DePaul Law Review

Volume 7
Issue 2 *Spring-Summer 1958*

Article 18

Labor Law - Strike Unlawful When Contract Dispute is Pending Before Railroad Adjustment Board

DePaul College of Law

The argument that allowing discovery of insurance coverage opens the door for discovering the defendant's entire financial status before judgment, which would invade his right of privacy can be met by answering that liability insurance policies contain unique characteristics due to statutory regulation. In the *Fisher* case, the court pointed out that statutory provisions confer an interest in such a policy on every member of the public that is negligently injured and that the unique characteristics of a liability insurance policy distinguish it from other financial resources.

After the *Fisher* case was decided in May, 1957, a motion for leave to appear amicus curiae and file a brief in support of the petition for rehearing, for and in behalf of five hundred ninety-two insurance companies, was requested and granted. However, even after the rehearing in which the opinion of *Brooks v. Owen*[24] was called to the attention of the court, the Illinois Supreme Court held to its original decision. What influence the contrary case of *Gallimore v. Dye*[25] will have on the rule of the *Fisher* case is undetermined at this time.

[24] 97 So. 2d 693 (Fla., 1957).

[25] E.D. Ill., Docket No. 3,851 (Jan. 13, 1958).

LABOR LAW–STRIKE UNLAWFUL WHEN CONTRACT DISPUTE IS PENDING BEFORE RAILROAD ADJUSTMENT BOARD

The Norfolk and Portsmouth Belt Line Railroad proposed to change the established starting and quitting points for five of its train crews. The carrier based its right to initiate this plan on its interpretation of a clause in the collective bargaining agreement which stated, "The point of going on and off duty shall be governed by local conditions." The union maintained that this action by the carrier could be effected only with the consent of the union or upon prior negotiation. After threat of strike and petition by the union to the National Mediation Board, the parties were referred to the Railroad Adjustment Board. The carrier submitted the dispute to the Adjustment Board but the union again called for a strike. The carrier petitioned the lower court for an injunction which was refused. On appeal to the United States Court of Appeals, Fourth Circuit, the judgment was reversed and a permanent injunction prohibiting the strike was granted. The court impliedly stated that the carrier had the right to initiate procedures, and the union could properly bring up complaints in the established grievance procedure after the carrier has set the proposed change into operation. *Norfolk and Portsmouth Belt Line R. Co. v. Brotherhood of Railroad Trainmen, Lodge No. 514*, 248 F.2d 34 (C.A. 4th, 1957).

The problem before this court is one of the most debated and oft-

discussed problems in the field of labor-management relations. The court was compelled to treat the problem of management's right to initiate and carry out its plans without the prior consent of the union, where a term in the collective agreements attempts to cover the proposed change.

Another issue, decided by the court, was the extent of the Railroad Adjustment Board's jurisdiction.[1] Both issues pose major problems in the efficient conduct of business and unions. In deciding these questions, the court necessarily went into the background of the applicable provisions of the Railway Labor Act.[2]

The stated congressional purpose in enacting the Railway Labor Act of 1943 is to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules and working conditions (Section 2(4)) and to provide for the prompt and orderly settlement of all disputes growing out of grievances and out of interpretation or application of agreements covering rates of pay, rules, or working conditions (Section 2 (5)).[3] Section 2(4) is generally held to concern itself with the making of the contract and major disputes[4] while Section 2(5) deals with the application of the contract and minor disputes.[5] Congress also set up the means for carrying out its purpose, and in Section 3 created the Railroad Adjustment Board to settle minor disputes.[6] The act gives employees the right to bring action, either in a court or before the Adjustment Board, for grievance disputes.[7] The petitioner before the Adjustment Board is given the right to file suit for enforcement of a non-money award.[8]

Throughout the years, the act has been interpreted so as to confer upon courts the power to enforce the provisions of the act and the right to issue injunctions to prohibit strikes in case of non-compliance with the decree of the Adjustment Board.[9] This is a departure from the anti-

[1] 45 U.S.C.A. § 153 (1943).

