

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

*Case No. C-93*

*Lumber Industry—Regular and Substantially Equivalent Employment: factors considered: loss of seniority rights.*

*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

*May 21, 1938*

STATEMENT OF THE CASE

On March 3, 1938, the National Labor Relations Board, herein called the Board, issued a Supplementary Decision and Order<sup>1</sup> in the above-entitled case, directed to Carlisle Lumber Company, Onalaska, Washington, herein called the respondent. The Supplementary Decision stated that there was insufficient evidence on which to make findings of the amounts of back pay due to certain of the employees against whom the respondent had been found to have discriminated. On application by the Board for leave to adduce additional testimony, the United States Circuit Court of Appeals for the Ninth Circuit, herein called the Circuit Court, on March 28, 1938, made the following order:

The motion of the National Labor Relations Board for permission to adduce additional evidence and to make supplementary findings covering the back pay of individual employees of the Carlisle Lumber Company, who were not included in its report heretofore made, is granted. The hearings are to be begun as soon as possible and the evidence is to be taken and certified within sixty days from this date. The evidence shall be

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<sup>1</sup> 5 N. L. R. B. 776.

confined to the period prior to February 1, 1938, and shall apply only to the employees not covered by the report of the supplementary hearing above referred to.

Pursuant to said order, the Board on April 7, 1938, ordered that a hearing be held for the purpose of taking the evidence as required. On April 11, 1938, the Acting Regional Director for the Nineteenth Region issued a notice of hearing, copies of which were served upon the respondent, upon its counsel, and upon the Union. Pursuant to the notice, a hearing was held on April 18 and 19, 1938, at Chehalis, Washington, before Thomas S. Wilson, 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, to introduce evidence bearing on the issues was afforded all parties. During the course of the hearing, exceptions were taken by the respondent and by the Union to various rulings of the Trial Examiner on motions and on objections to the admission of evidence. The Board has reviewed these rulings and finds that no prejudicial errors were committed. The rulings of the Trial Examiner are hereby affirmed.

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

#### FINDINGS OF FACT

In our Supplementary Decision we stated that some of the employees who testified at the supplementary hearing had apparently obtained regular and substantially equivalent employment by the date of our order of September 26, 1936. No findings were made for these persons.

All the employees falling within this class, who testified at the present hearing, indicated their desire to return to their former positions with the respondent company. The evidence also indicates that they have lost valuable seniority rights, in some cases as much as 10 years, which they would have retained had they continued in the employ of the respondent.

We find, therefore, that these individuals did not have regular and substantially equivalent employment at the time of the Board's order of September 26, 1936.

At the hearing, the Board introduced in evidence a chart<sup>2</sup> prepared by the respondent showing the hours of operation by the respondent from July 29, 1935, through January 31, 1938. A further exhibit<sup>3</sup> 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

<sup>2</sup> Board Exhibit No. 4.

<sup>3</sup> Board Exhibit No. 5.

of the Union employees would have worked and the amount each would have earned, if working for the respondent between July 29, 1935, and January 31, 1938. For certain individuals whose names were not on those charts introduced as exhibits, oral testimony as to hours and rates of pay was given by an officer of the respondent. From this testimony, we were able to compute the estimated amounts these employees would have earned if employed by the respondent from July 29, 1935, to February 1, 1938.

For the reasons set forth in our previous Decision, deductions must be made from the amount of estimated earnings for sums actually earned by the employees at other jobs between July 29, 1935, and January 31, 1938.

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 pay is 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.

Certain employees coming within the scope of our original order of September 26, 1936, have 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 respondent's offer of reinstatement to them back pay may become due.

#### ORDER

Upon the basis of the above findings of fact and of the findings of fact heretofore made in this case, 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.

## SCHEDULE A

Eli Backlin-----	\$55 85
Edward J. Corbett-----	196 07
Meryl Duprey-----	395. 13
J. B. Jacobsen-----	1, 103. 98
John Ketchum-----	3, 080. 16
Dewey Locke-----	466. 13
John Markow-----	833. 52
Pete Pinzak-----	1, 275. 26
Nick Preonas-----	506. 85
Charles Maynard Robinson-----	399. 11
Ivar Runquist-----	666. 75
Arthur Westling-----	319. 70

[SAME TITLE]

## AMENDMENT TO SUPPLEMENTARY DECISION AND ORDER

*June 9, 1938*

On March 3, 1938, and May 21, 1938, the Board issued Supplementary Decisions and Orders in the above-entitled case.

In neither of these decisions was an award made to Steve Tsaknakis. The evidence presented at the hearing held from February 1 to February 4, 1938, established that he was a member of the Union on July 29, 1935, that he went out on strike with the other employees, and that he had not obtained regular and substantially equivalent employment elsewhere at the time of our order of September 26, 1936. At that hearing he testified that he had earned \$1,242.89 at other jobs from July 29, 1935, to February 1, 1938.

At the hearing held April 18 and 19, 1938, it was admitted by an officer of the respondent that Tsaknakis was an employee of the Carlisle Lumber Company and that his name had been inadvertently omitted from the exhibit<sup>1</sup> introduced at the first supplementary hearing showing the estimated earnings of the various employees had they been employed at Carlisle. Evidence was then presented showing that his estimated earnings would have amounted to \$2,316.35. Deducting from this the sum of \$1,242.89 actually earned, there remains a loss of pay to February 1, 1938 of \$1,073.46.

We find that Steve Tsaknakis was employed by the respondent on May 3, 1935, struck on that date or thereafter, was a member of the Union on July 29, 1935, and had not obtained regular and substantially equivalent employment elsewhere at the time of our order of September 26, 1936, which directed that he be offered reinstatement. We find that back pay is due to Tsaknakis under the order heretofore made by the Board, and we find that the amount of

<sup>1</sup> Board Exhibit No. 3 at the hearing of February 1 to 4, 1938.

back pay due to him for the period up to February 1, 1938, pursuant to that order is \$1,073.46.

The Board, therefore, hereby amends its Supplementary Decision and Order of May 21, 1938, by inserting in schedule "A" thereof the following:

Steve Tsaknakis..... \$1, 073. 46

MR. EDWIN S. SMITH took no part in the consideration of the above Amendment to Supplementary Decision and Order.