

In the Matter of CARLISLE LUMBER COMPANY *and* LUMBER & SAWMILL WORKERS' UNION, LOCAL 2511, ONALASKA, WASHINGTON, *and* ASSOCIATED EMPLOYEES OF ONALASKA, INC., INTERVENER

Case No. C-93

Mr. Thomas P. Graham, Jr., for the Board.

Mr. Theodore B. Bruener, of Aberdeen, Wash., for the respondent.

Mr. J. O. Davies, of Chehalis, Wash., for the Union.

Mr. Howard S. Friedman, of counsel to the Board.

SUPPLEMENTARY DECISION

AND

ORDER

March 3, 1938

STATEMENT OF THE CASE

On January 16, 1936, Lumber & Sawmill Workers' Union, Local 2511, Onalaska, Washington, herein called the Union, filed a charge with the Regional Director for the Nineteenth Region (Seattle, Washington) against the Carlisle Lumber Company, Onalaska, Washington, herein called the respondent. On the same day the National Labor Relations Board, herein called the Board, issued a complaint against the respondent alleging that it had engaged in unfair labor practices within the meaning of the National Labor Relations Act, 49 Stat. 449, herein called the Act. A hearing was held on the complaint on April 7, 1936, and the days following. On September 26, 1936, the Board issued a Decision, finding that the respondent had engaged in the unfair labor practices alleged in the complaint and an order,¹ requiring among other things that the respondent—

Make whole its employees who were employed on May 3, 1935, who struck on that date or thereafter, and who were members of the Union on July 29, 1935, the day of the respondent's first act of discrimination against all of the members of the Union, for any losses of pay they have suffered by reason of such discrimination, by payment to each of them a sum equal to that which each would normally have earned as wages during the period from July 29, 1935, to the date of respondent's offer of reinstatement, less the amount earned by each of them during such period.

¹2 N L R B 248.

On October 19, 1936, pursuant to Section 10 (e) of the Act, the Board petitioned the United States Circuit Court of Appeals for the Ninth Circuit, herein called the Circuit Court, for enforcement of its order. Argument on the petition was heard by the Circuit Court on May 5, 1937, and reargument, on September 15, 1937. On December 13, 1937, the Circuit Court issued its decision and order enforcing the Board's order excepting in so far as it related to pay. On this point the Court said:

With respect to that portion of the order directing back pay to be made by the company to the employees, we withhold our ruling for a period of twenty (20) days.

If within such time either party shall apply to us pursuant to the terms of 160 (c) *supra* (Section 10 (e) of the Act) for leave to adduce additional evidence before the Board for the purpose of determining the wage issue and identifying the persons to whom such wages, if any, are due, together with the amounts due to such several persons, we will determine therefrom whether such additional evidence is material and whether there were reasonable grounds for failure to adduce it at the hearings heretofore had by the Board.

Should such application be granted, a reasonable time will be allowed within which the Board may, upon hearings before it or a member, agent, or agency, designated by the Board, determine the names of the persons if any to whom wages are due, together with the amounts, if any, due to each, including time within which the Board may certify such evidence together with its findings and order thereon to us.

In response to this provision of the Circuit Court's order on December 28, 1937, application was made by the Board to that Court for leave to adduce additional testimony. On January 5, 1938, the Court granted the application, ordering that

the Board may take evidence for the purpose of identifying the persons to whom back wages, if any, are due together with the amounts due the several persons, under the order heretofore made by the Board, determine the amount of back pay it finds should be paid to the several employees, and may certify such evidence and its findings and order thereon to us, within sixty days from the entry of this order.

Pursuant to said order, the Board on January 19, 1938, ordered that a hearing be held by the Regional Director for the Nineteenth Region for the purpose of taking evidence as required.

On January 28, 1938, the Regional Director for the Nineteenth Region issued an Order Directing Hearing Pursuant to Order of Court, and incorporating a notice of the hearing, copies of which

were duly served upon the respondent and the Union. Pursuant to the notice, a hearing was held on February 1, 2, 3 and 4, 1938, at Chehalis, Washington, before Madison Hill, the Trial Examiner duly designated by the Board. The Board, the respondent, and the Union were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and to cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

During the course of the hearing exceptions were taken by the respondent to various rulings of the Trial Examiner. The Board has reviewed these rulings and finds that no prejudicial errors were committed. All rulings of the Trial Examiner are hereby affirmed, except his ruling that, in effect, all striking Union members discriminated against by the respondent are entitled to their total back pay, less amounts meanwhile earned, from July 29, 1935, the date of the discrimination, to the date of the hearing. This ruling must be modified to the extent that those persons who had obtained other regular and substantially equivalent employment prior to the Board's order of September 26, 1936, are entitled to their back pay, less amounts meanwhile earned, from July 29, 1935, only to the date on which they obtained such employment.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

