IN THE MATTER OF ARBITRATION BETWEEN **AARON TREJO,** **Claimant,** **and** **SAULO TREJO,** **Claimant,** **vs.** **SEA HARVEST, INC.,** **Respondent**	Arbitrator: Hon. Joel Schneider (Ret.)

ARBITRATION DECISION AND AWARD

This matter is before the Arbitrator on Sea Harvest's application to compel arbitration. The Arbitrator received claimants' opposition and Sea Harvest's reply, and determined that oral argument was not necessary. This will serve as the Arbitrator's Arbitration Decision and Award.[1]

This matter arises out of Claimants' injuries allegedly suffered during their employment as commercial fisherman with Sea Harvest. The parties do not dispute the relevant underlying facts. The issue before the Arbitrator is whether the arbitration clause in Claimants' employment contracts is enforceable and whether Sea Harvest's request to compel arbitration should be granted. For the reasons to be discussed, the Arbitrator finds that the arbitration clause contained in Claimants' employment contracts is enforceable and hereby grants Sea Harvest's request to compel arbitration.

[1] For ease of reference and for present purposes only the Arbitrator will treat this as one matter although the Arbitrator recognizes two arbitrations were filed. The same issue is involved in both arbitrations.

BACKGROUND

Claimants Aaron Trejo and Saulo Trejo assert claims for personal injuries alleged suffered during their employment as commercial fisherman. In particular, Claimants assert claims for Jones Act negligence, unseaworthiness, and maintenance and cure. Claimants signed a new employment contract ("Crew Terms of Employment") with Sea Harvest at the beginning of each fishing voyage. Each employment contract signed by Claimants during the relevant time period contained the following arbitration clause:

> **Arbitration: I understand and agree that any dispute, claim or controversy arising out of my work as a crewmember, including but not limited to statutory Jones Act claims, negligence, unseaworthiness, maintenance and cure, and wage claims, and whether such claim or controversy be brought against the vessel, vessel owner[s] or vessel operator/employer, or any combination of them; or disputes relating to this Agreement, or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this arbitration clause, shall be determined by one arbitrator sitting in Philadelphia, Pennsylvania.**
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> **The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. If this agreement to arbitrate is determined to be exempt from enforcement under the Federal Arbitration Act, the laws of the State of New York shall be applied in determining the validity and enforceability of this agreement.**
>
> **ARBITRATION SHALL BE MY EXCLUSIVE REMEDY AND I UNDERSTAND THAT I GIVE UP MY RIGHT TO SUE. I FURTHER UNDERSTAND AND AGREE THAT I GIVE UP MY RIGHT TO SELECT THE VENUE FOR ANY CLAIM OR CONTROVERSY AND THAT I GIVE UP MY RIGHT TO TRIAL BY JUDGE OR JURY FOR ANY AND ALL CLAIMS, INCLUDING BUT NOT LIMITED TO STATUTORY JONES ACT, NEGLIGENCE, MAINTENANCE AND CURE, UNSEAWORTHINESS, AND WAGES.**
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> **The fee for arbitration, except the cost of any dispute concerning the enforceability of this Agreement or appeal of the arbitrator's decision, shall be borne by the Vessel's owner or Operator/employer as they may amongst themselves decide. Each party shall be responsible for their own attorney fees and costs and lay and expert witness fees and costs, unless contrary to law. Judgment on the Arbitration Award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional**

> **remedies in aid of arbitration from a court of appropriate jurisdiction; however, each shall bear its own costs in pursuing such remedies.**
>
> I have read, understand and agree to the terms of the above Agreement. By signing below, I acknowledge that I have been given time to review this Agreement, and I have read (or otherwise understand) and agree to its terms, and that I make this Agreement freely and voluntarily.

See, e.g., Resp't Ex. 1 at SHI0102 (emphasis in original).

Sea Harvest concedes that a seaman's employment contract, as is the case here, is exempt from enforcement under the Federal Arbitration Act ("FAA"). Nonetheless, Sea Harvest asserts that its arbitration clause is enforceable pursuant to state law, and further claims that the clause is enforceable under the laws of New York, New Jersey and Massachusetts. Moreover, contrary to Claimants' argument, Sea Harvest argues that public policy and unconscionability considerations do not render its arbitration clause unenforceable.

In opposition Claimants argue that the arbitration clause is unenforceable under the FAA and New York law. Claimants further assert that the arbitration clause is unconscionable and violates public policy. In addition, Claimants contend that the enforcement of Sea Harvest's arbitration clause would create a lack of uniformity in federal maritime law.

