

**In the Matter of:**

**JASON B. MEEKS,**

**ARB CASE NO. 17-022**

**COMPLAINANT,**

**ALJ CASE NO. 2016-SPA-003**

**v.**

**DATE: July 9, 2018**

**GENESIS MARINE, LLC,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

*For the Complainant:*

**Thomas R. Meeks, Esq.; *Meeks & Meeks*; Clarksville, Tennessee**

*For the Respondent:*

**Earl M. Jones III, Esq.; *Little Mendelson, PC*; Dallas, Texas**

**Before: 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 2007 & Supp. 2017), as amended by Section 611 of the Coast Guard Authorization Act of 2010, P.L. 111-281.<sup>1</sup>

On April 25, 2016, Complainant Jason Meeks filed a complaint with the Occupational Safety and Health Administration (OSHA) alleging that his former employer, Genesis Marine, LLC, violated the SPA by discharging him for engaging in activity that the SPA protects. OSHA concluded that Meeks did not engage in any protected activity under the statute. Meeks

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<sup>1</sup> SPA's implementing regulations can be found at 29 C.F.R. Part 1986 (2017).

requested a hearing. A Department of Labor (DOL) Administrative Law Judge (ALJ) concluded that Meeks failed to allege that he engaged in protected activity before Genesis terminated his employment. Meeks appealed to the Administrative Review Board (ARB). We vacate and remand.

### BACKGROUND

Genesis employed Meeks from February 2013, until March 26, 2016. Meeks alleged that in the summer of 2015 and before, while he was a crewmember on the *Renee Davison*, some of the ship's crew members used illegal drugs and alcohol while they were on duty. He and two other crewmembers did not engage in this activity. Meeks and the other two non-participating crewmembers did not report the illicit behavior because the Captain of the *Renee Davison* and the Port Captain were both involved in the behavior and they feared they would lose their jobs if they reported.

In January 2016, Meeks (and the other two who did not engage in using alcohol and drugs while on duty) reported the illicit drug and alcohol use on the ship during an investigation that the company ordered into the matter. On January 27, 2016, Meeks and the other two crewmembers who reported were placed on probation for 90 days for failing to report the illicit activity they had observed in the summer of 2015. That same day, Genesis transferred Meeks from the *Renee Davison* to another ship, the *Bryan Lee Teste*, demoted Meeks from tankerman 3 to tankerman 2, and thus also paid him less.

Approximately two months later, while Meeks was still on probation, the Port Captain who had been engaged in illicit activity and who had discovered that Meeks reported about him, created a situation tricking Meeks into relieving his duties on a barge when he would be breaking rules by leaving. Because he left the barge unattended by a licensed tankerman, Genesis fired Meeks.

Meeks reported to the Coast Guard in April 2016, that Genesis had "breached contracts by loading or unloading the contracting party's product using vessels, barges and docks of the contracting party's competitors, and . . . mistreated employees by threatening to discharge them."<sup>2</sup> On April 25, 2016, Meeks filed a SPA complaint against Genesis. OSHA dismissed the case on August 30, 2016, and Meeks filed objections with the Office of Administrative Law Judges.

Before the ALJ, Genesis filed a motion to dismiss, asserting that Meeks failed to allege that he engaged in any protected activity. Meeks responded to the motion in part stating that Genesis fired him in retaliation for reporting illegal drug activity.<sup>3</sup> He also submitted two affidavits. Genesis submitted a reply to Meeks's response. Thereafter, on December 12, 2016, the ALJ dismissed Meeks's claim for failure to allege that he "reported or was about to report a

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<sup>2</sup> ALJ Order Granting Respondent's Motion to Dismiss at 3.

<sup>3</sup> *Id.*

violation of a maritime safety law or regulation to the Coast Guard or other Federal agency or department before [Genesis] terminated his employment.”<sup>4</sup> Meeks 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.<sup>5</sup> We review the ALJ’s factual determinations to determine whether they are supported by substantial evidence.<sup>6</sup> The Board reviews the ALJ’s legal conclusions de novo.<sup>7</sup>

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.<sup>8</sup> 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**

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

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 . . . (C) the seaman testified in a proceeding brought to enforce a maritime safety law or regulation prescribed under that law. . . .

