

IN THE SUPREME COURT OF SEYCHELLES

(ADMIRALTY JURISDICTION)

CASE No. CS.263 OF1996

THE CAPTAIN, OFFICERS AND CREW OF THE FISHING VESSEL
"ARISTOTEL"

PLAINTIFFS

VERSUS

THE OWNERS OF THE FISHING VESSEL "ARISTOTEL"
MOSCOW NORODNY BANK LTD

DEFENDANTS
INTERVENOR

CASE NO. C.S. 262 OF 1996

THE CAPTAIN, OFFICERS AND CREW OF THE FISHING VESSEL
"RODIOS"

PLAINTIFFS

VERSUS

THE OWNERS OF THE FISHING VESSEL "RODIOS"
MOSCOW NORODNY BANK LTD

DEFENDANTS
INTERVENOR

CASE NO. C.S. 264 OF 1996

THE CAPTAIN, OFFICERS AND CREW OF THE FISHING VESSEL
"DEMOSFEN"

PLAINTIFFS

VERSUS

THE OWNERS OF THE FISHING VESSEL "DEMOSFEN"
MOSCOW NORODNY BANK LTD

INTERVENOR

Mr. K.B. Shah for the Plaintiffs
Defendant absent/unrepresented
Miss K. Domingue representing the Intervenors

JUDGMENT

Perera J

Three actions *in rem* were instituted by the captains, officers and crew of fishing vessels "Aristotel" "Rodios" and "Demosfen", against the owners of these vessels, claiming wages, repatriation costs and "catching bonuses". The total claims as per the statements of claims filed are as follows-

<u>Vessel</u>	<u>Wages</u> (in US Dollars)	<u>Catching bonus</u> (in US Dollars)	<u>Repatriation costs</u> (in US Dollars)
"Aristotel"	99,447	199,403	28,992
"Rodios"	102,930	184,788	30,804
"Demosfen"	107,893	188,532	25,368

These claims are pursued by F.C.F. Fishery Company Ltd of Taiwan, the charterers, upon a power of Attorney dated 1st July 1996 (P3) granted by fifty officers and crew of the three vessels. The three cases were consolidated for Convenience. The matter presently before Court is the entering of default judgment consequent to the defendants defaulting filing an acknowledgement of service. Apart from that default, Moscow Narodny Bank sought intervention as mortgagees of the said vessels.

Leave to intervene was granted on 23rd October 1996 with a condition that the intervenor bank files a defence pursuant to Or. 75 Rule 17(4) on the plaintiffs within two weeks. The intervenor failed to do so, but on 4th November 1996 filed an application under Or 75 Rule 13(4) for release from arrest of the three vessels, which was done on 8th November 1996, upon a bank guarantee being furnished. Thereupon on 10th December 1996, the intervenor applied for a stay of proceedings in the three cases on the ground of *forum non conveniens*. This Court dismissed that application on 3rd July 1997. The appeal to the Seychelles Court of Appeal was also dismissed on 9th April 1998. That Court held in *obiter* that as neither the owners of the vessels nor the intervenor had filed defences, the plaintiffs were entitled to apply for default judgment.

Subsequently, an application by the Intervenor to file a defence out of time was dismissed by this Court on 19th November 1998. An appeal against that order to the Seychelles Court of Appeal was not prosecuted by the Intervenor bank failing to furnish security for costs within the stipulated period. Consequently the plaintiffs filed motions dated 9th December 1998 for judgment by default. In respect of the vessel "Aristotle" a sum of US dollar 384, 346 was claimed being outstanding wages and repatriation costs and interest thereon. Subsequently on 1st December 2000, the capital sum was amended to US dollar 393, 096.00. In respect of the vessel "Demosfen"

a sum of US dollar 322, 393 was claimed, and in respect of the vessel "Rodios" a sum of US dollar 382,985 was claimed.

