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The Longshoremen's and Harbor Workers' Compensation Act: an Extension Shoreside: P.C. Pfeiffer Company, Inc., v. Diversion Ford, 444 U.S. 69 (1979)

Barry A. Edelberg

THE LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT: AN EXTENSION SHORESIDE

P.C. Pfeiffer Company, Inc., v. Ford, 444 U.S. 69 (1979)

In *P.C. Pfeiffer Company, Inc., v. Ford,* 444 U.S. 69 (1979), a unanimous Supreme Court held that the Longshoremen's and Harbor Workers' Compensation Act[1] covers land-based workers engaged in moving cargo at any point between ship and land transport, even if the workers are performing tasks that have not been shifted shoreside by containerization.[2] The decision thus broadens the Court's prior holding in *Northeast Marine Terminal, Inc. v. Caputo,*[3] which had rejected the "point of rest" doctrine[4] as a means of determining whether the Act covers injuries incurred while engaging in a particular activity.

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1. Longshoremen's and Harbor Workers' Compensation Act, Pub. L. No. 92–576, 86 Stat. 1251 (amending 33 U.S.C. §§ ;01–950 (1970)) (codified in scattered sections of 33 U.S.C. (1976)). In Southern Pacific Co. v. Jenson, 244 U.S. 205 (1917), the Court held that states lacked the power to extend their compensation systems seaside of the pier. After attempts to delegate that power to the States failed, Congress enacted the Longshoremen's and Harbor Workers' Compensation Act, 44 Stat. 1424, 33 U.S.C. §§ 901–950 (1927). Prior to 1972, the Act, in Section 3(a), covered only injury occurring "upon the navigable waters of the United States" (including any dry dock). In Nacirema Operating Co. v. Johnson, 396 U.S. 212 (1969), the Court held that Congress intended only that the Act fill the gap in coverage left after the *Jensen* decision. Consequently, the Court also held that the Act covered only injuries occurring seaside of the pier. Congress reacted to *Nacirema* by enacting the 1972 amendments. The 1972 amendments broadened the definition of "navigable waters" in Section 3(a) to include "any adjoining pier, wharf, dry dock, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel." 33 U.S.C. § 903(a)(1976). At the same time, Congress added the requirement that to recover under the Act, a person must be engaged in "maritime employment."

2. "A container is a large metal box resembling a truck trailer without wheels. It can carry large amounts of cargo destined for one or more consignees . . . . [I]f it carries goods destined for several consignees, it must be unloaded or 'stripped' and the goods sorted according to consignee. This operation may be done at the waterfront or inland. The analogous process during the loading phase is called 'stuffing.'" Northeast Marine Terminal Co. v. Caputo, 432 U.S. 249 at 253 n.2 (1977).

3. 432 U.S. 249 (1977).

4. According to the "point of rest" doctrine, the Act covers only injuries occurring seaside of the cargo's initial "point of rest" on the dock, or in the case of loading, the cargo's final "point of rest" before the cargo is loaded aboard ship. "Point of rest", is a term of art, and, as used in the industry, is the point that separates the stevedoring operation (seaside of that point), from the terminal operation function (shoreside of that point). This point is usually the pier warehouse. *Id.* at 274–75.

Respondent, Diverson Ford, an employee of Pfeiffer Company Inc., was injured while fastening military vehicles onto flatcars. Several days before the injury, a ship delivered the vehicles to port in Beaumont, Texas. The vehicles were then stored on shore and, on the day before the accident, loaded onto flatcars, which were to take the vehicles to their inland destination. Ford could not directly load or unload a vessel because of agreements between his union, his employer, and the Longshoremen's Union. Respondent Will Bryant, employed in Galveston, Texas, by the co-respondent Ayers Steamship Company,[5] had been injured while loading cotton from a dray wagon into a warehouse, where it was to be stored and later loaded onto a ship by longshoremen. Bryant could not directly load or unload a vessel because of agreements between his union, his employer, and the Longshoremen's Union.

