TERRY TUCKER v. CROUNSE CORPORATION

No. 5:00 CV-198-R

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF KENTUCKY
(PADUCAH DIVISION)

2001 AMC 854

December 21, 2000

JUDGES:

THOMAS B. RUSSELL, D.J.

HEADNOTES:

DAMAGES - 124. Maintenance and Cure - LABOR - 113. Collective Bargaining Agreements - PERSONAL INJURY - 1412. Duration.

Although an employer may set a seaman's rate of maintenance by a collective bargaining agreement, it may not limit the duration of maintenance to a fixed period as that would completely abolish the duty to pay until maximum cure is reached.

COUNSEL:

Dennis M. O'Bryan and John E. Drumm (O'Bryan Baun Cohen) for Terry Tucker

G. Ray Bratton for Crounse Corporation

OPINIONBY: RUSSELL

OPINION:

[*854] THOMAS B. RUSSELL, D.J.:

This matter is before the Court on Plaintiff's motion for immediate and retroactive increase in maintenance and cure. Plaintiff argues that such an increase is due based on the text of the collective bargaining agreement between Crounse and his union. In the Sixth Circuit, the text of such agreements typically controls the amount of maintenance and cure payments. *See Al-Zawkari v. American S.S. Co., 1990 AMC 1312, 871 F.2d 585 (6 Cir. 1989).* The collective bargaining agreement provides:

The Company [Crounse] agrees to:

(D) Continue the present disability benefits by providing:

1. For any on-the-job, lost time accidental injury of an employee, retention of seniority, and payment of one-half the employee's regular salary for up to six (6) months. . . .

2. For any other accidental injury (excluding injuries arising from other employment or self-employment, substance abuse or unlawful activity) or any illness, retention of seniority and payment of one-half the employee's regular salary for up to six months, subject to the following restrictions. . .

4. It is agreed that disability payments by the Company or by an insurance company made under the provisions of this article shall be considered to be maintenance payments made by the Company in any case in which the company might be legally responsible for such maintenance payments.

[*855] Crounse argues that it has complied with the terms of the collective bargaining agreement, and that it no longer owes payment of half-salary to the Plaintiff. Plaintiff argues that while Crounse may have provided benefits under § 2 (due to its previous denial of maintenance and cure), it now owes benefits under § 1. Nonetheless, it is undisputed that Plaintiff has received six months of half-salary payments.

The Court concludes that Crounse is responsible for continuing to make half-salary payments to the Plaintiff. "A shipowner is liable to pay maintenance and cure to the point of maximum cure, that is, when the seaman's affliction is cured or declared to be permanent." *Blainey v. American S.S. Co., 1993 AMC 2462, 2463, 990 F.2d 885, 887 (6 Cir. 1993).* It appears that Crounse seeks, by way of the collective bargaining agreement, to limit its obligation to only six months. This is not permitted by the caselaw of the Sixth Circuit quoted above, as a shipowner cannot abrogate the responsibility to pay maintenance and cure by contract. *See Al-Zawkari, 1990 AMC at 1315, 871 F.2d, at 588* (citing *Cortes v. Baltimore Insular Line, 287 U.S. 367, 1933 AMC 9 (1932)* and *DeZon v. American President Lines, 318 U.S. 660, 1943 AMC 483 (1943)).* Crounse and the Plaintiff's union set forth in the collective bargaining agreement (by implication) what they felt constituted a fair rate of maintenance and cure; i.e., half-pay ("It is agreed that disability payments by the Company . . . made under the provisions of this article shall be considered to be maintenance payments"). The Court shall not now disturb that amount by engaging in "overt legislation of particular dollar figures." *Id.* Therefore,

IT IS ORDERED:

Plaintiff's motion for immediate and retroactive increase in maintenance and cure is granted. Plaintiff's motion for attorneys fees regarding same is denied.