DISCUSSION

The parties agree that the arbitration agreement unambiguously identifies that New York law should apply if the FAA does not apply. The agreement states: "If this agreement to arbitrate is determined to be exempt from enforcement under the Federal Arbitration Act, the laws of the State of New York shall be applied in determining the validity and enforceability of this agreement." Accordingly, the Arbitrator will apply New York law and finds there is no need to discuss the result that would occur if the law of New Jersey or Massachusetts applied.

The Arbitrator rejects Claimants' argument that an exemption from enforceability under the FAA precludes enforcement of an arbitration agreement under state law. As Sea Harvest correctly notes, no case law squarely supports this argument. To the contrary, there are many instances where an arbitration agreement that was exempt from enforcement under the FAA was nonetheless enforced under state law. See, e.g., Valdes v. Swift Transp. Co., 292 F. Supp. 2d 524, 528 (S.D.N.Y. 2003) ("Although the Second Circuit has not squarely addressed the issue presented in this case, other courts have enforced arbitration provisions against claims arising from FAA-excluded contracts if such provisions were enforceable under state law." (citations omitted)). With regard to similar language contained in an arbitration clause, the Third Circuit has held:

> Applying the Supreme Court's precedent, we conclude that the District Court erred in holding that [the plaintiff transportation worker's] exemption status under section 1 of the FAA preempts the enforcement of the arbitration agreement under [] state law. It is telling that the arbitration agreement itself envisioned the possibility that [plaintiff's] employment contract would be exempt from the FAA's coverage under section 1 of the Act. It provided for that contingency by including the following: "To the extent that the Federal Aviation Act is inapplicable, Washington law pertaining to agreements to arbitrate shall apply." We see no reason to release the parties from their own agreement.

Palcko v. Airborne Express, Inc., 372 F.3d 588, 596 (3d Cir. 2004). For the same reasons as expressed in the cited cases, the Arbitrator will apply New York law despite the fact that claimants' arbitration agreement is exempt from enforcement pursuant to the FAA.

Claimants argue that because a seaman has a statutory right to a trial by jury in a Jones Act claim, he cannot be compelled to pursue that claim in arbitration. Claimants mainly rely on the proposition that a "seaman may be required to arbitrate claims for which there is no statutory right to proceed in federal court." Claimants' Br. at 5-6 (citing O'Dean v. Tropicana Cruises Intern., Inc., No. 98 CIV. 4543 (JSR), 1999 WL 335381 (S.D.N.Y. May 25, 1999)). Claimants are mistaken. The requirement allowing the arbitration of claims in the absence of a statutory

procedural right does not equate to a prohibition against the arbitration of a claim that is subject to a statutory right to a jury trial. As stated in Kozur, a seaman can waive his or her statutory right to a jury trial. See Kozur v. F/V Atlantic Bounty, LLC, No. CV 18-08750 (JHR), 2020 WL 5627019, at *8 (D.N.J. Aug. 18, 2020) (emphasis added), which stated:

> No language within the Jones Act leads to the conclusion that a Plaintiff may not waive the right to a jury trial. See Grooms v. Marquette Transportation Co., LLC, No. 14-CV-603-SMY-DGW, 2015 WL 681688, at *2 (S.D. Ill. Feb. 17, 2015) ("Congress did not express its intention that the rights afforded under the Jones Act be protected against waiver of the right to a judicial forum."). **To the contrary, the Jones Act permits a seaman to, in effect, waive the right to a Jones Act jury trial by providing a claimant the choice to file a claim under Federal Rule of Civil Procedure 9(h). Importantly, "[b]y agreeing to arbitrate a statutory claim, a party does not forgo the substantive rights afforded by the statute; it only submits to their resolution in an arbitral, rather than a judicial, forum." Mitsubishi, 473 U.S. at 628.** Plaintiff's arbitration clause does not restrict his right to bring a Jones Act claim against his employer, and further does not inherently force Plaintiff to forgo any of his substantive rights. Furthermore, courts have found "the modern rule is that a court enjoys the same power to grant equitable relief in an admiralty case as in an ordinary civil action." O'Dean v. Tropicana Cruises Int'l, Inc., No. 98 CIV. 4543 (JSR), 1999 WL 335381, at *2 (S.D.N.Y. May 25, 1999) (citing Farrell Lines Inc. v. Ceres Terminals Inc., 161 F.3d 115, 116–17 (2d Cir.1998); Pino v. Protection Maritime Ins. Co., 599 F.2d 10, 15–16 (1st Cir.1979)).