Each respondent initiated an action to recover for his injuries under the Act. In each case, an Administrative Law Judge denied the claims for longshoremen's compensation, holding, under the "point of rest" doctrine, that neither Ford nor Bryant was engaged in "maritime employment" as defined by § 2(3) of the Act.[6] Rejecting the "point of rest" doctrine, the Benefits Review Board reversed both decisions.[7] On appeal, the Fifth Circuit affirmed the Review Board's decisions, holding that "an injured worker is a covered 'employee' if at the time of his injury . . . he was . . . loading, unloading, repairing, building, or breaking a vessel."[8] At the Supreme Court level, the petitioners argued that a worker is engaged in maritime employment only if, "[o]n the day of his injury, . . . the worker (was) subject to being assigned by his employer to perform any part of his work on the navigable waters of the United States [seaside of the shoreline]."[9] The Supreme Court vacated the court of appeals judgment and, in a *per curiam* opinion, remanded the case for further consideration in light of *Northeast Marine*.[10] On reconsideration, the Fifth Circuit, in a brief *per curiam* opinion, reaffirmed its prior decision.[11]

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5. The Director of the Office of Worker's Compensation Programs of the United States Department of Labor was also a co-respondent in the appeals of both Bryant and Ford. Texas Employer's Ins. Assoc. was also a co-petitioner.

6. Ford v. Pfeiffer Co., Docket No. 74 L.H.C.A. 181 (March 21, 1975); Bryant v. Ayers Steamship Co., Docket No. 74 L.H.C.A. 89 (Feb. 28, 1975).

7. The decision of the Benefits Review Board in Bryant's case is reported in 2 B.R.B.S. 408 (March 21, 1975). The Board's decision in Ford's case is reported in 1 B.R.B.S. 367 (Nov. 13, 1975).

8. 533 F.2d 533, 539–40 (5th Cir. 1976).

9. Brief for Petitioners at 15; Pfeiffer Co. v. Ford, 444 U.S. 69 (1979).

10. 433 U.S. 904 (1977).

11. 575 F.2d 79 (5th Cir. 1978).

The Supreme Court granted the petitioners' new request for *certiorari* and subsequently affirmed the Fifth Circuit's later decision.

Writing for the Court, Justice Powell's first and strongest argument was that Congress, in the 1972 amendments to the Longshoremen's and Harbor Workers' Compensation Act, set forth a status requirement which was separate and distinct from the Act's situs requirement. Section 3(a) of the Act provides the situs requirement:

> Compensation shall be payable under this chapter in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel).[12]

The status requirement, contained in Section 2(3), further limits the Act's coverage by defining an "employee" as,

> any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harborworker including a ship repairman, shipbuilder, and shipbreaker.[13]

Thus, the Court argued that Section 2(3) refers to the nature of the employment and is independent of the situs requirement. The Court felt that the Act's structure demonstrated a congressional intent that the status and situs tests be distinct. To give "maritime employment" a definition that restricts the Act's geographical coverage would defeat this intent. Further, the Court said that such a definition of "maritime employment," would be inconsistent with the use of that term in Section 2(4) of the Act. That section defines an "employer" as a person "whose employees are employed in maritime employment, in whole or in part, upon the navigable waters of the United States."[14] The Court found that construing the term "maritime

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12. 33 U.S.C. § 903(a) (1976).

13. 33 U.S.C. § 902(3) (1976). A "shipbreaker" is "one who breaks up vessels unfit for further use and deals in their material." WEBSTER'S NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE (3rd ed. 1976).

14. 33 U.S.C. § 902(4) (1976).

employment" to contain an element of geographic restriction would make the situs requirement in the last clause of Section 2(4) "virtually superfluous."[15]

The Court then examined the legislative history of the 1972 amendments in an effort to shed more light on Congress's intent in expanding the Act's coverage shoreside. Citing a passage from the Committee report,[16] the Court noted that 1) the purpose of the "maritime employment" requirement was to exclude from coverage workers employed in the situs area, but "not engaged in loading, unloading, repairing, or building a vessel;"[17] and 2) "[the] legislative history discusses workers solely in terms of what they are doing, and never in terms of where they are working."[18] The Court added that,

> In adopting an occupational test that focuses on loading and unloading, Congress anticipated that some persons who work only on land would receive benefits under the 1972 Act. An obvious example is Blundo [an injured party in *Northeast Marine*]. He was checking and marking cargo from a container that had been removed from a ship and moved overland to another pier before it was opened. Without any indication that he would be required to set foot aboard a ship, this Court

