

**PUNITIVE DAMAGES FOR
UNSEAWORTHINESS:
*THE DUTRA GROUP V. BATTERTON***



Harold K. Watson

Miles v. Apex Marine Corp. 498 U.S. 19 (1990)

Plaintiff's decedent, a member of the crew, was stabbed to death by a fellow seaman.

Jones Act incorporates by reference the Federal Employers' Liability Act, which provides a cause of action for railway workers injured or killed as a result of their employers' negligence.

Court held that there is a cause of action for the wrongful death of a seaman based upon unseaworthiness.

Miles continued

This cause of action is limited to pecuniary damages, and therefore does not allow for recovery of loss of society:

Jones Act incorporates by reference the Federal Employers' Liability Act, which provides a cause of action for railway workers injured or killed as a result of their employers' negligence.

In *Michigan Central R. Co. v. Vreeland* (1913), the Supreme Court held that recovery for wrongful death under the Jones Act is limited to "pecuniary damages."

Congress must have intended to include this limitation on damages when it incorporated FELA into the Jones Act.

"It would be inconsistent with our place in the constitutional scheme were we to sanction more expansive remedies in a judicially created cause of action in which liability is without fault than Congress has allowed in cases of death resulting from negligence."

Atlantic Sounding v. Townsend, 557 U.S. 404 (2009)

Plaintiff seaman alleged that his employer had arbitrarily and willfully refused to pay maintenance and cure, claiming punitive damages.

District court denied employer's motion to dismiss, and the Ninth Circuit affirmed.

Atlantic Sounding continued

Supreme Court affirmed:

“Punitive damages have long been an available remedy at common law for wanton, willful, or outrageous conduct.”

“The general rule that punitive damages were available at common law extended to claims arising under federal maritime law.”

“[T]he failure of a vessel owner to provide medical care for seamen has provided the impetus for damages awards that appear to contain at least some punitive element. . . .

[T]here is no evidence that claims for maintenance and cure were excluded from the general admiralty rule. . . .As a result, [plaintiff] is entitled to pursue punitive damages unless Congress has enacted legislation departing from this common law understanding.”

Jones Act “did not eliminate pre-existing remedies available to seamen for the separate common-law cause of action based on a seaman’s right to maintenance and cure.”

“The reasoning of *Miles* remains sound,” but *Miles* doesn’t address maintenance and cure or its remedy.

Dissent (Alito, Roberts, Scalia and Kennedy):

Miles controls, and very little evidence that punitive damages were awarded by courts prior to the passing of the Jones Act.

Dutra's Arguments

Miles held that the issue of damages available to seamen is controlled by legislation.

Remedy of seaworthiness only really developed in the last 75 years after *Mahnich v. Southern Steamship* (1944); therefore, unlike maintenance and cure, does not predate the Jones Act.

Punitive damages have never been available under the FELA. *St. Louis, I.M. & S.R. Co. v. Craft* (1915) (recovery under the FELA is “confined to . . . loss and suffering”).

Jones Act and unseaworthiness are simply two paths to compensation for the same injury; maintenance and cure is an entirely different cause of action and “is not compensation for the disability suffered.”

Argument not made

- Negligence is irrelevant in an unseaworthiness claim; if you are alleging negligence, you are governed by the Jones Act.

Plaintiff's Arguments

Townsend holds that common law tradition allowing award of punitive damages extends to claims under the maritime law and that Jones Act does not eliminate remedies that existed prior to the passage of that act.

Developments in the law of unseaworthiness after the passage of the Jones Act does not make *Townsend* distinguishable; developments in liability standards do not suggest any change in available remedies.

Dutra does not show that punitive damages were not available for unseaworthiness claims prior to the Jones Act.

Punitive damages are available under FELA and the Jones Act; the cases Dutra relies on do not squarely hold they are not.

