

Hearing 05/01/1936

Scrap Metal

Beginning of Testimony

3:30 P.M. May 1st, 1936.

SCRAP METAL
ITALIAN M.S. FELTRE
HEARING BEFORE
HON. M. C. SLOSS, ARBITRATOR

MAY 1, 1936

HEARING BEFORE HONORABLE M.C. SLOSS, ARBITRATOR

Friday, May 1st, 1936, 2 o'clock P.M.
Room 534 Matson Building, San Francisco, California.

Present:

For Waterfront Employers Association:

Mr. Gregory A. Harrison
Mr. T.G. Plant
Mr. Frank C. Gregory
Mr. J.B. Bryan
Mr. L.C. Fox

For International Longshoremen's Association, Local 38-79:

Mr. H.P. Melnikow
Mr. H.R. Bridges
Mr. William Marlowe
Mr. R.H. Goulet
Mr. Charles Connors

ARBITRATOR SLOSS: Are you ready to proceed, gentlemen?

MR. MELNIKOW: Yes, sir.

MR. HARRISON: Before we proceed with the matter scheduled for today, there is a statement I am requested to make on behalf of the Waterfront Employers Association of San Francisco:

The Arbitrator will recall that at the close of the recent discontinuances of relations between the International Longshoremen's Association, Local 38-79, and the Waterfront Employers Association of San Francisco, relations were resumed after a hearing before the Arbitrator pursuant to an agreement. That meeting, held on April 21st, was one at which all of the parties representing the Pacific Coast District Local 38-79 and the Employers orally undertook [sic] to abide by all the provisions of the Award, and among other things to submit to the Labor Relations Committee all disputes and grievances, and in the meantime to continue compliance with the Award; and particularly it was agreed on behalf of Local 38-79 that no job action would be indulged in, and that all cargo of all types would be handled as directed pending the submission to the Labor Relations Committee of any dispute arising in connection therewith. A formal agreement was signed to that effect, and as the Arbitrator will recall two of the provisions that were incorporated in that agreement were extracted from a letter written by the Arbitrator to the parties, laying down the conditions upon which he was prepared to continue as an arbitrator between the parties. One of those provisions was that all controversies should be settled in the orderly method provided by the Award - that is, through the Labor Relations Committee or the Arbitration - and that job action would be abandoned, and further that all cargo would be handled as directed.

This morning gangs were ordered to perform work on the ship "FELTRE" - -

ARBITRATOR SLOSS: What is the name of the ship?

MR. HARRISON: "FELTRE". Among other cargo to be loaded on that ship was 100,000 pounds of scrap iron and steel. The gang that was turned to upon this cargo, after rigging the gear, and preparing for work, declined to proceed at approximately 8:30 in the morning. All efforts of the employer to secure performance of that work by the gang was unavailing. At approximately 9 o'clock this morning Mr. McLellan, an elected officer of the Union, came to the dock in question -

ARBITRATOR SLOSS: I do not quite follow you, Mr. Harrison. Did the statement you made refer to today or yesterday?

MR. HARRISON: Today - this morning.

ARBITRATOR SLOSS: All of this happened today?

MR. HARRISON: That is correct. At approximately 9 o'clock this morning Mr. McLellan, a delegate and elected officer of the Union, appeared upon the dock, and the request and demand was made upon him that the men turn to upon this cargo, and work as directed. Instead Mr. McLellan dismissed the men, and returned them to the Hall. At 10 o'clock this morning, at a meeting of the Labor Relations Committee, a demand was made on behalf of the Waterfront Employers Association, directed to the representatives of the Union, including the President of the Union, as well as other members of the Labor Relations Committee, that the cargo be handled as directed. That demand has been without any result; and according to our last information received several minutes ago there has been no progress made in an attempt to obtain any gangs to handle the cargo in question. We are sorry to say that in making this report we feel that this is an infraction of the agreement of April 21st, and falling squarely within the definition of job action as there laid down, and an obvious refusal on the part of the Union membership, and the officers of the Union as well, to handle cargo as directed, and submitting any disputes to the Labor Relations Committee; and we submit the matter to the Arbitrator for such action as he thinks appropriate.

MR. MELNIKOW: Mr. Arbitrator, in the first place, I would like to know whether Mr. Harrison is speaking for the Schirmer Stevedoring Company?

MR. HARRISON: I am speaking for the Waterfront Employers Association.

MR. MELNIKOW: Exactly. And I want to state, therefore, that the entire matter has been amicably arranged between the Schirmer Stevedoring Company and Local 38-79, and that therefore there is no dispute, and the Waterfront Employers Association is merely trying to create one on purpose this afternoon.