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15. The petitioners cited two pre-amendment cases supporting their proposition that "maritime employment" includes only work upon navigable waters. *See* Pennsylvania R. Co. v. O'Rourke, 344 U.S. 334, 339–40 (1953); Nogueira v. New York, N.H. & H.R. Co., 281 U.S. 133 (1930). The Court responded

> Neither decision discusses what types of land-based loading or unloading operations might constitute maritime employment, probably because the situs requirement in the pre-1972 Act barred recovery for all injuries sustained on land. *See* Nacirema Operating Co. v. Johnson, [*supra* note 1]. . . . In any event, the interpretation of the pre-1972 Act cannot obstruct Congress's obvious intent to include some landbased workers within the coverage of the current Act. 444 U.S. at 80 n.11.

The Court added that even petitioners acknowledged that the Act covers a land-based crane operator moving cargo from ship to dock. The petitioners, however, claimed that such activity, though covered, is not "maritime employment." The Court rejected that argument, saying that Section 2(3) of the Act defines "employee" as "any person engaged in maritime employment *including* . . . longshoring operations," (emphasis added), and not, as the petitioners would need to contend, "any person engaged in maritime employment [*as well as*] . . . longshoring operations." 444 U.S. at 77–78 n.7.

16. S. REP. NO. 1125, 92d Cong., 2d Sess. 1 (1972). The House submitted a virtually identical report which is *reprinted in* [1972] U.S. CODE CONG. & AD. NEWS 4698.

17. 444 U.S. at 79, quoting from S. REP. NO. 1125, *supra* note 16, at 13.

18. 444 U.S. at 80.

held that he was covered by the 1972 Act because this type of work was maritime employment.[19]

The Court added that, even when there is no containerized cargo, the typical loading gang has workers who need never board a ship. Further, the Court said, Congress heard testimony that 30-35 percent of shipbuilding and repair is done on land.[20] Even the petitioners recognized that both of these classes of workers were covered by the Act.[21]

The Court then said that only the "point of rest" doctrine, which the Court rejected in *Northeast Marine,* distinguished Bryant or Ford from longshoremen performing the same work in other ports. Following the *Northeast Marine* holding, the Court rejected that distinction in *Pfeiffer* as being contrary to congressional intent. Again citing *Northeast Marine,* the Court also rejected union membership as a ground for distinguishing Ford or Bryant from longshoremen performing the same work.[22]

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19. *Id.* In fact, the Court did have such an indication. In *Northeast Marine,* the Court said:

> At the time of his injury . . ., Blundo had been employed for five years as a "checker". . . . As a checker he was responsible for checking and recording cargo as it was loaded onto or unloaded from vessels, barges, or containers. Blundo was assigned his tasks at the beginning of each day and until he arrived at the terminal he did not know whether he would be working on ship or on shore. He was reassigned during the day if he completed the task to which he was assigned initially.

432 U.S. at 252–53. However, in holding that the Act covered Blundo, the Court said only that Blundo's injury occurred while he was performing an "integral part of the unloading process as altered by the advent of containerization." *Id.* at 271–72. *See infra,* note 35. Neither Ford nor Bryant were involved in such work. In holding that Blundo's co-respondent, Caputo, who was injured while placing previously unloaded goods into a delivery truck, was engaged in "maritime employment," the *Northeast Marine* Court refused to decide whether Caputo would have been covered had he not regularly loaded and unloaded cargo directly from or onto a ship. Instead, the Court limited its holding, saying that, at least, "amphibious" workers in Caputo's position were covered. 432 U.S. at 273–74.

20. 444 U.S. at 80–81; *see also Hearings on S. 2318 et al., before the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare,* 92d Cong., 2d Sess., 176 (1972) (testimony of Ralph Hartman, Bethlehem Steel Corporation).

21. *See supra* note 15.