[2] 45 U.S.C.A. § 151 et seq. (1943).

[3] 45 U.S.C.A. § 151a (1943).

[4] Slocum v. Delaware, 339 U.S. 239 (1950); Virginian Ry. v. System Federation No. 40, 300 U.S. 515 (1937); Brotherhood of Locomotive Firemen and Enginemen v. I.C.C., 147 F. 2d 312 (App. D.C., 1945); Order of Ry. Conductors of America v. Nat'l Mediation Board, 113 F. 2d 531 (App. D.C., 1940); Brotherhood of R.R. Trainmen v. Nat'l Mediation Board, 88 F. 2d 757 (App. D.C., 1936).

[5] Chgo. R. & I. R.R. v. Brotherhood of R.R. Trainmen, 229 F. 2d 926 (C.A. 7th, 1956). Accord: Brotherhood of R.R. Trainmen v. N.Y.C. R.R., 246 F. 2d 114 (C.A. 6th, 1957).

[6] 45 U.S.C.A. § 153 (1943). Slocum v. Delaware, 339 U.S. 239 (1950); Brotherhood of R.R. Trainmen v. N.Y.C. R.R., 246 F. 2d 114 (C.A. 6th, 1957); Wash. Terminal v. Boswell, 124 F. 2d 235 (App. D.C., 1941).

[7] Watson v. Mo.-Kan.-Texas R.R., 173 S.W. 2d 357 (Tex. Civ. App., 1943).

[8] Wash. Terminal v. Boswell, 124 F. 2d 235 (App. D.C., 1941).

[9] Switchmen's Union of N. America v. Nat'l Mediation Board, 320 U.S. 297 (1943); Brotherhood of R.R. Trainmen v. N.Y.C. R.R., 246 F. 2d 114 (C.A. 6th, 1957); Chgo. R. & I. R.R. v. Brotherhood of R.R. Trainmen, 229 F. 2d 926 (C.A. 7th, 1956).

injunction climate created by the Norris-LaGuardia Act of 1932.[10] In the case of *Chgo. R. & I. R.R. v. Brotherhood of Railroad Trainmen*[11] the court stated:

> The Railway Labor Act . . . embodies a complete plan for avoiding any interruption to commerce or the operation of any carrier engaged therein. . . . It does not call for the aid or submit to the limitations of the Norris LaGuardia Act . . . [for to submit to such limitations] would practically render the compulsory features of the latter act [Railway Labor Act] nugatory.[12]

Justice Brown, dissenting in *Brotherhood of Railroad Trainmen v. Central of Georgia R. Co.*[13] said a difference concerning the meaning and effect of a contract is a grievance which *must* be submitted to and decided by the Railroad Adjustment Board.

In the instant case, the court strengthened the rule that where there is a term in the contract designed to cover certain conditions, management has the right to initiate procedures and plans and the union is obliged to follow the dictates of management.[14] If the union disagrees with the policy of management in regard to this term of the contract, the union must wait until the plan is put into effect, and at that time may bring up the question in the ordinary manner under established grievance procedure.[15]

The case of *Fay v. Phenix Soda Fountain Co.*[16] is an illustration of this rule. There the management closed its plant one day a week. Although the union was opposed to this change, they waited until the change had been effected, and then brought up the question in accordance with the grievance machinery. The court approved of this process and ordered management to arbitrate the matter with the union.

In the principal case, the dispute centered mainly upon the union's contention that the clause of the contract did not give management the right to initiate the changes. The Railway Labor Act has been interpreted by the courts to give primary jurisdiction over interpretation of contract

[10] 29 U.S.C.A. § 101 (1947): "No court of the United States . . . shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute. . . ."

[11] 229 F. 2d 926 (C.A. 7th, 1956).

