

**In the Matter of:**

**DEVENDRA GUMMALA,**

**ARB CASE NO. 15-088**

**COMPLAINANT,**

**ALJ CASE NO. 2015-SPA-001**

**v.**

**DATE: September 26, 2017**

**CARNIVAL CRUISE LINES, INC.,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

*For the Complainant:*

**Devendra Gummala, *pro se*, Maipu, Santiago, Chile**

*For the Respondent:*

**Brooke T. Iley, *Esq.*; Blank Rome LLP, Washington, District of Columbia**

**Before: Paul M. Igasaki, *Chief Administrative Appeals Judge*; Joanne Royce, *Administrative Appeals Judge*; and Leonard J. Howie III, *Administrative Appeals Judge***

### **DECISION AND ORDER OF REMAND**

This case arises under the employee protection provisions of the Seaman's Protection Act, 46 U.S.C.A. § 2114 (SPA or the Act) (Thomson Reuters 2015), as amended by Section 611 of the Coast Guard Authorization Act of 2010, P.L. 111-281.<sup>1</sup>

In June 2014, the Complainant, Devendra Gummala, filed a complaint with the Occupational Safety and Health Administration (OSHA) alleging that his former employer, Carnival Cruise Lines (Carnival), violated the SPA by discharging him for engaging in activity that the SPA protects. OSHA concluded that Carnival was not covered under the SPA. Gummala requested a hearing. A Department of Labor (DOL) Administrative Law Judge (ALJ)

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<sup>1</sup> SPA's implementing regulations can be found at 29 C.F.R. Part 1986 (2015).

also concluded that Carnival Cruise Lines was not a covered employer under the SPA. Gummala appealed to the Administrative Review Board (ARB). We vacate and remand.

### BACKGROUND

Devendra Gummala, a citizen of India residing in Chile, was employed as a photographer aboard the Carnival vessel Fascination. Carnival Fascination is operated by Carnival Cruise Lines and flies a Bahamian flag. Carnival Corporation, incorporated in Panama, owns Carnival Cruise Lines, which is a Florida corporation and division of Carnival Corporation.

Respondent terminated Gummala's employment on or about June 12, 2014. He claims that Respondent fired him for making safety-related complaints. On or about June 22, 2014, Gummala filed a complaint against Carnival Cruise Lines under both the SPA and Section 11(c) of the Occupational Safety and Health Act (OSH Act).<sup>2</sup> OSHA dismissed the case for lack of jurisdiction on December 24, 2014, and Gummala filed objections with the Office of Administrative Law Judges.<sup>3</sup>

The ALJ issued a show cause order asking the parties to address the issue of coverage under the SPA. Thereafter, on August 6, 2015, the ALJ dismissed Gummala's claim for lack of jurisdiction. The ALJ held that Gummala failed to establish that he was a covered "seaman" under the SPA because the vessel was not owned by a citizen of the United States, Carnival Corporation being the vessel owner. Gummala appealed to the ARB.

### JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated to the Administrative Review Board the authority to issue final decisions under the Seaman's Protection Act. 29 C.F.R. § 1986.110(a); Secretary's Order No. 2-2012 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 77 Fed. Reg. 69,378 (Nov. 16, 2012). We review the ALJ's factual determinations to determine whether they are supported by substantial evidence. 29 C.F.R. § 1986.110(b). The Board reviews the ALJ's legal conclusions de novo. *Dady v. Harley Marine Servs.*, ARB Nos. 13-076, -077; ALJ No. 2012-SPA-002 (ARB July 31, 2015).

The ARB reviews an ALJ's grant of summary decision de novo, applying the same standard that ALJs employ under 29 C.F.R. Part 18. *Siemaszko v. FirstEnergy Nuclear Operating*

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<sup>2</sup> 29 U.S.C.A. § 660(c). Congress enacted the SPA following a Fifth Circuit opinion holding that OSH Act's 11(c) did not apply to seaman on navigable waters. *Donovan v. Texaco*, 720 F.2d 825 (5th Cir. 1983); 29 C.F.R. § 1986.103(e).

