

In the

ORIGINAL

Supreme Court of the United States

DANNY L. GRIFFIN,

Petitioner

v.

OCEANIC CONTRACTORS, INC.

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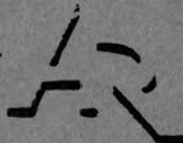
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Washington, D. C.

April 26, 1982

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IN THE SUPREME COURT OF THE UNITED STATES

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4 DANNY L. GRIFFIN, :

5 Petitioner, :

6 v. : No. 81-614

7 OCEANIC CONTRACTORS, INC. :

8 - - - - - x

9

10 Washington, D.C.

11 Monday, April 26, 1982

12

13 The above-entitled matter came on for oral
14 argument before the Supreme Court of the United States
15 at 10:02 o'clock a.m.

16

17 APPEARANCES:

18 ROBERT A. CHAFFIN, Esq., Houston, Texas; on behalf of.

19 Petitioner.

20 THEODORE COLLIER, Esq., Houston, Texas; on behalf of

21 Respondent.

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1 P R O C E E D I N G S

2 CHIEF JUSTICE BURGER: We will hear arguments
3 next in Griffin against Oceanic Contractors.

4 Mr. Chaffin, you may proceed whenever you are
5 ready.

6 ORAL ARGUMENT OF ROBERT A. CHAFFIN, ESQ.,
7 ON BEHALF OF PETITIONER

8 MR. CHAFFIN: Thank you, Your Honor. Mr.
9 Chief Justice and may it please the Court:

10 This is a case involving the interpretation of
11 a very old seaman's wage statute, a statute that had its
12 origin first in 1790 and later came to be known as what
13 is known now as the double wage penalty statute, which
14 took its present form approximately in 1872.

15 That statute provides in essence, Your Honors,
16 that if a seaman on a foreign voyage, such as the
17 Petitioner was found to be by the trial court in this
18 case, is not timely and properly paid his earned wages,
19 those wages which are rightfully and uncontestedly due
20 to him, one-third of those wages on the date of his
21 discharge and the remainder within four days thereafter,
22 that every master or owner who refuses or neglects to
23 make payment without sufficient cause in the manner
24 provided by the statute shall pay to the seaman a sum
25 equal to two days pay for each and every day during

1 which such delay shall continue.

2 Your Honors, that is the heart of the case
3 here today. In this particular case the trial court
4 found uncontestedly that the seaman, the Petitioner, had
5 been denied by the Respondent his wages, that he had
6 made timely demand for his wages, and that even though
7 demand had been timely made and with diligence he had
8 pursued his demand, that the Respondent failed in an
9 unreasonable manner, acted recalcitrantly, callously,
10 willfully and wantonly and failed to pay the Petitioner
11 his wages called for by the statute, Your Honor.

12 QUESTION: I got lost a little bit in the
13 arithmetic here, counsel. What was the -- in dollars,
14 what were the actual dollars he lost for the actual
15 days, apart from all the penalty provisions?

16 MR. CHAFFIN: Your Honor, if I may regress to
17 the facts just a little bit, the Petitioner was actually
18 due on his discharge \$412.50, the amount of money which
19 had been withheld from his pay check and was to be paid
20 to him when he was discharged.

21 The actual facts are, Your Honor, that the
22 Petitioner was at work as a seaman on board the
23 Respondent's vessel, which was the Lay Barge 27. He
24 received injuries which were due solely to an
25 unseaworthy condition of that vessel. He had to leave

1 the vessel to have minor surgery and to recuperate from
2 his injuries.

3 He left the vessel, Your Honor, on April the
4 1st of 1975. At that time the Respondent had withheld
5 from his paycheck \$412.50 that was to be paid to him on
6 the date of his discharge. He was not paid that money,
7 Your Honor, and when he was discharged in the port of
8 Rotterdam the trial court found that the Respondent
9 acted unreasonably, callously, willfully and wantonly in
10 disregard of his rights to receive those wages.

11 Subsequently, the Petitioner attempted with
12 due diligence, as the trial court found, to collect
13 those wages, but was denied the wages, Your Honor.

14 Now, the real thrust of this case, Your Honor,
15 is not the validity nor the applicability of this
16 statute, but the size of the penalty which the statute
17 carries with it. If I may read to the Court the one
18 sentence in the statute which I believe is the heart of
19 the case, it reads, Your Honors:

20 "Every master or owner who refuses or neglects
21 to make payment in the manner herein before mentioned
22 without sufficient cause shall pay to the seaman a sum
23 equal to two days pay for each and every day during
24 which payment is delayed beyond the respective period,
25 which sum shall be recoverable as wages."

1 QUESTION: Mr. Chaffin, I gather he got a
2 judgment of \$23,670.

3 MR. CHAFFIN: He did, Your Honor.

4 QUESTION: And of that, only \$6,881.60 is
5 penalty wages?

6 MR. CHAFFIN: That is true, Your Honor.

7 QUESTION: And is that the only item in issue
8 before us?

9 MR. CHAFFIN: That is, Your Honor. He was
10 awarded damages for injuries and for maintenance and
11 cure.

12 QUESTION: Maintenance and cure, prejudgment
13 interest, attorneys fees and recovery for pain and
14 suffering.

15 MR. CHAFFIN: That is correct, Your Honor.

16 QUESTION: But isn't the \$5,000 recovery for
17 pain and suffering and penalty wages?

18 MR. CHAFFIN: No, sir, Your Honor. The
19 Respondent in this case has satisfied the judgment in
20 full --

21 QUESTION: Except for the 68 --

22 MR. CHAFFIN: He has paid the \$6800 also, Your
23 Honor.

24 QUESTION: Oh.

25 MR. CHAFFIN: The issue before this Court,

1 Your Honor, is whether or not the trial court could
2 exercise its equitable discretion to shorten the running
3 of the penalty or to reduce the penalty to an amount
4 which is below that called for by the plain and clear
5 language of the statute.

6 QUESTION: I know. But what I'm trying to get
7 at is, the only item we have is the penalty wages of
8 \$6881?

9 MR. CHAFFIN: That is the sole issue before
10 this Court.

11 QUESTION: Right. And you suggest that
12 there's an argument that it ought to be less. How much
13 less?

14 MR. CHAFFIN: No, Your Honor.

15 QUESTION: None?

16 MR. CHAFFIN: I suggest that the position of
17 the Court should be --

18 QUESTION: No, no. Does your adversary say it
19 ought to be less than \$6881, nothing?

20 MR. CHAFFIN: Your Honor, he does not contest
21 the \$6880. That has been paid in satisfaction of
22 judgment. The adversary, the Respondent here, my
23 adversary, takes the position that the judgment of the
24 trial court was correct.

25 QUESTION: The \$23,000 --

1 MR. CHAFFIN: Yes, sir.

2 QUESTION: -- odd dollars?

3 QUESTION: You say it should be more, is that
4 it?

5 MR. CHAFFIN: That's correct, Your Honor.

6 QUESTION: What's the figure you suggest?

7 MR. CHAFFIN: Your Honor, the figure that I
8 suggest will come to something around \$300,000 when you
9 apply the statute exactly as written. the statute --

10 QUESTION: Mr. Chaffin, under your theory
11 would it continue to run until this very day because it
12 isn't paid? What about during the course of appeal?

13 MR. CHAFFIN: No, Your Honor. That question
14 was answered by this Court in the case of Pacific Mail
15 against Schmidt in 1916, written by Justice Holmes, Your
16 Honor. The Court there held --

17 QUESTION: Do you interpret that holding as
18 saying that the Court has discretion, then, not to give
19 it during the appellate period? Is that your
20 interpretation?

21 MR. CHAFFIN: The direct holding was that the
22 penalty would not run during what was there a good faith
23 appeal, Your Honor. I do not know whether --

24 QUESTION: Was that on the theory that the
25 Court had discretion?

1 MR. CHAFFIN: The theory is not announced
2 there or not stated to be discretion there, Your Honor.
3 It's simply stated that -- the Court simply stated, I
4 believe, that it was not the intent of Congress there
5 that that penalty should continue to accrue then.

6 QUESTION: But the literal language would not
7 appear to admit for that distinction either. So I'm
8 wondering whether the Court may have discretion that
9 goes back further.

