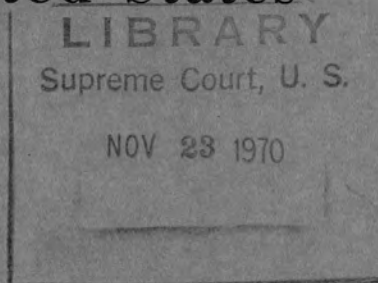


Supreme Court of the United States

OCTOBER TERM, 1970



In the Matter of:

Docket No. 29

----- X
U. S. BULK CARRIERS, INC. :
Petitioner, :
vs. :
DOMINIC B. ARGUELLES, :
Respondent :
----- X

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Place Washington, D. C.

Date November 12, 1970

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George W. Sullivan, Esq.

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* * * * *

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM

U. S. BULK CARRIERS, INC.,

Petitioner

vs

DOMINIC B. ARGUELLES,

Respondent

No. 29

Washington, D. C.

The above-entitled matter came on for argument at
2:20 o'clock p.m. on Thursday, November 12, 1970.

BEFORE:

WARREN E. BURGER, Chief Justice
HUGO L. BLACK, Associate Justice
WILLIAM O. DOUGLAS, Associate Justice
JOHN M. HARLAN, Associate Justice
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice

APPEARANCES:

GEORGE W. SULLIVAN, ESQ.
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Baltimore, Maryland 21202
Attorney for the Respondent

1 its final posture in the District Court.

2 The next item in his claim involves certain over-
3 time earnings that he said he was entitled to, but had not been
4 paid and these were disputed by the master of the vessel at the
5 time he signed all articles in the Port of Saigon.

6 The third issue involves alleged penalties to which
7 he refers as his source of entitlement: 46 U.S.C.A. Section
8 596.

9 Now, to see this case more or less in posture I would
10 like to review briefly the facts. Mr. Arguelles, an American
11 Merchant Seaman, was engaged in the Port of Galveston, Texas on
12 August 3, 1955 to serve as an Ordinary Seaman aboard the
13 S.S.U.S. PECOS. This is a merchant vessel; this is not a Navy
14 vessel, despite the U. S. in the title.

15 He served aboard the vessel and at a time when the
16 six months which was the period of the articles he signed as
17 part of his engagement, expired on February 3, 1966, the vessel
18 was entering at anchor, anchorage off from Cape St. John, which
19 is just off the coast of South Vietnam. The vessel was destined
20 to go to Saigon and discharge cargo which was in the ship.

21 The local authorities denied -- they didn't deny;
22 they just didn't grant it; as a factual matter the vessel
23 couldn't go up the river to the port of discharge and everyone
24 was required to stay on the vessel until pratique was granted.
25 This is a form of clearance to establish that the crew is

1 healthy, meets the quarantine requirements and what have you.

2 On February 13th, pratique was granted and the
3 vessel proceeded up the river to Saigon, a trip of some seven
4 hours. Thereafter, on the 15th the cargo was discharged and
5 on the 17th the Respondent, in company of seven other men, asked
6 to be signed off articles. They were referred to the U. S.
7 Consul who was acting in that port in the capacity of Shipping
8 Commissioner, which is customary in foreign ports when a seaman
9 leaves a ship.

10 The men were given a payroll voucher, which outlined
11 the earnings, the base wages and overtime which was certified
12 by the Consul and the men were given transportation to return
13 to the United States. A dispute arose at that time; the men
14 wanted to be paid off in cash. Because of the situation in
15 South Vietnam and the currency situation, U. S. currency was
16 not given to the men. They were allowed \$50 to use for expenses
17 incidental, perhaps, to their travel home.

18 Because of the dispute that arose the men --
19 Respondents, missed the plane. They left the next day, and
20 based on the testimony of the Respondent in his pretrial deposi-
21 tion, he arrived in Galveston on or about the 19th of February.

