UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
Miami Division

Case Number: 16-21348-CIV-MORENO

VANE LINE BUNKERING, INC.,

Petitioner,

vs.

CLEVELAND HOOPER,

Respondent.

_____/

ORDER GRANTING PETITIONER'S MOTION TO COMPEL ARBITRATION

THIS CAUSE came before the Court upon Petitioner's Motion to Compel Arbitration **(D.E. 1)**, filed on **April 14, 2016**. Having reviewed the Motion, the Response (D.E. 8) and Reply (D.E. 12), the pertinent portions of the record, and being otherwise fully advised in the premises, the Court finds that Motion is granted.

I. BACKGROUND

Respondent Cleveland Hooper is a seaman formerly employed by Petitioner Vane Line Bunkering, Inc. ("Vane Line"). On August 28, 2013, while working as a Tankerman aboard the DS-59, Hooper injured his back when he stepped into an open hatch. On August 31, 2013, Hooper reported the injury to Vane Line, and subsequently claimed that the injury was severe enough to prevent him from returning to sea.

Federal law requires Vane Line to pay all reasonable medical expenses ("Cure") related to Hooper's injury. Federal law also requires Vane Line to pay certain other expenses ("Maintenance") while Hooper recovers from his injury. Since August 28, 2013, Vane Line has paid $37,576.45 for Cure and $28,700 for Maintenance. As of the date of this Order, Vane Line

continues to pay Cure and Maintenance.

After the August 28, 2013 incident, Vane Line sent three letters to Hooper—each entitled "Advanced Wage Agreement"—that offered to pay "Advanced Wages" to Hooper in addition to Maintenance and Cure. The Advanced Wage Agreement defines Advanced Wages as "compensation for wages that [Hooper] ha[s] lost as a consequence of [his] injury." D.E. 1-3 at 2. In exchange for receiving Advanced Wages, the Advanced Wage Agreement includes a Dispute Resolution Clause, which states as follows:

> **Dispute Resolution** It is Vane [Line]'s intention to work diligently and make every effort to make you whole and healthy in order for you to return to work in the shortest possible period of time. Unfortunately, there are occasions where the injured employee and Vane [Line] become at odds with each other. ***In addition to making the required Maintenance and Cure payments; Vane is prepared to make advances in unearned wages and company benefits against settlement, arbitration award or judgment of any claim that could arise under the doctrine of unseaworthiness, the Jones Act, or any other applicable law provided that you agree to arbitrate these claims.***
>
> ***Therefore, in consideration of the payment of unearned wages and company benefits as outlined herein, you agree to arbitrate all claims against the vessel and/or Vane Line Bunkering, Inc., under the Comprehensive Arbitration Rules and Procedures of JAMS, in Washington, DC, Philadelphia or New York.*** Either party may call for the arbitration by a notice to the other sent by registered mail. The arbitration shall be conducted by a sole arbitrator selected in accordance with JAMS rules provided that JAMS shall not have the power to appoint arbitrators stricken by either party. Any filing fees, case management fees and any deposit for compensation of the arbitrators shall be advanced by Vane [Line], subject to subsequent allocation. The decision of the arbitrator shall be final and binding on the parties and any United States District or other court of competent jurisdiction shall have authority to enforce this agreement, to enter judgment on the award and to grant any remedy provided by law in respect of the arbitration proceedings.

D.E. 1-3 at 2–3 (emphasis added). Hooper signed the Advance Wage Agreement three times:

on September 26, 2013, October 22, 2013, and June 24, 2014. *See* D.E. 1-1, 1-2, 1-3. As of the date of this Order, Hooper has received over $74,000 in Advanced Wages from Vane Line. Vane Line represents that it will also continue paying Hooper, at a bi-weekly rate of $1,299.90, until Hooper is declared "Fit-for-Duty" or reaches "maximum medical improvement." D.E. 1-3 at 2.

