PACIFIC MARITIME ASSOCIATION

Oral Decision 05/13/1939 on Portland suspension of operations

Auditorium, 3rd Floor

Public Service Building

Portland, Oregon

4:00 o' clock p.m.

May 13, 1939

Decision of the Arbitrator

HON. WAYNE L. MORSE, Arbitrator: The hearing will come to order. The decision of the arbitrator is as follows:

Issue: Does this dispute over the suspension of longshore and ship operations in the Port of Portland by the Portland Waterfront Employers Association, with the knowledge and approval of the officers of the Waterfront Employers Association of the Pacific Coast, involve a coastwide issue subject to the jurisdiction of the coastwide arbitrator?

It is the decision of this arbitrator that the dispute does involve a basic interpretation of the agreement and, therefore, that matter is subject to coastwide arbitration.

By way of amplifying the decision the arbitrator wishes to comment briefly in this oral decision on the following points. He will discuss them in greater detail in a written decision to be filed with the parties at a later date.

The arbitrator is bound by the arbitration procedure set up in the agreement of October 1st, 1938, and amplified by the parties by way of stipulations at a hearing between district officers of the Union and Employers, entered into in February, 1939.

Rule 2 of those stipulated procedures reads as follows:

> "If either one 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."

Therefore, it is the ruling of this arbitrator that the particular issue before him has been raised in accordance with the agreement (Section 9 thereof), and the rules of procedure stipulated between the parties to that agreement. The arbitrator is clearly bound by the agreement and the rules of procedure imposed upon him by the parties.

Whether the employers have the right to close a port by suspending operations until the Union conforms to certain conditions demanded of the Union by the employers raises a question which goes to the legal essence and basis meaning of the contract itself. It is not a matter which can be localized in any given port of the Pacific Coast.

The contractual rights, duties and obligations brought into legal being when the parties signed the agreement of October 1st, 1938, must be considered in light of the arbitration machinery created by the parties for the settlement of their disputes when they cannot agree among themselves. For one party to say in fact, or by conduct in effect, "We will not perform under this contract or treaty until the other side does such and such," is to limit and infringe the judicial powers of the arbitrator, contrary to the spirit and intent of the parties as manifested in the entire agreement.

It is for the arbitrators to determine whether there has been a breach of contract, and they must not and cannot be restricted in the exercise of their judicial powers as granted to them in the agreement and rules of procedure.

When the Port of Portland was closed down by the employers it is clear from the record that a basic issue as to the rights of employers, wherever located, under the agreement to in effect suspend the agreement itself, was raised. That issue is clearly of coastwide significance.

A word as to the Luckenbach case. In the first place, the Luckenbach issue is not before this arbitrator. It seems to me that this decision in no way affects the merits of the Luckenbach case. That issue can be arbitrated when presented in proper form, in accordance with the agreement and the procedures entered into betweeen the parties. It can be raised before the local arbitrator, or it can be raised before the coastwide arbitrator as far as a coastwide issue is concerned, which will have to be demonstrated by the parties. The two cases themselves are separate, as far as the legal issue is concerned.

It is clear to the arbitrator, after listening to the record of this case, that both cases have one thing in common and that is that much of the evidence will be in common. But as to whether or not the Union has violated the Agreement in the Luckenbach case has no bearing upon the issue as to whether or not the employers of the Port of Portland have a right under this agreement to suspend operations until the Union performs the loading or unloading of the Luckenbach, whatever the case is.

A great deal has been said in this case - and I am not ruling on the merits of it at this time, but I do think that the parties are entitled to some knowledge as to the arbitrator's views as to remedies under this contract, - considerable has been said that one party or another has no remedy under this contract if the other party breaches the contract. That is not the view of this arbitrator. This arbitrator, in the Birmingham City case, made clear to both parties, - in fact, he ordered at the end of that case that both parties inform their representatives - ordered Mr. Foisei to inform the members of the Waterfront Employers Association and Mr. Bridges to inform the members of the Union - that he would not look kindly upon stoppages of work; that if in the future stoppages of work were established in an arbitration case, and fault were established, this arbitrator, upon the showing of damages, would assess damages. He held in that case that it is implied, - whether or not it is implied in the arbitration machinery set up in this agreement, that the arbitrator does not merely perform a wrist-slapping function, that the parties have agreed to create a judicial power in the arbitrator and that he will have power under the agreement to enforce his decrees.

There are other remedies, however, available to the parties in case of a breach other than by way of stoppage of work. Those remedies are legal, of one nature of another. The proof of damage, the failure of one party or another to abide by an award , certainly raises an issue that may be prosecuted by the party injured. There are other remedies. I speak now of the remedy this arbitrator would follow in case the parties ever refused to abide by his award. It is the same remedy that Judge Sloss, in an earlier decision in this district, threatened to follow in case his award was not adopted. It seems to me that there would be nothing for this arbitrator to do in such a case but to resign his position and in that resignation make clear to the public, which has a very vital interest, it seems to me, in industrial relation, his reasons for his resignation.

In view of the foregoing decision, the arbitrator orders the parties to proceed in this case on its merits, in Portland, Oregon, Monday morning, at 10 a.m., in this room, unless other quarters can be arranged by the parties, subsequently ordered by the arbitrator.

This hearing stands adjourned until Monday morning at 10:00 a.m.