

In the Matter of WEIRTON STEEL COMPANY *and* STEEL WORKERS
ORGANIZING COMMITTEE

Case No. VI-C-74

In the Matter of the Appeal of Weirton Steel Company and Clyde A. Armstrong from the Ruling of the Trial Examiner excluding Mr. Armstrong from further participation in the hearing.

DECISION

AND

ORDER

July 25, 1938

The matter before the Board is a motion by Weirton Steel Company, herein called the respondent, and Clyde A. Armstrong to vacate and set aside a ruling made on July 11, 1938, by Trial Examiner Edward Grandison Smith, at the hearing in Steubenville, Ohio, of the Matter of Weirton Steel Company and Steel Workers Organizing Committee, Case No. VI-C-74. During the hearing, which had been in progress since August 16, 1937, Armstrong had represented the respondent as its principal attorney. At the opening of the morning session on July 11, Trial Examiner Smith made the following statement:

On Thursday last an incident occurred in this courtroom, in this hearing, which was the direct result of the defiant, contemptuous and contumacious behavior of Clyde A. Armstrong, one of the attorneys for the respondent. Mr. Armstrong deliberately and wilfully, and in contempt defied the order and the authority of the Trial Examiner to such an extent that it was necessary that the hearing be adjourned, and it was adjourned on that account and before the usual time for adjournment.

Immediately thereafter, as a direct result of said conduct of said Armstrong, some of the spectators in this courtroom became exceedingly noisy and exhibited an attitude toward the Trial Examiner and the Board which cannot and will not be tolerated.

Since that time Mr. Armstrong has not indicated to the Trial

Examiner any remorse or repentance for his definitely defiant, contemptuous and contumacious conduct.

At other times during this hearing other acts of contemptuous, defiant and contumacious conduct of the same character have been committed in this hearing by Mr. Armstrong.

This Trial Examiner is convinced that Mr. Clyde A. Armstrong's defiant, contemptuous, and contumacious conduct on July 7, 1938, makes it impossible for him further to participate in this hearing, and he is accordingly barred and excluded from further participation as one of respondent, Weirton Steel Company's counsel in this hearing.

His personal appearance is cancelled as counsel of record, is hereby stricken, and the official reporter is instructed to record no further statements by Mr. Armstrong. In addition Mr. Armstrong will not be permitted in, and he is excluded from the hearing room for the balance of the hearing of this case.

All of which is accordingly ordered.

The Trial Examiner is not unmindful that an order of this kind ordinarily might work a hardship on the respondent. However, in the present case respondent has four other counsel of record. Some of those other counsel of record of respondent have actively participated in various off-the-record conferences that have been held for the purpose of eliminating unnecessary portions of the record, and of otherwise hastening the conclusion and end of this case.

Three of those other counsel have likewise been active in the examination of witnesses during the hearing, and many objections and motions have been stated by them on the record.

The hearing is adjourned until Wednesday, July 13, at 9:30 a. m. at this place.

By permission of the Board, the respondent and Armstrong filed a motion in writing in the nature of an appeal from the foregoing ruling. A hearing upon the motion was duly held before the Board at Washington, D. C., on July 20, 1938. The Board, the respondent, and Armstrong were represented by counsel, participated in the hearing, and were afforded an opportunity to adduce evidence bearing upon the issues, to examine and cross-examine witnesses, and to present oral argument.

1. There is no question here of punishment for contempt of court, or of disciplinary proceedings looking to the disbarment of an attorney. The Trial Examiner's ruling simply applies a rule made and issued by the Board pursuant to statutory authority.¹ The rule

¹ National Labor Relations Act, 49 Stat. 449, Section 6 (a): "The Board shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of the Act"

provides: "Contemptuous conduct at any hearing before a Trial Examiner or before the Board shall be ground for exclusion from the hearing."² It is a reasonable and a necessary rule. Exercise of the Board's functions requires that numerous hearings be held before Trial Examiners designated by it to conduct them. The rule intends that in the interest of orderly and expeditious hearings contemptuous persons may be excluded. It applies to lawyers and to laymen alike. Its purpose is not to punish offenses against the Board's dignity, but to assure and defend the control of the Board's hearings by its agents. When challenged by contemptuous conduct during hearings, the Board, lacking power to punish for contempt, must have and does have the elementary power to exclude the guilty individual or individuals.

