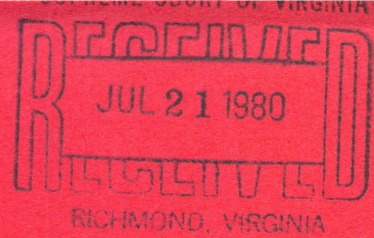


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IN THE
SUPREME COURT OF VIRGINIA
At Richmond

RECORD NO. 791841

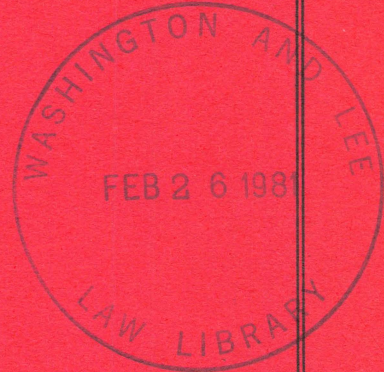
AMERICAN ORIGINAL FOODS, INC.
(Eastern Marine Builders & Supply Co.)
and
RELIANCE INSURANCE COMPANY,

Appellants,

v.

NETTIE FORD
and
YVONNE SPADY,

Appellees.



APPENDIX

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Andrew C. Mitchell, Jr.
S. Lawrence Dumville
Breedon, Howard & MacMillan
1700 First Virginia Bank Tower
Norfolk, Virginia 23510

Counsel for Appellants

LAW OFFICES
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NORFOLK, VIRGINIA

APPENDIX

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COMMISSIONER JOYNER:

The record will so show. Do you have some stipulations?

MR. MITCHELL:

I think it's pretty much agreed that Mr. Ford was injured on a ship - died on a ship. The ship was in navigable waters within the territorial limits of Virginia. The ship was named the SHINNECOCK. Both the employee and Mr. Ford are subject to the Longshoremen's & Harbor Workers Act, although we don't agree anyone is entitled to cover because of that. I believe we can agree that the average weekly wage based on the last twenty-six weeks is \$183.69. Also, that Nettie Ford is the deceased's mother, that he was employed by Eastern Marine Builders and that he worked both in the plant and on the ships.

NETTIE FORD, Claimant

BY MR. KLEIN:

Q State your name for the record, please.

A Nettie Ford.

Q You are the mother of George Ford?

A Right.

Q Where do you live?

A I live in Cheriton, Virginia.

Q Do you have a house that you live in there?

A Yes.

Q Are you the only person who lives in that dwelling?

A That's right.

Q Tell the Judge how many rooms are in that dwelling.

A Three.

Q What are they?

VIRGINIA:
IN THE INDUSTRIAL COMMISSION

GEORGE FORD, [deceased], Employee
NETTIE FORD, [mother] and YVONNE SPADY, Claimants

SEP 20 1979

V. Claim No. 575-676

Opinion by JOYNER,
Commissioner

AMERICAN ORIGINAL FOODS, INC.,
[Eastern Marine Builders & Supply Co.], Employer
RELIANCE INSURANCE COMPANY, Insurer

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Norfolk, Virginia 23510
for the Defendants.

Hearing before Commissioner JOYNER at Eastville,
Virginia, on March 20, 1979.

This claim is before the Commission upon the
application of Nettie Ford, mother of the deceased employee, who
claims as a parent in destitute circumstances [§65.1-66] or, in
the alternative, as an actual dependent in fact [§65.1-67], and
Yvonne C. Spady, who claims as an actual dependent in fact [§65.1-
67].

The employer pleads the jurisdiction and contends that the claimants exclusive remedy, if any, is provided by the Longshoremen's and Harbor Workers' Compensation Act, 33U.S.C.A., 901-950. The claim is further defended upon the ground that Nettie Ford is not a parent in destitute circumstances as that term has been construed by the Industrial Commission, nor was she actually dependent upon her son at the time of his death.

The claim is defended as to Yvonne Spady upon the

Claim No. 575-676

Page Two

ground that she was not actually dependent upon the deceased employee and, further, that to enter an award on her behalf is contrary to the public policy of the Commonwealth.

The evidence establishes that George Ford died as the result of an industrial accident on January 17, 1978, while employed at an average weekly wage of \$133.69. At the time of his death, he was engaged in welding hydraulic lines in the hold of F/V Shinnecock which was moored at his employer's dock at Cape Charles, Virginia. The cause of death was asphyxiation. At the time of his death, the claimant was not married nor was he survived by any minor children.

The evidence regarding the claim of Nettie Ford establishes that she is the mother of George Ford, that she was born either in 1899 or in 1909, the evidence being in conflict; that she has been widowed since 1940; that she receives Social

Security in the amount of \$152.00 per month together with a Social Security supplement of \$48.00 per month; that she owns no real or personal property and lives alone in a small three-room house without running water for which she pays rent of \$30.00 per month. She also testified that she suffered some infirmities of health for which she was treated on a regular basis by a local physician.

