

Westwood Plumbers and Harold W. Deem

Plumbers and Steamfitters Local Union 545, AFL-CIO and Harold W. Deem. *Cases Nos. 21-CA-2752 and 21-CB-938.*
May 16, 1961

SUPPLEMENTAL DECISION AND ORDER

On February 8, 1961, Trial Examiner Wallace E. Royster issued his Supplemental Intermediate Report and Recommendations with respect to backpay in the above-entitled proceeding, a copy of which is attached hereto. Thereafter, the Respondent Employer filed exceptions thereto, and a supporting brief.

The Board¹ has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Supplemental Intermediate Report and Recommendations, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following additions and modifications.

As found by the Trial Examiner, the record in the unfair labor practice proceeding herein showed that on August 20, 1957, less than 1 month after the discharge of the Charging Party, Deem, the Respondent Union sent a letter to the Respondent Employer, with a copy to Deem, stating that it had no objection to Deem's employment by the Respondent Employer. As further found by the Trial Examiner, however, the Trial Examiner in the unfair labor practice proceeding ruled that the question of whether the letter tolled the backpay liability of the Respondent Union should be reserved for a compliance proceeding, and the Board in its Decision and Order affirmed that ruling. Accordingly, the Board also issued its usual order, upon a finding of a Section 8(b)(2) violation, requiring the Respondent Union to notify the Respondent Employer, in writing, sending a copy to Deem, that it withdraws its objection to Deem's employment, and requests the Employer to offer Deem immediate and full reinstatement to his former or an equivalent position.²

Where, as here, prior to a Board finding that a union has violated Section 8(b)(2), the union voluntarily notifies both the employer and the employee that it has no objection to the reemployment of the employee, the Board has held that such notification constitutes compliance with the usual Section 8(b)(2) order and effectively terminates the union's backpay liability as of the date of such notification.³

¹ Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Rodgers, Leedom, and Fanning]

² *Westwood Plumbers*, 122 NLRB 726.

³ See *Bakery and Confectionery Workers' International Union of America, Local 12, AFL-CIO (National Biscuit Company)*, 115 NLRB 1542; *Sherman Paper Products Company*, 116 NLRB 529; *Plumbers and Steamfitters Union Local 100, et c.*, 129 NLRB 399.

Accordingly, we find, as the Trial Examiner in this supplemental proceeding did, that the backpay liability of the Respondent Union terminated on August 23, 1957.⁴

The Respondent Employer contends that if the Union's liability for backpay is to terminate on August 23, 1957, the Employer's liability should likewise terminate on that date; or if the Employer's liability is to extend to November 23, 1957, as found by the Trial Examiner on the basis of Deem's actual reemployment on that date after an offer of reinstatement on November 21, 1957, then the Union's liability should be extended to the same date. In support of its first contention, the Employer alleges that Deem was in effect offered reinstatement shortly after August 20, 1957. However, the record shows to the contrary that upon Deem's application for reinstatement at that time the Employer in effect *refused* to reinstate him.⁵ In support of its second contention, the Employer argues that the Union's notification that it had no objection to Deem's reemployment was insufficient as a matter of law to toll the Union's backpay liability, because such notification was stated to be subject to the terms and conditions of the collective-bargaining agreement between the Employer and the Union which contained a union-security provision, and Deem as an "old" employee might have to join the Union immediately to acquire full reinstatement to his former position in accordance with the Board's Order. In the absence of any contention or showing that the 30-day union-security clause involved was unlawful, we find no merit in this argument.

ORDER

Upon the entire record in the case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that:

1. Respondent Employer, Harry W. Bronson, d/b/a Westwood Plumbers and Culver Plumbers, Los Angeles, California, his successors and assigns, and Respondent Union, Plumbers and Steamfitters Local Union 545, AFL-CIO, shall jointly and severally make whole

⁴ As indicated in the case cited in footnote 2, *supra*, the Board's usual policy in this situation is to toll backpay liability 5 days after such a notification. However, as none of the parties appear to object to the 3-day period established by the Trial Examiner, we shall adopt this date.

⁵ Thus, Deem testified that the following occurred when he applied to Bronson for reinstatement at that time:

Well, he told me that it would be ironed out, that it wasn't straightened out yet, that there was some question as to joining the union, and he said he was doing something about it, or—I don't remember the conversation too much.

Well, I went down and I don't remember just exactly the conversation word for word, but there was conversation about the—that it seemed that I was to go back to work, but yet I wasn't. I couldn't get anything out of him. I didn't get my truck, I didn't get my assignments. There was no tickets. We worked off a ticket where the tickets are assigned to us. And I received no assignment for any work.

Harold W. Deem for his loss of earnings for the period July 25 through August 23, 1957, by payment to him of the sum of \$706.86.

2. Respondent Employer shall make whole Harold W. Deem for his loss of earnings for the period August 23 to November 23, 1957, by payment to him of the sum of \$692.74.

SUPPLEMENTAL INTERMEDIATE REPORT AND RECOMMENDATIONS

Following a Decision and Order of the Board in this matter¹ the Regional Director for the Twenty-first Region on October 4, 1960, issued a backpay specification and notice of hearing alleging that the Respondent Employer and Respondent Union were obliged to make Harold W. Deem whole by payment to him of \$1,399.60, less tax withholdings required by Federal and State laws.

The Respondent Employer filed an answer denying liability for any backpay accruing subsequent to August 23, 1957. The Respondent Union denied such liability subsequent to August 21, 1957. Either by answer or at the hearing before me the Respondents severally admitted or failed to contest the allegations in the backpay specification setting forth the projected earnings for that period.

