[2024 Gib LR 472]

AZHARI and OTHERS (masters and crew) v. PREVIOUS OWNERS OF M.V. "MED STAR"

SUPREME COURT (Happold, J.): August 21st, 2024

2024/GSC/029

Shipping—seamen—wages—court can determine claims by master or crew for wages under Admiralty jurisdiction (Senior Courts Act 1981)—wages are payments made in consideration of service—contractual entitlements—claim for compensation for unfair dismissal pursuant to Moroccan Labour Code, and masters' and officers' claim for notice period of dismissal, not claims for wages

The claimants applied for judgment in default for wages.

M.V. "Med Star" was arrested in December 2023, judgment in default was granted and the sale of the vessel ordered in February 2024. The necessary sums were deposited with the Admiralty Marshal to cover the masters' and crew's unpaid wages for the period September 1st, 2023 to December 31st, 2023. On April 11th, 2024, Dudley, C.J. ordered the masters' and crew's wages for the period January 1st, 2024 to April 13th, 2024, as well as repatriation expenses, to be paid as the Marshal's expenses of the arrest. Completion of the sale of the vessel took place on April 12th, 2024 and the masters and crew were paid off and left the vessel on that day. The proceeds of the sale were held by the Admiralty Marshal.

Dudley, C.J.'s order of April 11th, 2024 was expressly without prejudice to any claims filed by the master and crew for "compensation, wrongful dismissal, damages or otherwise . . ." The claimants applied for wages in the sum of MAD5,680,903.43 plus interest pursuant to the court's Admiralty jurisdiction.

The court's Admiralty jurisdiction was coterminus with that of the High Court of England and Wales. Section 20 of the Senior Courts Act 1981 provided:

> "(1) The Admiralty jurisdiction of the High Court shall be as follows, that is to say—
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> (a) jurisdiction to hear and determine any of the questions and claims mentioned in subsection (2) . . .
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> (2) The questions and claims referred to in subsection (1)(a) are—
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> . . .

(o) any claim by a master or member of the crew of a ship for wages (including any sum allotted out of wages or adjudged by a superintendent to be due by way of wages) . . ."

The claimants' claim was based on Moroccan law as the law governing the masters' and crew's employment. The claim had three bases: (a) notice period of dismissal (this claim was only made on behalf of the masters and the ship's officers). The basis of the claim was art. 8 of the Moroccan Collective Agreement for Merchant Navy Officers as incorporated into the masters' and officers' contracts of employment; (b) compensation for unfair dismissal pursuant to arts. 51 and 53 of the Moroccan Labour Code; and (c) damages for unfair dismissal pursuant to art. 41 of the Moroccan Labour Code.

The claimants submitted that (a) the court should interpret "wages" (which included "emoluments" (Merchant Shipping Act 1935, s.2)) liberally having regard to "the changed and changing conditions of seamen's employment"; (b) "wages" included damages for wrongful dismissal, which was what was claimed under the second and third bases of claim; and (c) in relation to the masters' and officers' claim for severance pay, the claimants distinguished the situation in *The Tacoma City* from the present case. In the former case, the claims for severance pay were made as a result of the insolvency of the shipowner, so that the officers' services had become redundant to the needs of the group of companies as a whole. In the present case the claimants' service was to the particular ship that was redundant but not their service to the ship owner, who operated other vessels.

The mortgagee submitted that the masters and crew had already received their wages. What they were now seeking did not relate to their service to the vessel and therefore did not constitute "wages" but rather compensation for loss of their employment.

Held, judgment as follows:

The claim was not a claim for wages under s.20(2)(o) of the Senior Courts Act 1981 and it was therefore outside the court's Admiralty jurisdiction. Wages were payments made to a seaman in consideration for his services and the value of those services. They were contractual entitlements. Damages for wrongful dismissal were classified as wages because they were damages for breach of contract. The claimants' second and third bases of claim were not contractual in nature but statutory claims founded on the Moroccan Labour Code. These claims were not, therefore, claims for wages. The masters' and officers' claim for their notice period of dismissal was also not a claim for wages. The notice period of dismissal to which the masters and officers were entitled was akin to redundancy pay paid not in consideration of their services to the ship but as compensation for their loss of employment. The claimants' application for judgment in default would be refused (paras. 17–27).