Notwithstanding her meager circumstances, Nettie Ford had at the time of her son's death, accumulated over an undetermined period of time when she was able to engage in limited employment, the sum of approximately \$4,000.00 which at that time was on deposit at two local banks. Following her son's death, it was her testimony that these funds had been completely depleted, in part to pay for his funeral and in part to pay those expenses which her son had paid prior to his death. There is no conflict in this portion of the evidence regarding the claim of Nettie Ford. There is conflict in that portion of the evidence regarding

Claim No. 575-676

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her claim as an actual dependent in fact. Nettie Ford testified that her son gave her money on a regular basis for house rent and food and that some funds were provided to her by him each time he received a paycheck and usually amounted to some ten to fifteen dollars per week. This evidence is contradicted, in part, by the testimony of Yvonne Spady

.When we face the decisive question of what the Supreme Court has in fact done to interfere with application of state laws on grounds related to the local-concern doctrine, we discover that the Supreme Court has not forbidden a state to apply its compensation law to a waterfront injury on these grounds in over forty years. . . ." [589.40 p.446].

Upon this evidence then we find that the Industrial Commission has jurisdiction of this claim; that Nettie Ford is a parent in destitute circumstances; and that no award may be entered on behalf of Yvonne Spady as a dependent in fact [§65.1-67] since partial dependents may not share in an award with those conclusively presumed to be wholly dependant upon a deceased employee [§65.1-66] and, further, that considerations of public policy would prevent an award in her behalf in any event.

We further find that payment of accrued compensation in this claim to Nettie Ford in a lump sum is not in her best interest and, pursuant to an agreement between Nettie Ford and United Virginia Bank/Seaboard National, Cheriton, Virginia, which is made a part of this record, the award for compensation will provide for its payment to United Virginia Bank/Seaboard National for the benefit of Nettie Ford to be withdrawn by her as hereinafter set out in the award and any subsequent modification to such award by Order of the Industrial Commission.

The evidence regarding the claim of Yvonne Spady establishes that she and the deceased employee had lived together without of matrimony for some fourteen years. There were four children in the household, none of which were fathered by the deceased employee, three of which were Yvonne Spady's and born prior to her acquaintance with George Ford and the youngest of which was the child of a relative, which she was raising. These children were supported by public assistance. However, Yvonne Spady testified that George Ford was her sole means of support which apparently was the case since she had no other source of income. She and George Ford had a joint bank account, held real and personal property jointly and she was the beneficiary of certain life insurance policies. She further testified that she and George Ford assisted his mother, Nettie Ford, in the management of her affairs.

As to the jurisdictional plea, the leading case of Southern Pacific Co. v. Jensen, 244 U.S. 205, (1917), established the general rule that the Longshoremen's and Harbor Workers' Act was the exclusive remedy. Certain exceptions to this rule began with the line of cases following Grant Smith-Porter Ship Co. v. Rohde, 257 U.S. 469 (1922). In Bethlehem Steel Co. v. Moore's, 335 U.S., 874 [1948] and again in Baekin v. Industrial Accident Commission, 338 U.S., 854 [1949], The Supreme Court held that injuries occurring to workmen during the course of ship repair were compensable under the state's Workmen's Compensation Act. Professor Larsen in his treatise on Workmen's Compensation, §29.40 after an exhaustive review of the authorities, notes ". .

A W A R D

An award is entered in favor of Nettie Ford, mother of George Ford, deceased, at the rate of \$122.45 per week, beginning January 17, 1978, and continuing in accordance with law, to be paid jointly to Nettie Ford and United Virginia Bank/Seaboard National, Cheriton, Virginia.

From compensation due under this award there shall be deducted and paid to John H. Klein and attorney's fee of \$1200.00 for legal assistance rendered the claimant herein.

The United Virginia Bank/Seaboard National, Cheriton, Virginia, is authorized to pay to Nettie Ford the sum of \$400.00 per month from the principal deposit to her account until further Order of the Commission.

IN THE INDUSTRIAL COMMISSION OF VIRGINIA

GEORGE FORD [deceased] Employee
NETTIE FORD [mother] and YVONNE SPADY, Claimants

NOV 16 1979

v. Claim No. 575-676

Opinion by MILLER,
Commissioner

AMERICAN ORIGINAL FOODS, INC., Employer
[Eastern Marine Builders & Supply Co.] , Employer
RELIANCE INSURANCE COMPANY, Insurer

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for Yvonne Spady
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Norfolk, Virginia, 23510

REVIEW before the full Commission at Richmond,
Virginia, October 30, 1979.

The full Commission upon review adopts the
findings of fact and conclusions of law contained in

the decision and award of September 20, 1979.

Accordingly, the said decision and award of September 20, 1979 appealed from are

AFFIRMED, with the modification that the fee for the claimant's attorney is hereby increased to the total sum of \$1, 450.00.

CERTIFICATE

I hereby certify that on the 21st day of July, 1980, twenty (20) copies of the foregoing Brief and Appendix were delivered to the Clerk of the Supreme Court, and three (3) copies were mailed to John H. Klein, Esquire, 720 Atlantic National Bank Building, Norfolk, Virginia, 23510, counsel for Nettie Ford, and to William King Mapp, Esquire, Post Office Box 138, Keller, Virginia, 23401, counsel for Yvonne Spady.



Attorney