

ORIGINAL

(S E R V E D)
(MARCH 23, 2000)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

DOCKET NO. 99-21

SOUTH CAROLINA MARITIME SERVICES, INC.

V.

SOUTH CAROLINA STATE PORTS AUTHORITY

The doctrine of state sovereign immunity does not prohibit the Federal Maritime Commission from asserting jurisdiction over a case brought by a private complainant against a port authority arguably operating as an arm of the State of South Carolina.

George M. Earle, for Complainant South Carolina Maritime Services, Inc.

Edward J. Sheppard, Patricia Snyder, and Susan Taylor Wall, for Respondent South Carolina State Ports Authority.

ORDER REVERSING THE ADMINISTRATIVE LAW JUDGE'S ORDER
AND REMANDING FOR FURTHER PROCEEDINGS

BY THE COMMISSION: (*Harold J. Creel, Jr., Chairman; Joseph Brennan, Antony M. Merck, John A. Moran, and Delmond J.H. Won, Commissioners*)

BACKGROUND

This proceeding began with the filing of a complaint before the Federal Maritime Commission ("Commission" or "FMC") on October 25, 1999, by South Carolina Maritime Services, Inc. ("Maritime Services"), a South Carolina corporation engaged in the operation of passenger vessels, against the South Carolina State Ports

Authority ("SCSPA"). In its complaint, Maritime Services asserted that SCSPA refused to give berthing space at Charleston, 'South Carolina, to Maritime Services' vessel, the M/V TROPIC SEA, which permits gambling activities on board when the vessel is in international waters. The denial of berthing space was due to SCSPA's purported policy of refusing to berth ships whose primary purpose is gambling. Maritime Services averred that SCSPA did provide berthing to another cruise operator, Carnival Cruise Lines, whose vessel, the M/S INSPIRATION, allegedly provided gambling services. Because of this apparently disparate treatment, Maritime Services claimed that SCSPA violated section 10(b) (10) of the Shipping Act of 1984 ("Shipping Act"), 46 U.S.C. app. § 1709(b)(10), by unreasonably refusing to deal, and section 10(d)(4), 46 U.S.C. app. § 1709(d)(4), by unduly and unreasonably preferring Carnival, and unduly and unreasonably prejudicing or disadvantaging Maritime Services. Maritime Services asked for a cease and desist order and for compensation for "actual injuries caused by [SCSPA]'s discriminatory practices, as well as interest and reasonable attorneys fees." Complaint at 10.

On November 16, 1999, SCSPA filed an Answer to the Complaint. In its Answer, SCSPA raised the affirmative defense that "[t]he Eleventh Amendment of the U.S. Constitution prohibits suits by private parties for reparations against" a state agency like SCSPA. Answer at 8.

The case was assigned to Chief Administrative Law Judge Norman D. Kline ('ALJ"). Reviewing a motion to dismiss filed by SCSPA and Maritime Services' response, the ALJ dismissed the case based on his belief that SCSPA, as an arm of the State of South Carolina, is immune from complaint proceedings brought before the Commission under the doctrine of sovereign immunity. On February 2, 2000, the Commission, on its own motion, determined to review the ALJ's decision to dismiss the case. For the reasons set forth below, we believe the ALJ erred, and therefore reverse his decision and remand the case for further proceedings.

PROCEEDINGS BEFORE THE ALJ

After filing its Answer, SCSPA filed a Motion to Dismiss, alleging several grounds for dismissing the complaint. Of these, the ALJ considered and based his ruling only upon SCSPA's argument that it is an agency of the State of South Carolina and therefore immune from suit by private parties under the doctrine of sovereign immunity. Motion at 14-17.

In its Response to the Motion to Dismiss, Maritime Services addressed the various grounds for dismissal, and averred, inter alia, that SCSPA is not immune from suit under the doctrine of sovereign immunity. Response at 8-9.