<sup>3</sup> The ALJ adjudicated only Gummala's SPA claim. Gummala, on appeal to the ARB, claims that he timely objected to OSHA's finding that Section 11(c) of the OSH Act did not cover Carnival but that the Office of Administrative Law Judges erred in deeming those objections as untimely. The Administrative Review Board is not the proper avenue for Gummala to object to OSHA's decision concerning the OSH Act as the Board does not have jurisdiction over the OSH Act.

*Co., Inc.*, ARB No. 09-123, ALJ No. 2003-ERA-013, slip op. at 3 (ARB Feb. 29, 2012). Pursuant to 29 C.F.R. § 18.72, an ALJ may enter summary judgment for either party if the pleadings, affidavits, material obtained by discovery, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision.

## DISCUSSION

### 1. Statutory and regulatory background

The SPA prohibits a person from retaliating against a “seaman” who makes safety complaints.

(a)(1) A person may not discharge or in any manner discriminate against a seaman because—(A) the seaman in good faith has reported or is about to report to the Coast Guard or other appropriate Federal agency or department that the seaman believes that a violation of a maritime safety law or regulation prescribed under that law or regulation has occurred . . . .

46 U.S.C.A. § 2114(a). “Person” is defined in the regulations as “one or more individuals or other entities, including but not limited to corporations, companies, associations, firms, partnerships, societies, and joint stock companies.” 29 C.F.R. § 1986.101(j). Prior to prohibiting “persons” from retaliation, the original SPA included a list of actors: “owner, charterer, managing operator, agent, master or individual in charge.” In the 2002 and 2010 amendments, Congress changed the list of actors to a more succinct definition of “person.”<sup>4</sup>

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<sup>4</sup> The implementing regulations provide:

SPA prohibits retaliation by a “person.” Title 1 of the U.S. Code provides the definition of this term because there is no indication in the statute that any other meaning applies. Accordingly, “person . . . include[s] corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.” 1 U.S.C. 1. This list, as indicated by the word “include,” is not exhaustive. See *Fed. Land Bank v. Bismarck Lumber Co.*, 314 U.S. 95, 100 (1941) (“[T]he term ‘including’ is not one of all embracing definition, but connotes simply an illustrative application of the general principle.” (citation omitted)). Paragraph (j) accordingly defines “person” as “one or more individuals or other entities, including but not limited to corporations, companies, associations, firms, partnerships, societies, and joint stock companies.

### A. “Seaman” and “Vessel Owner”

SPA’s implementing regulations define “seaman” by means of “vessel ownership” and also define “vessel ownership.”

(m) Seaman means any individual engaged or employed in any capacity on board a vessel owned by a citizen of the United States.

...

(q) Vessel owner includes all of the agents of the owner, including the vessel’s master.

29 C.F.R. § 1986.101. “Seaman” was intended “to be interpreted broadly.” *See* Senate Report accompanying the Coast Guard Authorization Act of 1984, S. Rep. 98-454 (May 17, 1984); *see also* SPA’s interim final regulations 78 Fed. Reg. 8390, 8394-95, 8397 & n.5 (Feb. 6, 2013) (“SPA contains no geographical limit; its scope is limited only by the definition of ‘seaman’”).

### B. “Citizen of the United States”

The SPA prohibits persons from retaliating against seamen who make safety complaints. The ALJ held that Gummala failed to establish that he was a covered “seaman” under the SPA because he was not employed by a “citizen of the United States.” An entity is a citizen of the United States if U.S. citizens own a controlling interest.

(d) Citizen of the United States means:

(1) An individual who is a national of the United States as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101 (a)(22)) or a corporation, partnership, association, or other business entity if the controlling interest is owned by citizens of the United States. The controlling interest in a corporation is owned by citizens of the United States if:

(i) Title to the majority of the stock in the corporation is vested in citizens of the United States free from any trust or fiduciary obligation in favor of a person not a citizen of the United States;

(ii) The majority of the voting power in the corporation is vested in citizens of the United States;

(iii) There is no contract or understanding by which the majority of the voting power in the corporation may be exercised, directly or indirectly, in behalf of a person not a citizen of the United States; and

(iv) There is no other means by which control of the corporation is given to or permitted to be exercised by a person not a citizen of the United States.