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<sup>4</sup> *Id.* at 6.

<sup>5</sup> 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).

<sup>6</sup> 29 C.F.R. § 1986.110(b).

<sup>7</sup> *Dady v. Harley Marine Servs., Inc.*, ARB Nos. 13-076, -077; ALJ No. 2012-SPA-002, slip op. at 2, n.2 (ARB July 31, 2015).

<sup>8</sup> *Siemaszko v. FirstEnergy Nuclear Operating Co., Inc.*, ARB No. 09-123, ALJ No. 2003-ERA-013, slip op. at 3 (ARB Feb. 29, 2012).

46 U.S.C.A. § 2114(a)(1).

In finding no allegation of protected activity, the ALJ relied solely on the statute at § 2114(a)(1)(A) that requires a report to the Coast Guard or other Federal agency or department to be considered protected. Because Meeks did not report to the Coast Guard until after he was fired, the ALJ dismissed the complaint. But the statute, as amended October 15, 2010, has several other categories of protected activities, including at (C), when “the seaman testified in a proceeding brought to enforce a maritime safety law or regulation prescribed under the law.”

The Board has interpreted “proceedings” under other whistleblower statutes we administer as covering internal complaints to the employer.<sup>9</sup> For instance, under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C.A. § 9610, the Federal Water Pollution Control Act (FWPCA), 33 U.S.C.A. § 1367, and, the Solid Waste Disposal Act (SWDA), 42 U.S.C.A. § 6971, protected activity includes filing, instituting, or testifying in a proceeding, and the Board has interpreted these statutes to cover internal complaints to an employer.<sup>10</sup> Likewise, under the Surface Transportation Assistance Act (STAA), 49 U.S.C.A. § 31105, protected activity includes “beginning a proceeding” or having “testified in such a proceeding,” which the Board has interpreted to cover internal complaints to an employer.<sup>11</sup> Thus, we hold that Meeks has alleged sufficient facts to survive a 12(b)(6) motion to dismiss. His witness statements to the internal investigators about the illicit drug and alcohol use on the *Renee Davison* by his ship captain, Port Captain, and other coworkers may be protected activity under the SPA at § 2114(a)(1)(C).<sup>12</sup>

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<sup>9</sup> See *Willy v. Admin. Review Board, USDOL*, 423 F.3d 484 (5th Cir. Aug. 24, 2005); *Passaic Valley Sewerage Commr’s v. United States Dept. of Labor*, 992 F.2d 474 (3d Cir. 1993).

<sup>10</sup> *Guttman v. Passaic Valley Sewerage Comm’rs*, No. 1985-WPC-002 (Sec’y Mar. 13, 1992) (FWPCA); *Helmstetter v. Pacific Gas & Electric Co.*, No. 1991-TSC-001 (Sec’y Jan. 13, 1993) (TSCA and SWDA); *Dodd v. Polysar Latex*, No. 1988-SWD-004 (Sec’y Sept. 22, 1994) (CERCLA and SWDA); *Caldwell v. EG&G Defense Materials, Inc.*, ARB No. 05-101, ALJ No. 2003-SDW-001 (ARB Oct. 31, 2008) (SDWA) (the Board has “construed the term ‘proceeding’ broadly to encompass all phases of a proceeding that relate to public health or the environment, whether or not the phase generates a formal or informal ‘proceeding’” (citation omitted)).

<sup>11</sup> *Davis v. H.R. Hill, Inc.*, No. 1986-STA-018 (Sec’y Mar. 19, 1987) (STAA).

<sup>12</sup> See *Kansas Gas & Elec. Co. v. Brock*, 780 F.2d 1505, 1510-1513 (10th Cir. 1985); *Mackowiak v. Univ. Nuclear Sys., Inc.*, 735 F.2d 1159, 1163 (9th Cir. 1984).

Accordingly, we remand to the ALJ for further proceedings.

**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.

**SO ORDERED.**

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

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