22. Note that if the Court had decided that only workers who could work at least some part of the day aboard a ship were covered, union membership could be a crucial factor. Given the facts of the instant case, to say that union membership is or is not a determinative factor in the outcome of the case would necessarily decide whether the Act's coverage extends to cargo handlers who never board a ship. To hold that union jurisdiction, as distinct from an employer's habits in assigning his workers' duties, could limit the Act's coverage would seemingly violate Section 15(b)'s prohibition of employee waivers of protection. 33 U.S.C. § 915(b) (1976).

"The crucial factor [in determining whether a worker meets the 'maritime employment' requirement of § 2(3)]," the Court said, "is the nature of the activity to which [he] may be assigned."[23] Citing *Northeast Marine* once again, the Court recognized that "[p]ersons moving cargo directly from ship to land are engaged in maritime employment."[24] Therefore, the Court continued, workers responsible for some portion of that process, such as Bryant and Ford, are also engaged in maritime employment.

In conclusion, the Court remarked that their decision was in keeping with the congressional intent of the Act. The decision does not extend coverage to all workers in the situs area. Workers whose only "responsibility is to pick up cargo for further trans-shipment" would not be covered under the Act.[25] Finally, the Court said that its decision further serves the federal legislative intent of having "a simple, uniform standard of coverage."[26]

The *Pfeiffer* decision demonstrates the Court's willingness to accord the Longshoremen's and Harbor Workers' Compensation Act a "liberal construction in keeping with the Act's purposes."[27] The Committee report demonstrates that the purpose of extending the Act's coverage shoreside went beyond providing continuous coverage to workers who, under the old Act, walked in and out of coverage during the course of their day's work as they walked from shore to ship and ship to shore. Nor was that purpose limited to protecting workers whose jobs were shifted shoreside when containerization became a widely used cargo-handling technique. That report pointed out that the injury frequency rate of longshoring was "well over four times the average [of the rate] for manufacturing operations."[28] Further, the Committee discussed the importance of a "workman's compensation system which maximizes industries [sic] motivation to bring about . . . an improvement" in working conditions as a means of lowering the high injury frequency rate.[29] As the *Pfeiffer* Court noted, the Act's purposes could not be served by a compensation system which, in effect, would allow coverage to shift with an employer's whims.[30]

Although the Committee said that their intent in expanding the Act's coverage shoreside "[was] to permit a uniform compensation system to apply to employees who would otherwise be covered by this Act for part of their

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23. 444 U.S. at 82.
24. *Id.*
25. *Id.* at 83, quoting S. REP. NO. 1125, *supra* note 16, at 11.
26. 444 U.S. at 83.
27. 432 U.S. at 268.
28. S. REP. NO. 1125, *supra* note 16, at 2.
29. *Id.*
30. 444 U.S. at 83.

activity,"[31] it is apparent that the Committee did not mean to imply that the amendments limit coverage to employees who work, at least in part, over water. That quote may mean that the intent of the Committee "[was] to permit a uniform compensation system to apply to employees who, [save for the strict territorial limitations of the present Act,] would be of a class of workers covered by this act for part of their activity."[32] Even should the quote be interpreted as expressing the intent of the Committee "to permit a uniform compensation system to apply to employers who, [without the amendments,] would be covered by this act for part of their activity," that statement does not necessarily mean that the Committee intended to extend coverage exclusively to such workers. Certainly, nothing in the Act's language or legislative history clearly implies such a limitation. Indeed, in its summary, the Committee said that a purpose of the bill was to extend coverage to additional workers.[33] If coverage were limited solely to those workers who had previously been covered by the Act for part of their activity, no additional workers would be covered by the amendments. Therefore, Congress must have intended that employees such as Ford and Bryant be covered by the Act and its amendments.[34] At most, the Pfeiffer Company could only argue that the Committee report was ambiguous on whether the amendments extended the Act's coverage to include land-based workers like Ford and Bryant. In keeping with the liberal construction applied to the Act, all ambiguities are resolved in "a way which avoids harsh and incongruous results."[35]

Given that the Court considered the amendments to extend the Act's coverage to some land-based workers who did not handle containerized cargo,

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31. S. REP. NO. 1125, *supra* note 16, at 11.