22 For reasons of his own convenience, I assume, he
23 didn't report to the company agent until the 22nd of February,
24 when he was given cash as certified to in the voucher. It was
25 his claim that this was wrong; he should have been paid off

1 more expeditiously; that this was a violation of Section 596;
2 the failure to give him his overtime wages was likewise a
3 failure to pay earned wages, even though they had been dis-
4 allowed by the department head of the vessel in accordance with
5 the terms and provisions of the collective bargaining agreement.

6 Further, he was claiming because the 11 days when
7 pratique had not been granted at the anchorage at Cape St. John,
8 that he was unjustifiably restricted to the ship and was en-
9 titled to additional 11 days of overtime, eight hours a day, as
10 a penalty.

11 It gets somewhat confusing in analyzing the claims
12 for penalty because it appears that at one point in the com-
13 plaint filed in the District Court there is a claim for double
14 a day's pay as provided for in Section 596 as a penalty on top
15 of the penalty of overtime not paid -- rather claim for restric-
16 tion to the ship but not paid.

17 Now, our position, in essence, is this: that all of
18 the claims that have been presented here are based on the terms
19 and provisions of the collective bargaining agreement and in the
20 collective bargaining agreement there is a procedure for presen-
21 ting grievances, a procedure for arbitration and it has been the
22 position of the Petitioner that at least in the first instance,
23 based on the decisions of this Court, he is required to pursue
24 those procedures to get the remedy available, if he is entitled,
25 rather than going to court and start a lawsuit.

1 Q Well, is there an "all disputes" clause in the
2 contract or just something limited to the interpretations of the
3 contract?

4 A It is limited to the interpretation of the
5 provisions of the contract, Your Honor.

6 Q Well, what's the statutory penalty got to do
7 with that?

8 A Well, the statutory penalty --

9 Q Let's assume the employer -- let's assume the
10 employer owed some overtime and that he was late in paying it
11 but then he tried to pay it and the only thing was the question
12 about statutory penalties.

13 A If the employer owed you overtime and was late
14 in paying it --

15 Q And then he paid them.

16 A The penalty would --

17 Q There is a statutory penalty for each day that
18 he was delayed; wasn't there?

19 A Yes; double day's pay, but --

20 Q All right; that's something that -- let's assume
21 that that's all that's left over in the dispute between the
22 parties. It has nothing to do with the collective bargaining
23 agreement.

24 A Well, we first have to determine the overtime
25 is due and owing.

1 Q No; the employer agrees; he's paid it already.

2 A Then there would be no basis for penalty
3 either if he's paid it unless there was a delay beyond the
4 period --

5 Q There was a delay, and the employer finally
6 pays it.

7 A I assume you are speaking hypothetically? As
8 opposed to the facts of this particular case, because we don't
9 concede there was a delay in this case.

10 Q Well, you jmean your arbitration should then
11 consider only the amount of the overtime?

12 A Yes, Your Honor.

13 Q I thought there was an "all disputes" clause
14 to this contract.

15 A If I may read from Article 12 which covers
16 this. Perhaps we are differing on terminology.

17 "In case a ~~dispute~~ arises over the interpretation of
18 any of the provisions of this agreement, whether the said dispute
19 originates on board ship or on shore, the union agrees to take
20 the matter up with the company and make every effort to adjust
21 said dispute.

22 "In the even that no -- " and so forth.

23 This would pretty much be resolved through the
24 disputes arising under the terms and provisions of the contract
25 itself.

1 Q What kind of disputes arise that would not be
2 covered under that clause. Can you suggest a hypothesis?that
3 would cover all conditions?

4 A Well, if --

5 Q Wages, hours --

6 A If, in the context of wages, if the earned
7 wages admittedly due to a man were not paid I don't believe the
8 contract would then be able to be resolved. You would then have
9 to go to court and sue, but the big question is determining
10 under the contract, and that's what I think are the basic issues
11 in this case, whether anything is due in the first instance. If
12 the money is due and concededly due and the company just
13 arbitrarily refuses to pay it, I think the man has a cause under
14 596, because the contract doesn't go that far.