These claims were purportedly, made under Section 1 (l) (n) of Part 1 of the Admiralty Jurisdiction Rules (S.I. 60 of 1976) (Cap 52), which is as follows-

"(n) Any claim by a master or member of the crew of a ship for wages and any claim by or in respect of a master, or member of the crew of a ship for any money or property which, under any of the provisions of the Merchant Shipping Acts 1894 to 1954, is recoverable as wages or in the Court and in the manner in which wages may be recovered"

By virtue of Section 3, the Jurisdiction of the Supreme Court may in all cases be invoked by an action *in personam*. However Sub Section (2) provides that in cases mentioned in paragraphs (a) to (c) and (2) to Sub Section 1 of Section 1, Jurisdiction may be invoked by an action *in rem* against the ship or property in question. Hence claims for wages, under paragraph (n) should generally be brought as actions *in personam*. However, Sub Section (6) is as follows-

"(6) Notwithstanding anything in the preceding provisions of this Section, the Admiralty Jurisdiction of the Supreme Court of Seychelles shall not be invoked by an action in rem in the case of any such claim as is mentioned in paragraph (n) of Sub Section 1 of Section one of this Act, unless the claim relates wholly or partly to wages (including any sum allotted out of wages or adjudged by a Superintendent to be due by way of wages).

The Merchant Shipping Act, 1905 (UK) defines "wages" as including "emoluments". It was held in the case of ***the Elmvile (No. 2) (1904) Probate Div. 422*** and in ***Shelford v. Mosey (1917) 1. KB. 523*** that a "bonus" was part of emoluments and was therefore included in "wages". Accordingly, in the present cases, the plaintiffs could claim the wages and "catching bonuses"

under paragraph (n) aforesaid. As regards "repatriation costs", paragraph (0) of Section 1 (1) provides for –

"(0) Any claim by a master, shipper, charterer or agent in respect of disbursements made on account of a ship.

It was held in the case of *the Wesport* (1966) 1. *Lloyd's Reports* 342 that "fees charged by Agents for their services may be considered as disbursements". As "repatriation costs" cannot fall under paragraph (n) as money "recoverable as wages", they may fall under paragraph (0) as disbursements made on account of the ship. However such disbursements can ordinarily be claimed by the master, shipper, charterer or Agent who expended them. In the present case, Admittedly a company known as Amanda International Ltd, the operators of the said three vessels entered into an "enlistment contract" with the master and crew of those vessels on 28th April 1995.

In these contracts, "Chops" were placed by 14 persons for enlistment in the vessel "Demosfen" 19 persons for enlistment in the vessel "Aristotel" and 17 persons for enlistment in the vessel "Rodios". Standard clauses of those contracts were –

1. *Contract limited for 12 consecutive months with the right of the company to extend or reduce the period according to the requirements of the vessels.*
2. *The basic wage payable in US dollars in "three month increments", first day after the third month.*
3. *Two months bonus payment at the end of the period of enlistment, and a further two month pay if the company extends the period.*
4. *"Catch bonus" according to individual co-efficient of each employee based on 40% of direct gross operating income payable after termination of enlistment period.*

Amada International Ltd has certified that the three vessels were operating from 28th April 1995 to 28th May 1996 (*exhibit P5, P6 & P7*). Hsia Ajenc (Pw1), the navigation officer of the vessel "Demosfen" testified that his monthly salary was US dollar 3533 and that he received payment only up to 28th April 1996. Although the vessels were under arrest from 27th May 1996, the witness and the crew of all the vessels were repatriated from Seychelles on 3rd July 1996. Hence he is entitled to wages only for 2 months. As the enlistment period ended on 12th April 1996 he would be entitled to two months bonus payment. Further as there was a *de facto* extension of the enlistment period thereafter, he would be entitled to a further bonus of two months payment. This would be the basis of payment for the rest of the crew in all three vessels, depending on their respective wages and the co-efficient they are entitled to from the catching bonus.

Evidence was also given by Miao Yen Tai (Pw2) the Fishing Master of the vessel "Aristotel", Fuliang Sang (Pw3) the Manager of FCF Fishery Corporation in Bangkok and Wu Teh-Teh (Pw1), the former General Manager of Amada International in Taiwan.

