

Arbitration Hearing 09/30/1936

[Coast Committee for the Shipowners](#)

[Arbitration Hearing on Termination Provisions of the Award](#)

[Judge Sloss' Decision](#)

COAST COMMITTEE FOR THE SHIPOWNERS

Room 402 - 215 Market Street

San Francisco, California

September 30, 1936

ARBITRATION HEARING ON TERMINATION PROVISIONS OF THE AWARD

Following is the official court reporter's transcript of the decision of Judge M.C. Sloss, Federal Longshore Arbitrator for Pacific Coast ports, on the termination provisions of the Award. Union representatives contended the Award did not terminate of its own provisions; that it could be terminated only by a specific notice of termination given by either party forty (40) days before September 30th.

Employers, through their counsel, Gregory Harrison, contended that the Award automatically terminated September 30th by reason of the fact that one party to the Award had served notice of a desire to modify.

Judge Sloss rendered his decision orally, at conclusion of argument. He completely sustained employers.

At the conclusion of the Judge's decision, H.P. Melnikow, I.L.A. representative, endeavored to maneuver the arbitrator into placing blame for termination of the Award upon employers. This the Judge declined to do.

On the contrary, disinterested observers interpreted Judge Sloss' remarks on this point to indicate that the I.L.A. was equally responsible for permitting the Award to terminate by reason of the inability to reach agreement on proposed modification.

The decision is admirably clear and to the point.

--

JUDGE SLOSS' DECISION

GENTLEMEN the urgency of this situation, the close approach of midnight of this day, which is the determining moment of the question we are considering, makes it important that this matter be decided at once; and for that reason I am going to give my conclusions orally without taking the time necessary to make a written award, as I have done in former cases.

At the outset, I may say, that my authority as Arbitrator is limited to the interpretation of the contract. I have no authority to make a contract for the parties, or to add to the contract under which they are operating, or to take anything out of the contract. I am fully aware of the seriousness of the situation that confronts both parties and the public; but those considerations do not give me any authority to do anything other than to say what I consider to be the meaning of the Award with respect to the point in dispute; and whatever consequences may result from that are a matter for appropriate action by the parties, with such aid as they may get from the authorities that are endeavoring to assist in this matter.

The question is: What is the effect of a notice to modify the agreement given 40 days prior to September 30, 1936? Does that terminate the Award, or, putting it in other language, does it prevent the renewal of the Award for another year?

It seems to me in reading this language that only one answer can be given, and that is, that unless the parties come to some agreement modifying the Award, or agree to going on under it without modification, or for extending the period for negotiation, the Award and the agreement which it involves will terminate at midnight today, or tonight.

The language appears to be open to no other conclusion; and we, of course, are bound by the language of the parties as evidenced by their intention.

The agreement provides that the Award, which incorporates the agreement made by the parties before the Arbitrators met was to constitute a series of agreements between the International Longshoremen's Association acting on behalf of various locals, and the four groups of waterfront employers, in Seattle, Portland, San Francisco and Los Angeles. That agreement by its terms is to continue for a year. That is, the original agreement was to continue until September 30, 1935, it having been renewed—its

termination by its own terms unless the parties agreed to continue it. Its termination would be September 30, 1936, which is this date. It then goes on to say the agreement shall be considered as renewed from year to year unless a certain event happens. Now, what is that event? Unless either party to the respective agreements shall give written notice to the other, of its desire to modify or terminate the same, said notice to be given at least 40 days prior to the expiration date.

Now, there is only one condition mentioned. There have been two provisions - one, what shall happen if there is a notice to modify, and what shall happen if there is a notice to terminate; but the two are lumped together in any effect under the agreement, namely, that the giving of either of those notices prevents the renewal of the agreement for another year. I think it is a little clearer way to state the situation to say that the giving of the notice prevents a renewal, than it is to say it terminates the agreement. In the first instance, the agreement terminates at a date fixed, and then it is subject to renewal unless something happens to prevent that renewal; and the event which in the agreement of the parties that prevents the renewal of the agreement is the giving of notice by either party to the other of its desire to modify or terminate the same. Now, notice has unquestionably been given. There is no doubt about it. The purpose, as I see it, of that provision with respect to modification as well as termination is this: That either party might be willing to continue under the Award provided suitable modifications could be agreed upon. A forty day period is provided for that negotiation; and if those negotiations result in an agreement satisfactory to both parties, why, the modifications are incorporated and the Award goes on with the addition of those modifications. If not, the result is, as I see it, that the Award comes to an end, and the parties are then left to such negotiations as they may enter into thereafter.

The suggestion made by counsel for the I.L.A. that if the parties do not agree after a notice of a desire to modify within the forty days or within the period elapsing between the date of the notice and the expiration of the date of September 30th, the suggestion that there then start a new period or series of periods of 40 days during which notice to modify may be given, appears to me to be unsupported by anything in the language of the agreement. The only renewal contemplated by the agreement is a renewal for one year; and I have as Arbitrator no right, nor has either party without the consent of the other, the right to incorporate in this agreement a provision for successive new periods of termination notice short of the expiration of the new year. If you say that the service of a notice of a desire to modify, if no agreement is reached, it shall leave the agreement in force, the result would be that the party, whichever it was to which such notice was given would have it in its power by simply refusing to agree to the proposed modifications, to compel a renewal of the Award for one year on terms which are unsatisfactory to the other side, and unacceptable to it.

I do not think it is necessary to take the time to elaborate the discussion further. That is my conclusion after careful consideration of this provision of the Award, and of similar provisions in other contracts; and the decision, therefore, will be that unless the parties by mutual agreement come to an understanding, a legal understanding of the terms by which the award shall be continued or shall be modified, or the parties agree voluntarily to extend the period for further negotiations, and agree and that extension agreement that pending such negotiations the award shall remain in force, - unless one of those events happen, the award and the agreements embodied in it will expire at midnight tonight.