10 MR. CHAFFIN: Well, Your Honor, in the Pacific
11 Mail case the trial court entered a judgment that
12 inflicted the penalty up through the date of the decree
13 of the trial court. And the appellant sought to have
14 that decree reviewed. The Court of Appeals then acted
15 to add to the penalty during the appellate procedure,
16 and the Supreme Court's action, Your Honor, was simply
17 to delete what the Court of Appeals had added, but not
18 to review the judgment of the trial court where they had
19 exercised the penalty for the entire period up until the
20 date of the district court's decree.

21 QUESTION: But there's nothing in the language
22 of the statute, is there --

23 MR. CHAFFIN: There is not, Your Honor.

24 QUESTION: -- to justify that?

25 MR. CHAFFIN: There is not, Your Honor.

1 QUESTION: Mr. Chaffin, I suppose it's totally
2 irrelevant, but I take it he has long since recovered
3 from his discomfiture?

4 MR. CHAFFIN: He made an uneventful recovery,
5 Your Honor, and the Petitioner does not in this case
6 contend that the Respondent's failure to pay his wages
7 inflicted greater injuries upon him, Your Honor.

8 I would, in reply to --

9 QUESTION: Were they unable to obtain surgical
10 advice for his hemorrhoidal condition in Brussels?

11 MR. CHAFFIN: No, Your Honor. He had
12 hospitalization treatment in Brussels and actually
13 reported back to the vessel while it was still in the
14 port of Rotterdam, while it was in the port of
15 Rotterdam. And his superintendent, his supervisor, is
16 the individual who actually denied the payment of his
17 wages to him, and that is found by the trial court in
18 its findings of fact and it's uncontested.

19 QUESTION: I had the impression from either
20 your brief or somewhere that he had a complete
21 recovery.

22 MR. CHAFFIN: He did have a complete recovery,
23 Your Honor.

24 QUESTION: Very, very quickly.

25 MR. CHAFFIN: Within five weeks he had

1 recovered and returned to work, Your Honor.

2 QUESTION: Well, did he press his claim with
3 the employer for this penalty wage?

4 MR. CHAFFIN: The trial court found that he
5 did press his claim with due diligence.

6 QUESTION: In what way?

7 MR. CHAFFIN: He made telephone calls, he
8 attempted to collect his wages. We also instituted suit
9 within 16 months following that, Your Honor, and after
10 the institution --

11 QUESTION: It was 16 months before you
12 instituted suit?

13 MR. CHAFFIN: Well, he tried without avail to
14 collect his wages, Your Honor, up until September of the
15 following year, without the aid of counsel.

16 QUESTION: Not that it matters, but in Houston
17 this case was tried, right?

18 MR. CHAFFIN: This case was tried in Sherman,
19 Texas, Your Honor.

20 QUESTION: In Sherman.

21 MR. CHAFFIN: The Eastern District of Texas.

22 QUESTION: Well, that's about 30 miles from
23 Houston -- from Dallas, correct?

24 MR. CHAFFIN: Yes, sir.

25 QUESTION: If this man had been injured in

1 Sherman, how much would he have collected? If he had
2 gotten this same injury on land in Sherman, as a lawyer
3 how much would you assume he would collect?

4 MR. CHAFFIN: Your Honor, the penalty wage
5 statute applies only to seamen's injuries. He would not
6 receive any penalty at all had he -- any recovery at all
7 --

8 QUESTION: I said if he was working for a
9 truck company that had no connection with the sea at all
10 and he had gotten the same injury and suffered the same
11 injury, same amount of time, and he had sued for
12 damages, about how much would he have collected?

13 MR. CHAFFIN: He would have collected nothing
14 but his actual damages, Your Honor.

15 QUESTION: Sir?

16 MR. CHAFFIN: He would have collected only his
17 actual damages in that particular instance, Your Honor.

18 QUESTION: It would be about what, \$100?

19 MR. CHAFFIN: No, Your Honor. It would be
20 \$412.50 plus his attorney's fees and collection --

21 QUESTION: And solely because this happened on
22 the sea, you get \$300,000?

23 MR. CHAFFIN: No, Your Honor. We get that
24 amount solely because the Congress saw fit to pass a
25 penalty provision. And if I might, Your Honor --

1 QUESTION: Counsel, before you proceed, I'm
2 not sure I understand how you get up to \$300,000. If
3 the \$412 had been paid on May 5th, would that have ended
4 the matter?

5 MR. CHAFFIN: It would have, Your Honor.

6 QUESTION: Right.

7 MR. CHAFFIN: It would have.

8 QUESTION: Then you multiply 202 by the number
9 by the number of days --

10 MR. CHAFFIN: By each and every day.

11 QUESTION: -- from April 1 until the district
12 court decided the case?

13 MR. CHAFFIN: That's correct, Your Honor.

14 QUESTION: What did he -- what was actually
15 withheld, counsel?

16 MR. CHAFFIN: What was actually withheld?
17 Your Honor, he --

18 QUESTION: What wages were actually withheld?

19 MR. CHAFFIN: The actual mechanism of
20 withholding was that he was paid every two weeks, Your
21 Honor, and that the Respondent withheld \$137.50 from his
22 paycheck.

23 QUESTION: Each week?

24 MR. CHAFFIN: Each two-week period.

25 QUESTION: In order to cover the possibility

1 of his having to be sent home?

2 MR. CHAFFIN: That's right, Your Honor.

3 QUESTION: So this was -- they failed to pay
4 over to him the withholding?

5 MR. CHAFFIN: That's right, Your Honor. There
6 is also an obligation under the maritime law that in the
7 event that a seaman is injured while in the service of
8 his vessel his employer is required to repatriate him.

9 QUESTION: I understand that, I understand
10 that. But that has nothing to do with this seaman.

11 MR. CHAFFIN: It does not, Your Honor.

12 QUESTION: Nor with this case.

13 Do you think that withholding is wages for the
14 purpose of this statute?

15 MR. CHAFFIN: The trial court so found, Your
16 Honor. It was withheld from his wages. He earned the
17 money and they failed to pay him that money.

18 QUESTION: Is that what you demanded?

19 MR. CHAFFIN: Yes, it is, Your Honor.

20 QUESTION: That's what was refused?

21 MR. CHAFFIN: That's what was refused, Your
22 Honor.

23 QUESTION: Now, suppose they had paid you
24 \$411.50. Would you be making the same claim?

25 MR. CHAFFIN: I would not, Your Honor. I

1 think the statute reads "without sufficient cause" and I
2 would not think that if they had made a simple clerical
3 error, Your Honor --

4 QUESTION: Well, no. They just said --
5 there's no explanation. What if they said, we'll pay
6 you \$400. I guess literally the statute applies.

7 MR. CHAFFIN: I wouldn't think it literally
8 would -- it perhaps might apply literally, Your Honor.
9 But the Court, this very Court, has interpreted the
10 "without sufficient cause" provision of the statute to
11 mean that it must be a callous, recalcitrant,
12 unreasonable withholding.

13 QUESTION: Did you have to pay -- did your
14 client have to pay his own way home?

15 MR. CHAFFIN: He did, Your Honor.

16 QUESTION: That callous and recalcitrant goes
17 to the employer's state of mind, not to the amount
18 withheld, doesn't it? I mean, supposing in Justice
19 White's example that they had said, we'll pay you \$400
20 and no more, you may think you've got a claim for \$12
21 but we're just not going to fool around with it, we
22 don't care what the rights of the matter are.

23 Now, wouldn't you still have a claim under the
24 statute?

25 MR. CHAFFIN: I believe that you would, Your

1 Honor.

2 QUESTION: Yes.

3 MR. CHAFFIN: If I might point out to the
4 Court, Your Honor, there is also a provision that if the
5 amount of the wage is in dispute and the employer, the
6 Respondent, feels he has a good faith defense to that,
7 then the proper procedure there, Your Honor, is to
8 tender that money into the registry of the court, let it
9 be known that a dispute is had as to that amount --

10 QUESTION: Counsel, what court should the
11 Defendant have tendered the money into?

12 MR. CHAFFIN: In this particular instance,
13 Your Honor?

14 QUESTION: Yes.

15 MR. CHAFFIN: The Defendant could have
16 tendered the money into the trial court's registry.

17 QUESTION: But that would have been a couple
18 of years after. They still would have had a couple of
19 years of penalty wages accrued, wouldn't they?

