

In the Matter of ALABAMA MARBLE COMPANY and CHARLES T. ADAIR,
AN INDIVIDUAL

In the Matter of ALABAMA MARBLE COMPANY and W. A. WILSON, AN
INDIVIDUAL

In the Matter of ALABAMA MARBLE COMPANY and W. A. ADAMS, AN
INDIVIDUAL

In the Matter of ALABAMA MARBLE COMPANY and C. M. KINSER, AN
INDIVIDUAL

In the Matter of ALABAMA MARBLE COMPANY and LOCAL NUMBER 133,
INTERNATIONAL ASSOCIATION OF MARBLE, SLATE AND STONE POLISHERS,
RUBBERS AND SAWYERS, TILE AND MARBLE SETTERS HELPERS AND
TERRAZZO WORKERS HELPERS, AFL

Cases Nos. 10-CA-86, 10-CA-87, 10-CA-88, 10-CA-93, 10-CA-185

ORDER DENYING PETITION FOR RECONSIDERATION
OF BOARD'S DECISION AND ORDER

August 26, 1949

On June 6, 1949, the Board issued its Decision and Order in the above-entitled proceedings, finding that the Respondent violated Section 8 (a) (3) and Section 8 (a) (1) of the Act, as amended, by discharging Charles T. Adair, W. A. Adams, W. A. Wilson, and C. M. Kinser.¹ More specifically, the Board found that the Respondent discharged Adair, Adams, Wilson, and Kinser because of their participation in a work stoppage which occurred on October 6, 1947; and that, although the work stoppage was in breach of a no-strike clause contained in an existing contract, the Respondent waived or condoned such conduct by permitting them to return to work. The Board rejected the Respondent's contention, namely, that there was no waiver because it had no knowledge, at the time that the Respondent agreed to allow these four union officers to resume work, of the role played by them in the work stoppage, on two stated grounds: (1) at that time, the Respondent knew that the employees had engaged in a work stoppage in breach of contract; yet the Respondent agreed to permit all employees to return to work without stipulating that it

¹ 83 N. L. R. B. 1047.

85 N. L. R. B., No. 161.

reserved to itself the privilege of disciplining any participant in the work stoppage; and (2) in any event, the Respondent's foremen had personal knowledge of the part played by the four union officers in the work stoppage at the time it occurred.²

On June 22, 1949, the Respondent filed a "Motion or Petition for Reconsideration" of the Board's Decision and Order.³ In support of its application for reconsideration, the Respondent asserted, among other things, (1) that it reinstated the four employees in question in reliance upon assurances made by the Union that such reinstatement would be without prejudice to the Respondent's privilege "to investigate and satisfy itself of the guilt of any individual employee and then discharge any individual employee on the basis of the information gathered"; and (2) that "the evidence affirmatively shows that the Respondent's foremen did not have knowledge of the part played by Adair, Wilson, Adams, and Kinser, on October 6, 1947."

On July 30, 1949, the Board directed the Respondent to file "a statement of citations from the record in this case, including page references to the transcript of hearing, relating to each of the contentions in which Respondent alleges that the Board's findings of fact were in error." Pursuant thereto, the Respondent filed its "Statement of Citations from the Record."

We have examined the Respondent's statement of citations and the entire record in this case. Upon the basis thereof, we conclude that there is no factual basis for the Respondent's contentions set forth above.

The record contains no evidence that the Union assured the Respondent that the reinstatement of the strikers would be without prejudice to the Respondent's privilege to discharge any of them at a later date. In its statement of citations, the Respondent refers to testimony of H. M. King, the Respondent's assistant general manager, and Walter L. Mitchell, a union representative, to support its contention that such an assurance was given. King gave no such testimony. Indeed, King admitted at the hearing, when asked in substance whether on October 6, at the time of the strike-settlement meeting, he intended to discharge any employee because of participation in the strike, that such a "thought didn't occur to me at that time." Neither does the reference to Mitchell's testimony support the Respondent's contention. At most, the testimony of Mitchell referred to relates a proposal which Mitchell made with respect to reinstatement of nine employees, not the com-

² In our Decision, we attributed the knowledge of the foremen to the Respondent.

