

## Arbitrator's Decision 08/19/1939 San Pedro Dispute

### MORSE'S DECISION

August 29, 1939

#### ARBITRATOR'S DECISION AS TO JURISDICTION IN SAN PEDRO DISPUTE

THE ARBITRATOR: The Arbitrator recognizes that in rendering this decision he is really plowing new fields under the Agreement of October 1, 1938. He is frank to confess that he proceeds with dragging feet, but with a very clear view as to what his obligations are under the Agreement and a very clear view as to what furrow lies ahead.

It is the Arbitrator's finding that there is an emergency existing in the Los Angeles Harbor. An emergency which at the present time is of coastwide significance. Under Section 9 of the Agreement of October 1, 1938, he can do nothing else but assume jurisdiction over the dispute on coastwide basis.

It is the Arbitrator's decision that his ruling laid down in the Portland closure case is applicable to this case so far as his taking jurisdiction in the premises is concerned.

Now, in taking jurisdiction in this case, the consequences differ materially, in the view of the Arbitrator, from what they appear to be counsel for each side.

Under the Agreement of October 1, 1938, providing for arbitration, it is to be remembered that the parties understood and agreed that arbitration shall be resorted to prior to resorting to economic action. However, there is nothing in that Agreement present moment, which makes it possible for an arbitrator to do anything about it if one or both of the parties take his decision and tear it up, refusing to abide by it, and then resort to economic force.

This Arbitrator has ruled in a jurisdiction matter in another case, and he will rule again, if the case is presented to him, that he believes that there is implied in the Agreement of October 1, 1938, certain inherent powers in the Arbitrator to find fault and fix damages if the proper petition and proof is presented to him. But the point I want to make at this moment is that the parties did agree that they would resort to arbitration before they resorted to economic action, and that neither party in the Agreement of October 1, 1938, signed away the right to resort to economic action if they want to follow that course of conduct with all of the consequences - and costly consequences - that go along with it.

As the Arbitrator views this situation, the Local Arbitrator in Los Angeles has handed down a decision. That decision has been challenged on various grounds which this Arbitrator is in no position to pass judgment on at this time. It has resulted in an emergency, which emergency, in turn, has raised a coastwide problem over which this Arbitrator under Section 9 must take jurisdiction. He is taking jurisdiction not over any dispute between this Union and Arbitrator Stalmaster; he is taking jurisdiction over a dispute that prevails in the San Pedro Harbor today. He is not in a position to say whether Arbitrator Stalmaster is right or wrong in that decision; whether the decision is within the power of the Local Arbitrator or is not within his power.

But it should be clear to every part in this dispute that the decision of Arbitrator Stalmaster now becomes one of the operative facts of the dispute now prevailing in the San Pedro Harbor. It is clear to this Arbitrator that the decision of Arbitrator Stalmaster and the basis for it and the surrounding facts and circumstances in which it is involved become operative facts in the present dispute. Therefore, in taking jurisdiction over this dispute on coastwide basis this Arbitrator is not in any position as suggested by counsel for the Employers to ignore or to refuse to consider the question as to whether or not the Award of Arbitrator Stalmaster is an erroneous award because of the allegation that the Award was rendered on the basis of an assumption of power on the part of the Arbitrator which he may not have had.

I cannot ignore that operative fact. I cannot take jurisdiction in this matter without taking jurisdiction over the entire dispute, which, of course, includes the Stalmaster Award and the basis for it.

As to the point as to whether or not this Arbitrator sits as an appellate court of arbitration, I do not see anything in the Agreement of October 1, 1938, that makes this Arbitrator an appellate court. However, maybe it can be shown that under Section 9 of the Agreement the parties intended by implication to give that power to a Coastwide Arbitrator when a situation, such as this, arises involving a problem of mutual concern to the parties and not covered by the Agreement.

Be that as it may, the matter will have to wait for final determination when we go into the merits of this case. But I do feel that, if any one is under obligations as far as the Agreement of October 1, 1938, is concerned to make an investigation and a report and to issue findings and orders in a dispute such as the one now prevailing in San Pedro, it must necessarily be the Coastwide Arbitrator. I do not see anything else in the Agreement that would support any other finding, at this time. If these two parties to this Agreement are to be stopped in a resort to the use of economic force in a situation such as this, it would have to be by an order of the Coastwide Arbitrator. Irrespective of what my personal desire in the premises may be, I must necessarily confine myself to the record and to the law that governs the contract.

In so doing, I find that there has been presented to me a coastwide issue; that it is within my jurisdiction under Section 9 to take jurisdiction over that issue and to consider all of the evidence that led to the dispute; to weigh all of the operative facts, including the Stalmaster Award; and to issue a final ruling on the merits in respect thereto. In taking jurisdiction, I must do what I have always done in the past: I must issue a first ruling, or a first order. That order is that a situation in which economic force prevails in a port must first be removed before the

Arbitrator proceeds on the merits. To me, arbitration is an empty gesture if, while the Arbitrator is sitting on a case, the work of a port ceases. That just does not make sense.

In the brief recess that I took I tried to weigh the relative merits of two possible orders which I feel I can render in the situation:

The first question that I put to myself was this: should I say to the Union that under the circumstances they should proceed without the use of the fifty men or the sixty-one men, or whatever the number is, (the so-called "penalty" men) on an assurance that, if I finally found on the merits that they were right in the premises, I would order pay to be given to them on a retroactive basis?

I weighed that, and it seems to me that a ruling to that effect would be beyond my power. I do not feel that I would have any right to order the Employers under such circumstances to pay men for work which, in fact, was not performed.

MR. HARRISON: We shall be perfectly willing to stipulate to that, Mr. Arbitrator.

THE ARBITRATOR: I wish to finish the decision because I have reached a decision on the matter.

Secondly, I put to myself the same question as I have in the other cases presented to me: What should the status quo be pending a final decision on the merits in this case?

I gave it the best thought of which I am capable, and I have come to the conclusion that there is only one thing which I can do under the premises, and that is to order both sides in this dispute to proceed to work the ships in the Harbor, because, after all, that is the matter of greatest concern at the moment. We must get the cargo moving, the harbor must be entirely opened, and the ships worked by men dispatched from the Union hiring hall. Therefore, it is ordered that men on the registered longshore list, including the so-called "penalty" men, shall be dispatched until I can determine this case on its merits.

In issuing that order I want it clearly understood that I am not setting aside Judge Stalmaster's Award. I am not referring to Honorable Stalmaster's award from the standpoint of passing any judgement upon it whatsoever. Neither is my temporary order to be interpreted as sustaining the Union's claim that the Arbitrator does not have the power under the Agreement to fix a penalty. That power will undoubtedly be established or proved non-existent when the case is heard on its merits. All I am saying is that as I take jurisdiction over a coastwide dispute in San Pedro Harbor I order that all parties proceed to handle the cargo of this Port. In doing so they shall make use of all members of the Longshore Union as dispatched who are on the registered lists, including the so-called sixty-one penalty men. We shall then proceed immediately on the merits of this case.

It seems to me that that can be done rather quickly. When the case is heard on its merits there should be introduced in evidence all previous transcripts in the case. Possibly from that time on the question can be handled on its merits by way of argument, although counsel certainly will be allowed the privilege of introducing witnesses if they care to. But, pending a decision on the merits, it is the order of this Arbitrator that work in the Port be resumed with the longshore lists of registered longshoremen in operation as they were prior to the so-called suspension of the sixty-one men.

It is so ordered.