On January 5, 2000, the ALJ granted the Motion to Dismiss, explaining that "recent Supreme Court decisions interpreting the 11th Amendment and State sovereign immunity from private suits plus

a decision by the U.S. Court of Appeals for the Fourth Circuit holding that SCSPA is an 'arm of the State' and therefore entitled to the 11th Amendment immunity from private suits require that the instant complaint be dismissed." ALJ Order at 11.¹ He went on to hold that the only method for the Commission to inquire into the alleged violations of the Act in this case would be by Commission-initiated investigation.

DISCUSSION

Neither party appealed the ALJ's decision to the full Commission. Ordinarily, when no party files an appeal from an ALJ's decision to dismiss a case, the ALJ's ruling becomes the Commission's decision 30 days after its issuance, under Rule 227(c), 46 C.F.R. § 502.227(c). However, given the importance of the sovereign immunity question to the Commission's ability to determine whether state-operated ports are acting in compliance with the provisions of the Shipping Act, we decided to review the ALJ's ruling. Because the ALJ dismissed the complaint on sovereign immunity jurisdictional grounds, it is necessary for the Commission to determine whether such dismissal was correct -- in other words, whether state sovereign immunity from private suits extends to proceedings before this agency.²

¹ The Fourth Circuit case referred to by the ALJ is Ristow v. South Carolina State Ports Auth., 58 F.3d 1051 (4th Cir. 1995).

² It is clear that the SCSPA is a "person" under 46 U.S.C. app. § 1702, and thus subject to the Shipping Act's requirements.

A. The Doctrine of Sovereign Immunity

In 1793, the U.S. Supreme Court ruled that Article III of the Constitution permitted a private citizen of another state to sue the State of Georgia in court without its consent. Chisholm v. Georgia, 2 U.S. (2 Dall.) 419 (1793). The Eleventh Amendment was passed shortly thereafter, with the purpose of overturning the Court's determination in Chisholm. See generally Alden v. Maine, 119 S.Ct. 2240 (1999) (discussing the history of the ratification of the Eleventh Amendment). The explicit language of the Amendment forbids a citizen of one state from suing another state without that state's consent. The Amendment says that "[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S. Const. amend. XI (emphasis added). However, in Hans v. Louisiana, 134 U.S. 1 (1889), the Court ruled that the doctrine of state sovereign immunity extends beyond the linguistic boundaries of the Eleventh Amendment, and forbade a suit against a state by a citizen of that same state in

In California v. United States, 320 U.S. 577, 585-6 (1944), the Supreme Court ruled, under identical language in the Shipping Act's predecessor statute (the Shipping Act, 1916), that "with so large a portion of the nation's dock facilities . . . owned or controlled by public instrumentalities, it would have defeated the very purpose for which Congress framed the scheme for regulating waterfront terminals to exempt those operated by governmental agencies." See also Reno v. Condon, 120 S.Ct. 666 (2000) (Federal government may regulate commercial activities of state entities).

Federal court in a case involving a question of Federal law. Subsequent decisions also "rejected similar requests to conform the principle of sovereign immunity to the strict language of the Eleventh Amendment." Alden, 119 S.Ct. at 2254. "These holdings reflect a settled doctrinal understanding, consistent with the views of the leading advocates of the Constitution's ratification, that sovereign immunity derives not from the Eleventh Amendment but from the structure of the original Constitution itself." Id. Thus, our discussion here is not limited to the text of the Eleventh Amendment, but rather addresses the broader doctrine of sovereign immunity, as it has been developed and enunciated by the Supreme Court.

Based on his reading of numerous Supreme Court cases, the ALJ held that "it is irrational to argue that an agency like the Commission . . . is free to disregard the 11th Amendment or its related doctrine of State immunity from private suits." ALJ Order at 20. He also ruled that there is "no significance to an argument that the doctrine of 11th Amendment State sovereign immunity from private suits does not extend to administrative proceedings." Id.

However, the Supreme Court has defined the terms of state sovereign immunity, and this definition does not extend to administrative proceedings. All of the recent Supreme Court cases addressing state sovereign immunity involve proceedings against states in judicial tribunals, not before administrative agencies.