15 But, before you can even get to anything like that,
16 of arbitrary nonpayment one has to first determine that some-
17 thing is due, and this has not been done and that's where I
18 believe it's very important the grievance procedure be pursued.

19 I think in the decisions of this court in cases --

20 Q Then your position, Mr. Sullivan, is that the
21 collective bargaining agreement provides pro tanto, anyway, a
22 barrier to bringing suit under this statute?

23 A Until the disputes are resolved one way or the
24 other and if it is assumed that if they are resolved in favor
25 of the seaman the wages would be paid; there wouldn't be any need

1 for the penalty in that instance.

2 Q Then, I take it you are conceding Mr. Justice
3 White's hypothetical situation, where there was overtime and
4 its payment was delayed, but it eventually was paid and then we
5 have a question of the availability to him of the statutory
6 penalties?

7 A I believe the decisions have held, Mr. Justice
8 Blackmun, that overtime -- all wages are earnings within the
9 context of the statute, so there wouldn't be any distinction
10 between the base wage and the overtime rate. Once it is deter-
11 mined that the overtime earnings are due, if they are arbitrarily
12 withheld beyond the period provided in the statute the penal-
13 ties might very well be justified, unless again, we get back
14 to another aspect of Section 596: sufficient cause, if it can
15 be shown there was sufficient cause for the nonpayment of the
16 monies due. Then, of course, the penalties have not been
17 applied in most instances.

18 This Court in Johnson versus Isbrandtsen determined
19 a case which doesn't quite touch the facts of this case that we
20 are reviewing here, determined that there was sufficient cause
21 and even though there was a delay in the payment because of
22 wrongful withholding of certain funds out of earned wages.

23 Q Well, isn't there a strong policy reasoning
24 underlying the statutory penalty?

25 A I think it --

1 Q In terms of protecting a seaman who doesn't
2 carry much of a reserve as a businessman does; isn't that part
3 of the statutory scheme?

4 A I think that purpose, where money is due is to
5 prevent the employer from being arbitrary and capricious and
6 not paying money conceded to be due to the man.

7 Q Well, really isn't it broader than that, that
8 it prevents the employer from delay in payment of the money due?

9 A Well, when you come to the --

10 Q It doesn't make any difference whether it's
11 arbitrary or capricious under the statute; does it?

12 A No; but there may be sufficient cause. If that
13 is resolved then we come to another problem or there could be
14 a problem. But, what has been claimed here, these overtimes and
15 restriction to the ship under the conditions I've endeavored to
16 describe, create --rights that were created by the terms and
17 provisions of the collective bargaining agreement themselves;
18 therefore, if there is a dispute, we submit it should be re-
19 solved on the basis of the grievance procedure and the arbitra-
20 tion procedure in this contract.

21 Q Well, do you envision that the grievance pro-
22 cedure itself, if it's found that this overtime was due and
23 further held -- it further was determined that they were withheld
24 without sufficient cause that the grievance procedure itself
25 could take cognizance of the statute and give double pay?

1 A I don't find anything in the agreements that
2 would provide that. The agreement merely provides that the
3 resolution of the dispute would lead to the payment. The union
4 would refer the matter to the company for payment.

5 You see, as a practical matter, what happens when
6 these ships pay off at the end of a voyage, you usually have a
7 union patrolman aboard and the individual crew member that has a
8 problem, he says well, he worked certain overtime and it's not
9 being allowed. The union patrolman will talk to the department
10 head. In one instance, the chief mate or the chief engineer or
11 the chief steward and they will endeavor to resolve it there.
12 If this can't be done it will be referred to the contracting
13 officer or contract enforcement officer at the union's head-
14 quarters and it will endeavor to resolve that between the con-
15 tract enforcement officer and the company representative in the
16 company office. And it usually would be done. If not, then
17 it would go on to arbitration and the arbitration will find.

18 Q So, in the lower court, both the majority and
19 the dissent, as I read it, agreed that in order to bring your
20 position or the grievant's position into play the rights asserted
21 by the seaman had to have their source in the collective bar-
22 gaining agreement. At least that's the way I read it.