The facts are as follows: This scrap iron which has been collected from the homes in San Francisco to be sent to the Italian Red Cross, obviously to encourage the continuation of the war there, has previously been handled at all times by the members of the crew - the Italian crew of the "FELTRE", of the Libera Line. This morning was the first time that a request was made of the longshoremen -

MR. BRIDGES: The second time.

MR. MELNIKOW: The second time. I beg your pardon. This morning was the second time that a request was made to handle that type of cargo. The men felt, and I think they had sufficient reason to believe that that work might place them in violation of the law under the President's Proclamation of February 29th, and they put that problem up to Mr. Bridges. Mr. Bridges got in touch with the Schirmer Stevedoring Company and arranged it as follows: - this work involves possibly one hour of work altogether - there are three gangs employed there now, and it was arranged that those three gangs would continue to work, and they are loading the cargo on the ship, and that this one hour's work would be delayed pending a reply to the telegram which was sent by Mr. Bridges to Secretary of State Hull, which reads as follows:

"May 1, 1936.

Honorable Cordell Hull

Secretary of State

Washington, D.C.

ITALIAN STEAMSHIP FELTRE OF LIBERA LINE ATTEMPTING TO LOAD SCRAP IRON COLLECTED IN SAN FRANCISCO TO ITALIAN RED CROSS STOP OUR MEMBERS DO NOT WISH TO BE PUT IN POSITION OF VIOLATING THE SPIRIT OR LETTER OF THE LAW OR THE PRESIDENT'S PROCLAMATION OF FEBRUARY TWENTY-NINTH PLEASE ADVISE WHETHER BY LOADING THIS CARGO THEY WOULD BE GIVING AID TO THE CONTINUATION OF WAR IN VIOLATION OF SUCH SPIRIT AND LETTER OF PRESIDENT'S PROCLAMATION.

"HARRY R. BRIDGES, President

"I.L.A. Local 38-79

"27 Clay Street

"San Francisco, Calif."

That was sent a couple of hours ago; and the reply will be here very quickly, I am sure; and if the Secretary of State says that it is not a violation of law, the men will proceed to handle that one hour's work. If he says it is in violation of law, I think that no contract which could be made would compel men to violate the law. I think we will all agree on that.

I think it is a clear case of the Waterfront Employers Association attempting to create issues after the parties directly involved, to wit: The Schirmer Stevedoring Company and Local 38-79, have settled the issues in an amicable way. The issue does not exist today, because the management of the Schirmer Stevedoring Company agreed to this plan which is being carried out.

I might, before I stop, also take up another issue, Mr. Chairman:

It was my understanding when we first started these hearings that any statement to be made regarding any issues that were before you were to be made by you, and by no one else. And when I was called up this morning by the Press, I was surprised to find that the Employers had violated that pledge, and that they are attempting to try this case in the newspapers. I think that is entirely unfair, unless both sides are released from the pledge, and allowing one side or the other to do that, I want to find out if the publicity department of the Waterfront Employers Association is unaware of this understanding between the parties - because, if there are statements to be issued along those lines, we have quite a few to issue ourselves [sic]; but we have refrained thus far, but we want to know whether that arrangement still exists. If not, then, of course, the Press could be invited in here, and get all the facts, instead of such distorted facts as the Waterfront Employers Association choose to submit to them.

MR. HARRISON: Let us take up one point at a time.

ARBITRATOR SLOSS: Without going into this matter of publicity, I think the other matter is much more vital, and I want that disposed of first.

MR. MELNIKOW: I think we should have them both disposed of.

MR. HARRISON: When I said that I was appearing for the Waterfront Employers Association, I want it understood that I am appearing for all the members. I anticipated some such statement as that, so we had Mr. Schirmer here, and he is here now, and he informs me that he has had no agreement whatsoever with Local 38-79, or any agreement with them, and that he has made no agreement with reference to any telegram to the Secretary of State. I might state that at the Labor Relations Committee meeting held today, the President of Local 38-79, in declining to order the men to work, and in declining to proceed with arbitration, made that proposal, and the Employers' representatives declined to proceed along that line, properly urging that the only place for that was in the Committee itself. The situation is that Mr. Schirmer has never withdrawn his order for the gangs. The fact is that Mr. Bridges called him up and asked him whether he could use one of the ship's gangs. He said he could. That is all he knows about it.

ARBITRATOR SLOSS: What is meant by a ship's gang?