In Seminole Tribe of Fla. v. Florida, 517 U.S. 44 (1996), the Court held that the Indian Commerce Clause does not grant Congress the authority to abrogate a state's sovereign immunity from suit in Federal district court under the Indian Gaming Regulatory Act. The Court specifically limited its inquiry to the issue of whether Congress could "expand the jurisdiction of the Federal courts beyond the bounds of Article III" of the Constitution. Id. at 65. The Court's discussion in Seminole Tribe is limited to the subject of district court jurisdiction over states, and no mention of or analogy to administrative proceedings is made.³

In Alden, the Court ruled that the Constitution's Interstate Commerce Clause does not grant Congress the authority to subject nonconsenting states to private suits for damages in state courts under the Fair Labor Standards Act.⁴ The Court noted that the "separate and distinct structural principle" of sovereign immunity

³ A recent circuit court opinion, rendered after Seminole Tribe, agrees with this analysis. See Premo v. Martin, 119 F.3d 764, 769 (9th Cir. 1997), cert. denied, 522 U.S. 1147 (1998) ("the Amendment on its face limits only the authority of Article III courts."). Cases decided before Seminole Tribe reached similar results. See, e.g., Ellis Fischel State Cancer Hosp. v. Marshall, 629 F.2d 563 (8th Cir. 1980), cert. denied, 450 U.S. 1040 (1981) ("Petitioner, however, cites no case law for the proposition that the eleventh amendment is any bar to administrative action, and we reject that position. The eleventh amendment bars judicial action, not action by Congress or the executive branch.").

⁴ The Court characterized the issue of whether the Federal government can abrogate state sovereign immunity from suit in the state's own courts as "a question of first impression." Alden, 119 S.Ct. at 2260.

"is not directly related to the scope of the judicial power established by Article III, but inheres in the system of federalism established by the Constitution." Alden, 119 S.Ct. at 2255. The Court also stated that it has "often described the States' immunity in sweeping terms, without reference to whether the suit was prosecuted in state or federal court." Id. at 2262. While the Court recognized that sovereign immunity arises from the "system of federalism," and not from the mere text of the Eleventh Amendment, it nevertheless described such immunity only in terms relating to the possibility of "suit . . . in state or federal court." Id. The remainder of the recent sovereign immunity cases address suits in Federal court. See College Sav. Bank v. Florida Prepaid Postsecondary Educ. Expense Bd., 119 S.Ct. 2219 (1999) (Congress cannot seek constructive waivers of sovereign immunity from states for suit in Federal court under the Trademark Remedy Clarification Act/Trademark Act of 1946); Florida Prepaid Postsecondary Educ. Expense Bd. v. College Sav. Bank, 119 S.Ct. 2199 (1999) (Congress lacks authority under section 5 of the Fourteenth Amendment to abrogate state sovereign immunity from suit in Federal court under the Patent and Plant Variety Protection Remedy Clarification Act); Kimel v. Florida Bd. of Regents, 120 S.Ct. 631 (2000) (Congress lacks authority under section 5 of the Fourteenth Amendment to abrogate state sovereign immunity from suit in Federal court under the Age Discrimination in Employment Act). See generally The

Supreme Court - Leading Cases, 113 Harv. L. Rev. 200-233 (1999).

The doctrine of state sovereign immunity, even freed from the linguistic boundaries of the Eleventh Amendment, is meant to cover proceedings before judicial tribunals, whether Federal or state, not executive branch administrative agencies like the Commission. There is no compelling reason offered by either the ALJ or SCSPA to extend the reach of the Supreme Court's holdings in Seminole Tribe and Alden, and thereby nullify the Commission's jurisdiction over state ports, which jurisdiction has been in place for decades. The Shipping Act of 1984, and the Shipping Act, 1916⁵ before it, illustrate Congress's decision that the regulation of ports, whether publicly or privately owned, is essential to protecting the nation's oceanborne commerce. Commission jurisdiction over complaint cases brought against ports is one of the agency's primary means of regulating ports. Accordingly, the Commission has in the past rebuffed attempts to restrict its jurisdiction over public port authorities. See, e.g., James J. Flanagan Shipping Corporation d/b/a James J. Flanagan Stevedores v. Lake Charles Harbor and Terminal Dist. and Lake Charles Stevedores, Inc., 27 S.R.R. 1123, 1130 (1997) ("that the Port presumably acts i'n the