2. The transcript of the proceedings at the hearing in Steubenville on July 7, and the testimony of Trial Examiner Smith before the Board, indicate that Armstrong's conduct on that day was highly contemptuous and improper, and was calculated to destroy the orderly progress of the hearing, and to impair the Trial Examiner's control of the proceedings. The incident particularly referred to in the Trial Examiner's ruling had its beginning during the afternoon session. Armstrong had called and was examining a witness. Polier, attorney for the Board, objected to a question. After a brief colloquy, Trial Examiner Smith said, "I do not see the relevancy." Armstrong retorted, "I am sure you will when we are through, Mr. Examiner. It will all be connected up. I think it is obvious now, but I am sure you will see it later on." The Trial Examiner sustained Polier's objection, but when Armstrong made an offer of proof, Polier withdrew his objection, but still insisted that the proof offered was irrelevant and immaterial. An altercation between counsel ensued. Polier, who had been seated, rose. Armstrong walked rapidly toward Polier. Trial Examiner Smith testified before the Board that he then thought Armstrong was about to attack Polier. The record shows that he said, "Take your seats, gentlemen." He testified that Polier at once resumed his seat but Armstrong did not, that Armstrong's attitude remained tempestuous and threatening. The Trial Examiner said, "Take your seats now. Take your seat, Mr. Armstrong." Armstrong replied, in a manner characterized by the Trial Examiner as defiant and snarling, "If it is a request, I will, Mr. Examiner, but not an order." Trial Examiner Smith said, "It is my request . . .", and paused. When Armstrong did not respond, he added, ". . . and it is my order." Armstrong retorted, "I won't sit down on an order, but I will sit down on a

² Article II, Section 31, of National Labor Relations Board Rules and Regulations—Series 1, as amended

request. I am not going to sit here and listen to charges of corruption of this witness." The Trial Examiner said, "Nothing further. The remarks of Mr. Armstrong on the subject are expunged, and the remarks of Mr. Polier on the subject are expunged." At about this time Armstrong resumed his seat. The Trial Examiner ruled that the question of the admissibility of the proof offered by Armstrong would be taken under advisement until the next morning, and excused the witness until that time. He testified before the Board that Armstrong thereupon sprang to his feet. The record, at this point, reads:

Mr. ARMSTRONG. Mr. Examiner, every time . . .

Trial Examiner SMITH. The order has been made.

Mr. ARMSTRONG. Every time we put on a witness . . .

Trial Examiner SMITH. The order has been made.

The Trial Examiner testified that although the record shows that Armstrong's remarks were interrupted, the latter continued to speak in spite of the Examiner's repeated ruling. Armstrong then said, "I want to explain my position. I do not care whether it is right or not." The Trial Examiner said, "Sit down. We will not hear any such comments." Armstrong again ignored the instruction to be seated. He said, "I am going to explain my situation as to this witness. I have a right to do it, and I am going to do it," in a manner described by the Examiner as aggressive, contemptuous, contumacious, and defiant. The record for the remainder of the session reads as follows:

Trial Examiner SMITH. Sit down. I say right now!

Mr. ARMSTRONG. Mr. Examiner, I will not sit down under instructions of that kind.

Trial Examiner SMITH. This hearing stands adjourned until tomorrow morning at 9:30.

Mr. FAHEY [counsel for an intervening labor organization charged in this proceeding with being dominated and supported by the respondent]. We take exception to that. (Applause.)

Trial Examiner SMITH. Silence. You are in this court, notwithstanding the fact that an adjournment has been ordered.