20 MR. CHAFFIN: That's correct, Your Honor. I
21 would point out also that throughout this case the
22 Respondent --

23 QUESTION: What would they have had to
24 tender? Would they have had to tender just the \$412 or
25 plus all the penalty wages that had accrued up to that

1 date?

2 MR. CHAFFIN: It is my understanding of the
3 case law, Your Honor, that it would simply be a tender
4 of the wages due.

5 QUESTION: And so they could have done that at
6 any time?

7 MR. CHAFFIN: Any time, Your Honor.

8 QUESTION: Before or after suit?

9 MR. CHAFFIN: Before or after suit, Your
10 Honor, that's correct.

11 QUESTION: Mr. Chaffin, I think you told me
12 earlier that without the help of counsel initially the
13 Petitioner made demands upon the employer.

14 MR. CHAFFIN: He did, Your Honor.

15 QUESTION: How frequently were those demands
16 made?

17 MR. CHAFFIN: Well, Your Honor, the evidence
18 introduced at the trial court was that he made the
19 demand when he left their employ, and there were
20 records, telephone records, that he had telephoned his
21 employer on several occasions previous to that --
22 subsequent to that. In addition, he wrote them a letter
23 asking for his wages, Your Honor.

24 QUESTION: And on each instance what he was
25 asking for was the \$412?

1 MR. CHAFFIN: Well, he was asking for the
2 \$412, as well as other elements. He was asking for the
3 money back that he had had to pay his own way home.
4 They had lost some of his personal effects. He was
5 asking that he be repaid those things.

6 But he was not asking for any damages for his
7 injuries, Your Honor.

8 QUESTION: And in each instance did he get a
9 response from the employer to his demand?

10 MR. CHAFFIN: In effect he did not, Your
11 Honor.

12 QUESTION: You mean they simply didn't answer
13 him?

14 MR. CHAFFIN: Well, if he would get a
15 telephone call, he would simply receive a reply that
16 we're looking into it or whatever. But at the time of
17 the trial, Your Honor, the Respondent brought forth two
18 of their own witnesses from their home office, and those
19 witnesses did not offer any reason or any excuse as to
20 why the Petitioner's wages had never been paid.

21 QUESTION: No explanation of any kind?

22 MR. CHAFFIN: No explanation whatsoever, Your
23 Honor.

24 QUESTION: May I ask one other question. I
25 may have misunderstood your answer. Did you say they

1 could have made the tender before or after suit?

2 MR. CHAFFIN: Either way, Your Honor.

3 QUESTION: Where would they have made the
4 tender before suit was filed?

5 QUESTION: They could have just paid him the
6 \$412, which would have left in dispute any of the
7 penalty wages.

8 MR. CHAFFIN: That's correct, Your Honor.

9 QUESTION: No, but my question is -- you still
10 haven't answered my question.

11 MR. CHAFFIN: I beg your pardon, Your Honor.

12 QUESTION: My question is, if they wanted to
13 still dispute the \$412, but pay it into court somewhere,
14 where could they have paid it before suit was filed?

15 MR. CHAFFIN: They could have filed their own
16 lawsuit, Your Honor.

17 QUESTION: Oh, I see. I see.

18 MR. CHAFFIN: The statute provides, Your
19 Honor, that it is a sum recoverable as wages, not that
20 it is his wages that he is recovering, Your Honor. The
21 penalty portion is not a wage itself; it is a sum
22 recoverable as wages, a sum equal to two days pay. But
23 it is not to be considered as wages, Your Honor.

24 A portion of the Respondent's, and I think the
25 significant thrust of their argument, goes to the point

1 that in the Respondent's opinion this is to be
2 considered as a compensatory or remedial measure, Your
3 Honor.

4 QUESTION: Let me ask you again, they withheld
5 \$412. Now, the penalty is two days wages full, full two
6 days? It isn't just twice what they've withheld?

7 MR. CHAFFIN: No, Your Honor. It is a sum
8 equal to two days pay for each and every day during
9 which the withholding continues. It is not two days
10 wages, Your Honor. It is a sum equal to that. And
11 there is a distinction there.

12 QUESTION: But it is not a sum equal to what
13 they have withheld?

14 MR. CHAFFIN: It is not, Your Honor. The sum
15 that they have withheld bears no relationship to the
16 penalty inflicted by the statute. This Court, Your
17 Honor, in 1930, speaking through Justice Stone in a case
18 called Collie against Fergusson, when this very statute
19 was before the Court said, Your Honor: "The Petitioners
20 argue that the statutory allowance is compensatory.
21 However, the words 'refuses or neglects to make payment
22 without sufficient cause' connote conduct which is in
23 some sense arbitrary or willful, or at least a
24 forfeiture not attributable to impossibility of
25 payment."

1 "We think the use of this language indicates a
2 purpose to protect seamen from delayed payment of wages
3 by the imposition of a liability which is not
4 exclusively compensatory, but designed to prevent by its
5 coercive effect arbitrary refusals to pay."

6 QUESTION: Does that suggest, Mr. Chaffin,
7 that there is absolutely no equitable defense at all?

8 MR. CHAFFIN: The statute does not provide for
9 equitable defenses.

10 QUESTION: Do our cases touch on whether or
11 not the employer has any equitable defenses?

12 MR. CHAFFIN: Your Honor, there is a case out
13 of this Court called McCrea against the United States.
14 That case is once again by Justice Stone, in 1934. In
15 that particular case, Your Honor, the Petitioner, who
16 was a seaman, urged on the Court that his wages had been
17 withheld from him without sufficient cause.

18 The trial court found that they had not been
19 withheld, but that the seaman had not presented himself
20 to receive his wages. However, after that the seaman
21 took the position that the failure to pay without
22 sufficient cause activated the penalty even after the
23 period of time at which they are originally due to him.

24 Mr. Justice Stone in that case, Your Honor,
25 said that you do not consider events which happen beyond

1 the time period set forth in the statute, that the
2 statute provides a reasonable and a definite manner in
3 which the seaman can recover the penalty.

4 Now, Your Honor, I believe that that is a
5 perfect analogy to this case, because what the
6 Respondent is attempting to do here truly, Your Honor,
7 is to draw into issue facts that occurred after the
8 statute had been triggered.

9 QUESTION: Yes, but they did in the Pacific
10 Mail case draw into consideration the fact that a
11 judgment had been entered and there was reasonable cause
12 to appeal it.

13 MR. CHAFFIN: In the Pacific Mail case --

14 QUESTION: Post -- you know, post to that
15 fact.

16 MR. CHAFFIN: Well, Your Honor, I believe that
17 is clearly distinguishable. For one thing, in the
18 Pacific Mail case --

19 QUESTION: Well, all I'm making the suggestion
20 is that sometimes you can look at post-occurrence
21 facts.

22 MR. CHAFFIN: Your Honor, yes, you can, Your
23 Honor. But those occurrences they were talking about
24 there were post-judgment occurrences. Now, the Supreme
25 Court in that case also said, Your Honor, that they need

1 not reach the issue of whether or not the cause of
2 action had merged into the judgment, which is the common
3 and ordinary rule --

4 QUESTION: They said there was sufficient
5 cause for appeal. They read the word "sufficient cause"
6 to apply to a later period of time.

7 MR. CHAFFIN: That's right, Your Honor, that's
8 correct.

9 QUESTION: What if an employer, upon receiving
10 the demand, simply said, you're wrong, you have not any
11 wages coming, and then there was a dispute. Then would
12 it turn on what the court would ultimately find on
13 whether at first there was a bona fide dispute, and
14 second, whether their conduct was, using these strong
15 terms that have been mentioned --

16 MR. CHAFFIN: Whether, if the employer owed
17 the wages, Your Honor, the dispute would turn -- or the
18 applicability of the statute would turn on whether or
19 not the withholding was without sufficient cause. Now,
20 if the employer wants to take that risk they may do so,
21 Your Honor.

22 The more reasonable approach is to tender the
23 wages, to pay constructively the seaman's wages into the
24 registry of the court, and then proceed from that point
25 forward.

1 QUESTION: Tender them, tender the wages
2 claimed in full settlement and final, binding
3 disposition of all pending claims?