At the hearing pursuant to the Circuit Court's order, the Board introduced in evidence a chart² prepared by the respondent, showing the actual hours of operation by the respondent from July 29, 1935, to January 31, 1938. A further exhibit³ introduced by the Board, also prepared by the respondent and based on the first chart, sets forth an estimate of the number of hours each of the Union employees would have worked and the amounts each would have earned if working for the respondent between July 29, 1935, and January 31, 1938. A copy of this exhibit containing minor corrections was submitted to the Board by the respondent after the hearing, and is hereby made a part of this record. In arriving at the amounts to be paid each employee pursuant to the order of September 26, 1936, deductions must be made, from the estimates of amounts which would have been earned in employment at the respondent's plant, for sums actually earned by the employees at other jobs between July 29, 1935, and February 1, 1938. The balance is the net loss to each employee during that period caused by the discrimination. Under the Board's order of September 26, 1936, back pay was awarded to the date of the respondent's offer of reinstatement. Since no offer of reinstatement had been made to the

² Board Exhibit No. 2.

³ Board Exhibit No. 3.

date of the hearing on February 1, 1938, complete awards cannot be made by this order, but awards will be made up to that date; the amounts accruing subsequently to that date up to the time of any eventual offer of reinstatement must be the subject of later calculation.

We find that the employees named in Schedule A were employed by the respondent on May 3, 1935, struck on that date or thereafter, were members of the Union on July 29, 1935, and had not obtained regular and substantially equivalent employment elsewhere at the time of our order on September 26, 1936, which directed that they be offered reinstatement. We find that back wages are due to such persons under the order heretofore made by the Board, and we find that amount of back pay due to each of such persons for the period up to February 1, 1938, pursuant to that order, is that set forth in Schedule A after his name.

In the case of the employees coming within the terms of Section 2 (b) of our order of September 26, 1936, who had, however, apparently obtained other regular and substantially equivalent employment prior to that date, the record does not contain evidence from which we can ascertain the amount due for the period to the date on which such employment was obtained. The statement of the hours of operations of the respondent introduced in evidence, is divided into varying periods ranging in length from one week to ten months. The end dates of these periods do not correspond with the dates on which regular and substantially equivalent employment was obtained by the employees in question. We are, therefore, unable to calculate with accuracy the hours each would normally have worked at the respondent's plant up to the time he obtained such other employment. Moreover, the evidence as to the earnings of certain such employees elsewhere was given in lump sums for the whole period up to the date of the hearing and was not divided according to dates in such a way as to enable us to determine what portion of such earnings should be deducted from the gross back pay due them. For these persons we can make no finding at the present time, but shall apply to the Circuit Court for leave to adduce further testimony thereon.

Approximately twenty-one (21) additional employees coming within the scope of Section 2 (b) of our order had suffered no net loss because of earnings elsewhere during the period up to the time of the hearing on February 1, 1938. For those we make no findings at the present time. It is, of course, possible that, by reason of events occurring after February 1, 1938, and prior to the respondent's offer of reinstatement to them, back pay may become due.

O. F. Kraus was employed by the respondent as a gateman until May 2, 1935. Thereafter his job was listed as "discontinued". There was no evidence that this job was not discontinued in good faith by the respondent. We make no award to O. F. Kraus.

The testimony of John Swiderski and J. B. Jacobson does not present evidence sufficiently clear for us to ascertain the amount which each has earned elsewhere during the period in question. For these two no finding is made at the present time, but the Board will apply to the Circuit Court for leave to adduce further testimony as to them.

Certain employees who testified at the previous hearing could not be reached and were not present at the hearing on February 1, 1938. In their absence, there was insufficient evidence on which to base findings of amounts due to them. The Board will apply to the Circuit Court for leave to adduce further testimony as to them.

ORDER

Upon the basis of the above findings of fact the National Labor Relations Board hereby orders that the respondent, Carlisle Lumber Company, its officers and agents, shall take the following affirmative action, pursuant to Section 2 (b) of the Board's order of September 26, 1936, which the Board finds will effectuate the policies of the Act:

Make whole each of the persons named in Schedule A for the loss of pay suffered by reason of the respondent's discrimination to February 1, 1938, by payment to each of them respectively, of the sum set forth following his name, which sum is equal to that which each would have earned as wages from July 29, 1935, the date of the discrimination, up to February 1, 1938, less the amount each has earned during that period.

MR. DONALD WAKEFIELD SMITH took no part in the consideration of the above Supplementary Decision and Order.