MR. HARRISON: One of the cargo gangs. He has three other gangs on the ship. He was asked by the President of the Union whether if one of those gangs was directed to do the work, if he could use it, and he said, "Yes." Up to this moment no work has been done. As to the statement that there was an agreement, there is no truth in that, because that was rejected at 10 o'clock this morning. The truth of the matter is that this cargo is the very same cargo that the I.L.A. refused to handle on the last ship of the same company prior to the breach between Local 38-79 and the Waterfront Employers Association, and it has been on the dock waiting loading ever since. Consequently, when we appreciate the fact that at that time a similar wire was sent to Mr. Hull, and an answer was received, and since the I.L.A. knew what cargo was going to be handled, there is no surprise about this situation at all. The only issue before us is whether it is not true, as we allege, and as we see, we simply have another evidence that we cannot get Local 38-79 to continue work and submit their disputes before the Labor Relations Committee.

ARBITRATOR SLOSS: There seems to be no substantial dispute about the facts as to any agreement. What have you to say about Mr. Harrison's statement? I want to get the facts clearly before me, before I say what my conclusions are.

MR. MELNIKOW: There is no doubt, Mr. Chairman, that the three gangs are there, and that they are prepared as soon as the question of the legality of this cargo is cleared up to work it. There is also no doubt as to that communication with Mr. Schirmer, that he agreed to that arrangement. Of course, if he is on the spot here before the Employers Association, I am not going to insist that he affirm that; but there isn't any doubt that there was an arrangement between Mr. Bridges and the Schirmer Stevedoring company that that could be done.

MR. BRIDGES: I talked to Mr. George Schirmer. I talked to you, didn't I?

MR. SCHIRMER: You were talking to George. We agreed to use one of these gangs to load the scrap as soon as we got word from you.

MR. BRIDGES: As soon as we got word from Washington.

MR. SCHIRMER: As soon as we got word from you. We didn't know anything about Washington.

ARBITRATOR SLOSS: Mr. Harrison has made a statement here that I would like to have cleared up: He says that this is the same cargo that was on the dock on an earlier occasion when another vessel for the same line was here.

MR. BRIDGES: I believe some material may have been added to it, but that is apparently true.

ARBITRATOR SLOSS: Yes. And it was also stated at that time that there was a telegram sent to the Secretary of State. Have you the answer to that telegram?

MR. BRIDGES: Yes.

MR. MELNIKOW: This telegram which is dated April 11th, 1936, is addressed to:

"HARRY BRIDGES, PRESIDENT INTL LONGSHOREMENS ASN- ALBERT E. BOYNTON MANAGING DIRECTOR OF THE INDUSTRIAL ASSOCIATION OF SAN FRANCISCO HAS REQUESTED ME BY TELEGRAM TO INFORM YOU THAT SCRAP METAL CAN BE LEGALLY EXPORTED TO ITALY PARAGRAPH SCRAP METAL IS NOT INCLUDED AMONG THE ARTICLES ENUMERATED IN THE PRESIDENTS PROCLAMATION OF FEBRUARY 29 THE EXPORTATION OF WHICH TO ETHIOPIA AND ITALY IS PROHIBITED."

This is the reason that this issue exists: -

"IN THIS CONNECTION YOU SHOULD SEE THE PRESIDENT'S STATEMENT IN REGARD TO COMMERCIAL TRANSACTIONS WITH THE BELLIGERENTS ISSUED TO THE PRESS ON FEB 29 IN WHICH HE RENEWED HIS APPEAL TO THE AMERICAN PROPLE [SIC] ‘ THAT THEY SO CONDUCT THEIR TRADE WITH BELLIGERENT NATIONS THAT IT CANNOT BE SAID THAT THEY ARE SEIZING NEW OPPORTUNITIES FOR PROFIT OR THAT BY CHANGING THEIR PEACE TIME TRADE THEY GIVE AID TO THE CONTINUATION OF WAR'

"CORDELL HULL

"SECY OF STATE."

And that is the point we are trying to clear up - whether this scrap iron shipment would lead to a continuation of the war.

MR. HARRISON: May I ask what the date of that wire is?

ARBITRATOR SLOSS: April 11th, 1936.

MR. BRIDGES: Now, there are two statements made there, and both statements are included in the telegram - that is, the Secretary of State called our attention in both telegrams to the statement made by the President on February 29th. Now, we must agree that the intention of the telegram is open to misconstruction; it is kind of vague. When we came up here this morning, we asked the Waterfront Employers to jointly send a request to the Secretary of State in order to get a definite answer, but they said that was out of the question.