4 MR. CHAFFIN: That's right, Your Honor, that's
5 right.

6 QUESTION: You say that would be the way to
7 wash it --

8 MR. CHAFFIN: That is the more reasonable
9 approach.

10 QUESTION: All he would have to do is tender
11 \$412 to stop the accumulation of any penalty?

12 MR. CHAFFIN: That's right, Your Honor, that's
13 right.

14 QUESTION: He'd have to do that within the
15 time, the two-day time period?

16 MR. CHAFFIN: No, Your Honor. He can tender
17 the wages at any time after the statute --

18 QUESTION: Well, would there be penalty -- if
19 he delays until after the two-day time period, even if
20 for only ten days, there are penalty wages at least for
21 the ten days?

22 MR. CHAFFIN: That's right, Your Honor. I
23 point out to the Court, Your Honors, that this statute
24 had its origin in 1790, but in 1872 the statute
25 originally read that the penalty would be a sum not

1 greater than two days pay for a time period not
2 exceeding ten days. It gave the judiciary discretion.
3 That provision was consciously deleted from the statute
4 in 1898 by the Congress, Your Honors, at which time the
5 penalty was changed to read one day's pay for each and
6 every day during which the penalty continued.

7 So the legislative history of the statute,
8 Your Honor, even though it be skimpy, I would say to the
9 Court is contained actually in the evolution of the
10 statute itself in that the statute originally contained
11 a provision that allowed the trial court discretion.
12 That provision was removed by the Congress, Your Honor.
13 It was a provision that was removed after the bill had
14 been passed by the Fifty-Fourth Congress in 1896 and
15 went to the Senate in 1898.

16 So the shipping industry as well as the seamen
17 had a perfect opportunity to have both of their sides
18 aired, Your Honor, and even with that that was
19 consciously deleted.

20 Now, I point out, Your Honor, that in the case
21 --

22 QUESTION: But in 1890 the seamen were not
23 organized. The seamen were not organized.

24 MR. CHAFFIN: They were not organized as well,
25 Your Honor. No quarrel with that.

1 QUESTION: They still got a pretty good
2 result.

3 MR. CHAFFIN: They got a very fine result,
4 Your Honor.

5 QUESTION: And furthermore, they got the -- it
6 used to be -- in 1898 it was one day's pay.

7 MR. CHAFFIN: That's right, and in 1915 it was
8 upped to two days pay.

9 QUESTION: And it was mandatory.

10 MR. CHAFFIN: Mandatory, Your Honor.

11 QUESTION: Could that have been because
12 Congress thought they needed protection?

13 MR. CHAFFIN: That is exactly why it is, Your
14 Honor.

15 QUESTION: Do they still need that
16 protection?

17 MR. CHAFFIN: They do, Your Honor.

18 QUESTION: Why?

19 MR. CHAFFIN: Why?

20 QUESTION: They've got a union, they're
21 organized.

22 MR. CHAFFIN: Well, Your Honor, when you're at
23 sea and discharged in a foreign port the union and your
24 organization may not be nearly so assistive to you as
25 you might think, Your Honor. The dangers that a seaman

1 --

2 QUESTION: Have you ever talked to any
3 captains recently?

4 QUESTION: Mr. Chaffin, I know you think you
5 answered this, the question my brother Powell asked you
6 earlier. What's the starting date for the penalty wages
7 under your submission? What day?

8 MR. CHAFFIN: Under my submission, Your
9 Honor?

10 QUESTION: Yes.

11 MR. CHAFFIN: The starting date is April 1,
12 the date that he --

13 QUESTION: April 1 what year?

14 MR. CHAFFIN: 1976, Your Honor.

15 QUESTION: And what's the terminal date?

16 MR. CHAFFIN: May the 6th, 1980, the date of
17 the district court's decree, Your Honor.

18 QUESTION: And it's the double wages for that
19 period from April '76 to 1980 --

20 MR. CHAFFIN: That's right, Your Honor.

21 QUESTION: -- that brings out the \$300,000?

22 MR. CHAFFIN: That's right, Your Honor.

23 QUESTION: Why should it terminate with the
24 rendering of the district court's judgment?

25 MR. CHAFFIN: That's the holding of Pacific

1 Mail, Your Honor.

2 QUESTION: That it automatically terminates or
3 that it terminates only if the employer had good reason
4 to appeal, or --

5 MR. CHAFFIN: There is no authority, Your
6 Honor -- I suppose that if it was a bad faith appeal
7 that the appellate court could continue to have the
8 penalty accrue with it. The standard rule of law, Your
9 Honor, is that every cause of action merges into the
10 judgment that's entered on that cause of action. And I
11 see no reason to distinguish this statute from that,
12 Your Honor.

13 Other than that, Your Honor, I would save some
14 time for rebuttal, but I would point out to the Court
15 that in the interpretation of the statute where neither
16 the validity nor the applicability of the statute is
17 challenged, which it is not here, Your Honor, and the
18 words of the statute are plain and unambiguous, that
19 simply because the statute brings with it a harsh
20 financial result, a severe penalty, that the courts
21 cannot sit in review and reverse what is a conscious
22 decision of the Congress.

23 QUESTION: Would the stringent provisions of
24 the statute that you have just referred to, harsh you
25 called them, be tolled if the employer had tendered \$412

1 into a court to be impounded until the case was
2 resolved? Would that stop it?

3 MR. CHAFFIN: That's a constructive payment of
4 seaman's wages, Your Honor. And it would stop it,
5 according to case law.

6 QUESTION: On that one point, is there
7 statutory support for your suggestion that that tender
8 of that amount would be sufficient?

9 MR. CHAFFIN: No, Your Honor.

10 QUESTION: That's based on a court, one Court
11 of Appeals?

12 MR. CHAFFIN: No, Your Honor, it's based on
13 several Courts of Appeals.

14 QUESTION: Is that right.

15 MR. CHAFFIN: Thank you, Your Honors.

16 CHIEF JUSTICE BURGER: Mr. Goller.

17 ORAL ARGUMENT OF THEODORE GOLLER, ESQ.

18 ON BEHALF OF THE RESPONDENT

19 MR. GOLLER: Mr. Chief Justice, may it please
20 the Court:

21 There is but a single issue in this case, and
22 that is whether or not the trial judge had discretion to
23 determine the period for which the penalty under Section
24 596 of Title 46 would run.

25 I was somewhat surprised to hear counsel say

1 this morning that the time of the penalty would stop
2 with the rendition of the district court's decree,
3 because everything that he has submitted has indicated
4 that the penalty would simply run on into perpetuity
5 until paid; a literal wording of the statute would
6 require that result.

7 QUESTION: But do you agree with him that if
8 you had tendered the \$412 at any time the accrual would
9 have stopped?

10 MR. GOLLER: I think that would be true, Your
11 Honor.

12 QUESTION: Yes.

13 MR. GOLLER: Yes, sir.

14 QUESTION: Including tendering it to a court
15 to be impounded, or must it have been given, tendered to
16 the party, the employee?

17 MR. GOLLER: Your Honor, I'm not aware, Mr.
18 Chief Justice, I'm not aware of a case specifically
19 passing on this point. There are suggestions in the
20 cases that the funds might have been tendered in some
21 fashion. But I'm not aware of a case where it
22 specifically has been held.

23 QUESTION: The statute permits it, though?

24 MR. GOLLER: The statute says nothing about
25 it. The statute is silent on --

1 QUESTION: Mr. Goller, may I ask, I gather the
2 district judge picked a 30-day period. That was
3 approximately the time the Petitioner was out of work,
4 was it not?

5 MR. GOLLER: May I expand on the facts --

6 QUESTION: Yes.

7 MR. GOLLER: -- just a little bit for the
8 Court's edification? This Petitioner was a welder by
9 trade who was employed by contract with my client in New
10 Orleans to go to Antwerp to join a pipelaying barge that
11 was then being made ready to go into the North Sea and
12 conduct pipelaying operations. In the contract it
13 provided that the employer would be entitled to deduct
14 from his pay \$137.50 for each of the first pay periods,
15 to be applied against his return transportation in the
16 event that he breached his contract. Maybe his girl
17 friend would write him and say, I want you home, so he
18 got the first airplane home and came back to the United
19 States. That is the purpose of the provision in the
20 contract.