SCHEDULE A

Adams, W. R.-----	\$914. 09	Bullock, J. S.-----	\$1,485. 51
Allen, B. W.-----	801. 78	Bullock, W. T.-----	1,849. 40
Aplin, Herbert-----	291. 02	Burchett, K. E.-----	2,206. 64
Arrington, George-----	1,638. 00	Calas, Gust.-----	494. 32
Arrington, W. C.-----	226. 38	Cass, Stanley-----	480. 29
Bailey, Denver-----	473. 11	Christison, Fred-----	539. 57
Baker, Harry-----	1,078. 53	Christian, John-----	1,208. 37
Baron, Sam-----	713. 63	Curelas, Gust.-----	1,221. 79
Bays, M. L.-----	2,658. 28	Curry, John-----	1,908. 96
Bena, John-----	1,266. 70	Davis, Clifford-----	761. 87
Berg, Roger-----	115. 85	Davis, M. J.-----	1,236. 07
Berg, Walter-----	1,321. 78	De Lano, R. W.-----	1,443. 46
Beier, Martin-----	648. 18	Derkocht, Tom-----	39. 47
Bougas, John-----	916. 35	Dyce, Jack-----	569. 31
Box, James-----	2,359. 78	Erickson, S. O.-----	1,289. 54
Bickar, A. M.-----	1,649. 82	Farlas, Sam-----	1,211. 26

SCHEDULE A--Continued

Fitzhugh, J. R.....	\$355.49	Noble, Claude.....	\$563.40
Fox, Orra.....	483.73	Oppelt, Jack.....	1,997.80
Gilham, Hugh.....	892.59	Page, J. A.....	1,376.53
Gish, Jess.....	842.80	Pannell, George.....	1,065.49
Goyette, Myron.....	904.05	Parnel, John	1,267.00
Greear, A. M.....	1,435.89	Peterson, Louis J.....	2,680.96
Greear, J. W.....	2,208.96	Pierpoint, C. W.....	621.29
Gunder, F. P.....	1,379.70	Pier, O. D.....	1,212.62
Hammond, C. P.....	210.50	Pihl, Alfred.....	74.85
Hammond, M. S.....	716.30	Plumb, H. E.....	680.83
Hatch, W. B.....	1,330.13	Plumb, O. B.....	1,557.65
Hawkins, Jess.....	2,043.97	Powell, D. A.....	235.93
Hearn, Roy.....	808.71	Powell, J. W.....	1,986.33
Hegdahl, Waldemar.....	246.13	Powell, Walter.....	2,455.26
Hemenway, Louis.....	1,702.17	Prill, A. A.....	224.45
Henricksen, Andrew P.....	745.12	Ragen, Fred.....	1,264.08
Hobensack, T. F.....	230.66	Ragen, Vital.....	832.90
Hope, Ted.....	814.26	Raish, Lawrence.....	1,727.80
Hunt, John.....	3,019.42	Reed, M. E	381.03
Jacobsen, Martin.....	1,451.11	Rogers, A. L.....	1,341.51
Jacox, Ivan.....	713.76	Ronquist, Herbert.....	276.63
James, George.....	692.00	Ronquist, Sixten.....	1,329.89
Jeffries, L. B.....	911.78	Ronquist, William.....	397.03
Jeffries, O. B.....	1,886.98	Ruth, C. L.....	384.50
Johnson, A. C.....	1,818.95	Schaeffer, E. C.....	1,291.51
Johnson, John.....	277.11	Schutti, Joe.....	854.28
Johnson, S. O.....	2,067.00	Shepherd, Earl.....	908.59
Jones, Gordon.....	463.60	Skinner, J. W.....	597.40
Katyrynuk, Joe.....	1,024.34	Smoots, Harry.....	827.90
Kerr, Sid.....	1,035.61	Spence, R. L.....	1,852.97
King, James.....	800.13	Stewart, Stanley.....	2,609.72
Kulas, Frank.....	808.12	Strasser, George.....	890.85
Lambros, Pete.....	1,890.85	Strasser, Richard.....	614.49
La Pine, F. A.....	2,734.51	Sutphin, Ed.....	2,609.96
La Pine, J. B.....	1,559.86	Sweltzer, J. P.....	1,516.65
La Pine, R. D.....	2,190.28	Sweitzer, R. E.....	750.56
Linder, Alex.....	181.85	Swerhun, Fred.....	99.09
Locke, Ed.....	1,330.33	Thayer, Harold.....	724.25
Looney, H. R.....	206.50	Thayer, Howard.....	1,010.05
Madden, Joe.....	246.09	Trueman, Dave.....	1,867.21
Marsh, O. W.....	17.59	Wallace, Dave.....	1,777.00
McChesney, Ray.....	795.35	Westerman, C. J.....	988.99
McCracken, S.....	463.99	White, Roscoe.....	1,161.49
McDonald, Henry.....	1,300.56	Wilson, Everett.....	264.78
McIntyre, Fred.....	851.24	Wilson, George.....	1,595.05
Miller, Henry.....	1,076.78	Wisner, Louis.....	1,449.78
Miller, Manson.....	235.13	Wood, B. F.....	1,299.08
Miller, S. A.....	1,262.63	Wolhaupt, C. M.....	2,282.40
Misner, R. V.....	2,935.20	Wright, A. G.....	1,070.51
Morris, B. L.....	567.20	Wright, Wesley.....	720.51
Nelson, Alex.....	222.42	Zandecki, John.....	1,004.89
Nelson, Fritz.....	429.50		