29 C.F.R. § 1986.101(d)(1); *see also* 78 Fed. Reg. 8390, 8395.

### C. “Only a citizen of the United States”

Furthermore, a corporation is only a citizen of the United States if:

- (i) It is incorporated under the laws of the United States or a State;
- (ii) Its chief executive officer, by whatever title, and the chairman of its board of directors are citizens of the United States; and
- (iii) No more of its directors are noncitizens than a minority of the number necessary to constitute a quorum.

29 C.F.R. § 1986.101(d)(2).

#### 2. The ALJ failed to consider Carnival Cruise Lines as an agent and operator of vessel owner

It is Gummala’s burden to show coverage. Gummala did not put forth record evidence demonstrating who owns the majority of Carnival Corporation stock. Gummala alleges without evidentiary support that the majority of Carnival Corporation’s Board and executives are American citizens and that the Chairman and CEO are American Citizens. Gummala also avers that Carnival Cruise Lines has or had American officers.

The ALJ held that Gummala failed to establish that he was a covered seaman under the SPA because he was not employed by a U.S. vessel owner. The implementing regulations to the amended SPA define “vessel owner” more broadly than the mere title owner of the vessel. “(q) Vessel owner includes all of the agents of the owner, including the vessel’s master.” OSHA, in the 2013 interim regulations, explained:

Section 2114(a)(1)(D) of SPA protects a seaman’s notification of the “vessel owner” of injuries and illnesses. This would include all notifications to agents of the owner, such as the vessel’s master. See 2 Robert Force & Martin J. Norris, *The Law of Seamen* § 25-1 (5th ed. 2003). Other parties that may fall within the meaning of “vessel owner” include an owner pro hac vice, operator, or charter or bare boat charterer. See 33 U.S.C. 902(21) (defining, for purposes of the LHWCA, the entities liable for negligence of a vessel); see also *Helaire v. Mobil Oil Co.*, 709 F.2d 1031, 1041 (5th Cir. 1983) (referring to this list of entities as “the broad definition of ‘vessel owner’ under 33 U.S.C. 902(21)”). Paragraph (q) defines “vessel owner” as including “all of the agents of the owner, including the vessel’s master.”

78 Fed. Reg. 8390, 8394.

The cited section, 33 U.S.C.A. § 902(21), provides:

Unless the context requires otherwise, the term “vessel” means any vessel upon which or in connection with which any person entitled to benefits under this chapter suffers injury or death arising out of or in the course of his employment, and said vessel’s owner, owner pro hac vice, agent, operator, charter or bare boat charterer, master, officer, or crew member.

“Vessel ownership” is a lynchpin to the rest of SPA coverage. Carnival argues that Carnival Corporation is the owner and it is registered in Panama. But Carnival Cruise Line, its subsidiary, is likely also a vessel owner and agent as the operator of the vessel. The ALJ did not discuss the regulatory definition of “vessel owner,” and we find this to be reversible error.

Although Gummala does not specifically argue the agency and operator-owner argument, Gummala did appeal the ALJ’s decision, which dismissed Gummala’s claim because Carnival Cruise Lines was not a vessel owner. We give pro se pleadings latitude. *See, e.g., Griffith v. Wackenhut Corp.*, ARB No. 98-067, ALJ No. 1997-ERA-052 (ARB Feb. 29, 2000), slip op. at n.5 (“[p]ro se complainants are by nature inexpert in legal matters, and we construe their complaints liberally and not over technically”). Accordingly, we remand to the ALJ for further proceedings.<sup>5</sup>

#### CONCLUSION

For the foregoing reasons, the ALJ’s Decision and Order is **VACATED** and this case is **REMANDED** to the ALJ for reconsideration consistent with this Decision and Order of Remand. All other arguments inconsistent with this Order are deemed moot.

**SO ORDERED.**

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**PAUL M. IGASAKI**  
**Chief Administrative Appeals Judge**

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**JOANNE ROYCE**  
**Administrative Appeals Judge**

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**LEONARD J. HOWIE III**  
**Administrative Appeals Judge**

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<sup>5</sup> We decline to decide in this Order that Carnival is an operator, agent, or other covered entity because Carnival has not had the opportunity to brief the matter.