Mr. POLIER. Mr. Examiner, may I make a motion with regard to the conduct . . .

Trial Examiner SMITH. This hearing has been adjourned. (Whereupon, at 2:40 o'clock p. m., an adjournment was taken until tomorrow morning at 9:30 o'clock a. m., July 8, 1938.)

As soon as the hearing had been ordered adjourned and simultaneously with Fahey's exception to the order, Armstrong turned and faced the spectators in the hearing room, whereupon a disorderly demonstration ensued, which was noted by the reporter. When the

hearing reconvened the next day, it was immediately adjourned to July 11, at which time the Trial Examiner announced the ruling here sought to be vacated.

Although no testimony was offered on Armstrong's behalf in support of the contention, it was argued that he refused to be seated in order to record his reasons for objecting to the Trial Examiner's ruling by which the examination of the witness on the stand was deferred. But Armstrong, it was testified, customarily conducted the examination of witnesses and made objections to rulings from his seat at the counsel table. It was therefore obviously unnecessary for him to defy the Trial Examiner's instruction to be seated in order to explain his objection. Nor does this argument in any way explain Armstrong's petulant attempt to differentiate between a request and an order to be seated, which occurred some time prior to his final defiance of the Trial Examiner.

Although he was present at the hearing before the Board and had ample opportunity to state his version of the incidents above described, and any explanation of his participation therein, Armstrong failed to do so.

The ruling of the Trial Examiner indicates that Armstrong had been guilty of contemptuous behaviour on earlier occasions. It appears that on October 5, 1937, too, the Trial Examiner found it necessary to adjourn the hearing because of Armstrong's defiance of his instructions. During Armstrong's cross-examination of a witness, the Trial Examiner ruled: "The witness will not be required to answer." Armstrong retorted, "Is that all you have to do, Mr. Examiner, say you don't want to answer a question and that is the end of it?" The Trial Examiner characterized this reply as impertinent and out of order. Later, during the examination of another witness, a dispute arose among counsel concerning a remark made by Armstrong at the counsel table. The record, after a brief but acrimonious exchange among counsel, reads as follows:

Mr. ARMSTRONG. I am seriously protesting, Mr. Examiner, against the method and means by which this hearing is being conducted. I am entering that on the record right now. It is getting now to the place where we can't even speak to each other but where counsel for the Board gets up and objects to it. That is absurd. It is so absurd that it is a tragedy.

Trial Examiner SMITH. Your conduct, sir, has reached the limit. Take your seat.

Mr. ARMSTRONG. What is that?

Trial Examiner SMITH. You may take your seat.

Mr. ARMSTRONG. Am I offending anybody standing here?

Trial Examiner SMITH. You have heard . . .

Mr. ARMSTRONG. I do not prefer to take that seat right now. Is there anything more, Mr. Laughlin, [Associate Counsel to Mr. Armstrong] that you think of I might ask?

Trial Examiner SMITH. Mr. Armstrong, will you please be in order.

Mr. ARMSTRONG. Is there anything I am doing, Mr. Examiner?

Trial Examiner SMITH. Take your seat at the counsel table.

Mr. ARMSTRONG. I am conferring with Mr. Laughlin.

Trial Examiner SMITH. I note what is occurring and what is not occurring.

Mr. ARMSTRONG. Mr. Examiner, I certainly am going to stand up for my right of freedom to stand where I please as long as I am not offending anybody, and to conduct this hearing in the method I see fit as long as I am not offending anybody; and I am going to continue to ask Mr. Laughlin some questions about what I should ask this witness.

Trial Examiner SMITH. You do not happen to be conducting this hearing.

Mr. ARMSTRONG. I am not trying to conduct it that way.

Trial Examiner SMITH. (Sounds gavel) Will you take your seat at the counsel table? And proceed with your conference if you wish.

Mr. ARMSTRONG. Mr. Examiner, I am not subject to instructions of that kind. I respectfully state, and I want to state this, as for your years, Mr. Examiner, I have the highest respect in the world and I am not showing disrespect for that; but as for my rights in this proceeding, I am going to stand to the last ditch.