Pursuant to notice, the matter was tried before Trial Examiner Wallace E. Royster in Los Angeles, California, on November 7, 1960, and upon reopening, on January 23, 1961. The General Counsel and the Respondent Union were represented by counsel. The Respondent Employer did not appear. Upon the basis of the entire record in the case, including the Decision and Order of the Board, I make the following:

FINDINGS OF FACT

As found by the Board in its Decision and Order, Deem was discharged by the Respondent Employer on July 25, 1957, at the demand of the Respondent Union. Deem was offered reinstatement by the Respondent Employer on November 21, 1957, and returned to work the next day. Under the terms of the Decision and Order of the Board he is entitled to be made whole for any loss of earnings sustained by him during this period. I find on the basis of the denied or admitted allegations in the backpay specification that for the period July 25 through August 23, 1957, a period of 4½ weeks, Deem would have earned in his employment with the Respondent Employer the sum of \$706.86. During this period he had no interim earnings.² His projected earnings for the period from August 23 to November 22, a period of 12½ weeks, are \$2,154.24. His interim earnings were \$1,461.50. Deem then is entitled to receive the sum of \$706.86 as backpay for the first period and \$692.74 for the second. The question to be resolved is in what fashion should this liability be allocated between the two Respondents.

On August 20, 1957, the Respondent Union sent the following letter to Westwood Plumbers with a copy to Deem:

DEAR SIR: This is to notify you that the undersigned Local Union has no objection to Harold W. Deem being employed by you, subject to all of the terms and conditions of the Collective Bargaining Agreement between your firm and District Council #16 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada.

Upon its receipt Deem telephoned an agent of the Respondent Union and was told that the letter meant that he could go back to work for the Respondent Employer. At the unfair labor practice hearing in connection with this letter, Trial Examiner David F. Doyle ruled:

It is my ruling here that that question of whether this letter, under the circumstances, did or did not act to stop the running of back-pay must be reserved for a hearing on compliance, or for such disposition in a subsequent proceeding, my thought being this, that under the complaint and answer here, which

¹ 122 NLRB 726.

² The Respondent Union concedes this to be true. The Respondent Employer, not being present at the hearing, did not join in this concession. However, the finding that Deem had no interim earnings from July 25 through August 23 does not prejudice the Respondent Employer. It has admitted, by failing to deny the allegation in the backpay specification, that Deem's interim earnings for the third quarter of 1957 amounted to \$518.

is the foundation for our actions here, we are concerned with the original liability, if any, which would be decided, and then an order in usual terms which would read from the date of discrimination until the date on the part of the Employer, until the man is actually re-instated, and in the part of the union, until it by valid notice notifies the employer it has no objection to his re-employment. . . .

So, I am going to tell you frankly, now, that that question as to the effectiveness of Respondent's Exhibit 2 stopping liability, I am going to place outside the limitations of this complaint and answer, and leave that to be disposed of at a different time after we have decided the original question here as to whether discrimination in fact occurred as regards the parties named in the complaint. . . . (Tr. 236-237).

And again at page 238:

. . . and stating that the resolution of the question presented by the two documents is reserved for compliance, . . .

On page 239 Trial Examiner Doyle said:

. . . if there comes a time when these documents are proposed as effectively stopping the back-pay liability of the union, then someone else will have to take the evidence on the whole situation, . . . and you will have a hearing on that.

I interpret the ruling by Trial Examiner Doyle as removing from his consideration the question of whether the letter and the telephone call made by Deem to the Respondent Union could serve to toll the backpay liability of the Respondent Union. In its Decision and Order the Board affirmed the Trial Examiner's rulings. I consider that in this fashion the Board too refused to consider the possible tolling of backpay liability of the Respondent Union in connection with the August 20 letter or the telephone calls.

The Board's order in this case required the Respondent Union, in addition to making Deem whole for loss of pay, to notify the Respondent Employer that it had withdrawn its objection to Deem's employment as a plumber and to request the Respondent Employer to offer Deem immediate and full reinstatement to his former position. The letter, of course, says that the Respondent Union has no objection to the employment of Deem, but does not affirmatively request the Respondent Employer to offer reinstatement to him. Why Deem was not offered reinstatement until November 21 is not explained. If it be true that the Respondent Union covertly opposed such action on the part of the Respondent Employer, there is nothing in this record to substantiate a finding to that effect. There is no evidence that the good faith of the Respondent Union was tested to learn if the letter was written for any purpose other than to notify the Respondent Employer and Deem that the Respondent Union had no objection to Deem's employment. I find that a causal connection is not established from any act or failure to act by the Respondent Union to Deem's loss of earnings subsequent to August 23. In consequence I find that the backpay liability for the Respondent Union ended on August 23, 1957.

[Recommendations omitted from publication.]

Arlan's Department Store of Michigan, Inc.¹ and Helen DeQuin, Petitioner² and Evelyn Helaers, Petitioner³ and Central States Joint Board, Retail and Department Store Employees, Amalgamated Clothing Workers of America, AFL-CIO. *Cases Nos. 7-RD-311 and 7-RD-314. May 16, 1961*

DECISION AND DIRECTION OF ELECTION

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Stanley S. Sadur, hearing

¹ The Employer's name appears as amended at the hearing.

² Herein called Petitioner DeQuin or DeQuin.

³ Herein called Petitioner Helaers or Helaers.