23 And what I want to ask you is whether the different
24 facets of this man's claim can be traced to either the collective
25 bargaining agreement itself or the articles under which he

1 signed which I didn't find in the record. How do you trace
2 them; how do you find them?

3 A I trace them to the contract, Your Honor.

4 Q Contract of what?

5 A The collective bargaining agreement that was
6 entered into between the National Maritime Union and the em-
7 ployer.

8 Q You can do that?

9 A I endeavor to do so, both in my brief and in
10 outlining those sections in a single appendix we have referred
11 to them.

12 Q And the articles have no relevance?

13 A The articles containing the statutory pro-
14 visions under which the man joins the vessel and they do set
15 forth Title 46 U.S.C.A. 596. However, the conditions under
16 which he worked on the vessel, the nature of overtime which is
17 not covered in the articles, is determined in accordance with the
18 agreement. And the restriction to ship which he is talking about
19 for those 11 days when pratique was not granted off of Cape St.
20 Jaques, would be something that has ceded; a right given to him
21 by the contract, and not by the articles.

22 Q I suppose the only reason he would be entitled
23 to overtime, any overtime pay at all is because of the collective
24 bargaining agreement.

25 A Yes, Your Honor; this is true and this is our

1 position and in reading the decisions in this Court it appears
2 that the Court has gone to great lengths to give the collective
3 bargaining agreement the force almost of law. I read the
4 phrases "the common law of the contract," and the "code of the
5 industry" and there we have this maritime industry that operates
6 many, many vessels. Generally we're talking about a number of
7 unions as well as a number of companies and a number of manage-
8 ment organizations and have endeavored to set up a practical
9 basis on which to keep the vessels operating smoothly and to
10 determine the rights of the union members, especially in this
11 overtime and perhaps restriction to ship area where overtime
12 would be involved; and provide a uniform, expeditious basis for
13 resolving these claims.

14 Now, if you go to litigation and you come into the
15 U. S. District Court every time a man says, "Well, the chief
16 office didn't allow my overtime," you will have a lot of cases;
17 you will also have a lack of uniformity and resolution because
18 the men in the union and in the company offices are very
19 familiar with the ship's operations and the conditions under
20 which these claims may arise.

21 Q Mr. Sullivan, did I detect in this record a
22 reference of this man to the union's agent in Japan?

23 A Yes, you did.

24 Q Is this action of itself indicative of the
25 desirability of such a statute?

1 A Mr. Arguelles, the Respondent in this case,
2 returned to Galveston, which was his port of sign-on. If I
3 understand his testimony in the pretrial deposition, ordinarily
4 he shipped out of Balitmore. And in going to the union agent
5 in Galveston, I think the first problem there is to resolve the
6 question of the restriction to ship and whether it was justi-
7 fied and the best man to determine this or to give information
8 on the positions in Saigon and that this anchorage where the
9 ship was held, would be the port agent in Yokohama.

10 Now, in writing to him he would get, perhaps an
11 authoritative expression on whether the restriction of ship was
12 infact, a condition in that area and whether the basis of his
13 claim that he is entitled to eight hours a day overtime for those
14 11 days when he couldn't get off the ship, is justified. The
15 idea of him writing to the agent would allow an opportunity for
16 the reply from Japan to come back to Mr. Arguelles in Baltimore,
17 since he was not living in Galveston and not regularly shipping
18 out of Galveston made his base of operations in Baltimore.

19 And in any event, under that Article II, Section 2
20 of the collective bargaining agreement, if he was dissatisfied
21 with that advice it says as you read down, that he was entitled
22 to a further matter to the head office of the union, if he
23 didn't want to follow the advice of the agent in Galveston,
24 which apparently he didn't do, but he wouldn't do anything else.

25 He went back to Baltimore; he engaged counsel and

1 ultimately brought this lawsuit, which gave rise to the problems
2 we have here.