21 When he arrived in Antwerp he worked on the
22 pipelaying barge in the harbor for the period from March
23 7, 1976, until April 7 -- I'm sorry, April 1, 1976,
24 which was the day that he had difficulty with his
25 preexisting hemorrhoids and went into the hospital at

1 Antwerp for treatment for the hemorrhoid condition.
2 When he came out of the hospital he was offered the
3 option of taking care of himself at Antwerp or coming
4 home to make his recovery.

5 He chose to come home. In fact, he purchased
6 his airplane ticket while he was still in the hospital,
7 before he ever reported back to the barge. He returned
8 to Houston. He was seen a couple of times by a colon
9 specialist in Houston, a rectal specialist. He was
10 pronounced fit for duty on May 3, 1976.

11 He actually did go back to work for another
12 employer in the North Sea in the same type of employment
13 on May the 5th, 1976. So the period --

14 QUESTION: So he was actually out of work for
15 how many days?

16 MR. GOLLER: 34 days.

17 QUESTION: 34. And the district judge gave
18 the penalty wages, as I understand it, for approximately
19 30 days, did he not?

20 MR. GOLLER: For exactly 34 days, Your Honor.

21 QUESTION: 34. So he picked the time that he
22 was actually out of work as the limit of his entitlement
23 --

24 MR. GOLLER: That is correct.

25 QUESTION: -- to the wages.

1 MR. COLLIER: And he doubled his straight time
2 wages of \$101.20 a day to arrive at a figure of \$202.40
3 a day, times 34 days, and it figures out to exactly
4 \$6,881.

5 QUESTION: Of course, suppose he had been out
6 of work only two or three days. Do you suppose that
7 would have been a fair limit?

8 MR. COLLIER: Well, of course, we take the
9 position, Your Honor, that the construction of the
10 statute and the determination of the penalty period for
11 which the statute should run should rest entirely in the
12 discretion of the trial judge --

13 QUESTION: As a matter of --

14 MR. COLLIER: -- or of this Court -- excuse
15 me?

16 QUESTION: As an equitable matter?

17 MR. COLLIER: Sir?

18 QUESTION: As an equitable matter?

19 MR. COLLIER: That's right, Your Honor. And
20 the First, the Second, the Fourth and the Fifth Circuits
21 have adopted that position. The only circuits that have
22 held to the contrary are the Third and the Ninth, the
23 Ninth based on a Third Circuit decision which we believe
24 to be --

25 QUESTION: But isn't there a problem whether

1 the statute permits that interpretation of authorizing
2 the district judge to do that?

3 MR. GOLLER: If one should look literally at
4 nothing but the words of the statute, yes, Your Honor,
5 there is a problem.

6 QUESTION: Well, is there anything in this
7 record to indicate why the wages weren't paid over?

8 MR. GOLLER: Mr. Justice --

9 QUESTION: Some basis for an equitable
10 discretion?

11 MR. GOLLER: Mr. Justice, there is not. And
12 again, if I may expand on the facts a little bit, when
13 this gentleman left Antwerp to come back, as the record
14 will reveal, the exhibits will reveal, there were
15 telephone calls made from the New Orleans office of
16 Oceanic Contractors, the Respondent, attempting to get
17 back in touch with him, to get him to return to work.
18 There are telex messages that were -- between Oceanic
19 --

20 QUESTION: Did he make a demand for his wages
21 in Antwerp?

22 MR. GOLLER: He says he did.

23 QUESTION: Did the district court find he
24 did?

25 MR. GOLLER: The district court found he did.

1 There's a matter in dispute --

2 QUESTION: So there's no -- was it denied?

3 Did the employer deny that he made such a demand?

4 MR. GOLLER: I don't recall that the
5 employers, the testimony that we put on at the trial
6 really went to that point. So we've assumed that the
7 district judge is correct in the handling of the case
8 and have really not --

9 QUESTION: That the demand was made was just
10 not -- and the money was just not paid?

11 MR. GOLLER: Mr. Justice White, the reason
12 that the demand -- the money was not paid, if the demand
13 was in fact made, was because we expected him to come
14 back to Antwerp and go back to work and honor his
15 contract.

16 QUESTION: Where do you find that in --

17 QUESTION: That isn't even in the record.

18 MR. GOLLER: That he was coming back?

19 QUESTION: Yes.

20 MR. GOLLER: The testimony in the transcript
21 of the testimony shows that very clearly. Mr. Justice
22 Brown --

23 QUESTION: Could you cite to someplace in the
24 findings of the district court where he makes a finding
25 on that?

1 MR. GOLLER: I do not believe there is a
2 finding. I'm simply reciting the evidence as it
3 appeared in the district court. The district judge did
4 find that the withholding of the \$412.50 was without
5 sufficient cause. We do not contest that at all.

6 QUESTION: He found it was callous also.

7 MR. GOLLER: He did.

8 QUESTION: Aren't we bound by those findings,
9 counsel?

10 MR. GOLLER: Yes. We have not contested the
11 findings, and I think under Rule 56 you are bound here,
12 Your Honor.

13 QUESTION: How do you read discretion into the
14 language of the statute?

15 MR. GOLLER: I think you really have to look
16 at the history of the statute itself and to realize and
17 consider the role of the admiralty courts. The
18 admiralty courts have been accepte as the protectors of
19 seamen's rights from the time this statute was enacted
20 originally in 1790. And that's shown by a clear reading
21 of the statute, because the statute itself provides that
22 the master must respond in admiralty.

23 Congress as early as 1790 was aware and knew
24 that this statute would be construed in an admiralty
25 court. And when you -- as it comes, as it is reenacted

1 --

2 QUESTION: Are you saying just because it's an
3 admiralty court we have to read in discretion?

4 MR. GOLLER: I say, yes, Your Honor, because
5 it is an admiralty court and because the admiralty
6 courts have traditionally been the protectors of the
7 seamen's rights, I say that Congress enacted this
8 statement with that knowledge beforehand, with the
9 understanding that the admiralty courts would protect
10 the rights of these seamen. Judge --

11 QUESTION: Counsel, I'm still worried about --
12 knowing all of this that you talked about, and your
13 client knew all of this, why couldn't they have gotten
14 out of this for \$400? Why?

15 MR. GOLLER: Your Honor, I suppose --

16 QUESTION: Why did they choose not to?

17 MR. GOLLER: -- with hindsight I think this is
18 exactly what happened. The Petitioner came back to the
19 United States. The operational office was in Antwerp,
20 and I think it really was a matter of inadvertence,
21 despite what Judge Justice found, that they didn't make
22 the payment.

23 QUESTION: Are you suggesting --

24 QUESTION: Which is what Congress didn't want
25 to happen.

1 MR. GOLLER: I believe that's right, Your
2 Honor.

3 QUESTION: And \$300,000 would break you of
4 that.

5 MR. GOLLER: That's right. Your Honor, the
6 same thing would be true if one dollar were
7 inadvertently withheld as a consequence of an honest
8 mistake. If there is no finding of sufficient cause,
9 the penalty over the period of four and a half years or
10 whatever it is, some 1600 days, would result in a
11 payment of \$324,000.

12 QUESTION: It certainly is strange, after the
13 lawsuit was started -- at least that somebody in the
14 company must have known the lawsuit was going on.

15 MR. GOLLER: They did, Your Honor. And that
16 is of course the reason that the Respondent paid off the
17 judgment in September 1980. The judgment was paid
18 September 17th, 1980.

19 But we think that the heart of this case is
20 the fact that the statute itself is a remedial statute.
21 It's not a penalty statute. It's not penal in nature.
22 The statute provides that these sums shall be
23 recoverable as wages, not as penalties.

24 And if we turn to this Court's holding in
25 Pacific Mail against Schmidt, we say that that case is

1 direct authority for the proposition that the court has
2 discretion for setting the time of the penalty. In that
3 case a seaman who returned from a foreign voyage was
4 paid his wages through a date, September 23, 1913. He
5 stayed on the vessel for seven or eight days later and
6 then was discharged when they found some silverware
7 missing and accused him of taking it. So they offset
8 the value of the silverware against the wages due him
9 for those eight days.

10 And the trial judge found that the offset was
11 unlawful, was without sufficient cause, and invoked the
12 penalty up until the date of trial, which was a date
13 like November, 45 days or so. The Court of Appeals
14 extended that penalty through the date of the appeal.