³ The Respondent's request for oral argument with respect to the application for reconsideration is hereby denied. The record, including the statement of citations and other documents filed by the Respondent in support of its application for reconsideration, adequately presents the issues and positions of the parties.

plainants here, who were discharged for cause on October 6 and whose discharge caused the strike. Mitchell testified in substance that he proposed that, if the Respondent reinstated the strikers and the nine dischargees and processed the cases of the nine dischargees as grievances, the Respondent thereafter could discharge the nine dischargees if such investigation convinced the Respondent that they deserved such treatment. This proposal the Respondent did not fully accept; at this time, the Respondent agreed to reinstate only the strikers and to process the cases of the nine dischargees as grievances. The complaint contains no allegation with respect to the nine dischargees; they are persons other than the four strikers involved in this proceeding. The assurance contained in Mitchell's proposal thus did not relate to any of the strikers or to any of the four union leaders involved in this proceeding.

The record contains evidence that the Respondent's foremen knew of the part played by local union officers in the work stoppage at the time it occurred.

Thus, W. C. Kinser, quarry foreman, credibly testified that, on October 6, 1947, he heard his brother, C. M. Kinser, tell W. A. Adams to "call the men out" of the quarry; that, a few minutes later, he saw all the employees in the south end of the quarry, about 25 to 30 in number, leave the quarry hole; that these quarry employees then congregated in the vicinity of the quarry clock; that some employees inquired whether they should "clock out"; that he, Foreman Kinser, instructed the employees not to do so; and that Cecil (C. M. Kinser) told them, "Yes, go ahead and clock out." There is in the record an affidavit sworn to by Foreman Kinser in which he corroborates in large measure this oral testimony. In addition, Manager King credibly testified that he received a report from Foreman Kinser as to what had occurred on October 6 in which he was told by Kinser that he heard "his brother Cecil tell Walter Adams to go to the south end of the quarry and pull the men out"; that he "saw Adams go in that direction"; and that he "saw Cecil Kinser go to the north end of the quarry and shortly thereafter the men came out of the quarry."

Ellis I. Dison, a foreman who had "charge of the rubbing beds" and "supervision over the coping and stock that comes out of the saw-mill," credibly testified that, on October 6, 1947, he was told by Charlie Adair that "they had some trouble in the shop up there and they would have to shut the face down until they got it settled." In an affidavit sworn to by Dison, he states ". . . Charles Adair came to me and told me that I would have to shut the Rubbing Beds down . . ."

The record thus contains direct evidence that the Respondent's foremen knew of the part played by Adair, C. M. Kinser, and Adams in the work stoppage at the time it took place. There is credible testimony by employees that certain operations were shut-down on the morning of October 6, 1947, at the direction of Wilson, the fourth union leader involved in this proceeding, but there is no direct evidence that any foreman knew of this at the time it occurred. However, the Respondent's foremen were present in the plant and quarry at the time of the work stoppage; Wilson's strike activity, as well as those of the other three, took place openly and in full view of those present; and it is unlikely that the foremen in charge did not learn promptly why the operations were shut down. In view thereof, we find that the Respondent's foremen knew of the role played by Wilson, as well as Adair, Adams, and Kinser, in the work stoppage of October 6, 1947, at the time it occurred.

For the reasons stated herein and in our Decision and Order, we reject the Respondent's contention, namely, that there was no waiver because it had no knowledge, at the time that the Respondent agreed to allow the four union officers to resume work, of the role played by them in the work stoppage.

As the Respondent has not shown that the Board misapprehended or overlooked any matter material to the issues in this proceeding, we hereby deny the Respondent's application for reconsideration of our Decision and Order, dated June 6, 1949.

MEMBERS REYNOLDS *and* MURDOCK took no part in the consideration of the above Order Denying Petition for Reconsideration of Board's Decision and Order.