Cases cited:
(1) *Arosa Star*, *The*, [1959] 2 Lloyd's Rep. 396, considered.
(2) *Blessing*, *The* (1877), 3 P.D. 35, considered.
(3) *Halcyon Skies*, *The*, [1977] Q.B. 14; [1976] 1 All E.R. 856, referred to.
(4) *Tacoma City*, *The*, [1991] 1 Lloyd's Rep. 330, followed.

Legislation construed:
Merchant Shipping Act 1935, s.2: The relevant terms of this section are set out at para. 13.
s.54: The relevant terms of this section are set out at para. 9.

Senior Courts Act 1981 (c.54), s.20: The relevant terms of this section are set out at para. 8.

I. Watts and *A. Seruya* (instructed by Massias & Partners) for the claimants;
L. Keane (instructed by Signature Litigation) for Attijariwafa Bank.

1 **HAPPOLD, J.:**

Introduction and chronology

This is my judgment on an application for judgment in default by the claimants, the masters and crew of the vessel M.V. "Med Star," claiming for wages in the sum of MAD5,680,903.43 (£451,763.36) plus interest pursuant to this court's Admiralty jurisdiction.

2 If successful in their application, the claimants intend to assert a maritime lien over the proceeds of sale of the vessel which, according to the order of priorities as determined by Restano, J. in his order of July 30th, 2024 in Claim No. 2023/ADM/005, would be ranked above Attijariwafa Bank's interest as mortgagee.

3 Claim No. 2023/ADM/005 was an *in rem* claim brought by Gibdock Ltd. The vessel was arrested on December 15th, 2023. Judgment in default was granted and sale of the vessel ordered by Restano, J. on February 8th, 2024.

4 On March 13th, 2024, Far East P&I Pte Ltd. was added to the proceedings pursuant to CPR, 61.8(7) and agreed to deposit the necessary funds with the Admiralty Marshal to cover the masters' and crew's unpaid wages for the period September 1st, 2023 to December 31st, 2023. By an order of Dudley, C.J. of April 11th, 2024, the masters' and crew's wages for the period January 1st, 2024 to April 13th, 2024, as well as repatriation expenses, were to be paid as the Marshal's expenses of the arrest.

5 Completion of sale of the vessel took place on April 12th, 2024 and the masters and crew were paid off and left the vessel that day prior to its delivery to the purchaser. The proceeds of sale of the vessel are currently held by the Admiralty Marshal.

6 On June 18th, 2024, the mortgagee obtained summary judgment in its claim 2024/ADM/005 in the sum of MAD44,087,024.94 (equivalent to £3,488,221.57 as of May 29th, 2024) plus interest at the judicial rate of 8% *per annum* from April 16th, 2024. The mortgagee was permitted to claim recovery of its judgment debt against the proceeds of sale of the vessel.

7 Dudley, C.J.'s order of April 11th, 2024 was expressly without prejudice to any claims filed by "the Master and Crew . . . for compensation, wrongful dismissal, damages or otherwise as they may be advised." On May 22nd, 2024, the claimants filed and served this claim. The mortgagee was served because it had filed a caution against the release of the vessel. I heard Miss Keane, counsel for the bank as an interested party without requiring the bank formally to intervene, on the ground that the masters and crew had been permitted to do likewise at the priorities hearing on July 30th, 2024.

The issue to be decided

8 This court's Admiralty jurisdiction is coterminus with that of the High Court of England and Wales, as set out in s.20 of the Senior Courts Act 1981. Section 20 provides, in relevant part, that:

> "(1) The Admiralty jurisdiction of the High Court shall be as follows, that is to say—
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> (a) jurisdiction to hear and determine any of the questions and claims mentioned in subsection (2);
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> . . .
>
> (2) The questions and claims referred to in subsection (1)(a) are—
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> . . .
>
> (o) any claim by a master or member of the crew of a ship for wages (including any sum allotted out of wages or adjudged by a superintendent to be due by way of wages) . . ."

In other words, albeit that this is a claim brought by the masters and crew of the vessel, if it is not a claim for "wages" within the meaning of that term for the purposes of s.20(2)(o), it is not a claim within this court's Admiralty jurisdiction.

9 If summary judgment were to be given for claimants, it is uncontested that they would have a maritime lien to the extent of the judgment debt over the proceeds of sale of the vessel. A maritime lien covers all seamen's wages claims (see *The Halcyon Skies* (3) ([1977] 1 Q.B. at 31)), with a master having "the same rights, liens and remedies for the recovery of his wages as a seaman has" (s.54 of the Merchant Shipping Act 1935). It therefore seemed appropriate to determine the question of whether the

claimants' claim was for "wages" as a preliminary issue, as if this court does not have jurisdiction over the claim it must fail and summary judgment cannot be entered.