ARBITRATOR SLOSS: Well, I think the situation is perfectly clear, and it can be disposed of very quickly:

The understanding reached on the 21st of April was incorporated in a written agreement; that agreement contained the undertaking of all parties to live up to the terms of the Award, and specifically to accept and abide by the terms and the conditions which I had stated as the terms and conditions upon which I was willing to resume my duties as arbitrator. One of them was the acceptance of, and obedience to, the rulings made by me regarding job action, which is stated in my letter, and again in the agreement of April 21st, to be a procedure which is consistent with the carrying out of the award.

Now, it seems to me perfectly plain that the action that has been taken in this instance is a violation of that agreement, and a violation of that understanding, and it presents an objection under which I am not willing to proceed as arbitrator unless the action is immediately remedied.

The telegram of the Secretary of State is not to my mind open to any misconstruction at all. It shows on its face clearly that the shipping of this scrap iron is not illegal, and it is not in violation of the proclamation of the President as it says: "Scrap metal is not included among the articles enumerated in the President's Proclamation of February 29 the exportation of which to Ethiopia and Italy is prohibited." Now, that answers the question as to whether it is unlawful to do it; and the further statement in the telegram of the Secretary of State is nothing more than a reference to the President's statement of an appeal to the American people to so conduct their trade that it cannot be said that they are seizing new opportunities for profit. That is an appeal to people to avoid doing things that might be thought to further war, even though those goods are not unlawful; that is an appeal which the people to whom it is addressed may or may not follow without violating the law. The statement is perfectly clear that they are not violating the law. I do not want to be understood by what I am saying that I think the Union has any right under the Award itself, or under the last agreement, to pass upon the question of whether handling of certain cargo is or is not illegal. I think the objection to handle any cargo on the ground that it is illegal falls into the same category as an objection on any other ground. They have a right to make the objection, but the objection when made is to be disposed of, not by their determination to stop work, but by reference to the Labor Relations Committee, and then if necessary to the Arbitrator. I think that this action is just as clearly a violation of the Award, and of the last agreement, as any of the other cases of job action that we have been talking about during the past months; and I have no other action but to stand upon what I said. If there was a doubt as to whether the action was illegal, it would still be the duty of the I.L.A. Local, and its members, to go on with that work until that matter is decided through

arbitration. There is no provision that I know of giving an appeal on any question under this Award to the Secretary of State, but if there could be any such justification, it is disposed of by the telegram from the Secretary of State, in which he says in as plain terms as possible that the exportation of scrap metal to Italy is not illegal under the President's Proclamation.

MR. MELNIKOW: Mr. Chairman -

ARBITRATOR SLOSS: Now, I am giving my views on this thing very directly and very plainly, because I think it is fundamental to the continuation of the relations of the parties under this Award, and it is equally fundamental to my continuation in the position of arbitrator.

I think we have got to have a clear understanding that these agreements are going to be lived up to, or that they are not. To my mind there is not the slightest doubt but that the action of this morning is not living up to those agreements.

MR. MELNIKOW: I would like to ask a question, Mr. Chairman, without going into the merits of this particular situation at all, but as to the principle which you have stated: I would like to know whether the longshoremen are directed to handle smuggled cargo, which they definitely know is smuggled, and whether it is their duty to proceed to handle that cargo?

ARBITRATOR SLOSS: Let us deal with the case we have before us this afternoon. I do not want to get into a lot of hypothetical questions.

MR. MELNIKOW: It seems to me -

ARBITRATOR SLOSS: You have here a case where the most that could have been said up to the time of the sending of those telegrams that there may have been a doubt as to the shipping of this cargo was illegal; but there is no doubt now according to the very authority that you appeal to yourselves, so that I see no foundation for the position you have taken.

MR. MELNIKOW: You will note, Mr. Chairman, if there had been no last paragraph, that there would have been no doubt. We were trying to clear up, as I understand the situation, just what that last paragraph meant, because it shouldn't have been added there. If it had been a flat answer there would be no qualifications or anything else, but simply the statement that it was perfectly all right to ship scrap iron under any and all circumstances.

ARBITRATOR SLOSS: I do not see how anything can be more direct or plain that scrap metal can be legally exported to Italy.

MR. HARRISON: I would like to add, Mr. Chairman, that Mr. Melnikow himself took the position in his statement that the men felt that the work was in violation of some proclamation, and we submit that unless we can determine these things as laid down by the Award, that the situation is simply hopeless.

MR. MELNIKOW: I will submit this, Mr. Harrison, that it is my opinion that neither the Waterfront Employers Association nor its machinery could force men to violate the law. Now, I will admit that there is a very serious doubt here as to whether this is a violation of the law; and I will further admit that if the telegram had been sent as suggested this morning --.

