Post-Dispute Arbitration Contract Valid Under Seaman Protection Act

By Justin Kelly, ADRWorld.com

(12.12.2007) New York's highest court recently ruled that the federal policy in favor of arbitration rebuts any notion that an arbitration agreement between an injured seaman and a ship owner entered into after the seaman was injured aboard ship is unenforceable under the Jones Act, a federal statute that authorizes lawsuits for injuries caused by a vessel owner's negligence.

In a Nov. 27 opinion in Nicholas Schreiber v. K-Sea Transportation Corp. et al. (No. 135), the New York Court of Appeals also held that the post-dispute arbitration agreement was separate from the seaman's employment contract. Therefore the arbitration agreement was not exempt from enforcement under Section 1 of the Federal Arbitration Act (FAA).

David M. White, an attorney with White & Associates, P.C., in New York, said the crux of this conflict is a battle of public policy, which the court properly resolved in favor of the agreement's presumptive validity. In his view, the court's decision is consistent with the FAA and nearly 185 years of U.S. Supreme Court precedent.

Nicholas Schreiber was injured while working on a ship owned by K-Sea Transportation. A few weeks after the injury, K-Sea proposed increasing Schreiber's injury payments to two-thirds of his salary if he agreed to arbitrate his claims. Schreiber accepted the proposal.

Over a year later, Schreiber sued K-Sea in state court, asserting Jones Act and other claims. K-Sea responded by filing a demand for arbitration with the arbitration provider specified in the arbitration agreement. Schreiber moved to stay the arbitration while K-Sea cross-moved to compel arbitration.

Schreiber argued that the arbitration agreement with K-Sea was part of his employment contract. Therefore the FAA did not apply because Section 1 of the FAA makes "contracts of employment of seamen" unenforceable.

The trial court rejected this argument. But because it found that K-Sea failed to show that the arbitration agreement was entered into without coercion, the court granted Schreiber's motion to stay the arbitration.

A majority of the Appellate Division, New York's intermediate appellate court, agreed with the trial court that K-Sea had the burden of showing that the arbitration agreement was fair. But it ruled that a hearing was necessary to determine this issue.

A dissenting judge argued that the trial court should have compelled arbitration because Schreiber had the burden of showing that the agreement was unenforceable, but he failed to do so.

The state's top court agreed in part with the majority and in part with the dissent. It ruled that there should be a hearing to determine the enforceability of the post-dispute arbitration agreement but that the burden of proof resided with Schreiber to show that the agreement should not be enforced.

FAA Section 1 Not Applicable

The New York Court of Appeals conclusively found that the post-dispute arbitration agreement in this case was not a contract of employment. Rather it was separate and distinct from Schreiber's employment agreement. Therefore, FAA Section 1 did not apply, making the arbitration agreement enforceable under the FAA.

The court emphasized that the liberal policy in favor of enforcing arbitration agreements applies even to claims arising under protective statutes like the Jones Act. That policy is embodied in Section 2 of the FAA, which provides that a "written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction" is enforceable except on such grounds as exist at law or equity for the revocation of any contract.

Schreiber also argued that Section 5 of the Federal Employers Liability Act (FELA) prohibits enforcement of the arbitration agreement. This provision makes invalid contracts whose purpose or intent is to enable a common carrier to exempt itself from liability under the FELA.

However, the court rejected this argument because the arbitration agreement did not purport to exempt K-Sea from liability. Rather it only required the parties to arbitrate.

The Court of Appeals distinguished *Boyd v Grand Trunk Western R. Co.* (338 U.S. 263, 1949), a case in which the Supreme Court broadly construed Section 5 of the FELA, saying that the policy favoring arbitration was not present in that case.

"To hold, as Schreiber urges, that any agreement to arbitrate a Jones Act claim is void would contradict that policy," the court said. "We therefore conclude that an arbitration agreement is not a forbidden exemption from Jones Act liability."

Finally, the court also rejected the argument that because seamen are "wards of the admiralty," their contracts should be considered invalid if there is any showing that the agreement was unfair, deceptive or coerced. The court called this idea antiquated.

"Surely most seamen today are as intelligent and responsible as most others; the record shows that Schreiber himself writes lucid English, uses a computer, and has been involved in some business ventures," it said.

The court held that the "wards of the admiralty" notion does not outweigh the policy favoring arbitration. For this reason, it found that the burden of showing a defense to enforcement of the arbitration agreement under the FAA rests on the party resisting arbitration and is not shifted simply because the objecting party is a seaman.