counsel indicated he would not need to engage in additional discovery if his motion to strike were denied. This further supports the conclusion that defendant has not been prejudiced by plaintiff's alleged failure to clearly indicate an intent to seek punitive damages. For these reasons, it is ordered that defendant's January 20, 1988, Motion to Strike Plaintiff's Claim for Punitive Damages is denied.

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