The Advanced Wage Agreement also provided notice to Hooper that his employment with Vane Line was not indefinite. The agreement states as follows:

> **Employment Status** It is Vane [Line]'s company policy to terminate the employment of any employee who misses six (6) consecutive months of work. It is important for you to realize now that this ***will not affect the payment of Maintenance, Cure, Advanced Wages and Employee Benefits, which will continue to be paid be Vane [Line] as outlined until you are declared Fit-for-Duty and/or have reached Maximum Medical Improvement.*** If you do not become Fit-for-Duty until more than six (6) months after your injury, you are encouraged to reapply for employment and Vane [Line] will make every effort to place you in a job as soon as possible. However, please understand that there is no guarantee that you will be re-employed.

D.E. 1-3 at 2 (emphasis in original).

Sometime after June 14, 2014, Vane Line terminated Hooper's employment and a dispute arose over the payment of Maintenance and Cure. On January 15, 2015, Hooper's attorney sent a "Notice of Representation and Request for Maintenance and Cure Benefits" to Vane Line. On July 2, 2015, Vane Line sent correspondence to Hooper, which included a Demand for Arbitration Before JAMS.

The arbitration commenced on July 17, 2015, and the parties selected Joseph P. Farina, retired Chief Circuit Judge, as the arbitrator. Thereafter, the arbitration was continued until February 16, 2016, and Hooper filed his Response on March 11, 2016. In the Response, Hooper asserted, *inter alia*, that the arbitration provision in the Advanced Wage Agreement is

unenforceable. Accordingly, in an April 11, 2016 Order, Judge Farina stayed the arbitration until a court of competent jurisdiction orders the parties to arbitrate. Vane Line then filed the instant Motion on April 14, 2016.

II. ANALYSIS

The Federal Arbitration Act ("FAA") states that "an agreement in writing to submit to arbitration an existing controversy arising out of such a contract . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. The mandatory language of the FAA reflects a strong, well-established, and widely recognized federal policy in favor of arbitration. *See, e.g., Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 25 (1991) (The FAA's "purpose was to reverse the longstanding judicial hostility to arbitration agreements that had existed at English common law and had been adopted by American courts, and to place arbitration agreements upon the same footing as other contracts."); *Southland Corp. v. Keating*, 465 U.S. 1, 10 (1984) ("In enacting § 2 of the [FAA], Congress declared a national policy favoring arbitration and withdrew the power of the states to require a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration."). Under normal circumstances, therefore, "an arbitration provision with a contract admittedly signed by the contractual parties is sufficient to require the district court to send any controversies to arbitration." *Chastain v. Robinson-Humphrey Co., Inc.*, 957 F.2d 851, 854 (11th Cir. 1992).

Against this backdrop, Hooper makes three arguments against the enforceability of the arbitration clause in the Advanced Wage Agreement. First, Hooper argues that the Advanced Wage Agreement qualifies as a "contract[] of employment of seamen," and is thus void under the FAA. 9 U.S.C. § 1. Second, Hooper contends that the Federal Employers' Liability Act

("FELA") prevents the Court from enforcing the arbitration provision. Finally, Hooper claims that the entire Advanced Wage Agreement is void. None of these arguments prevents enforcement of the arbitration clause.

A. Section 1 of the FAA

Section 1 of the FAA provides that "nothing herein contained shall apply to *contracts of employment of seamen*, railroad employees, or any other class of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1 (emphasis added). Hooper argues that the Advanced Wage Agreement is a contract of employment because it stated, "Because Vane Line . . . considers you a valid employee and wants you to return to work as soon as you are able, we are willing to provide assistance in addition to the minimum legally required benefits as outlined above (i.e. Maintenance & Cure)." D.E. 1-3 at 1. The Court, however, agrees with Vane Line that the phrase "contracts of employment of seamen" does not mean any contract that has some connection or relation to a party's employment. And courts have uniformly held that post-incident agreements to pay a seaman advanced wages are non-employment agreements under the FAA. *See, e.g.*, *Harrington v. Atlantic Sounding Co., Inc.*, 602 F.3d 113, 121 (2d Cir. 2010) (holding that a post-incident agreement to pay a seaman advanced wages in exchange for an agreement to arbitrate is not contract of employment as defined by the FAA); *Terrebonne v. K-Sea Transp. Corp.*, 477 F.3d 271, 279 (5th Cir. 2007) (holding that the "maintenance and cure" provisions of an arbitration agreement, though "an intrinsic part of the employment *relationship*, [are] separate from the actual employment *contract*") (emphasis in original). The Advanced Wage Agreement in this case is precisely that—a post-incident agreement to pay Hooper advanced wages. Accordingly, the Court finds that the arbitration agreement is not void under Section 1 of the FAA.