3 Now, again I go back to the decisions of this Court
4 in similar problems in other industries and it seems, in follow-
5 ing the provisions of the Labor-Management Relations Act of
6 1947, Section 301(a) that it is desirable to have these things
7 resolved between the company and the union in accordance with
8 their contract. And I think perhaps one thing that disturbed
9 the Fourth Circuit more than anything else is the time-honored
10 concept that a seaman is a ward of the Admiralty and therefore,
11 a person to be protected.

12 But, in these instances you have on the one side a
13 very powerful union; you have a very effective labor-management
14 relations system working in the maritime industry and it seems
15 that at least to make an exception in this type situation, to
16 let the parties to the agreement endeavor to work this out and
17 I think they are best qualified to do so.

18 Now, as in the Maddox case and the Baca versus
19 Sipes case, a decision of this Court, it was suggested that the
20 effort be made to resolve in accordance to grievance procedures
21 before the litigation would be resorted to, and perhaps that is
22 what you had in mind, Mr. Justice Blackmun: did he get fair
23 treatment, adequate treatment at the hands of his union?

24 I think that he did here. He didn't give the union
25 really a chance to take the matter up. I think he just dropped

1 it when they said "Write to Yokohama." He didn't take it any
2 further and I think he should have. He eventually engaged
3 counsel, and counsel has certainly been qualified to take the
4 matter up for him with the union and that wasn't done; instead,
5 they started the lawsuit.

6 And really, in granting summary judgment of the
7 District Court, I think the District Court Judge reached the
8 conclusion that there was really no dispute on this point, that
9 he didn't pursue grievance and arbitration procedures. That's
10 why the summary judgment was justified.

11 Now, today, again with the shipping industry
12 operating all over the world and men leaving ships occasionally
13 in foreign ports, I think uniform procedures are most important
14 and we should have a system on which everyone may rely and
15 expect to have a certain amount of predictability in the results.
16 This is why it becomes important, I believe, to follow the
17 grievance procedure and the arbitration procedure set up in the
18 agreement. This is what they wanted to do and this is what
19 would best serve the needs of the industry generally. We're
20 trying to strengthen our American Merchant Marine so it remains
21 an important factor.

22 Mr. Gibson, the Secretary of State for Commerce,
23 recently at the International Labor Organization meeting in
24 Geneva, was quoted as saying that the American seamen today
25 enjoy the highest wages of all seamen in the world and have

1 better living conditions and working conditions on the ship
2 because of the free atmosphere of collective bargaining. I
3 think it's a desirable result, to uphold the agreement and the
4 basis which the parties of the agreement wanted to utilize to
5 resolve their differences. Litigation is always there as a
6 last resort but really that's what it should be: a last resort.
7 First efforts should be made.

8 MR. CHIEF JUSTICE BURGER: Mr. Avnet.

9 ORAL ARGUMENT BY I. DUKE AVNET, ESQ.

10 ON BEHALF OF THE RESPONDENT

11 MR. AVNET: Mr. Chief Justice, and may it please the
12 Court: I would like just to cite a few additional facts here
13 before I go into the argument.

14 I would like to point out that the statute provides
15 that in the foreign voyage the seaman is entitled to be paid
16 off in 24 hours after the cargo is discharged; or in four days
17 after he is discharged; and for not doing so, the ship is liable
18 for two days pay for each day of delay. And that the wages
19 should be recoverable, "as wages in any claim made before the
20 court."

21 Then there is another Section 597 which provides
22 that where a seaman asks for a draw at any port he must be paid
23 a portion of his wages due: a third; otherwise the whole amount
24 becomes due and he is entitled to be discharged.

25 Now, in this case Mr. Arguelles, the seaman, went

1 first to Saigon during the six month period of these shipping
2 articles and then went back to Taiwan to take on another cargo
3 and the six months was about to expire and one day before the
4 six months' period, on February 2 of 1966, Mr. Arguelles asked
5 the captain to be discharged. The captain said, "No." And he
6 said, "I'd like my draw," and the captain said "no." Reading
7 between the lines it is obvious here the captain did not wish
8 to lose Mr. Arguelles and he intended to keep him beyond the
9 six months period of his articles, knowing that by the time the
10 ship got to Saigon or near Saigon, that the six months would
11 have expired and he would still have the services of Mr.
12 Arguelles, even though Mr. Arguelles no longer wanted to serve
13 beyond the six months' period.