⁵ The Shipping Act, 1916, which was replaced in most respects by the Shipping Act of 1984, was the statute the Commission and its predecessor agencies administered for decades. See supra at 4-5 n.2. The provisions of the 1916 Act not replaced by the passage of the 1984 Act were subsequently abolished by the Interstate Commerce Commission Termination Act, Pub. L. 104-88, 109 Stat. 8033 (1995).

public interest does not shield it from the Commission's scrutiny.").

A private cause of action against an arm of the state brought before an administrative agency, because it invokes the remedial powers of the Executive branch, is in many respects more analogous to a Federal investigation than it is to a suit brought by a private party before a Federal or state court. For instance, section 11(b) of the Shipping Act provides that if a complainant in a Commission proceeding "is not satisfied, the Commission shall investigate [the complaint] in an appropriate manner and make an appropriate order." 46 U.S.C. app. § 1710(b). The Commission is also authorized to initiate investigations on its own motion, as a further weapon in its regulatory arsenal. Commission investigations, and private complaint proceedings, are part of a unified system of regulation created by Congress under the Shipping Act. It is important to note that the complaint case, as a regulatory tool, is not fungible with the right to file suit against a party in court. See National Fuel Gas Supply Corp. v. Federal Energy Regulatory Comm'n, 59 F.3d 1281 (D.C. Cir. 1995) (agency adjudications are not Article III court proceedings); Chavez v. Director, Office of Workers Compensation Programs, 961 F.2d 1409 (9th Cir. 1992) (same); Ecee, Inc. v. Federal Energy Regulatory Comm'n, 645 F.2d 339 (5th Cir. 1981) (same); see also Tennessee Dep't of Human Servs. v. U.S.. Dep't of Educ., 979 F.2d

1162 (6th Cir. 1992) (Eleventh Amendment does not apply to administrative agencies). A private complainant may not bring court action regarding alleged violations of the Shipping Act, as the FMC's jurisdiction over any such alleged violations is exclusive. See Government of Guam v. American President Lines, 28 F.3d 142 (D.C. Cir. 1994) (no implied private cause of action in court under the Shipping Act, 1916); see also D.L. Piazza Co. v. West Coast Line, Inc., 210 F.2d 947 (2nd Cir.), cert. denied, 348 U.S. 839 (1954). This further emphasizes the unitary nature of the regulatory scheme created by the Shipping Act, as all original determinations as to whether the Act has been violated, whether initiated by private complaint or by Commission investigation, are made by the Commission.'

For these reasons, we have chosen to reverse the ALJ's decision dismissing the present case, and hold that the doctrine of sovereign immunity does not bar complaints against state-run ports.⁷

B. Whether Commission Reparations Awards are Enforceable

The ALJ also noted that "the Commission cannot enforce its orders without the aid of the federal courts," and that, under

⁶ C.f., United States v. Locke, 120 S.Ct. 1135 (2000) (recognizing a Federal interest in maintaining "a uniformity of regulation for maritime commerce.").

⁷ Because it is not necessary to a resolution of the sovereign immunity question, we express no opinion regarding whether SCSPA is in fact an arm of the State of South Carolina.

sovereign immunity grounds, such enforcement might be impossible. ALJ Order at 21. It is true that, under section 14(d) of the Shipping Act, a party which has secured a reparations award by Commission order may "seek enforcement of the order in a United States district court having jurisdiction of the parties." 46 U.S.C. app. § 1713(d). The ALJ appears to have concluded that such enforcement would be impossible because, even if the Commission retained jurisdiction over a state-operated part, a district court would not have jurisdiction to order the enforcement of a reparations award. The ALJ assumed that the port would enjoy sovereign immunity from an enforcement proceeding. For this reason, the ALJ wondered, "what federal court would take jurisdiction of a private suit for enforcement of a reparations award that would have to be paid out of the State treasury?" ALJ Order at 21 n.8.