The enforceability of arbitration agreements under New York law is analyzed under general contract principles. Salvano v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 623 N.Y.S.2d 790, 794 (1995). The burden rests on the proponent of arbitration to demonstrate that the parties agreed to arbitrate the dispute at issue. Here, the arbitration clause is clear, explicit and conspicuous, demonstrating the parties' intent to arbitrate Claimants' underlying claims. "[O]n a motion to compel or stay arbitration, a court must determine, 'in the first instance ... whether parties have agreed to submit their disputes to arbitration and, if so, whether the disputes generally come within the scope of their arbitration agreement.'" Mozzachio v. Schanzer, 188 A.D.3d 873, 874 (2020) (citations omitted). Sea Harvest has met this burden.

Under "New York law, in the absence of fraud or other wrongful conduct, a party who signs a written contract is conclusively presumed to know its content and to assent to them, and he is therefore bound by its terms and conditions." Progressive Cas. Ins. Co. v. C.A. Reaseguradora Nacional De Venezuela, 991 F.2d 42, 46 (2d Cir. 1993) (citation omitted). Accordingly, Claimants are bound by their agreed upon and contracted for arbitration terms.

Even though Claimants recognize there is a strong public policy in favor of alternative dispute resolution, including arbitration, they nonetheless argue that enforcing their arbitration agreement would violate the public policy "in favor of allowing Jones Act seaman to assert a claim for personal injury against their employers in a judicial forum and to have those claims tried before a jury." Claimants' Br. at 10. Claimants rely on U.S. Bulk Carriers, Inc. v. Arguelles, 400 U.S. 351, 355-56 (1971), for the proposition that Sea Harvest's arbitration agreement should not be enforced because it deprives Claimants of their right to bring their Jones Act claims in federal court. Id. at 10. As Sea Harvests correctly argues, however, Arguelles is distinguishable from the instant matter since the wage claims asserted in that case were subject to the Labor Management Relations Act where the Supreme Court addressed ambiguous language between two provisions in the Act. In Arguelles the Supreme Court ultimately concluded that a provision for a federal remedy to enforce grievance and arbitration did not abrogate a seaman's right to sue for wages in federal court. Arguelles, 400 U.S. at 356-57. The Court expressly clarified: "We deal only with the seaman's personal wage claims." Id. at 357. Accordingly, Claimants' reliance on Arguelles is misplaced. As noted above, numerous courts have held that the Jones Act permits a seaman to waive his or her right to a Jones Act jury trial.

Claimants further argue that the "ward of admiralty" doctrine and Federal Employers' Liability Act ("FELA") supports their public policy argument against enforcement. In particular,

Claimants argue that FELA prohibits "any contract, rule, regulation, or device whatsoever to deprive an injured worker of rights under FELA or the Jones Act" and, thus, the arbitration agreements at issue are unenforceable. See Claimants' Br. at 13-14 (citing Boyd v. Grand T.W.R. Co., 388 U.S. 263, 265 (1949)). Claimants' reliance on the ward of admiralty doctrine and FELA is misplaced. The District Court in Kozur decided Claimants' argument when it addressed the same arbitration language that is at issue here. The Court wrote, "[t]he Jones Act, in providing that a seaman should have the same right of action as would a railroad employee, does not mean that the very words of the FELA must be lifted bodily from their context and applied mechanically to the specific facts of maritime events." Kozur, 2020 WL 5627019, at *8 (quoting Cox v. Roth, 348 U.S. 207, 209 (1955)). As was the case in Kozur, Claimants' arbitration clause does not restrict their right to bring a Jones Act claim against their employer, and further does not force Claimants to forgo any of their substantive rights.

The Arbitrator also notes that three subject areas have been recognized under New York law where arbitration is prohibited on public policy grounds: (1) child custody issues under New York's Domestic Relations law; (2) disqualification of attorney from representation; and (3) state antitrust law. Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Benjamin, 1 A.D.3d 39, 44, 766 N.Y.S.2d 1, 6 (2003). The instant claims do not fall into any of these three areas.

> [Moreover], because freedom of contract is itself a strong public policy interest in New York, we may void an agreement only after "balancing" the public interests favoring invalidation of a term chosen by the parties against those served by enforcement of the clause and concluding that the interests favoring invalidation are stronger. . . . Only a limited group of public policy interests have been identified as fundamental to outweigh a public policy favoring freedom of contract…. The fact that a contract term may be contrary to a policy reflected in the Constitution, a statute or a judicial decision does not render it unenforceable…, and the mere presence of a public interest does not erect an inviolable shield to waiver. Indeed, the courts of this State regularly uphold agreements waiving statutory or constitutional rights.