14 Well, I point out it's not a case of a man who
15 didn't want to go to Saigon, the thing he agreed to do; he had
16 already been there, but because the articles were about to ex-
17 pire he wanted to get off the ship and get paid. Then the
18 vessel arrived in Cape St. Jacques, which was on the 3rd, the
19 day the articles expired, he again asked to be discharged and
20 be paid off and again he was refused.

21 Now, assuming that the ship was not granted clear-
22 ances; that is that the crew was not granted shore leave. There
23 was no objection, apparently, to the agent coming aboard with
24 an American Consul, if necessary, so that the men who wanted to
25 get paid off whose articles had expired, could be paid off, but

1 the captain didn't want that. Apparently, reading between the
2 lines, he wanted to keep that crew on the ship and maybe it
3 was because he couldn't get replacements or it was difficult to
4 get replacements. But be that as it may, this violated the
5 articles so far as Mr. Arguelles was concerned, because he was
6 there only on six month' articles and they were forcibly keeping
7 him there beyond that.

8 Well, they were confined to the ship, then, in -- at
9 Cape St. Jacques for a period of some ten or eleven days and
10 finally the ship was moved up the river toward the Port of
11 Saigon.

12 Q May I ask you this --

13 A Yes, sir.

14 Q If the six months' expiration date comes at
15 a time they are in a foreign port, does the seaman have a right
16 to insist upon -- the articles until he's at his home port or
17 can the master of the vessel terminate him then and there?

18 A The procedure, Your Honor, is to decide -- for
19 the man to decide whether he wants to continue on and then he
20 resigns his articles or if he decides he doesn't want to con-
21 tinue on then he's paid off right there and the captain replaces
22 him with someone else.

23 Q Suppose he wants to stay on but the captain
24 wants to terminate him. My question is: may he be terminated in
25 a foreign port?

1 A I would think so, because the article says
2 it's only for six months.

3 Q Suppose the six months' period ends when the
4 ship's in the middle of the Pacific Ocean?

5 A Well, of course, as a practical measure, he
6 would be continued on until the next port and he would be paid
7 off at that next port.

8 Well, when the vessel arrived then in Saigon, and
9 this is on the 13th of February, again he asked to be dis-
10 charged and be put off and again he was refused, it being the
11 obvious intention of the captain to keep him aboard there
12 regardless of his articles and regardless of what his wishes
13 were.

14 Finally, it was on the 17th that Mr. Arguelles was
15 finally permitted to leave the ship and then, instead of being
16 paid in American dollars, as the law requires, he was paid by
17 simply a voucher and given \$50 and the answer was given, not
18 there, but here, later on, that there not cash enough to do it.

19 Now, there is no proof that there was any law that
20 barred the payment of American dollars in Saigon; there was no
21 proof in the record at all. On the contrary, Mr. Arguelles
22 testified, and that's the only testimony we have here, direct
23 testimony, that he thought he was entitled to be paid off there,
24 and this prompted an argument between him and the American
25 Consul and some of the other seamen who wished to be paid off.

1 Then they flew him to the states and there he had to
2 wait for approximately three days before the company decided to
3 pay him off. Now, the evidence is clearly contrary to what my
4 brother has stated, that he waited there to be paid; he didn't
5 wait around and neglect to go to the office. He was not paid
6 by the company until the 22nd when the others were paid off.

7 Now, these are the facts in the case and then the
8 man said, "You haven't paid me all my overtime." They said,
9 "Well, you will have to go to your union." He went to his
10 union; the union says, "You go to Yokohama." Now, of course,
11 this is a futile thing for him to do; he couldn't negotiate
12 with Yokohama or the delegate there; and contrary to what my
13 brother says, it is the job of the union to take the matter up
14 at a higher level if there -- if the grievance has not been
15 settled in the local courts.