B. FELA and the Jones Act

In *Boyd v. Grand Trunk Western Railroad*, the Supreme Court held that Sections 5 and 6 of FELA void any contractual provision that limits a plaintiff's choice of forum. 338 U.S. 263, 266 (1949). The Jones Act, which applies to seamen, incorporates "by reference the more detailed provisions" of FELA "which govern the liability of railroads to their employees." *Pure Oil Co. v.* Suarez, 346 F.2d 890, 892 (5th Cir. 1965). Therefore, Hooper argues that the special venue provisions of FELA void the arbitration clause in the Advanced Wage Agreement.

In *Pure Oil*, however, the Fifth Circuit held that the venue provisions in FELA are not incorporated into the Jones Act. 346 F.2d at 892–93. ("Congress has seen fit to impose different venue requirements in Jones Act cases. To now hold that the venue requirements under the FELA are controlling would negate the plain language of [the Jones Act]."). As a result, Hooper's argument that FELA's provisions limiting venue should be applied to Jones Act cases has been soundly rejected. *Terrebonne*, 477 F.3d at 282–83 ("Because, under our decision in *Pure Oil Co.*, the venue provisions of section 6 of the FELA are inapplicable to Jones Act cases, it necessarily follows that nothing in section 5 of the FELA is applicable to Jones Act venue. Hence, neither *Boyd* nor section 5 dictate the result here."); *Harrington*, 602 F.3d at 124 ("In concluding that FELA §§ 5–6 and *Boyd* are inapplicable to seamen arbitration agreements, we align ourselves with all of the courts that have considered the issue."). The Court therefore finds that FELA's venue provisions to not void the arbitration clause in the Advanced Wage Agreement.

C. Validity of the Advanced Wage Agreement

Finally, Hooper argues that the Advanced Wage Agreement is void. Specifically, Hooper contends that the agreement (1) is the product "fraud in the inducement" and "negligent

misrepresentation," (2) suffers from "lack of consideration," and (3) "constitutes an improper seamen's release." D.E. 8 at 7.

In *Buckeye Check Cashing, Inc. v. Cardegna*, the Supreme Court conclusively established the following:

> Challenges to the validity of arbitration agreements . . . can be divided into two types. One type challenges specifically the validity of the agreement to arbitrate. The other *challenges the contract as a whole*, either on a ground that directly affects the entire agreement (e.g., the agreement was fraudulently induced), or on the ground that the illegality of one of the contract's provisions renders the whole contract invalid.

546 U.S. 440, 444 (2006) (emphasis added). The Court also held that "unless the challenge is to the arbitration clause itself, the issue of the contract's validity is considered *by the arbitrator in the first instance*." *Id.* at 445 (emphasis added); *see also Chastain v. Robinson-Humphrey Co., Inc.*, 957 F.2d 851, 854 (11th Cir. 1992) ("Under normal circumstances, an arbitration provision within a contract admittedly signed by the contractual parties is sufficient to require the district court to send any controversies to arbitration.").

Hooper's challenges to the validity of the Advanced Wage Agreement are not directed to the arbitration clause itself, but rather to the agreement as a whole. The FAA requires that such arguments be made "to the arbitrator in the first instance." *Buckeye Checking*, 546 U.S. at 445. Accordingly, Hooper must submit these arguments to the arbitrator.

III. CONCLUSION

For the foregoing reasons, it is hereby

ADJUDGED that Petitioner's Motion to Compel Arbitration is **GRANTED**. The parties are **ORDERED** to arbitrate their claims in accordance with the Advanced Wage Agreement. It is further

ADJUDGED that this matter is **CLOSED**.

DONE AND ORDERED in Chambers at Miami, Florida, this 6th of July 2016.

FEDERICO A. MORENO
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record