10 The court can determine such claims regardless of the nationality of the vessel or its owner (see s.20(7) of the Senior Courts Act 1981) or of its master and crew, and regardless of the law governing the latter's employment. In determining what "wages" are, however, the court applies the *lex fori*, that is the law of Gibraltar: see *The Arosa Star* (1) ([1959] 2 Lloyd's Rep. at 402).

11 The claimants' claim is based on Moroccan law as the law governing the masters' and crew's employment, Morocco being the flag State of the vessel at the relevant times and the masters' and crew's contracts of employment making specific reference to the Moroccan Merchant Marine Rules. The claimants provided an expert report on Moroccan law by Dr. Fadou Dabhi. Miss Keane objected to the report's admissibility and argued that, even if admissible, I should give it no weight. I admitted it, however, *de bene esse* in order to decide this issue.

12 As described in paras. 4 and 5 above, the claimants (or, at least, all but two of them: see para. 28 below) have been paid their contractual wages up until the date of their repatriation. In these proceedings, the claimants make further claims on three bases, as set out at paras. 17–19 of the particulars of claim and further described in Dr. Dabhi's expert report.

(a) Notice period of dismissal (this claim is only made on behalf of the masters and the ship's officers). The basis of this claim is art. 8 of the Moroccan Collective Agreement for Merchant Navy Officers as incorporated into the masters' and officers' contracts of employment.

(b) Compensation for unfair dismissal pursuant to arts. 51 and 53 of the Moroccan Labour Code.

(c) Damages for unfair dismissal pursuant to art. 41 of the Moroccan Labour Code.

Although Mr. Watts, in argument, suggested that the claimants' rights under the Moroccan Labour Code might have been incorporated into their contracts of employment, I do not think this can be right. Certainly, it seems in contradiction to Dr. Dabhi's report, which states that art. 41 of the Moroccan Labour Code cannot be waived by contract, and that employees are entitled to rely on the most favourable provisions provided in their contract of employment, any applicable collective bargaining agreement or "the internal regulations," which I assume means the Moroccan Labour Code.

The parties' arguments

13 The claimants' arguments are threefold. First, the court should interpret the term "wages" (which term includes "emoluments": see s.2 of the Merchant Shipping Act 1935) liberally having regard to "the changed and changing conditions of seamen's employment" (*The Arosa Star* (1) ([1959] 2 Lloyd's Rep. at 402)). As Worley, C.J. said (*ibid.*, at 402–403):

> ". . . [T]o-day, few are serving under the old simple mariner's contract for a specified voyage, and that, as a consequence of changed conditions and modern conceptions of welfare, most seamen are engaged on special contracts which provide for notice of termination of service, paid leave, sick leave, and so on, which can be and are properly regarded as additions to wages, additions which the mariner can 'be fairly said to have earned by his services'."

14 The claimants' second point is that the term "wages" includes damages for wrongful dismissal, which is what is claimed under the second and third bases of claim. In this regard I was referred to what is said by Dillon, L.J. in *The Tacoma City* (4) ([1991] 1 Lloyd's Rep. at 347) ("the lien for wages covers damages for wrongful dismissal"), as well as to various earlier judgments and passages from practitioner works, in particular Meeson's *Admiralty Jurisdiction and Practice* (1993), which at 43 lists "damages for wrongful dismissal" as recoverable as wages, giving the authority of *The Blessing* (2).

15 The claimants' third point was made specifically in relation to the masters' and officers' claim for severance pay. The claimants distinguished the situation in *The Tacoma City* from that in the instant case. In the former case, the claims for severance pay were made as a result of the insolvency of the shipowner, so that the officers' services had become redundant to the needs of the group of companies as a whole. In the instant case, it was argued, the claimants' service was to the particular ship that was redundant but not their service to the shipowner, who operated other vessels. I heard no evidence on this point (although Mr. Watts tendered Captain Azhari as a witness) but for the purpose of argument assume it to be correct. Given this, the masters' and officers' claims for their notice period of dismissal related to their service to the ship.

16 Miss Keane, for the mortgagee, argued that the masters and crew had already received their wages. What they were seeking in their claim did not relate to their service to the vessel and therefore did not constitute "wages" but rather compensation for loss of their employment.

