

Federal Court Enforces Foreign Arbitral Award Resolving Jones Act Seaman's Personal Injury Claim

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The U.S. District Court for the Western District of Washington has enforced a settlement between a Jones Act seaman and his employer for maintenance and cure payments, pursuant to the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention"). *Castro v. Tri Marine Fish Co., LLC*, 2017 WL 3262473 (W.D. Wash. July 31, 2017). Because the employment contract between the employer and the Jones Act seaman calling for arbitration satisfied all the requirements of an arbitration agreement under the New York Convention and was not contrary to public policy, it was irrelevant that it called for arbitration in a nation other than the one where the settlement of the personal injury claim was formalized. Despite the Jones Act seaman's status as a ward of admiralty, the court found that the arbitral award approving the settlement did not offend the United States' "most basic notions of morality and justice." For that reason, according to the court, the award "can and will be enforced."

Plaintiff Michael Castro, a citizen of the Philippines, signed an employment contract with Tri Marine Fish Co. that contained a clause calling for arbitration of any disputes in American Samoa. Two weeks later, he suffered torn knee ligaments while working on Tri Marine's fishing vessel. Tri Marine transported him to the

Philippines, made arrangements for his medical care, and paid him maintenance and cure. Castro negotiated, and received, an advance on any final settlement amount with Tri Marine. The advance agreement provided that Castro would be bound by the arbitration agreement in his employment contract.

Castro and Tri Marine later entered into a final settlement pursuant to which he received a lump sum payment. During the settlement negotiations, Castro received a document explaining his rights as a seafarer and the extent of the waiver he would be agreeing to; had the documents translated into his native language, Tagalog; and was given the opportunity to ask questions. Notwithstanding the employment contract calling for arbitration in American Samoa and the advance agreement referring back to the employment contract, Castro and the claims executives who negotiated the release then took the settlement documents to an accredited Maritime Voluntary Arbitrator at the Philippines' Office of the National Conciliation and Mediation Board. The arbitrator explained to Castro the legal consequences of the settlement in both English and Tagalog, including the permanent waiver provision. Castro told the arbitrator that he understood the implications of the settlement agreement. The arbitrator then entered an order finding that the signed release and compromise were "not contrary to law, morals, good customs, and public policy." The arbitrator dismissed the case between the parties.

Nearly three years later, Castro sued Tri Marine in Washington state court, asserting claims for negligence, unseaworthiness, maintenance and cure, and statutory wages. Tri Marine removed the suit to the Western District of Washington and moved to enforce the arbitral award to which it and Castro had agreed in the Philippines. The court noted that a federal statute, specifically 9 U.S.C. § 7, provides that a reviewing court shall confirm an arbitral award unless it is subject to one of seven enumerated grounds for refusal: (1) incapacity; (2) lack of proper notice; (3) the award exceeds the scope of the arbitration agreement; (4) composition of the arbitral authority did not comply with the parties' agreement or the law of the place of the arbitration; (5) the award is not yet binding; (6) the subject matter is incapable of arbitration in the country where enforcement is sought; or (7) enforcement would be contrary to the public policy of that country. Castro challenged the award on six grounds, all of which the court rejected. We discuss Castro's defenses below.

Lack of jurisdiction; scope of the arbitration agreement; selection of the arbitrator:

Castro argued that the settlement agreement and arbitral award failed on each of these grounds because they had been formalized by a Filipino arbitrator, notwithstanding that Castro's employment contract called for arbitration in American Samoa. The court disagreed. The court noted that the employment contract and the written receipt for the cash advance providing that Castro agreed to be bound by the arbitration provision in the employment contract qualified as "agreements in writing" to arbitrate and therefore were subject to the New York Convention. Acknowledging that the arbitration had not occurred in American Samoa, the court nonetheless noted that arbitration agreements are subject to general contract law principles. Accordingly, because Castro had accepted the benefits of the arbitral award—i.e., his final maintenance and cure payment—in the Philippines, he was equitably estopped from arguing that the arbitration was invalid because it did not occur in American Samoa. The court determined that it had jurisdiction to enforce the award.

Coercion: citing Supreme Court precedent holding that seamen's releases are subject to special scrutiny because seamen are "wards of admiralty," Castro argued that he had not entered into the release agreement freely and voluntarily. The court found that Tri Marine had met its burden to prove otherwise. Tri Marine produced testimony from multiple witnesses confirming Castro had been informed of his rights and the consequences of the waiver, both orally and in writing, and in English and Tagalog. Castro affirmed that he understood, and ultimately received an award that exceeded the payment schedule amount for seamen's disability allowance claims in the Philippines given the nature of his injuries.

Lack of notice: Castro said he did not receive adequate notice that the settlement proceedings in the Philippines were "arbitration proceedings." But the court noted that "this defense applies where a party is unable to participate meaningfully or in the proceedings at all." Because Castro had negotiated the settlement in person and appeared in person before the arbitrator, this defense was inapplicable, regardless of whether he knew the process was an "arbitration proceeding."

Public policy: Castro argued that the arbitral award violated public policy because it did not comply with Jones Act requirements granting special legal protection to seafarers. The court noted that this defense is narrow and applies only where enforcing an award would violate the forum state's "most basic notions of morality and justice." The court also observed that provisions of the Federal Arbitration Act exempting seamen's employment contracts from arbitration do *not* apply to

agreements that are subject to the New York Convention. Ultimately, the arbitral award did not violate public policy because Castro had received most of the benefits afforded under U.S. maritime law, including transportation to his home country, medical care, maintenance and cure payments, and robust notice of his rights during the settlement process. Castro complained that the proceedings overly emphasized the Philippines disability payment schedule, but the court observed that a Filipino regulatory agency had created those guidelines to protect the interest of Filipino citizens. And, in any event, Castro was paid more than twice the prescribed amount under the guidelines.

As we have discussed in a prior post, the New York Convention is a powerful tool for the enforcement of international arbitration awards. The *Castro* decision is an example of the broad reach of the New York Convention and the considerable deference that U.S. courts will give to agreements that fall within the Convention. *Tri Marine* also appears to have benefited from a well-developed record that showed ample consideration for the rights of the seaman during the settlement process, and a settlement payment that exceeded local standards.