Oral Argument —

Questions that suggest a justice is leaning in favor of Dutra

JUSTICE KAGAN (in response to a statement by Dutra's counsel that *Miles* draws a line that precludes the courts from creating remedies beyond what Congress has created): And I guess what I'm asking is, how is that kind of flashing yellow light, ***which I agree with you, that sounds like a flashing yellow light to me***, how is it consistent with all the changes that have occurred in the unseaworthiness action?

JUSTICE SOTOMAYOR (questioning plaintiff's counsel): -- except that it's not like Townsend, where there were at least two cases where punitive damages were awarded. I really don't see a case where it was clear that it was awarded for unseaworthiness as opposed to maintenance and cure, number one. And there aren't any treatises that affirmatively say that punitive damages were awarded for unseaworthiness. That's a somewhat different historical picture.

JUSTICE ALITO (questioning plaintiff's counsel): But if there were just – if there were an established rule in maritime cases that you get punitive damages, how do you account for the fact that there weren't cases awarding punitive damages for unseaworthiness?

JUSTICE ALITO: But, I mean, I think -- I wasn't around in the 19th Century either, but I think then and earlier, there were an awful lot of very unseaworthy vessels that were sent out to sea by owners. And they just took the risk. And it wasn't their life that was at stake. And so what would be -- it seems strange that there wouldn't be punitive damages claims in those cases, in any unseaworthiness case.

JUSTICE ROBERTS (questioning plaintiff's counsel): But maintenance and cure is something very different. Maintenance and cure is you're talking about somebody who can't do anything for himself, who's seriously injured or isn't taken care of. And you can understand maybe allowing punitive damages in that situation but not necessarily in the other.

JUSTICE GINSBURG: (questioning plaintiff's counsel) Mr. Frederick, one thing that I think is undisputable is the evidence is very slim that there were punitive damages, in fact, awarded for unseaworthiness claims. I mean, you can't dispute that, the evidence is slim.

MR. FREDERICK: I -- I would agree with that, Justice Ginsburg.

JUSTICE GINSBURG: And you would also agree on the Jones and FELA that the courts of appeals have been uniform in saying no.

JUSTICE KAGAN: (questioning plaintiff's counsel) So how do you think, Mr. Frederick, we should think about the question of the relationship between the Jones Act, on the one hand, and the common law maritime function, on the other? Because there is this language in *Miles* when seems to say broadly that, given the Jones Act, given that the Jones Act exists, courts should be wary of -- of doing things with their common law hat on. So how should we think about that?

JUSTICE KAGAN (questioning plaintiff's counsel): But Miles, in -- in -- in some parts at least, does not read like a one-off. It reads like a general statement about the relationship between the Jones Act and the common law maritime law.

Questions suggesting a justice is favoring the plaintiff

JUSTICE GINSBURG (questioning Dutra's counsel): I thought all those cases in the Miles line had to do with wrongful death actions and the whole history that there was no -- before Death on the High Seas Act, there was no such remedy?

JUSTICE ALITO: So, if [the vessel] sinks, the owner is probably not going to be one of the ones that drowns. So, if the owner does a cost/benefit analysis of the -- the cost of getting a better ship or repairing the ship versus the amount of money that could be obtained from -- from going ahead with a voyage using that ship, is that always going to come out in favor of safety? Is it generally going to -- did it -- did it always -- did it generally come out in favor of safety in the -- in the 19th century?

JUSTICE KAVANAUGH: -- two ways we can look at this. One is the Miles precedent, Jones Act, twin causes of action. The other is Townsend says punitives have historically been available and awarded in general maritime actions. The question's which of those principles to follow here. Where does the special solicitude for the welfare of sailors principle factor into how we should think about that, or does it factor at all?

Reading the Tea Leaves

Miles was a unanimous decision (8-0; Justice Souter did not participate), but none of the justices who decided that case are still on the Court

Atlantic Sounding was a 5-4 decision. Three of the justices in the majority (Thomas, Ginsburg and Breyer) are still on the Court; two of the dissenters (Alito and Roberts) are still on the Court.

My reading of the oral argument is that the justices gave plaintiff's counsel a slightly harder time than they gave Dutra's counsel.