PACIFIC MARITIME ASSOCIATION

Arbitrator's Decision 05/16/1939

Portland, Oregon

Room 570 County Court House

11:00 o'clock a.m.

Tuesday, May 16th, 1939.

Decision of the Arbitrator

HON. WAYNE L. MORSE, Arbitrator: The salient facts in this case are few. On May 9th, 1939, the Waterfront Employers Association of Portland notified the Union by letter that work on all vessels in Portland would be discontinued on May 11th, 1939, unless the longshoremen would agree to work the Steamer William Luckenbach. It appears from the record that the Union had refused to work the William Luckenbach ships because of the fact that on May 1st, 1939, a picket line of the Maritime Office Employees Union started to march in front of the Luckenbach terminal. A few days thereafter an injunction was issued by the Circuit Court of Multnomah County, Oregon, enjoining the picketing of the terminal. Thereafter some persons who were allegedly picketing the Luckenbach terminal were arrested and charged with violation of the injunction.

However, it appears from the record that after the picket lines had been removed by the enforcement of the injunction the longshoremen continued to refuse to work the Luckenbach ship. This refusal was the apparent motivation for the Employers' issuance of the Port closure order. The port was closes by the Waterfrotn Employers Asociation of Portland, with the approval of the Waterfront Employers Association of the Pacific Coast on May 11th, 1939. On May 10th, 1939, the local Portland Union requested Honorable Samuel B. Weinstein, local Port arbitrator, to arbitrate the following question:

"Are the Waterfront Employers in violation of the agreement of October 1st, 1938, by reason of breaking off labor relations and threatening to close the Port of Portland before the terms of the contract in reference to adjudication of disputes had been fulfilled?"

The Waterfront Employers Association of Portland, in a letter to the Union, dated May 10th, 1939, states:

"In view of your refusal to comply with the terms of any of the awards handed down by the Honorable Samuel B. Weinstein since the first of this year, we do not believe that the arbitration of the disputes with your organization will tend toward a settlement of the dispute. In any event we have determined not to call for any further arbitration until your organization has furnished us with evidence of an intention and readiness on your part to comply with the award when it has been handed down by the arbitrator."

At 10:00 a.m. on May 11th, 1939, Arbitrator Weinstein called the parties before him, supposedly for arbitration. Unfortunately an official court reporter was not called to make an official transcript of the hearing before the arbitrator held on the morning of May 11th. However, the record made by the parties In this case as to what transpired at the morning hearing of May 11th, and a transcript of a hearing before Arbitrator Weinstein on the afternoon of May 11th, satisfies this Arbitrator that the parties disagreed as to the conditions under which arbitration should proceed. It appears from the record in this case that as a result of the disagreement between the parties over the procedure to be followed in arbitrating their differences, Arbitrator Weinstein offered the parties his services as mediator pending final arbitration of the controversy. This extraordinary procedure adopted by the Arbitrator failed at a subsequent hearing held before Arbitrator Weinstein, then acting in the capacity of a mediator, to break the deadlock between the parties as to their unreconcilable demands concerning arbitration procedures.

It was at this point in the controversy that the district officers of the Union called upon the Coastwide Arbitrator to determine whether or not the closing of the Portland Port involved a coastwide or local issue. Under the agreement of October 1st, 1939, and the stipulations as to procedure entered into between the parties in February, 1939, the Coast Arbitrator was bound to pass judgement upon the jurisdictional nature of the dispute. A controlling stipulation of February 10th, 1939, provides that:

"If either or both of the parties in a given dispute are of the opinion that a given issue 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."

The Coast Arbitrator ruled on May 13th, and again on May 15th, when the issue was raised for a second time, that the closing of the Port involved a coastwide issue. He held that the closing of any port prior to arbitration of differences involves a basic interpretation of the agreement of October 1st, 1938, as to the right under the agreement of the parties to close a port, and therefore, under Section 9 of the agreement the Coast Arbitrator is bound to adjudicate the dispute. He held that such a dispute involves an entirely different legal issue from that which is basic in the Luckenbach case and that, in the agreement, and in light of the stipulations as to arbitration procedure, he could not arbitrate two entirely different cases at one and the same time.

There was then held, on the afternoon and evening of May 15th, an arbitration hearing before the Coast Arbitrator on the issue as to whether the Waterfront Employers Association of Portland and of the Pacific Coast had the right under the agreement of October 1st, 1938, to close the Port of Portland prior to submitting the dispute to arbitration on its merits.

It is the opinion of the Arbitrator that the Waterfront Employers Association of Portland and of the Pacific Coast failed to comply with the terms of the agreement of October 1st, 1938, when they ordered a shut down of the Port of Portland on May 11th, 1939, prior to submitting the dispute to arbitration on its merits.

When the agreement of October 1st, 1938, is read from its four corners and in its entirety, and when it is read in light of previous agreements and awards made a part of the record of this case, it is clear that the parties sought to set up arbitration machinery which should be used in the adjudication of disputes prior to the resorting to direct action by either party.

Counsel for the Employers, in a brilliant argument, sought to defend the closing of the Port of Portland on the theory that in a bi-lateral contract situation breach of contract by one party justifies at least the suspension of the contract by the other. However, counsel's theory rests upon the premise that there has been a breach of contract by the Union, and also upon the premise that under the agreement of October st, 1938, the parties to the agreement have the right to determine the question as to whether there has been a breach of the contract by the other party.

This arbitrator does not accept as sound either premise. It may be that the Union was guilty of a violation of the agreement of October 1st, 1938, when its members refused to load the steamer William Luckenbach. However, that issue for determination on its merits was not before the Arbitrator and hence cannot be ruled upon in this decision.

But even assuming that the Union was guilty of an illegal stoppage of work, the Employers cannot justify, under the agreement, an illegal stoppage of work on their part because in their opinion the Union has violated the agreement. This is true because the parties, in the agreement of October, 1938, have set up their own private courts of arbitration to adjudicate their differences prior to either side resorting to direct action. It is the opinion of the Arbitrator that the agreement in its entirety, and Sections 9, 10, and 11 in particular, are subject to no other reasonable interpretation. If the arbitration provisions of the agreement do not bind the parties in accordance with the views expressed in this decision, then this Arbitrator is at a loss to understand what the parties did intend to provide in the agreement as far as attempting to prevent stoppages of work by arbitration is concerned. Arbitration at the whim of the parties is not arbitration at all. It is basic in arbitration such as is provided in the agreement of October 1, 1938, that the parties waive the right to determine for themselves as to whether or not there has been a breach of contract by the other parties to the agreement. It is clearly implied that such a determination is to be exercised under the agreement by the parties' own judicial officers provided for in the agreement, namely, the arbitrators.

Therefore, this Arbitrator, having found that the Waterfront Employers Association of Portland and of the Pacific Coast were not justified under the agreement of October 1, 1938, in closing the Port of Portland prior to submitting the then existing dispute in the industry to arbitration, hereby orders the Employers to open the Port of Portland not later than 1:00 p.m., Tuesday, May 16th, 1939.

Respectfully submitted,

Wayne L. Morse

Coast Arbitrator.

MR. HARRISON: Mr. Arbitrator, speaking on behalf of the Employers in this proceeding, in keeping with the custom and procedural practice that has usually prevailed, merely for the purpose of the record, and without asking for any ruling upon it from the Arbitrator at all, we repeat the exceptions and objections that we have made heretofore, but say to the Arbitrator that compliance with the award of the Arbitrator for the opening of the port is immediate, and so far as the Employers are concerned orders for all ships will be placed immediately.