15 When it got to the Supreme Court, the Court
16 held that there was sufficient cause for taking the
17 appeal and therefore period of the penalty would be --
18 would stop as of the date of the district court's
19 decree. Now, logically, once there is a finding that
20 the wages were withheld without sufficient cause, then
21 it seems to me that no court after that can come along
22 and say that the penalty will run for 30 days or 60 days
23 or 90 days and then the penalties shall stop, because if
24 you read the statute literally the penalty is payable,
25 if it is a penalty, is payable for each and every day

1 that payment is withheld.

2 So literally it's payable until paid, which in
3 our case frankly would be September 17, 1980.

4 QUESTION: What about your opponent's argument
5 that the claim merges in the judgment and once you have
6 a judgment the rules governing payment of judgments
7 would govern, rather than the statute?

8 MR. GOLLER: That is not what this Court held
9 in Pacific Mail. What this Court did hold in Pacific
10 Mail was that there was sufficient cause for the
11 shipowner taking the appeal from the district court's
12 judgment, and that's all that it held.

13 We do not think that there is a merger under
14 the circumstances, if you read the statute literally.

15 QUESTION: When you were in the district
16 court, were you then principally litigating the question
17 of whether the \$412 was due or was the litigation
18 focusing on the penalty provisions?

19 MR. GOLLER: Mr. Chief Justice, the litigation
20 focused on every aspect of the case, and that is why
21 Judge Justice rendered the opinion he did. He found the
22 vessel to be unseaworthy, on the issue of the facts of
23 the case, the circumstances of this accident. He
24 awarded \$5,000 as general damages for the injuries
25 caused by the unseaworthiness.

1 He found that Respondent also failed to pay
2 maintenance for this period from the date of the
3 accident up until May 3, when the Petitioner was found
4 fit for duty. So he awarded not only the maintenance,
5 but he awarded a sum for attorney's fees under this
6 Court's decision in Vaughn against Atkinson, that the
7 failure to pay maintenance was improper.

8 QUESTION: Are there any cases which give any
9 intimation that the earnings from other employment are
10 to be credited against the ultimate amount of the claim,
11 as would be the case with a violation of the civil
12 rights laws in denying employment, something of that
13 kind?

14 MR. GOLLER: There are no such direct holdings
15 to our knowledge, Your Honor.

16 QUESTION: Did you make any proffer of
17 evidence of wages from other jobs by way of mitigation?

18 MR. GOLLER: Yes, we did. We showed the
19 Petitioner's wages for Viking Offshore Company, which is
20 the company that he commenced working for on May 5,
21 1976, which was 34 days after his accident.

22 QUESTION: Was that proffer accepted by the
23 district court or refused?

24 MR. GOLLER: It was accepted in the sense that
25 we feel that all those factors came into the district

1 court's decision in setting the penalty period at 34
2 days, the time that he returned to work. That's what he
3 specifically considered.

4 QUESTION: You said earlier in your argument
5 that your view is that these amounts are paid as wages?

6 MR. COLLIER: Yes, sir, under the statute. The
7 statute says specifically they shall be recoverable as
8 wages.

9 QUESTION: Even though he was working
10 somewhere else and making comparable wages?

11 MR. COLLIER: Well, I think the statute is
12 speaking to the fact that these sums to be recovered
13 will be wages and not penalties, Mr. Chief Justice.

14 QUESTION: As the Chief Justice says, a normal
15 rule would be to set off, to set off amounts earned
16 elsewhere.

17 MR. COLLIER: I know of no decisions permitting
18 a setoff in these cases.

19 QUESTION: Well, has there ever been any
20 decisions denying it?

21 MR. COLLIER: Not that I can recall, and I
22 can't --

23 QUESTION: Certainly none here, are there?

24 MR. COLLIER: There are none.

25 QUESTION: You spoke of the failure to pay the

1 \$412 in Antwerp on demand, the demand of which the
2 company seemed to be perhaps not fully aware, that it
3 was a result of inadvertence. Now, you mean the kind of
4 inadvertence that takes eight days to get a letter from
5 Baltimore to Washington, or what kind of inadvertence do
6 you mean?

7 Did somebody just drop the ball, is that it?

8 MR. GOLLER: I think that is it, Mr. Chief
9 Justice. When the Petitioner returned to the pipelaying
10 barge following his discharge from the hospital in
11 Antwerp --

12 QUESTION: That's certainly not what the
13 district court said. The district court said the
14 refusal to pay unearned wages to claimant constituted
15 arbitrary, unreasonable, callous and willful disregard
16 of the Plaintiff's rights. That certainly doesn't
17 square with your answer that it's an inadvertent thing.

18 MR. GOLLER: Well, Mr. Justice Rehnquist, I'm
19 going back and drawing on the facts, the transcript, the
20 testimony that was in evidence.

21 QUESTION: Did you ever challenge any of the
22 district court's findings? Did you appeal from the
23 district court to the Court of Appeals?

24 MR. GOLLER: We did not.

25 QUESTION: And you haven't cross-appealed from

1 the judgment of the Fifth Circuit, have you?

2 MR. GOLLER: We did not.

3 QUESTION: Aren't you bound by those
4 findings?

5 MR. GOLLER: We are bound by those findings,
6 and I understand that. We --

7 QUESTION: Your only challenge is that the
8 Court of Appeals was entitled to -- and the district
9 court -- entitled to read the statute as they did read
10 it? You're not challenging the \$23,000 recovery??

11 MR. GOLLER: We are not.

12 QUESTION: Or the \$412 of wages?

13 MR. GOLLER: We are not. So far as we know,
14 that \$412.50 was not in fact paid, and the trial judge
15 found that it was not paid.

16 The only thing that we are saying is that the
17 trial judge was correct in exercising his discretion to
18 limit the period of the penalty and that he has that
19 discretion, and that is vested in the admiralty courts.

20 QUESTION: Is there anything in the record to
21 show what his earnings were -- you made a proffer --
22 what his earnings were with the other employer? Was it
23 at the same rate, a comparable rate?

24 MR. GOLLER: I do not know the rate. There is
25 evidence in the form of an exhibit in the file showing,

1 I believe, what his earnings were. And as I recall, it
2 was around \$6500 for a short period of time.

3 There is evidence --

4 QUESTION: Did he work continuously from the
5 time he went back to work?

6 MR. GOLLEP: He worked for a short period --

7 QUESTION: But not continuously?

8 MR. GOLLER: Not continuously. Nor would he
9 have worked continuously for the Respondent, because the
10 pipelaying season lasts in the North Sea only from the
11 time the vessels can get out in the spring until they
12 have to come in in the fall. And there was a finding,
13 as I recall, by the trial judge that the pipelaying
14 season would have terminated on September 15 of 1976.

15 QUESTION: Mr. Goller, I gather your whole
16 case turns on our accepting your submission that because
17 it's in admiralty the statute necessarily, in its
18 application in admiralty, is conditioned on an equitable
19 discretion in the trial judge to do what he thinks is
20 the just thing to do in terms of fixing a penalty
21 period?

22 MR. GOLLER: I feel that's a fair summation of
23 our position, based upon the decisions of the First,
24 Second, Fourth and Fifth Circuits. We feel the only
25 case to the contrary really is the Swain case of the

1 Third Circuit and that the Swaine Court simply
2 misinterpreted this Court's holding in the Pacific Mail
3 versus Schmidt case, because in that case that's exactly
4 what this Court did.

5 After the penalty had been invoked, had been
6 triggered and had run for some period of time, as I
7 recall around 45 to 60 days -- in any event, from
8 September 13th to about November the 11th -- then this
9 Court held that the penalty should cease at that time.
10 So if we read the statute literally this Court would not
11 be empowered to make that holding.

12 Now, it did it, the Court did this, by saying
13 that there was sufficient cause for the appeal. But if
14 we accept Petitioner's argument and literally,
15 slavishly, blindly apply this statute, then it would go
16 on and on and on forever until paid.

17 QUESTION: The harsh terms of the district
18 court's finding, apparently tasked in terms of the
19 traditional analysis of this statute, hardly laid a very
20 good foundation for his invoking equitable discretion,
21 would you agree?