Trial Examiner SMITH. This is the third warning, Mr. Armstrong. You have had two preceding warnings.

Mr. ARMSTRONG. Mr. Examiner, I do not intend to be told to sit down when I should sit down, nor stand up when I should stand up. I am doing nothing to offend you, or anybody in this room. Now, you just take whatever action that indicates.

Trial Examiner SMITH. This hearing stands adjourned until tomorrow morning at 9:30.

Mr. FAHEY. May the record show our exception to the statements of the Trial Examiner . . .

Mr. JOHNS [an attorney for the Board]. The hearing is adjourned.

(Much commotion and noise among the audience.)

* * * * *

(Whereupon, at 2:23 p. m., October 5, 1937, the hearing in the above-entitled matter was adjourned to reconvene at 9:30 a. m., October 6, 1937.)

It may be noted that the Trial Examiner's request to Armstrong to be seated was repeated four times, and that his efforts to moderate Armstrong's conduct were characterized by great restraint. At the hearing before the Board, Chairman Madden asked Armstrong what he meant by his statement that he did not intend to be told when to sit down and when to stand up and that the Trial Examiner might take whatever action that indicated. Armstrong avoided making a direct answer, entered upon a lengthy statement directed not to the Chairman's question but to the merits of the controversy before the Trial Examiner, and then, taking offense at an interruption by the Chairman, took refuge in counsel and refused to answer further. The statement which Armstrong refused to explain is, on its face, deliberately defiant and contemptuous of the Trial Examiner.

The lengthy record affords other instances of persistence in argument after rulings and of impertinence toward the Trial Examiner on Armstrong's part. The Trial Examiner several times requested Armstrong to observe decorum and called attention to his failure to do so. The following exchange took place on September 10:

Trial Examiner SMITH. We are concerned here with whether or not these respective organizations are labor organizations. That is one answer.

Mr. ARMSTRONG. And that is the very point that I am going into, as to whether or not this is a labor organization (the gavel fell).

Mr. ARMSTRONG. Mr. Examiner, it is not necessary to break marble.

Trial Examiner SMITH. No, if you keep in order.

Mr. ARMSTRONG. I want to merely state our position, Mr. Examiner. I am trying to do it in a proper manner and in a fair manner.

Trial Examiner SMITH. You are out of order now. The Trial Examiner is making statements for the record.

On September 22, Armstrong ended an argument with the following words: "Does it just become relevant on their side and irrelevant on ours? Is that ruling going to apply equally to both sides?" Whereupon the record reads as follows:

Trial Examiner SMITH. That remark would justify very severe action. However, it will not be taken now. But such remarks as that are entirely out of order.

Mr. ARMSTRONG. Mr. Examiner, I am calling to your attention what I actually believe to be a fact and which I actually feel the record will substantiate.

Trial Examiner SMITH. You can make your point, you can have your ruling, you can state your grounds, you can have your

exceptions, you can have the record complete without any remarks of that kind.

Mr. ARMSTRONG. My remarks, Mr. Examiner, were in reply to the statement that you made in response to my motion.

Trial Examiner SMITH. I am giving timely warning on the record. Proceed, gentlemen.

On the next day, the Trial Examiner again warned Armstrong. On November 16, the Trial Examiner characterized Armstrong's manner of cross-examination as "very objectionable," accusing Armstrong of walking toward a witness in a threatening manner and browbeating him. On November 30, the following occurred:

Trial Examiner SMITH. We have heard that often enough.

Mr. ARMSTRONG. You haven't heard it often enough, Mr. Examiner (the gavel sounds).

These and similar incidents recorded in the transcript, taken in connection with the outburst of October 5, persuade us that Armstrong's contemptuous behaviour on July 7 is not an isolated occurrence, but reflects a calculated attempt to wrest control of the hearing from the Board's duly designated agent.

