

ELPIDIO E. AMON, Plaintiff, vs. NORWEGIAN CRUISE LINES, LTD., Defendants

CASE NO.: 02-21025-CIV-HUCK/TURNOFF

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

2002 U.S. Dist. LEXIS 27064

September 25, 2002, Decided
September 26, 2002, Filed

DISPOSITION: [*1] NCL's Motion to Compel Arbitration GRANTED. All other pending motions denied as moot.

CORE TERMS: employment agreement, seamen, arbitrator, contract of adhesion, arbitration clause, appointed, compel arbitration, employment contract, arbitration, arbitrate, forum selection clause, legal relationship, beneficiary, enforceable, signatory, vessel, seaman, collective bargaining

COUNSEL: For ELPIDIO AMON, plaintiff: James Daryl Gassenheimer, Rachel Sherry Cohen, Mase & Gassenheimer, Miami, FL.

For NORWEGIAN CRUISE LINE LIMITED, defendant: Steven Michael Dunn, Dunn & Johnson, Miami, FL.

JUDGES: PAUL C. HUCK, UNITED STATES DISTRICT JUDGE.

OPINIONBY: PAUL C. HUCK

OPINION: ORDER GRANTING DEFENDANT'S MOTION TO COMPEL ARBITRATION

THIS CAUSE came before the Court on Defendant, Norwegian Cruise Line Limited's ("NCL") Motion to Compel Arbitration. By its Motion, NCL asks this Court to enforce the arbitration clause in its employment contract with the Plaintiff, ELPIDIO A. AMON ("Amon"), to require Amon to arbitrate the claims asserted in this case.

Amon originally filed his suit in state court, asserting claims for Jones Act negligence, unseaworthiness, maintenance and cure and unearned wages arising out of his employment as a seaman aboard one of NCL's vessels. NCL 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 [*2] on the Recognition and Enforcement of Foreign Arbitral Awards ("Convention") 9 U.S.C. §§ 201 *et. seq.* NCL now seeks to compel arbitration pursuant to the Convention.

A party's request of the district court for an order requiring arbitration of a dispute 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 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). Here NCL's request for arbitration must be granted because the subject agreement meets all four criteria.

At the time that Amon, a Philippine citizen, suffered the injuries alleged in his suit, he was working for NCL as a crewmember under the terms of a standard Philippine Employment Administration (POEA) Contract of Employment ("Employment Agreement"). Amon's employment with NCL pursuant to the Employment Agreement constitutes a commercial legal relationship. [*3] *Francisco*, 293 F.3d at 273-74. In paragraph 2, the

Employment Agreement provides that its terms are to be observed in accordance with Department Order No. 4, series 2000. Order No. 4 incorporates the Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going vessels ("Standard Terms"). Amon's Employment Contract provides, by virtue of the incorporation of the Standard Terms, that:

SECTION 29. DISPUTE SETTLEMENT PROCEDURES

In cases of claims and disputes arising from this employment, the parties covered by a collective bargaining agreement shall submit the claim or dispute to the original and exclusive jurisdiction of the voluntary arbitrator or panel or arbitrators ... If there is no provision as to the voluntary arbitrators to be appointed by the parties, the same shall be appointed by the parties, the same shall be appointed from the accredited voluntary arbitrators of the National Conciliation and Mediation Board of the Department of Labor and Employment.

There has been no appointment of voluntary arbitrators to resolve this dispute. Therefore, by virtue of the Standard Terms, Amon's Employment Agreement provides [*4] that claims arising from the agreement are submitted to the jurisdiction of arbitrators appointed from the National Conciliation and Mediation Board of the Philippine Department of Labor and Employment. The Philippines is a signatory to the Convention.

Based on the foregoing, it is apparent that, absent a valid reason not to enforce the Employment Agreement, the Employment Agreement calls for mandatory arbitration of Amon's claim against NCL and that NCL is entitled to enforce its right to arbitrate.

In an effort to avoid his Employment Agreement's arbitration clause, Amon contends that his Employment Agreement is an invalid contract of adhesion. Amon argues that as a vulnerable seaman from a third-world country, desperate for employment, he was subjected to NCL's overreaching in requiring him to sign the Employment Agreement as presented, without any ability to negotiate its terms. In support of his argument, Amon cites a number of cases wherein the courts, recognizing that seamen often have unequal bargaining power and often are at the mercy of ship owners, have been especially protective of seamen's rights. Amon argues that courts often elect not to enforce agreements which attempt [*5] to deprive seamen of their legal rights because they are contracts of adhesion.

However, that is not the agreement before the Court. The record does not support Amon's contention that the Employment Agreement he signed is a contract of adhesion or unreasonable under the circumstances. To the contrary, it appears that his 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 Amon, are hired by foreign vessel operators, such as NCL. 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 foreign employers' dictates. Moreover, the standard POEA Employment Agreement is ultimately the product of the POEA. 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); [*6] *Lejano v. K.S. Bandak*, 705 So.2d 158, 167-68 (La. 1998). In fact, NCL has established that, under Philippine law, NCL is prohibited from hiring Philippine seamen except through the POEA. See *Lejano*, 705 S.2d at 168. While Amon, standing alone has little individual bargaining power, he is, as are all other Philippine seamen, the beneficiary of the collective bargaining power, he is, as are all other Philippine seamen, the beneficiary of the collective bargaining power represented in the Tripartite Technical Working Group. Consequently, the Court finds that the Employment Contract is not a contract of adhesion and its arbitration clause should be enforced. See *Marinechance Shipping, Ltd. v. Sebastian*, 143 F.3d 216, 220 (5th Cir. 1998) (enforcing the forum selection clause in a standard POEA approved employment contract); *Lejano*, 705 So.2d at 168-69 (finding that seamen's standard POEA contract, including its forum selection clause, enforceable and not a contract of adhesion where it was bargained for and approved by the POEA).

The Court concludes that Amon's Employment Agreement, including its arbitration clause, is [*7] enforceable and that Amon must arbitrate the claims he raises here as required by his Employment Agreement. Accordingly, NCL's Motion to Compel Arbitration is GRANTED. Because Amon's claims will not be 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 25th day of September, 2002.

PAUL C. HUCK

UNITED STATES DISTRICT JUDGE

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