[12] Ibid., at 932. Accord: Manion v. Kansas City Terminal Ry., 353 U.S. 927 (1957); Graham v. Brotherhood of Locomotive Firemen, 338 U.S. 232 (1949); Virginian Ry. v. System Federation No. 40, 300 U.S. 515 (1937); Brotherhood of R.R. Trainmen v. N.Y.C. R.R., 246 F. 2d 114 (C.A. 6th, 1957); Watson v. Mo.-Kan.-Texas R.R., 173 S.W. 2d 357 (Tex. Civ. App., 1943).

[13] 229 F. 2d 901 (C.A. 5th, 1956).

[14] Order of Ry. Conductors v. Pitney, 326 U.S. 561 (1946); Williams v. Jacksonville Terminal, 315 U.S. 386 (1942).

[15] Fay v. Phenix Soda Fountain Co., 153 N.Y.S. 2d 153 (S. Ct., 1956).

[16] Ibid.

clauses to the Railroad Adjustment Board.[17] Several cases have held that the Adjustment Board has the right to arbitrate disputes after the contract has been made and that the decision of the Adjustment Board is final.[18] Therefore, in the principal case, the court found that the Adjustment Board had jurisdiction to decide whether the clause of the contract in dispute was sufficiently broad to encompass the right of management to unilaterally initiate changes. Since the question was presented to the Adjustment Board by the carrier, the union could not strike until final determination of the dispute by the Adjustment Board.[19]

In a belated effort, the union admitted the validity of the carrier's contention that the action was in accordance with the clause in the contract, but the court pointed out that although this concession would leave the matter before the Adjustment Board a moot question, a strike was still unlawful.[20]

Thus, the enforcement of the Railway Labor Act is strengthened by the decision in the instant case. The determination of the dispute between management and the union is within the jurisdiction of the Adjustment Board, and during the pendency of this dispute an injunction will issue prohibiting a strike. In the words of the court:

> It [Railway Labor Act] cannot leave them free to strike in aid of proposed contract changes when they have not fully processed any such proposal as a "major dispute" under the required procedures of the Act.[21]

[17] Texas & N.O. R.R. v. Brotherhood of Ry. & Steamship Clerks, 281 U.S. 548 (1930); Sampsell v. B. & O. R.R., 235 F. 2d 569 (C.A. 4th, 1956); Alabaugh v. B. & O. R.R., 222 F. 2d 861 (C.A. 4th, 1955).

[18] Watson v. Mo.-Kan.-Texas R.R., 173 S.W. 2d 357 (Tex. Civ. App., 1943). In Brotherhood of R.R. Trainmen v. N.Y.C. R.R., 246 F. 2d 114, 118 (C.A. 6th, 1957) the court said, "A minor dispute may be submitted to the National Railroad Adjustment Board by either party, and the award of the Board is final and binding on both parties."

[19] Chgo. R. & I. R.R. v. Brotherhood of R.R. Trainmen, 229 F. 2d 926 (C.A. 7th, 1956).

[20] E.J.E. Ry. v. Burley, 325 U.S. 711 (1945). Major disputes are differences arising out of proposals for new contracts or of changes in existing contractual or legal obligations or relations. The Railway Labor Act provides for procedures to be followed in the event of a major dispute, but compulsions go only to insure that those procedures are exhausted before resorting to self-help. No authority is given to decide the dispute and no such power is intended, unless the parties themselves agree to arbitration.

[21] Norfolk and P.B.L.R. v. Brotherhood of R.R. Trainmen, 248 F. 2d 34, 46 (C.A. 4th, 1957).

LABOR LAW—"UNLAWFULLY ASSISTED" UNION WHICH HAS NOT COMPLIED WITH FILING REQUIREMENTS MAY OBTAIN RECOGNITION WITHOUT CERTIFICATION

The National Labor Relations Board found that Bowman Transportation, Inc., unlawfully assisted District 50, United Mine Workers to organ-