16 Now, the grievance contract says, "Must be settled
17 in an American Continental port or in the final port of dis-
18 charge; here being Houston. Or the American Continental Port,
19 which would have been also Houston.

20 Now, this is where it should have been settled and
21 it wasn't settled here and it was for the union to take it up,
22 not this man, because this man wasn't getting any relief from
23 the union and therefore he came to me and after I wrote to the
24 company to try to get them to pay the man they refused and I
25 finally took it to court.

1 Now, these are the facts in the case, may it please
2 the Court.

3 Q I think that you are emphasizing these facts
4 on the theory that this is the kind of recalcitrance that the
5 statute was intended to penalize.

6 A Exactly, Mr. Chief Justice.

7 And, to answer now, Justice Stewart's question: it
8 is true that the amounts of the overtime -- or rate of the
9 overtime, is fixed by the collective bargaining contract, but
10 the remedy, Your Honor, is given by the statute and this is --

11 Q In other words the pay remedies --

12 A And the question arises, therefore: whether the
13 collective bargaining remedy is a mandatory substitute for the
14 statutory remedy. We say "no." We say that the man could
15 pursue either one of the remedies.

16 Now, Mr. Justice Blackmun has significantly pointed
17 out that precisely to overcome an abuse such as has occurred
18 there, and that is where the union subjects the man to a futile
19 -- to a futile result; that is, to try to contact an agent in
20 a foreign port. That in that kind of a contingency the man
21 should be permitted to go to court and get the relief which is
22 guaranteed by that statute. Of course that statute is in the
23 interests of making and building a strong Merchant Marine for
24 the defense of the country and for a solid mercantile develop-
25 ment in our country with regard to the Merchant Marine as was

1 indicated by this court in a decision written by this Court
2 fairly recently, which I cite in my brief.

3 Q How long has this statute been on the books?

4 A The statute originated, Mr. Justice, about
5 1790 and there it was amended about 1915, in its present form,
6 and this has been the policy -- this statute is based, of course,
7 upon policy, to have a strong Merchant Marine dating from --
8 back to the date of the Revolution.

9 I would like to point out now at this point that Mr.
10 Sullivan, my opponent, is arguing that there's no lead now for
11 this type of statute because American seamen are much better off
12 than they were a century ago. I won't argue with him that they
13 are better off now and that that is due to the collective bar-
14 gaining machinery; however, it is not as good a situation as
15 counsel would have you believe.

16 Today, the passenger vessel trade, that is American
17 passenger vessel trade is very much off. These people are
18 having difficult times, which means then that seamen may be
19 subjected to delay in payment of their wages or nonpayment. We
20 have a number of marginal shippers in the Merchant Marine to-
21 day, people owning one ship or two ships who are making their
22 profit through trade in the Saigon run. Now, with the unwinding
23 of that war and the end of that war, obviously these small
24 companies are going to be in financial straits and these seamen
25 then will suffer as a consequence, because there will be a

1 delay in payment and which will mean no payment at all,
2 eventually.

3 And so it is important to have this two-for-one
4 specter facing the ship owner or ship operator so he will know
5 that those wages must be paid promptly in order to encourage
6 these men to go to sea.

7 We're having a number of mergers today and people
8 don't know who their employer is and in these instances there
9 are delays and nonpayment of wages compelling the men to go to
10 court under this statute.

11 Q Do you think that the grievance procedure it-
12 self, could take account of the statute and give the man what
13 the statute gives him; that is: double pay for any wages wrong-
14 fully withheld? A one-hundred percent penalty for each day that
15 it was wrongfully withheld and that that could be done by the
16 grievance machinery and that would give your clients and others
17 similarly situation much faster relief because, generally speak-
18 ing, a grievance procedure works faster than a Federal Court
19 case; doesn't it?

