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## **Maritime Law: Pay What is Due, or Else**

By Marilyn Raia

The owner of a fishing vessel failed to pay \$7,380 to a person he orally contracted with to prepare his boat for fishing. Significant economic consequences followed under federal maritime law and Washington state law. *Johnson v. Wang*, 2018 AMC 2838 (W.D. Wash. 2018) should be a lesson for all.

### **The Oral Contract**

Wang hired Johnson, who had been a commercial fisherman for sixty-three years, to evaluate the fishing vessel *Thor*, which he was considering buying. Wang told Johnson if he decided to buy the vessel, he would hire Johnson to get it ready for tuna fishing, and to be the captain for the following season. They agreed Johnson would be paid \$15 per hour for his preparation work. They also agreed the proceeds from fishing would be split 60 percent to the boat and 40 percent to the crew. Johnson would get 20 percent and the two other crew members would receive 10 percent each. The agreement was not put in writing.

Johnson inspected *Thor* before Wang bought it and was able to negotiate a \$10,000 reduction in the sale price. Johnson spent 492 hours getting the vessel ready for the fishing season. Two other crewmembers worked on the vessel too. Wang paid for the equipment and materials used. He also authorized Johnson to remove equipment from his other boat and put it on *Thor*.

### **The Unpaid Wages**

Before the work was completed, one of the crewmembers became upset because Wang had not paid him. He threatened to confront Wang who then fired both crewmembers allegedly because he was not satisfied with their work. Johnson asked if he was to vacate the *Thor* too. Wang advised him the fired crewmembers would be replaced. Replacements were never found because of the low wages to be paid by Wang.

Eventually, Johnson told Wang that *Thor* was ready to go fishing. In response, Wang told Johnson he intended to sell the vessel. He ordered Johnson to get off and remove his belongings. Johnson asked to be paid for his work. Wang refused. Wang called Johnson "dead wood, an old man" and said Johnson would be dead before Wang "paid him a dime."

### **The Lawsuit**

Johnson sued Wang and *Thor* in federal court in Washington. He sought what he was owed for his wages, i.e., \$15 per hour for 492 hours or \$7,380. He did not sue for the share he would have earned had he been the captain of the vessel for the fishing season. Wang's first two mistakes were: 1) representing himself; and 2) not telling the truth at deposition and trial. The court found Wang to be not credible. Severe financial consequences followed.

### **The Wages Due Under Federal Law**

The court first held the case would be governed by federal maritime law. It then held a federal statute, namely, 46 U.S.C § 10601, required agreements between vessel owners and seamen, including agreements in the fishing industry, to be in writing. Accordingly, the contract between Wang and Johnson should have been in writing. Because it was not in writing, it was void.

The court next held another federal statute, 46 U.S.C. §11107 provided the remedy for the void contract. A seaman hired under a void contract is entitled to recover the higher of 1) the amount



agreed upon in the void contract; or 2) the highest rate of wages at the port where the seaman was hired. In this case, the court found the highest rate of wages for what Johnson did was \$45 per hour which was higher than the \$15 per hour he had orally agreed to. It awarded him \$22,140 for unpaid wages or \$45 for 492 hours of work.

### **The Wage Penalty Under State Law**

In addition to what was owed under the federal statute, the court agreed with Johnson that a wage penalty was due under Washington state law. Washington state law provides for a wage penalty when an employer willfully and intentionally deprives an employee of wages. The penalty is the amount of the wrongfully held wages, resulting in the employee's recovery of twice the amount of the unpaid wages. The court held the application of state law was allowed even though the case was governed by federal maritime law because state law did not interfere with federal law. It merely supplemented it. The amount due to Johnson was held to be \$44,280 or approximately six times what Johnson had originally asked Wang to pay him.

### **Attorneys' Fees**

The court recognized it had discretion under federal maritime law to award attorneys' fees under certain circumstances. It concluded Wang was "intentionally dishonest, recalcitrant and acted in bad faith" when refusing to pay Johnson for his work in preparing *Thor* for the fishing season. It awarded punitive attorneys' fees to Johnson subject to later proof.

### **Pre-Judgment Interest**

Finally, the court awarded Johnson pre-judgment interest on \$22,140, the amount due to him under the federal statute for his unpaid wages. It used a 12 percent per annum rate resulting in an additional award of \$5,387.20.

The lesson to be learned: Pay what is due.