22 MR. GOLLER: Yes, unless -- and if you view
23 simply that finding without him taking into
24 consideration all of the evidence in the case -- the
25 fact that the injuries were very minor in nature, that

1 when the Petitioner returned to the United States he saw
2 the physician only twice and within a period of 31 days
3 he was declared fit for duty, and the fact that he'd had
4 a prior hemorrhoid condition and this was simply a
5 recurrence of it, that he went right back to work and
6 was able to perform his work as well as he had prior to
7 the injury.

8 QUESTION: Mr. Goller, I could understand an
9 argument about discretion better if there was some
10 defensible reason given for the failure to pay. If
11 there was a dispute over whether there was cause for
12 withholding or not, you might say that the Congress
13 certainly didn't intend to impose this penalty if there
14 was an arguable, reasonably arguable reason for
15 withholding.

16 But there's nothing in this record to indicate
17 any justifiable cause for withholding, is there?

18 MR. GOLLER: Well, I think there is, Mr.
19 Justice White.

20 QUESTION: This is just a pure -- this is just
21 a pure argument that, even though we deliberately
22 withheld it, we nevertheless -- there's nevertheless
23 discretion to disregard the statute.

24 MR. GOLLER: Well, I think there is only when
25 you consider the totality of the circumstances and all

1 of the evidence the judge had before him when he decided
2 this case.

3 QUESTION: Well, that may be. As Justice
4 Rehnquist says, if there were different findings it
5 might help you. But --

6 QUESTION: Of course, if there were different
7 findings there wouldn't have been any penalty wages.
8 They had to make the finding of deliberate withholding
9 to justify even one day's penalty wage.

10 MR. GOLLER: To justify any penalty it had to
11 be without sufficient cause.

12 QUESTION: What is equitable reason? There's
13 too much money?

14 MR. GOLLER: Sir?

15 QUESTION: So they can't have a case where
16 there'd be discretion if you are bound by the findings.

17 MR. GOLLER: There had to be a finding of
18 without sufficient cause in order to trigger the statute
19 initially. And whether you word it as callous,
20 arbitrary, willful, wanton, or whatever, there has to be
21 that finding.

22 QUESTION: Well, but that's -- to say it's
23 without sufficient cause is one thing. To say it's
24 unreasonable, callous and willful disregard is another.
25 I mean, the district court wouldn't have had to make

1 those findings in order to find that it was without
2 sufficient cause.

3 MR. GOLLER: Well, again all I can say, Mr.
4 Justice Rehnquist, is that is what this particular trial
5 judge did find. What another trial judge might find on
6 the same facts might be entirely different.

7 QUESTION: Well, doesn't the law in the Fifth
8 Circuit require the malicious type finding in order to
9 justify the conclusion that it was without sufficient
10 cause?

11 MR. GOLLER: I believe that it does, Your
12 Honor.

13 QUESTION: So that in order to find any
14 penalty wages, he had to find this kind of malice --

15 MR. GOLLER: That's right.

16 QUESTION: -- in the Fifth Circuit.

17 QUESTION: Certainly the statute doesn't
18 require that, does it?

19 MR. GOLLER: The statute does not require
20 that.

21 QUESTION: We're bound by the statute, I take
22 it, not by the Fifth Circuit's rule.

23 QUESTION: But the statute as construed in the
24 Fifth Circuit requires it.

25 MR. GOLLER: That's correct. The decisional

1 law requires it.

2 QUESTION: What case requires it, by the way?

3 MR. GOLLER: American Federation versus Dahl,
4 D-a-h-l, Your Honor.

5 QUESTION: So that in the Fifth Circuit you
6 think that if the trial judge thought, well, it was
7 reasonably arguable when they denied it, it wasn't
8 malicious, then there would be discretion?

9 MR. GOLLER: The opinion indicates that --

10 QUESTION: They don't even need that. They
11 say there is discretion even if it were malicious.

12 MR. GOLLER: If the Fifth Circuit had a case
13 where the trial judge would simply hold that the
14 withholding is without sufficient cause, I believe the
15 Fifth Circuit would allow the penalty to stand. The
16 Fifth Circuit does --

17 QUESTION: Well, it didn't in this case.

18 MR. GOLLER: Well, it affirmed the judgment of
19 the district judge.

20 QUESTION: Well, there were findings -- there
21 were findings that it was malicious, or something to
22 that effect, anyway. And yet they didn't allow the
23 penalty to stand.

24 MR. GOLLER: Yes, Your Honor, the \$6,881.60 is
25 part of the total judgment.

1 QUESTION: I understand that. But they
2 certainly didn't allow the running beyond the 34 days.

3 MR. GOLIER: That's true, they did not reverse
4 the decision of Judge Justice and reinstitute the
5 penalty.

6 If the Court please, might I just call
7 attention to another statute which this Court has
8 interpreted that I think justifies our position in this
9 case that the court has discretion in interpreting the
10 statute. Section 5 of the Longshore Act provides that
11 the liability of an employer for compensation under that
12 Act shall be exclusive and in place of all other
13 liability to the injured longshoreman or anyone entitled
14 to recover compensation under that longshoreman. Yet --
15 when you read that statute, the literal wording of the
16 statute, you read it clearly, that's what it says and
17 that's all it says.

18 Yet this Court in Reid against Yaka and in
19 Jackson versus Lykes Brothers held that where a
20 longshoreman is employed directly by a
21 compensation-paying employer who is also a shipowner,
22 then the shipowner is not immune from tort liability and
23 the longshoreman may sue the shipowner directly for
24 damages under the general maritime law.

25 Specifically, those cases held that he had a

1 cause of action for damages for unseaworthiness. Now,
2 that statute was amended in 1972 and the longshoreman's
3 remedy for unseaworthiness was eliminated. Since that
4 time the appellate courts have held that the
5 longshoreman nevertheless still retains his direct
6 action against his employer under the principles of
7 maritime negligence so long as the quality of the
8 negligence that causes the accident is negligence in the
9 navigation of the vessel. Courts have distinguished
10 negligence in loading the cargo on the vessel, which is
11 normally longshore work, and navigation of the vessel,
12 which is operation of the ship.

13 And I cite those cases to you simply to
14 reaffirm that, although the literal wording of the
15 statute in question may say that the two days wages or
16 the double wages are payable until paid, certainly this
17 longshore statute shows clearly that this Court and
18 other federal courts obviously have the right to
19 interpret these statutes to divine the intent of
20 Congress.

21 I think the history of this statute indicates
22 that Congress intended to turn its administration over
23 to the federal admiralty courts, and if Congress had
24 been dissatisfied with it it would have amended the
25 statute, because for many years these cases have been on

1 the books allowing the courts to exercise their
2 discretion in determining the period of the penalty.

3 QUESTION: You referred to a case, I think
4 American Federation against Dahl, but I don't see it,
5 under that caption at least, cited.

6 MR. GOLLER: May I?

7 QUESTION: Yes, by all means.

8 Perhaps I got the title wrong.

9 MR. GOLLER: Sorry, Your Honor, I may have
10 gotten my tongue twisted. It's Caribbean Federation
11 Lines versus Dahl. That's the Fifth Circuit case on the
12 point.

13 QUESTION: Thank you.

14 QUESTION: Let me ask one question that may be
15 pretty remote from the issue. I notice the statute
16 didn't apply to whaling vessels. Why not, I wonder?

17 MR. GOLLER: I would --

18 QUESTION: Is there anything in the
19 legislative history that explains that?

20 MR. GOLLER: No. The statute also does not
21 apply to fishing vessels in general, because --

22 QUESTION: I understood that.

23 MR. GOLLER: -- the seamen on those vessels
24 are paid by shares or by the catch.

25 QUESTION: It would seem to me the whaling

1 vessel example would have fallen right within the
2 purpose of the statute.

3 MR. GOLLER: Incidentally, if I may refer back
4 to Pacific Mail against Schmidt, in that case the Court
5 held that there was grave doubt as to whether or not the
6 statute should be invoked at all under the circumstances
7 of that case, because the Petitioner in the case -- or
8 the Respondent in the case, the seaman, was injured
9 while the vessel was in port. And here we have a seaman
10 who was injured while the vessel was in port.

11 So the answer to this question is not all that
12 clearcut. But at least we feel that certainly --

13 QUESTION: Is it correct that the conflict
14 arose in, what was it, about 1966 or '67? Was there a
15 conflict before then? When was the Third Circuit case
16 decided?

