

Arbitration Award 06/01/1939

IN THE MATTER OF A CONTROVERSY BETWEEN

WATERFRONT EMPLOYERS ASSOCIATION,

COMPLAINANTS

AND

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, DISTRICT #1, RESPONDENTS

Involving question as to whether picket line cases should be heard by Coastwide arbitrator or local arbitrator

ARBITRATOR'S AWARD

Mr. Gregory Harrison For Complainants

Mr. Clifford D. O'Brien For Respondents

Wayne L. Morse, Coastwide Arbitrator

Eugene, Oregon

June 1, 1939

ARBITRATION AWARD

I.

Facts

On May 4, 1939, Mr. F. P. Foisie, president of the Waterfront Employers Association, sent the following wire to Mr. H.R. Bridges, president of the International Longshoremen's and Warehousemen's Union:

"Several questions are pending at Pacific Coast ports relating to the duty of longshoremen to pass through picket lines to do longshore work. The question has arisen whether such questions are of local or coastwise significance. Several ships are now delayed because of such questions and hence an emergency exists. The Coast arbitrator is now requested to determine at once whether questions involving the duty of longshoremen to pass through picket lines are of local or coastwise significance and whether they should be determined by local arbitrators or by the coastwise arbitrator."

Concurrent with the sending of the wire to Mr. Bridges, Mr. Foisie, in behalf of the Waterfront Employers Association, asked the Coastwide arbitrator to hold an arbitration hearing on the issue as to whether so-called picket line cases should be tried before the Coastwide arbitrator or before local arbitrators in the ports where such cases arise. Inasmuch as the employers' request for an arbitration of the matter was made in accordance with the terms of the agreement of October 1, 1938, the arbitrator notified the parties to the agreement that he would conduct a hearing in San Francisco at 9:30 a.m. on May 5.

It appears from the record of this case that disputes had arise in the ports of Portland and Seattle as the results of the alleged refusal of longshoremen to pass through picket lines which had been stretched across certain port terminals by unions other than the International Longshoremen's and Warehousemen's Union. It was claimed by the employers that as a result of the alleged refusal of longshoremen to pass through the picket lines of other unions the operations of several ships were being delayed with serious loss to their owners.

It also appears from the record of this case that the Honorable Samuel B. Weinstein, arbitrator for the Port of Portland, had requested the Coastwide arbitrator to determine the matter of jurisdiction by the arbitrator insofar as picket line cases are concerned.

II.

Issue

Are disputes which involve the refusal of longshoremen to pass through picket lines subject to the jurisdiction of the Coastwide arbitrator, or are they local in nature and subject to the jurisdiction of local arbitrators?

III.

Decision

As was pointed out by the arbitrator in an oral decision handed down on the issue on May 5, 1939, it is impossible to determine the issue with a finality which would make a rule applicable to all possible cases that may arise in the future. This is true because the arbitration procedure as to jurisdiction of the Coastwide arbitrator, as set out in the agreement of October 1, 1938, and augmented by stipulations as to procedure entered into between the parties in February, 1939, provides that either party to the agreement may request the Coastwide arbitrator to pass judgment upon the coastwide or local nature of any issue submitted by either party for arbitration.

Thus, Section 9 of the agreement of October 1, 1938, reads in part as follows:

"In the event that any Labor Relations Committee or the parties hereto fail to agree on any question involving a basic interpretation of this agreement or any other question of mutual concern not covered by this contract relating to the industry on a Coastwide basis, such questions, at the request of either party, shall be referred for decision to such Coast arbitrator . . .

"The Coast arbitrator shall have the power to determine whether any question in dispute involves a basic interpretation of the agreement and if the dispute in question is one of mutual concern relating to the industry and not covered by the agreement, whether it is of Coastwide or local application."

"rule 2 of the stipulations as to arbitration procedure agreed to between the parties, and dated February 10, 1939, reads as follows:

"If either or both of the parties in a given dispute are of the opinion that a given issue should be arbitrated on a coastwide basis, they are to have the right to call upon the Coastwide Arbitrator for a decision as to whether or not the issue should be handled by the local arbitrator or by the Coastwide Arbitrator, even though the local Arbitrator may consider the issue to be local in nature."

In view of the above-quoted rules of procedure which govern the jurisdiction of the Coastwide arbitrator, it is clear that either party to the agreement would have the right in a given picket line case to call upon the Coastwide arbitrator for a determination of the question as to whether that particular picket line case involves a problem that calls for a basic interpretation of the agreement. It is impossible to imagine in advance all of the possible factual situations that may give rise in the future to a picket line dispute. It is possible that some factual situation may exist in the future involving a picket line dispute which would clearly raise Coastwide issues and be subject, therefore, to the jurisdiction of the Coastwide arbitrator. If and when such factual situations do arise, the Coastwide arbitrator will be duty bound, under the terms of the agreement, to take jurisdiction over the dispute at the request of either party.

However, on the basis of the picket line disputes which have arisen in the industry to date, the arbitrator has no hesitancy in advising the parties that at least the typical picket line dispute is one which involves a local issue, and therefore, should be tried before a local arbitrator. The Encinal Terminal picket line dispute, decided by the local arbitrator in San Francisco, on March 2, 1939, is a typical example of such a dispute. There have been similar cases in Seattle tried by the local arbitrator.

The usual picket line dispute is ordinarily the result of some controversy between an employer and some union other than the International Longshoremen's and Warehousemen's Union - a dispute which is usually localized in the port of its origin, and a dispute in which the facts are also local to the port in which the picket line has been established.

In such cases the parties to the agreement should not seek the services of the Coastwide arbitrator unless they in good faith actually believe that some basic interpretation of the agreement is involved, and unless they are prepared to make a reasonable showing in support of any such contention.

The arbitrator so rules because he wishes to urge upon the parties again the importance of eliminating unnecessary delays in settling disputes. Referring a picket line dispute to the Coastwide arbitrator in the first instance for a determination of the question as to whether a Coastwide issue is involved is bound to take time and cause delay. Such procedural tactics should not be resorted to by either party unless there is some reasonable basis for supporting a contention that a Coastwide issue is involved.

Therefore, based upon the arbitrator's knowledge of picket line cases in the industry as they have arisen to date, the arbitrator suggests that the parties should look upon picket line disputes as of local significance and should submit them to arbitration before a local arbitrator.

However, the arbitrator wishes to make clear that the above ruling is not to be interpreted by the parties to the agreement as one of finality which will prevent the parties submitting a picket line dispute to the Coastwide arbitrator when, in good faith, either party believes that the dispute does, in fact, involve an issue which is of Coastwide significance. The arbitrator does hope to make clear by this decision that in his opinion the "run of the mine" picket line disputes should be submitted to local arbitrators, because experience has shown them to be of local, rather than of Coastwide, significance.

Further, the arbitrator wishes to make clear that in the interests of expediting quick determination of disputes he will not look kindly upon the reference of picket line disputes to the Coastwide arbitrator for decision unless counsel is able to show clearly that Coastwide issues are in fact involved.

Respectfully submitted,

WAYNE L. MORSE

Coastwide Arbitrator