Matter of New Brunswick Theological Seminary v. Van Dyke, 184 A.D.3d 176, 183, appeal dismissed, 36 N.Y.3d 937 (2020), leave to appeal denied, 36 N.Y.3d 912 (2021) (internal citations and quotation marks omitted).

In sum, the arbitrator finds that the public policy in favor of freedom to contract outweighs any notion in Claimants' favor under the ward of admiralty doctrine. Accordingly, the arbitrator finds that public policy considerations do not preclude enforcement of the arbitration agreement.

Claimants also oppose arbitration of their claims on unconscionability grounds, arguing that the agreement at issue is a contract of adhesion. Claimants contend that they are in a particularly vulnerable position when faced with an employment contract containing an arbitration provision. They further argue that when they signed their contracts they were not represented by legal counsel and were not made aware of their rights under the Jones Act and general maritime law. Claimants also argue that due to their status as commercial fisherman, they lack bargaining power to negotiate employment terms. Claimants also urge the Arbitrator to consider the economic pressures and the context in which their agreements were signed. See Claimants' Br. at 15.

Sea Harvest counters that Claimants' argument on this point harkens back to historical times when seamen spent months or even years living onboard their ships—the roots of the doctrine of "ward of admiralty." Sea Harvest correctly points out that the Supreme Court recently addressed and noted the limited role of the ward of admiralty doctrine in contemporary maritime law:

> The doctrine has never been a commandment that maritime law must favor seamen whenever possible. . . . And, while sailors today face hardships not encountered by those who work on land, neither are they as isolated nor as dependent on the master as their predecessors from the age of sail. In light of these changes and of the roles now played by the Judiciary and the political branches in protecting sailors, the special solicitude to sailors has only a small role to play in contemporary maritime law.

The Dutra Group. v. Batterton, 139 S. Ct. 2275, 2287 (2019).

Claimants' argument that their arbitration agreements are contracts of adhesion is belied by the facts in this matter. Under New York law, adhesion is found where the party seeking to enforce a contract used high pressure tactics or deceptive language in the contract and where there is gross inequality of bargaining power between the parties. Moreover, to support an adhesion defense it must be demonstrated that an agreement imposes substantial unfairness on the party with weaker power. See Matter of Ball (SFX Broad. Inc.), 236 A.D.2d 158, 161, 665 N.Y.S.2d 444 (1997) (citations omitted). Here, Claimants do not contend that Sea Harvest used high pressure tactics or deceptive language in its contracts. It is undisputed that Claimants signed a new employment contract at the beginning of each voyage and each contact contained the same arbitration clause. Claimants had numerous opportunities to seek legal advice as to their rights prior to signing their contracts.

Claimants' unconscionability argument based on the "ward of admiralty" doctrine is also unavailing. To accept Claimants' argument might render all employment contracts signed by commercial fisherman a contract of adhesion. This would undermine New York's strong public policy interest favoring parties' right to freedom of contract. Accordingly, the Arbitrator finds that the arbitration agreement is not unenforceable as a contract of adhesion.

Claimants argue that enforcing their arbitration agreements under state law would create a lack of uniformity in federal maritime law. The District Court in Kozur found the same argument to be unconvincing:

> [T]he Supreme Court has held that "the Jones Act is to have a uniform application throughout the country unaffected by local views of common law rules."… This requirement of uniformity is not, however, absolute.
> . . . .
> Most notably, precedent provides that the uniformity requirement is relaxed when dealing with procedural doctrines—distinguishing substantive doctrines as those

> "upon which maritime actors rely in making decisions about primary conduct—how to manage their business and what precautions to take."

Kozur, 2020 WL 5627019, at *9-10 (citations omitted). The Arbitrator agrees with Kozur.

Likewise, the arbitrator finds that the general requirement of uniformity with regard to maritime law does not blanketly prohibit application of state law to the issue of arbitration.

CONCLUSION

For the foregoing reasons, the arbitrator finds that the parties entered into a valid and enforceable arbitration agreement and that Claimants' claims fall within the scope of the agreement. The arbitrator further finds that public policy, unconscionability and uniformity considerations do not render Claimants' arbitration agreements unenforceable. Accordingly, Sea Harvest's application to compel arbitration is GRANTED.

s/ Joel Schneider
Hon. Joel Schneider (Ret.)
Arbitrator

DATED: August 10, 2022