We note that review of the Commission's determinations awarding reparations to private complainants against state port authorities is available in the courts of appeals pursuant to the Hobbs Act, 28 U.S.C. § 2342. Such review is not an initial suit by a citizen against a state under Article III, and is not a situation in which sovereign immunity would be implicated. Entities like SCSPA, if found by the Commission to be in violation of the Shipping Act, may petition the courts of appeals for review. The courts of appeals retain jurisdiction "to determine the validity

of" orders issued by the Commission. 28 U.S.C. § 2342. The determination of the validity of a Commission order is a review of administrative action, not a suit against a state. See, e.g., Chevron U.S.A. v. Natural Resources Defense Council, 467 U.S. 837 (1984) (setting forth the standards for review of an agency's interpretation of the statute it administers). Sovereign immunity would not preclude appellate review of a Commission order,,

The possibility of bringing a cause of action against a port in district court to enforce a reparations award may be said to be analogous to Hobbs Act review in the courts of appeals. The role of the district court, pursuant to section 14 of the Shipping Act, is to permit a party holding a reparations award to seek "enforcement" of the order. Section 14 states that "the findings and order of the Commission shall be prima facie evidence of the facts therein stated." Such a proceeding is not an original suit against a state entity implicating Article III jurisdictional authority, but instead, like Hobbs Act review in the courts of appeals, is court review of a Federal agency's order.⁸ Thus, we

⁸ The Hobbs Act specifies that the petition for review is against the United States. 28 U.S.C. § 2344. While a district court enforcement proceeding to secure a reparations award would not be captioned as an action against the United States, it would nevertheless constitute review of agency action. Furthermore, the existence of the district court enforcement avenue appears to have originated not as a method of review intended to create a "suit" against an adverse party. Rather, it arose from sections 30-31 of the Shipping Act, 1916, as a means of protecting a shipper's choice of venue in actions against a common carrier, when the shipper required court review of the agency's determination. See Cons010

believe that Commission reparations awards are enforceable against entities like SCSPA.

However, even if a court were to rule that a Commission reparations award is unenforceable, the issuance of an order finding violations of the Shipping Act is not futile. The Commission must be able to determine whether the actions of regulated entities like SCSPA violate the Shipping Act. Whether or not a complainant is able to collect on a reparations award is a separate issue, distinct from the Commission's obligation to pass judgment on the legality of allegedly unreasonable or otherwise prohibited actions. Also, Commission decisions in complaint cases, whether or not a reparations award is issued, serve as precedent in future complaint cases and investigations.

It is also important to note that not all "state" port instrumentalities are in fact arms of the state. Whether they are is a determination made on a case-by-case basis. See 13 Wright, Miller and Cooper, Federal Practice and Procedure § 3524. See also Jacintoport Corp. v. Greater Baton Rouse Port, 762 F.2d 435 (5th Cir. 1985) (port not entitled to sovereign immunity); Principe Compania Naviera, SA v. Board of Comm'rs of the Port of New Orleans, 333 F. Supp. 353 (E.D. La. 1971) (same).

v. Federal Maritime Comm'n, 383 U.S. 607, 613-15 (1966); Interstate Commerce Comm'n v. Atlantic Coast Line R.R., 383 U.S. 576 (1966).

CONCLUSION

The Commission has determined to reverse the ALJ's Order, and rule that the doctrine of state sovereign immunity does not bar Maritime Services' claim against SCSPA. We remand the case to the ALJ for a determination on the merits of: (1) SCSPA's other grounds arguing for dismissal of the proceeding and, if the case is not dismissed, (2) Maritime Services' substantive claims of violations of the Shipping Act.

THEREFORE, IT IS ORDERED, That the ruling of the Administrative Law Judge dismissing the complaint in this proceeding is reversed; and

IT IS FURTHER ORDERED, That this proceeding is remanded to the Administrative Law Judge for further action consistent with this Order.

By the Commission.


Bryant L. VanBrakle
Secretary