3. Counsel argued before the Board that Armstrong's aggressive conduct and his persistence in making objections to rulings were the result of provocation over the 11-month period of the hearing. In the course of argument, counsel saw fit to make highly improper, unprofessional, and unsubstantiated accusations against the Board. We do not believe the argument was made in good faith. Even if the accusations were entirely true, they would not in any way explain, mitigate, or excuse the contemptuous conduct to which the ruling under appeal was directed.

4. Upon the entire record, we believe that Armstrong, well aware as an attorney that the Trial Examiner lacked the power to punish his conduct by the imposition of fine or imprisonment, took deliberate advantage of that knowledge to prevent the Trial Examiner from conducting the hearing to an orderly conclusion. We find that Armstrong was guilty of contemptuous conduct to an aggravated degree, and that the Trial Examiner's ruling was entirely justified.

5. Armstrong's actions since July 7 convince us that the hearing cannot proceed if he is present, and that the ruling must stand without modification. In Steubenville, on the morning of July 13, a crowd gathered between the post office and the Fort Steuben Hotel carrying signs and placards which bore expressions outrageously slanderous of and derogatory to the Board, the Trial Examiner, and

the Board's attorney.³ At about the same time, an effigy of the Trial Examiner was hung from a window of the hotel. At the request of members of the crowd, Armstrong came out of the hotel, was lifted to the shoulders of some men, and addressed the throng. The record is not clear whether from this position Armstrong could see the effigy of the Trial Examiner. However, he directly faced the signs and placards. He was heard to say, "I hardly know what to say to you. I just want to say a word. I just want to tell you I'll never forget you. I never want to forget you. I'll stick with you to the end," and "I am proud of you; without your support I could not have continued so long."

Several times during the hearing disorders among spectators had forced the Trial Examiner to adjourn to chambers. By responding to the plaudits of the crowd on this occasion, Armstrong not only displayed complete lack of remorse for his reprehensible conduct, but continued to undermine the Trial Examiner's control of the hearing.

After these facts had been spread on the record at the hearing before the Board, the Chairman offered Armstrong an opportunity to make apology to the Trial Examiner and to give assurances of future proper and professional conduct. Armstrong refused, stating that he had done nothing wrong. Under the circumstances, there is no reason to believe that, were Armstrong permitted to resume participation in the hearing, he would refrain from repetitions of the acts which we find intolerable, and the occurrence of which wrests control of the hearing from the Trial Examiner and renders its orderly conduct impossible.

6. As to the contention that Armstrong's exclusion will work great hardship upon the respondent and will constitute the denial to it of due process of law, it may be noted that the respondent is represented of record by four counsel other than Armstrong. One of these, Mr. Laughlin, was present throughout most of the hearing. Others participated in the examination of witnesses and in noting objections to rulings. For whatever inconvenience results to the respondent from Armstrong's failure to comport himself in a manner consonant with his continued participation in the hearing the respondent must hold Armstrong, not the Board, responsible. We shall order an adjournment to enable the respondent to retain other counsel, or otherwise to prepare to resume the presentation of its defense. We find that Armstrong's exclusion will not deprive the respondent of due process of law.

³ Among the legends appearing upon the signs were: "America does not want N. L. R. B. dictatorship," "Actions of the N. L. R. B. are un-American," "N. L. R. B. means communism," "Is Smith an examiner or a dictator," and "Down with Pollerism and Communism."

ORDER

The National Labor Relations Board hereby orders that:

1. The ruling of Trial Examiner Edward Grandison Smith excluding Clyde A. Armstrong from further participation in the hearing of the Matter of Weirton Steel Company and Steel Workers Organizing Committee, Case No. VI-C-74, be, and it is hereby in all respects, affirmed;
2. The motion of Weirton Steel Company and Clyde A. Armstrong to vacate and set aside said ruling be, and it hereby is in all respects, denied; and
3. The hearing of the Matter of Weirton Steel Company and Steel Workers Organizing Committee be in recess until August 24, 1938.