32. *Id.* The Federal Respondent's brief suggested that the quote was a result of a draftsman's oversight. Brief for the Federal Respondent at 31, Pfeiffer Co. v. Ford, 444 U.S. 69 (1979). Gilmore and Black warn against "tak[ing] the Committee Reports as holy writ. . . . The Reports do not read as if they had been divinely inspired. As essays in statutory construction, they do not commend themselves." G. GILMORE AND C. BLACK, THE LAW OF ADMIRALTY § 6–51.

33. S. REP. NO. 1125, *supra* note 16, at 1.

34. The Senate Committee's reference, in their summary, to the extension of the Act's coverage to additional workers, does not have a counterpart in the House report. *See supra* note 33.

35. 432 U.S. at 268. It is not submitted that any doubts in the law are resolved in claimant's favor. *See* Pittston Stevedoring Corp. v. Dellaventura, 544 F.2d 35, 48 (2d Cir. 1976), *aff'd, Northeast Marine, supra* note 2. To benefit from this rule of liberal construction a party must convince the court that the Act is ambiguous. It is not enough to convince the court that a particular construction of the Act causes a "harsh or incongruous result." *See* Nacirema Operating Co. v. Johnson, 396 U.S. 212, 223–24 (1969).

the petitioners needed to resurrect some form of the recently crucified "point of rest" doctrine to support his cause. They needed to contend that the Act covers only workers who do at least some work shipside of the "point of rest." However, the Court, in *Northeast Marine,* said that although the expression "point of rest" was well known in the industry when the amendments were drafted, that term appears nowhere in the statute or legislative history. Therefore, the *Northeast Marine* Court found it difficult to believe that Congress intended that term to be a decisive factor in the Act's status requirement.[36] Moreover, the inherent difficulties of determining the "point of rest," and the ability of employers to shift that point landward or shoreward at will, militate against application of the "point of rest" doctrine in the instant case. That doctrine entirely conflicts with the intent of Congress to provide uniform, simple, and equitable coverage for workers.[37]

Arguably, the decision of the *Pfeiffer* Court goes considerably beyond the Court's holding in *Northeast Marine.* While the *Northeast Marine* Court held that an employer could not defeat the purpose of the 1972 amendments by merely shifting the "point of rest" shoreward, that Court noted that the 1972 amendments were enacted to remedy two evils of the old Act. These evils were that the prior Act subjected the same employee to different coverage depending merely on his location at the time of his injury, and that the prior Act did not protect workers performing "longshoring operations that modern technology had moved onto the land."[38] Thus, the real question the Court faced in *Pfeiffer* was whether the amendments were intended to accommodate possible future developments in cargo-handling techniques and technology that may move still more tasks ashore. The Act's use of open-ended terms such as "longshoring" and "longshoring operations" to describe activities included in "maritime employment"[39] clearly demonstrates this intent. Had the *Pfeiffer* Court held for the petitioners, an employer would have been able to circumvent the Act merely by devising a system of unloading or loading a vessel in which the most hazardous tasks would be performed by land-based workers. Admittedly, allowing land-based workers to recover under the Act

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36. 432 U.S. at 275. The petitioners also argued that workers handling containerized cargo were a limited exception to the Act's normal coverage, since the work performed in checking and stuffing was analogous to work that, before the advent of containerization, was performed in the ship's hold. Further, the Committee report showed a special concern for workers whose tasks were shifted shoreside by containerization. *See* 432 U.S. at 273–74; Stockman v. John T. Clark & Son of Boston, 539 F.2d 264, 265 (1st Cir. 1976), *cert. denied,* 433 U.S. 908 (1977). However, since the Act's language suggests no such limited exception, this argument failed.

37. S. REP. NO. 1125, *supra* note 16, at 12–13.

38. 432 U.S. at 276.