17 I had the impression that for about 50 years
18 the statute was consistently construed to allow the
19 district judge discretion.

20 QUESTION: In the Caribbean case, the Court of
21 Appeals cites as authority the Mystic case in 20 Federal
22 Second.

23 MR. GOLLER: Yes, sir.

24 QUESTION: That's fairly --

25 QUESTION: That's a case that holds there's

1 discretion, that's right.

2 MR. GOLLER: That is how long the courts have
3 so held.

4 Thank you.

5 CHIEF JUSTICE BURGER: Mr. Chaffin.

6 REBUTTAL ARGUMENT OF ROBERT A. CHAFFIN, ESQ.

7 ON BEHALF OF PETITIONER

8 QUESTION: Mr. Chaffin, of course we know the
9 general proposition that Mr. Justice Frankfurter
10 expressed so well that if a statute is clear you don't
11 need to look to the legislative history. But do you
12 think Congress ever contemplated the possibility of a
13 \$320,000 payment for a \$412 default?

14 MR. CHAFFIN: Your Honor, I don't know that
15 they calculated, thought of that exact figure. But I
16 would suggest --

17 QUESTION: I mean that proportion.

18 MR. CHAFFIN: -- in relative terms I think
19 they did, Your Honor. I think they did in relative
20 terms, Your Honor. I think so clearly that --

21 QUESTION: Well, is it perhaps more accurate
22 to say that Congress, as they often do, never gave it
23 any thought one way or the other?

24 MR. CHAFFIN: Your Honor, I don't really think
25 that would be accurate in this case, because the

1 Congress consciously deleted the "not more than" form of
2 penalty in 1898 which gave that limiting provision to
3 the courts. And the bill was the subject of extended
4 debate, Your Honor.

5 I would suggest to the Court, Your Honor, that
6 what's really happening here is that the Respondent is
7 attempting to make a backdoor challenge to the validity
8 of the statute, Your Honors. The statute is clear and
9 plain on its face, and that the rules interpreting the
10 seaman's statute are even more clear, that if there
11 exists an ambiguity in a seaman's statute that ambiguity
12 must be interpreted in favor of the seaman.

13 QUESTION: Let me ask you one question on your
14 theory. When the statute before 1950 had the "not more
15 than" language in it, did it -- was it not true that the
16 district judge then had discretion within the ten-day
17 range?

18 MR. CHAFFIN: That's true, Your Honor.

19 QUESTION: And now by limiting the ten-day
20 ceiling -- they took the ten-day ceiling -- is it also
21 clear they took away his discretion?

22 MR. CHAFFIN: That's true, Your Honor.. That's
23 exactly our position, Your Honor.

24 QUESTION: But there are two different things
25 that that one amendment accomplished, then.

1 MR. CHAFFIN: Well, Your Honors --

2 QUESTION: Is there anything in the
3 legislative history to make it clear that they intended
4 to do both? One, it removed the limit on his
5 discretion. Did it also entirely take away the
6 discretion?

7 MR. CHAFFIN: Oh, Your Honor, the statute was
8 clear on its face saying that he could not exceed ten
9 days.

10 QUESTION: Right.

11 MR. CHAFFIN: And when they removed that after
12 two years --

13 QUESTION: And then he could exceed ten days.

14 MR. CHAFFIN: He could after that time, Your
15 Honor, fix the running of the statute according to the
16 terms of the statute.

17 I would suggest, Your Honors, that what's
18 really at issue here has nothing to do with the wording
19 of the statute. It is the impact of the statute, the
20 financial burden which comes with it. And I would
21 suggest further, Your Honors, that that is not a proper
22 matter for review by this Court, which is backed up by
23 the case of Tennessee Valley Authority against Hill. In
24 that case, Your Honors, decided by the Chief Justice and
25 written by the Chief Justice, a three-inch fish stopped

1 a \$100 million dam straight in its tracks, Your Honors.

2 QUESTION: \$130 million.

3 MR. CHAFFIN: \$130 million.

4 So it's clear that if the statute is valid, if
5 it's constitutional, in the case of the seaman he has
6 been a protected breed of worker for several hundred
7 years --

8 QUESTION: How do you explain the fact that
9 for 50 years the Courts of Appeals consistently
10 misconstrued the statute and Congress did nothing about
11 it?

12 MR. CHAFFIN: I have no explanation for that,
13 Your Honor, except to say that the statute was lightly
14 applied in those days, and in these days --

15 QUESTION: It was what applied?

16 MR. CHAFFIN: Lightly applied. You do not
17 find a great judicial history on the statute, Your
18 Honor. But the case of Isbrandtsen against Johnson came
19 before this case -- this Court -- in 1952 involving this
20 statute. Justice Burton then said, Your Honor, that in
21 statutes which derogate the common law as known to the
22 maritime law, those statutes must be strictly construed
23 and construed in the favor of the seaman if there be a
24 doubt; that legislation remedial to the seaman is to be
25 given the benefit of the doubt if there exists one in

1 favor of the seaman.

2 QUESTION: Well, if you're going to get into
3 maxims you're up against the proposition that courts
4 abhor a forfeiture too, aren't you?

5 MR. CHAFFIN: Courts what, Your Honor?

6 QUESTION: Abhor a forfeiture, which this
7 really is.

8 MR. CHAFFIN: This is not a forfeiture, Your
9 Honor. This is a statute designed to prevent great
10 potential harms. A seaman who is discharged in a
11 foreign port without his wages can die there, Your
12 Honor. It is a significant potential harm this statute
13 is designed to prevent. It has punch and impact.

14 QUESTION: Doesn't it take on the appearance
15 at least of a forfeiture in traditional terms when the
16 sanction or the penalty is so out of proportion to the
17 injury that then courts have construed such things as
18 forfeitures?

19 MR. CHAFFIN: I suppose you could take that
20 approach, Your Honor. But that approach is rejected by
21 numerous cases, numerous cases. The Ryder against
22 Solartone case, an antitrust case, was the same thing.
23 The statute carries with it significant financial
24 impact, and that is in essence the entire objection to
25 the law, Your Honor. And I just cannot buy that the

1 Congress could not foresee that after two years. It's
2 an old statute and it has a punch and impact, which is
3 simply removed if you interpret it as Respondent would
4 have, Your Honor.

5 We would ask the Court to stabilize the law
6 and have a uniform period for the running of the
7 statute.

8 QUESTION: Just one more question. Suppose,
9 if -- and I underline the "if" -- the Court, this Court,
10 concluded that the Fifth Circuit standard, its rule, was
11 not correct. Would it be an appropriate remedy to
12 declare that that was an improper standard and send it
13 back to return to the district court, so that the
14 district court could reexamine it in light of what we
15 would have then said is the correct interpretation of
16 the statute? Would that be the solution?

17 MR. CHAFFIN: That would not be my solution,
18 Your Honor.

19 QUESTION: Rather than an affirmance?

20 MR. CHAFFIN: My solution, Your Honor, would
21 be that the case be reversed and rendered with
22 instructions --

23 QUESTION: I know. But I put an "if"; I put a
24 hypothetical to it. If we concluded that their standard
25 was wrong, would that be the appropriate disposition of

1 the case?

2 MR. CHAFFIN: If that was the conclusion, Your
3 Honor, I would certainly think that you would also have
4 to add too that you could not consider conduct outside
5 the period of time prescribed by the statute.

6 The only equitable conduct in this case was
7 that the Petitioner himself went out and found
8 reemployment. Now, equitable conduct by its nature
9 refers to some type of conduct that the Respondent in
10 this case should have come forward with. Your Honor,
11 the record is absolutely clean of any conduct on the
12 part of the Respondent that they did anything to help
13 the Petitioner collect money that was rightfully due
14 him.

15 In other words, the only equities in the case
16 actually fall on the side of the Petitioner, with the
17 exception of the one equity which the Respondent jumps
18 on, Your Honor, and that's that it's a big penalty.

19 CHIEF JUSTICE BURGER: Thank you, gentlemen.
20 The case is submitted.

21 (Whereupon, at 11:05 a.m., the case in the
22 above-entitled matter was submitted.)

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CERTIFICATION

Alderson Reporting Company, Inc. hereby certifies that the attached pages represent an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of the United States in the matter of:

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