

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-20429
Summary Calendar

ROMEO ITIMA,

Plaintiff-Appellant,

versus

COSCOL MARINE CORPORATION,
d/b/a Tankships U.S.A., Inc.,

Defendant-Appellee.

Appeal from the United States District Court for
the Southern District of Texas
(CA-H-93-688)

(October 18, 1994)

Before REAVLEY, DAVIS and DeMOSS, Circuit Judges.

PER CURIAM:*

Coastal Tankships U.S.A., Inc. employed Itima as a seaman on board the S/S Coastal Corpus Christi. The summary judgment evidence establishes that Coastal's practice is to have its seamen sail for 80 days and then take 40 days of vacation time. Hence, for each two days of sailing the seaman earned one day of vacation. Seaman receive regular, equal, bi-weekly paychecks

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

throughout the time they are sailing and on vacation time. Itima began his employment on June 23, 1990 and left the vessel for a period of vacation on September 8, 1990. He had sailed for 78 days and accumulated 39 days of vacation.

Itima made three voyages on the Coastal Corpus Christi. The first was a coastwise voyage of 22 days, the second a foreign voyage (to the Bahamas) of 8 days, and the third a coastwise voyage of 48 days. Hence, Itima earned 11 vacation days for the first voyage, 4 vacation days for the second voyage, and 24 vacation days for the third voyage.

Had he remained in the employ of Coastal he would have continued to receive regular bi-weekly paychecks during his vacation time. However, on September 20, Itima resigned from Coastal. He had received his regular paychecks on August 31 and September 14, and on September 28 he received a final paycheck.

Coastal admits that its final paycheck to Itima underpaid him, by failing to pay him for 11 vacation days. Coastal claims that the underpayment was inadvertent, a claim which Itima disputes. Coastal has since offered to pay the amount owed, \$868.89, but Itima claims that he is entitled to double wages for each day wages were delayed under 46 U.S.C. § 10313(g) (1994). The district court ordered Coastal to pay the \$868.89, but denied recovery under § 10313.

The case turns on whether the last paycheck underpaid wages for a foreign voyage or a coastwise voyage. Section 10313 only applies to voyages between a port in the United States and a port

in a foreign country, or a voyage by a vessel of certain tonnage between an American Atlantic port and an American Pacific port. 46 U.S.C. § 10301(a) (1994). In this case the vessel did not travel to a Pacific port, although one of its three voyages was a foreign voyage. Further, the double wage provision for certain coastwise voyages does not apply to a vessel engaged in coastwise commerce. 46 U.S.C. § 10504(c),(d) (1994). Itima does not deny that the vessel was engaged in coastwise commerce on two of the three voyages in question.

We cannot fault the district court's reasoning. The last paycheck included payment for 28 vacation days, enough to cover the first coastwise voyage, the second foreign voyage, and part of the third coastwise voyage. The amount owed Itima is best characterized as wages earned during the coastwise voyage.

AFFIRMED.