39. 33 U.S.C. § 902(3) (1976).

increases the uncertainty as to what constitutes "maritime employment." However, this uncertainty is the necessary price of a compensation system free of loopholes through which an employer can easily pass. Further, the *Pfeiffer* Court offers some guidance as to what workers are engaged in "maritime employment." Workers performing tasks "significant[ly] relat[ed]"[40] to "some portion"[41] of "tasks traditionally performed by longshoremen" are engaged in "maritime employment."[42] A similar test may be invoked to determine the boundaries of "maritime employment" in general. It is submitted that a court should find that a worker was engaged in "maritime employment" if his duties included tasks functionally analogous to some part of the "tasks traditionally performed by" longshoremen, harborworkers, shipbuilders, or shipbreakers.[43]

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40. Executive Jet Aviation, Inc. v. City of Cleveland, Ohio, 409 U.S. 249, 268 (1972); Odom Construction Co. v. United States Department of Labor, 622 F.2d 110 (5th Cir. 1980). In the context of the "maritime employment" requirement that "significant relationship" should be that of a functional analogy. Otherwise a clerical worker might still be deemed covered under the Act. *See* Maher Terminals, Inc. v. Farrell, 548 F.2d 476 (3d Cir. 1977).

41. 444 U.S. at 83.

42. *Id.* at 82–83.

43. *See* 33 U.S.C. § 902(3) (1976). The Third Circuit, while applying the "nature of overall duties" test, held that an employee whose duties were found to be "primarily (if not 'purely') . . . clerical," could not recover under the Act for injuries he incurred while acting in his capacity as a clerk, despite the fact that on occasion the worker checked cargo. Maher Terminals, Inc. v. Farrell, 548 F.2d 476, 477 (3d Cir. 1977). The court said that, "on occasion he left the office to examine markings on cargo, and that in the past he had worked as a checker is not controlling. What is controlling is the nature of his primary duties. As we perceive the congressional intent, that is the sole test. Farrell's primary duties being that of a clerk and not a checker, he is excluded from coverage." *Id.* at 478. Although the result in *Maher* is sound, the court's reference to an employee's "primary" duties is unfortunate and needlessly vague. The test should not be whether one's "primary" duties are maritime, but whether one's maritime responsibilities are so insignificant as to be negligible, in which case that worker would not be covered by the Act while performing non-maritime activities. Restated affirmatively, the test should be whether a worker spends a significant amount of his time performing maritime activities. *See* Odom Construction Co. v. United States Department of Labor, 622 F.2d 110, 113 (5th Cir. 1980). Such a test is simple, equitable, and serves Congress's desire to exclude from coverage purely clerical employees, and workers "whose only responsibility is to pick up stored cargo for further trans-shipment." S. REP. NO. 1125, *supra* note 16, at 13. The suggested test is inapplicable if at the precise moment of his injury the worker was performing a "maritime activity." For example, had Farrell been injured while checking cargo, he should have been covered under the Act. This is so, because the test only determines whether a worker's overall duties are sufficiently maritime in nature that he may be considered to be "engaged in maritime employment" even at those times when he is performing activities that are not maritime. *See* 33 U.S.C. § 902(3) (1976).

Since the *Pfeiffer* decision holds that the concept of "maritime employment" looks only to the function of a worker the location of his and not to his workplace, a seeming paradox results. A trucker who loads or unloads his truck on a situs within the Act is covered. However, a worker constructing a sewage drain over navigable water is not covered by the current Act, even though he may have been protected under the pre-1972 Act.[44] This paradox is resolved when one realizes that the "maritime employment" requirement focuses the Act on activities "bear[ing] a significant relationship to traditional maritime activities."[45] Thus, a maritime locality alone does not bring an activity within the ambit of the Act.[46]

Pfeiffer v. Ford follows both the spirit and the letter of the 1972 amendments to the Longshoremen's and Harbor Workers' Compensation Act. The holding of the Court that the scope of "maritime employment" includes all workers who move cargo from ship to land transportation reflects the intent of Congress to eliminate the impractical technicalities that weakened the pre-1972 Act. By using a functional definition of "maritime employment" when interpreting the 1972 Act, the Court continues its trend of recognizing the impact of contemporary cargo-handling techniques on the working man.[47] The Court has imposed only those limitations upon the Act that are clearly required by the Act's terms.

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44. Fusco v. Perini North River Associates, 601 F.2d 659 (2d Cir. 1979), *vacated,* 444 U.S. 1028, *rev'd on rehearing,* 622 F.2d 1111, 1113 (2d Cir. 1980).

45. *Id.* at 1113.

46. *Executive Jet Aviation, supra* note 40.

47. *Fusco, supra* note 44; *See also Executive Jet Aviation, supra* note 40.

48. *See Northeast Marine, supra* note 2.