My conclusions

17 I agree with the claimants' first general point. As Ralph Gibson, L.J. said in *The Tacoma City* (*ibid.*, at 344):

> "The cases show a development of the concept of 'wages' based upon a liberal approach and a determination to do what is fair and just in order to secure the seaman what he has earned by service to and in the ship."

Moreover, as Ralph Gibson, L.J. also pointed out, that the security provided to mortgagees might be diminished by categorizing a particular claim as a claim for seamen's wages is not a relevant consideration when deciding such claims. But the term "wages" must have its limits.

18 As regards the second point, looking at the cases when damages for wrongful dismissal were awarded claims for wages, with the exception of the early case of *The Blessing*, they involve the payment of wages in lieu of notice (see *The Arosa Star* ([1959] 2 Lloyd's Rep. at 401); and *The Tacoma City* ([1991] 1 Lloyd's Rep. at 332)). In other words, what was awarded was wages for the period of notice to which crew members were entitled under their contracts of employment. So, in *The Tacoma City* it was accepted that the officers with notice periods in their contracts were entitled to payment of their wages in lieu of notice but the mortgagee successfully resisted such claims by officers with contracts lacking such terms because the Court of Appeal of England and Wales held that, that in the absence of express provision, no such a term could imply. Indeed, it is trite law that a claim for wrongful dismissal is a claim in contract.

19 As for *The Blessing*, there the contract was a special contract for a specific period of time; the master had been wrongfully dismissed, and the Admiralty Judge, Sir Robert Phillimore, was clear that it was a claim for wages due under the contract. As Dillon, L.J. explained in *The Tacoma City* ([1991] 1 Lloyd's Rep. at 347):

> ". . . [D]amage for wrongful dismissal are founded on the wages and other emoluments which the claimant would have earned on the ship, but for the wrongful act of the shipowner, or the master on behalf of the owner [*sic*]."

Damages for wrongful dismissal are considered wages because they are damages for breach of a seaman's contract of employment.

20 The claimants' third point relates to the Court of Appeal of England and Wales's judgment in *The Tacoma City* (4). The Court of Appeal upheld Sheen, J.'s conclusion that none of the plaintiffs was entitled to severance pay (see Ralph Gibson, L.J. in *The Tacoma City* ([1991] 1 Lloyd's Rep. at 342)) but all three lord justices went on to discuss what was meant by the term "wages" and why the severance pay claimed by the appellants did not constitute such. Although strictly speaking *obiter*, that analysis took place in consideration of the earlier case law (including the judgments in *The Blessing* (2), *The Arosa Star* (1), and *The Halcyon Skies* (3)) and I give it great weight.

21 At first instance, Sheen, J. had stated that the severance pay—

> "is compensation for losing employment and not part of the emoluments of employment. It is not paid for services rendered but because services are no longer required. Therefore, severance pay is not 'wages' for the purposes of a maritime lien."

as per the summary given by Ralph Gibson, L.J. at *The Tacoma City* (*ibid.*, at 333).

22 According to Ralph Gibson, L.J. (*ibid.*, at 345):

> "All the additions to wages, payable under special contracts, 'which the mariner can be fairly said to have earned by his services' (per Worley C.J. in The Arosa Star at p. 403) which have been accepted as giving rise to liens, have been claims which can be regarded as items in the quantification of the value of the current service in the ship by the seafarer . . .
>
> Thus a pension, or a medical severance payment, or a redundancy payment payable under the redundancy agreement included in the NMB agreements, are not part of the value of the current service of the seafarer but are sums which in substance are to be paid in respect of earlier service in the same or different ships.
>
> I have no doubt that severance payments under the NMB agreement are outside the concept of 'wages' and provide no basis for maritime liens."

23 Leggatt, L.J. took a different route but came to the same conclusion (*ibid.*, at 346):

> "Wages constitute remuneration for services. Since wages include 'emoluments', they are not confined to periodic payments. In its natural meaning of severance payment does not constitute remuneration, because it is not paid for services rendered or for services that would have been rendered, but for leave, sickness, wrongful dismissal or in lieu of notice. It is paid when a seaman who has been continuously employed for at least two years is dismissed by his employer. In other words it is a payment made not for services to a ship, but to compensate the seaman for the termination of his employment after a reasonably long period of service to the same employer. It is not paid for past service, even though the amount of the payment is calculated by reference to the length of it. In my judgment severance pay does not constitute wages.
>
> . . .
>
> [A] severance payment is not made for service to that or any ship. It is merely compensation for dismissal, albeit assessed by reference

to the aggregate length of service in ships owned by those companies in the Reardon Smith Group to which a seaman has rendered services. The appellant's claims for severance pay are therefore not the subject of a maritime lien."