Are the three gangs still working, Mr. Schirmer?

The three gangs are there working; and this one hour's work wouldn't have become the mountain that it has developed into from a mole-hill; but there is a tendency on the part of the Waterfront Employers Association, which has existed for some time, and which reached its culmination on April 14th, to disrupt this entire machinery, and this is purely one of those examples.

MR. HARRISON: I submit the matter to the Arbitrator, and I submit it with the statement that I feel that it comes within the category referred to by the Arbitrator when he stated what he would do in the event of violation by either party.

MR. MELNIKOW: In other words, you don't want the Arbitrator to handle this matter for which the meeting has been called - is that the way I understand you?

MR. HARRISON: I have made my statement, and I submit it to the Arbitrator.

MR. MELNIKOW: You haven't answered my question. My question is whether you don't want the Arbitrator to handle this matter for which the meeting has been called?

MR. HARRISON: I haven't come to that yet, Mr. Melnikow.

MR. MELNIKOW: Well, I think it ought to be cleared up. Perhaps by now this whole matter has been cleared up. Surely one of the two Secretaries of the Cabinet have answered this telegram, and there is no doubt that this whole matter is cleared up by now.

MR. HARRISON: We cannot agree that we must wait for an answer from the Secretary to clear anything up.

ARBITRATOR SLOSS: I think the situation is this: I have stated my views about this particular matter, and I will add that I have no doubt whatever in my own mind of the correctness of what I have said - that the action taken, or the non-action taken this

morning was a violation of the Award and the agreement, and brings me up to the point of what I should do under such circumstances.

Now, I realize fully the seriousness of the position in which we find ourselves. I want the process of arbitration, and the Award to go on; I want the work on the waterfront to go on, and I want proper relations and cooperation between the two parties in that regard. I am not going at this moment to cut the thing off abruptly, but I will give the I.L.A. an opportunity to put itself in proper relation to the situation by postponing this hearing for a short while. It is now what time? It is 2:30. I think we will adjourn until 3:30, and at that time I will hear what you gentlemen have to say as to whether the men have gone to work loading that scrap iron, and then according to the answer received I will announce my further action.

I will not go forward with any hearings on any matter until this question is settled, because it goes, as I said before, to the very root of the whole negotiations and the agreements with respect to my going on as arbitrator. Now, I want that thing cleared up. We are only ten days after the agreement was signed when we again find ourselves in a situation where job action is resorted to. If I permit this to go by without definite, positive protest, and without taking such action as may be necessary, I think we might as well throw that agreement into the wastebasket, and go back to where we were a month or two months ago - so I will return at 3:30 o'clock, and find out what has happened in the meanwhile.

(Recess.)

3:30 P.M. May 1st, 1936.

ARBITRATOR SLOSS: Well, are we all here?

MR. MELNIKOW: Yes.

ARBITRATOR SLOSS: Well, what is the situation?

MR. MELNIKOW: I was advised by phone a few moments ago by Mr. Bridges that he had instructed the men - the company, rather, to put the men to work, and that the men would go to work on that scrap iron which was the subject of discussion before we adjourned. Perhaps he can speak better for himself.

MR. BRIDGES: That is correct. The company and the men have both been notified, and I think the matter is straightened out.

ARBITRATOR SLOSS: Is there anything further you gentlemen want to add?

MR. HARRISON: All we can say is that they have not as yet returned to work. We understand that there is some sort of a controversy going on at the dock, and whether the men will or will not handle the cargo.

MR. MELNIKOW: I am afraid you are under misapprehension. The three gangs, as Mr. Schirmer testified very clearly, have been working all day.

MR. HARRISON: We are talking about turning to on the disputed cargo.

MR. MELNIKOW: And one of those three gangs has been ordered to do this work.

MR. HARRISON: I suggest that we call Mr. Schirmer, and find out what the situation is.

MR. MELNIKOW: That will be satisfactory.

ARBITRATOR SLOSS: I would like to have that matter cleared up before we go on.

MR. MELNIKOW: By all means.

(Thereupon Mr. Gregory telephoned.)

MR. BRIDGES: He notified me that he was going to switch the gangs over at 3:30.

MR. GREGORY: (Speaking over telephone:) "They are working, and the first load just went aboard."

MR. GREGORY: You got the answer, did you Mr. Reporter?

(Statement read.)

ARBITRATOR SLOSS: Then, we will proceed. It is getting pretty late, but we will get as far as we can on this question that was brought up for today.

You may go on, Mr. Melnikow.