20 A Well, in the first place, Mr. Justice, I
21 don't think that the grievance machinery would necessarily work
22 any faster because in this particular industry where you have
23 the persona commodus involved, being out at sea, whether it be
24 on the company's side or the workmen's side, these cases are
25 long in the handling. Now, until you get the parties together;

1 until they can be heard, particularly an arbitration case, it
2 takes a long time. There is considerable grumbling about this
3 in the industry.

4 Q Well, it couldn't go any - faster in a Federal
5 Court, could it?

6 A Well, it is, Your Honor, because they don't go
7 this long or this far; they don't come up to the United States
8 Supreme Court. They usually terminate in the District Court.

9 Q Well, if a man's in Japan he can hardly be a
10 witness in the Federal District Court in Baltimore, either, any
11 more than he can be in these grievances.

12 A That's correct. But usually they end up in the
13 District Court and do not go up on appeal.

14 To answer your other question, Mr. Justice, it is
15 true that an arbitrator could do that, that is, impose the
16 penalty of two-for-one, but I have never seen it done and it is
17 very unlikely that the arbitrator would do that. There is
18 nothing in the grievance procedure that would require them to
19 do that.

20 Q Suppose he didn't take account of it, what
21 you're talking about.

22 A You mean the arbitrator?

23 Q Yes.

24 A If he didn't -- you mean recognize the grie-
25 vance of the seaman and didn't decide in his favor?

1 Q Yes.

2 A Then, of course, the seaman wouldn't get
3 anything and he's come away empty-handed and that would be
4 controlling.

5 Q Why couldn't he come to the Court at that
6 stage?

7 A I doubt if he could then, Mr. Chief Justice,
8 because if he did then there would be nothing due him because
9 he had agreed to go into the arbitration proceeding.

10 Q Does the grievance procedure and the arbitra-
11 tion operation have the power to subpoena?

12 A Not that I know of; no, sir.

13 Q So that if the employer wanted to engage in
14 dilatory tactics in not having their master or other available
15 and they didn't want to take their depositions they could delay
16 an arbitration a good deal longer than they could do it in
17 Federal Court by power of subpoena.

18 A That is correct, sir.

19 And so I think, Your Honors, that it's best to leave
20 the law as is and if they want to substitute the collective
21 bargaining run before the statute, I think the place to do that
22 is in the Congress and not to come here and ask Your Honors to
23 do that and I think it is salutary that we have both remedies so
24 that the seaman can choose which one he wants.

25 Thank you.

1 MR. CHIEF JUSTICE BURGER: Thank you.

2 You have about two or three minutes left, if you
3 wish.

4 MR. SULLIVAN: Well, if I may, then I would like to
5 say something.

6 REBUTTAL ARGUMENT BY GEORGE W. SULLIVAN, ESQ.

7 ON BEHALF OF THE PETITIONER

8 MR. SULLIVAN: The facts of the case insofar as
9 lining up with 596, and the payoff, there was really -- we have
10 always contended on the merits there was no delay in this case.

11 The statute provides that the payment of wages,
12 assuming that you are talking about everything that is con-
13 ceivably due to the man, may be made within four days after the
14 discharge, or within 24 hours after the cargo is finally dis-
15 charged from the vessel.

16 Now, Mr. Arguelles, and this is in his deposition,
17 which is set forth in the --

18 Q Well, you're not suggesting that we try to
19 redetermine the facts here?

20 A No, Your Honor; I'm not, but they made the
21 certain allusion that it was on the company agent's dilatory
22 tactic that he wasn't paid promptly in Galveston. Actually he
23 was in Galveston on the 19th, based on his testimony and he
24 didn't go to the company agent's office on his own. He took the
25 time himself, rather than to go over there. He could have been

1 paid off within 24 hours after the cargo was off the vessel.

2 The cargo was completely discharged on the 18th in Saigon.

3 MR. CHIEF JUSTICE BURGER: Very well; thank you Mr.
4 Sullivan.

5 Thank you, and the case is submitted.

6 (Whereupon, at 3:00 o'clock p.m. the argument in the
7 above-entitled matter was concluded)