24 According to Dillon, L.J. (*ibid.*, at 347–348):

". . . [T]he wages for which the seaman has a lien on the ship must, in my judgment, be wages for the seaman's service in that ship . . .

The 'wages' are consideration for the seaman's service in the ship—or to the ship as it is sometimes put. Their rate during the service in the ship may take into account previous service in other ships, e.g. higher rates of pay for men who have held a particular rank for more than a particular period even if the whole tenure of the rank was not in the ship in question. Their rate may also depend on future contingencies, e.g. a contract may provide for higher rates of pay if in the course of the voyage the ship enters a war zone or a new collective wages' agreement with a trade union comes into operation. But it does not follow from that that every payment to be made by the owner to a seaman under the seaman's contract of employment is necessarily a payment of 'wages.'

The severance pay is payable when the seaman becomes surplus to the requirements of the shipping company or group, and is required to report to the Merchant Navy Establishment Administration for further employment. Under the contract in the ship's Articles the liability to pay the severance pay is a liability of the company which owned the ship in which he was serving when he became surplus to requirements. But the severance pay is to be calculated by reference to the whole of his service with the company or group in question. It is not paid as extra remuneration, or deferred remuneration on a contingency, for his services merely during the voyage in his last ship when he becomes surplus to requirements. Indeed it is not paid as remuneration for his services at all; it is paid as compensation for the loss of expectation he would otherwise have had that because of his long service he would be offered further employment by the company or group after the end of what was in the event his final voyage in his last ship for the company or group.

Such a payment is therefore not, in my judgment, 'wages' even in the extended sense in which that word is used in the context of a maritime lien."

25 In my opinion, Dillon, L.J. makes the crucial point that wages are payments made to a seaman in consideration for his services and value of those services is quantified in the seaman's contract of employment. To put it another way, wages (including emoluments) are contractual entitlements,

and damages for wrongful dismissal are classified as wages because they are damages for breach of contract. The claimant's second and third bases of claim are not contractual in nature; they are, according to the expert opinion of Dr. Dabhi (see para. 10 above), statutory claims founded upon provisions of the Moroccan Labour Code. The claims are not, therefore, claims for wages.

26 This leaves the issue of the masters' and officers' claims for their notice period of dismissal. This does seem to be a contractual entitlement. Here, too, however, I do not consider the claim to be one for wages. The notice period of dismissal to which the masters and officers were entitled seems to me to be of the same species as the severance pay claimed in *The Tacoma City* (4), akin to redundancy pay (albeit contractual, not statutory) because paid as compensation for the employee's loss of employment. Although all three members of the Court of Appeal of England and Wales in *The Tacoma City* differed in their description of what severance pay was, they were all agreed that it was not a component of the plaintiffs' wages. I agree. The notice period of dismissal is not wages because it is not remuneration for the masters' and officers' services. It is not paid in consideration of their services to the ship but to compensate them for their loss of employment, which is why, despite what is said in Jackson's *Enforcement of Maritime Claims*, 3rd ed., at 2.80 (2000), I do not consider that it makes any difference whether entitlement to the payment is contingent of the employee's redundancy to the needs of the ship rather than those of his employer generally. I also note that according to Dr. Dabhi's report the notice period of dismissal is payable when dismissal is pronounced "for fleet reduction or cessation of activity." It would seem odd to classify such payments as wages in one situation and not the other.

My decision

27 The claim not being a "claim by a master or member of the crew of a ship for wages" (s.20(2)(o), Senior Courts Act 1981) it is outside this court's Admiralty jurisdiction. I consequently refuse the claimant's application for judgment in default pursuant to CPR, 61.9. I need make no order for costs.

28 One final point. Mr. Watts informed me that two members of the crew (claimant nos. 13 and 40: Ilyas Hanine and Malika Karim) did not, in fact receive their wages when the crew was paid off before their repatriation. I take no view on the merits of these claims but both seafarers are entitled to assert them. I grant them 14 days from the date of this judgment in which to file their claims.

Judgment accordingly.