These witnesses corroborated the evidence of Hsia A Jen regarding the arrears of wages, the bonuses, the "catching bonus", and the repatriation costs incurred. As regards the "catching bonus", Amada International Ltd has certified that the 40% of US dollar 472,830 shared by the crew amounted to US dollar 189,132. According to the evidence in the case, the co-efficient for the Fishing Master is 12 while for a Navigation Officer it is 5. The Chief Mate gets 4, the Deck Officer 3, the Translator 2 and the rest of the Sailors only 1.

In the statement of claim, the amount claimed as repatriation costs per person is US dollar 1812. According to the evidence in the case, these costs were paid by the families of the crew through the F.C.F. Fishery Company in Taiwan, and Aquarius Shipping Agency Ltd in Seychelles

The crew of the three vessels were on identical terms of contract. There is proof that 17 members of the vessel "Aristotel", 17 members of "Rodios" and 14 members of "Demosfen" left by the Air Seychelles Flight to Singapore on 3rd July 1996. (*exhibit P8*). The total cost of the air fares was SR. 175,000. The period of enlistment therefore ended on 3rd July 1996.

On the basis of the oral and documentary evidence, the claims are settled as follows-

THE VESSEL "ARISTOTEL"

<u>Post</u>	<u>Monthly Salary (in US dollar)</u>	<u>Salary due (in US dollar) (2 months 2 months bonus at end of enlistment period 2 months bonus for extension of contract)</u>	<u>Catching bonus (in US dollars)</u>	<u>Repatriation Costs (in US dollar)</u>
1. Fishing Master	4511	27,066	5,217	1812
2. Navigation Officer	3533	21,198	27,174	1812
3. Chief Mate	3044	18,264	21,139	1812
4. Deck Officer	1631	9,786	16,304	1812
5. Translator	675	4050	9,783	1812
6. 11 Sailors	438x11	<u>28908</u>	<u>59,785</u>	<u>19932</u>
		<u>109,272</u>	<u>199,702</u>	<u>28992</u>

Total = US \$ 337,966

THE VESSEL "RODIOS"

	<u>Monthly Salary (in US dollar)</u>	<u>Salary Due (including bonuses)</u>	<u>Catching Bonus</u>	<u>Repatriation Costs</u>
1. Fishing Master	4511	28,116	65,217	1812
2. Chief Mate	3044	18,974	21,139	1812
3. Deck Officer	2283	14,430	16,304	1812
4. 2 nd Mate	1631	10,166	10,870	1812
5. 12 Sailors	438x12	31,716	65,220	21744
6. Cook	438	<u>2730</u>	<u>5,435</u>	<u>1812</u>
		<u>106,132</u>	<u>184,185</u>	<u>30,804</u>

Total = US \$ 321,121

THE VESSEL "DEMOSFEN"

	<u>Monthly Salary</u>	<u>Salary Due (including bonuses)</u>	<u>Catching Bonus</u>	<u>Repatriation Costs</u>
1. Fishing Master	4511	27,066	65,217	1812
2. Navigation Captain	3533	21,198	27,174	1812
3. Chief Mate	3044	18,264	21,139	1812
4. Deck Officer	2283	13,698	16,304	1812
5. Translator	675	4050	9,783	1812
6. 9 Sailors	438	<u>23,652</u>	<u>48,915</u>	<u>16,308</u>
		<u>107,928</u>	<u>188,532</u>	<u>25,368</u>

Total = US \$ 321,828

Judgment is accordingly entered in favour of the plaintiffs as against the owners, charterers and operators, as follows-

1. *The captain and crew of fishing vessel "Aristotel" (case no 263/96), a total sum of US dollars 337,966 together with interest and costs.*
2. *The captain and crew of fishing vessel "Rodios" (case no. 262/96) a total sum of US dollars 321,121 together with interest and costs.*
3. *The captain and crew of fishing vessel "Demosfen" (case no. 264/96), a total sum of US dollar 321,828 together with interest and costs.*

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A.R.PERERA

JUDGE

Dated this 29th day of November 2004