

MEMBER ALERT



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“ARBITRARY AND CAPRICIOUS” FAILURE TO PAY MAINTENANCE SUFFICIENT TO COVER SEAMAN’S ACTUAL LIVING EXPENSES RESULTS IN AWARD OF ATTORNEYS FEES

Members whose vessels trade to US ports are reminded that US Courts are zealous in protecting the rights of seamen in respect of maintenance and cure, and any resistance (let alone recalcitrance) by owners in providing necessary financial support and/or medical treatment, howsoever legitimate initially, can potentially be viewed in the cold light of judicial hindsight as justifying an award of attorneys’ fees in the seaman’s favor, as a recent case in the Eastern District of Louisiana demonstrates.

In Borders vs. Abdon Callais Offshore, handed down in the Eastern District of Louisiana on April 25, 2010 (U.S.D.C., E.D. La. Civ. No. 10-2763, Africk, J.), the District Court, granted a seaman’s motion for an increase in maintenance payments from \$15.00 per day to \$40.00 per day based on the seaman’s actual living expenses. The shipowner, who had been paying maintenance at the rate of \$15.00 per day, had contested the seaman’s motion largely on the basis that the seaman’s proof of his actual expenses was insufficient.

In a decision notable for its emphasis on a seaman’s right to maintenance in an amount sufficient to cover his actual living expenses within reason and the “feather light burden [on the seaman] of demonstrating actual costs”, the Court demonstrated little patience with the vessels owner’s opposition and found the vessel owner’s failure to increase the maintenance rate “arbitrary and capricious”. On that basis, the Court awarded the seaman his attorneys’ fees incurred in pressing the claim.

In so holding, the Court stated:

“The Court finds that defendant was arbitrary and capricious in failing to pay a reasonable maintenance rate. Defendant paid plaintiff \$15.00 per day for maintenance, which was a standard maintenance rate in the late 1970s and early 1980s. *Hall*, 242 F.3d at 592. While it is possible that defendant had a legitimate question regarding whether plaintiff’s claim for \$40.00 per day was reasonable, defendant offers no evidence whatsoever to show that the rate it is currently paying, \$15.00 per day, is reasonable in 2010. In fact, the minimum reasonable rate for a seaman in plaintiff’s locality based purely on the defendant’s figures—\$11.00 per day for food, \$11.00 per day for rent (\$330 prorated over 30 days), and no allotment for utilities – would be \$22.00 per day, nearly 50% more than what defendant actually paid plaintiff. The Court finds that defendant was unjustified in making maintenance payments at a rate that was standard thirty years ago. Accordingly, plaintiffs entitled to attorney’s fees associated with the underpayment of maintenance.”

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Of particular note are the Court's comments that, even though the vessel owner may have had legitimate reason to initially question the seaman's claim, any effort to minimize maintenance payments based on outdated judicial authority from years long passed is likely to fail.

Though the case is apparently not yet at an appealable stage (judgment has not been entered), Members should bear this decision in mind.