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Labor Law—Railway Labor Act as Amended—Statutory Construction—The Extra-Territorial Effect Thereof.—Air Lines Stewardesses, Etc., Ass'n v. Northwest Airlines, Inc.

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doctrine,[7] which requires that for enforcement of an agreement to arbitrate the court must not only be satisfied that the dispute is covered by the agreement but also that the claimed subject of arbitration is bona fide and reasonable. The dissent, in the instant case, discussing both the construction of the pension plan and whether the dispute was bona fide under such a construction applied the requisites set out by *Cutler Hammer*. In recent years the *Cutler Hammer* doctine has not been strictly followed and a group of cases have either distinguished the doctrine or failed to apply its reasoning.[8] The instant case, by failing to mention the bona fides of the claim, still further departs from the *Cutler Hammer* doctrine.

The court seems to reach a reasonable and just result in the face of contrary prevailing opinion. It is encouraging to note that the common sense concepts behind collective bargaining are becoming more controlling in labor arbitration litigation than the rigid formalism applied in the general area of contract law. It is submitted that an adherence to the *Cutler Hammer* doctrine would slow down arbitration processes by refusing to allow the arbitrator to proceed immediately with settlement of the dispute, and thereby defeat the basic purpose of arbitration.

PAUL D. SCANLON

Labor Law—Railway Labor Act as Amended[1]—Statutory Construction —The Extra-Territorial Effect Thereof.—*Air Lines Stewardesses, Etc., Ass'n v. Northwest Airlines, Inc.*[2]—The Air Line Stewardesses Association International is the certified bargaining agent for employees of Northwest Airlines hired or performing their duties within the United States and its territories.[3] In a proceeding by the union to impeach[4] an arbitration

[7] International Association of Machinists v. Cutler Hammer Inc., 271 App. Div. 917, 67 N.Y.S.2d 317 (1st Dep't 1947), aff'd without opinion, 297 N.Y. 519, 74 N.E.2d 464 (1947); Botany Mills Inc. v. Textile Workers Union, 44 N.J. 504, 130 A.2d 900 (1957).

[8] Matter of Bohlinger and National Cash Register Company, 305 N.Y. 539, 114 N.E.2d 31 (1953); Matter of Teschner, 309 N.Y. 972, 132 N.E.2d 333 (1956); Matter of Potoker, 2 N.Y.2d 533, 141 N.E.2d 841 (1957).

[1] 49 Stat. 1189 (1936); 45 U.S.C. § 181 (1958) as amended to include common carriers by air engaged in interstate or foreign commerce.

[2] 267 F.2d 170 (8th Cir. 1959). cert. den. 36. U.S. 901 (1959).

[3] The Association was certified by the National Mediation Board under the Railway Labor Act, 44 Stat. 577 (1926); as amended 64 Stat. 1238 (1951); 45 U.S.C. §152 (1958).

[4] It is the Association's position that it be recognized as the collective bargaining agent of all employees hired by Northwest irrespective of the geographic location of operations or nationality of the employees, and that the Railway Labor Act as amended to include common carriers by air, confers upon the Association that right. The following is the pertinent language of the amendment:

> "All of the provisions of section 151, 152, and 154-163 of this title are extended to and shall cover every common carrier by air engaged in interstate or foreign commerce . . . and every air pilot or other person who performs any work as an employee . . . of such carrier . . ." 49 Stat. 1189 (1936); 45 U.S.C. § 181 (1958).

award issued by the National Mediation Board excluding foreign national employees from coverage under the collective bargaining agreement the United States District Court for the District of Minnesota denied the union's motion for summary judgment.[5] On appeal to the Circuit Court of Appeals for the Eighth Circuit sustained. Held: The Railway Labor Act as amended to include common carriers by air engaged in interstate or foreign commerce does not encompass foreign nationals employed by such carrier in the operations of flights between points outside the United States and its territories.[6]

The question of whether the amendment to the Railway Labor Act has any extra-territorial effect has been previously litigated.[7] The principal case represents one of two[8] recent attempts on the part of the union to obtain a more favorable interpretation of the Railway Labor Act. An examination of the amendment and pertinent provisions of the Railway Labor Act incorporated by reference appears to justify the interpretation of the amendment as pronounced by the courts. Clearly Congress could have worded the statute to operate extra-territorially,[9] but such was not Congress's intention.[10] Congress has been hesitant in influencing the labor standards of foreign nations.[11] In this reluctance one can see a danger that airlines which operate wholly or partially without the United States and its territories will employ foreign nationals on these segments of their flights to the exclusion of our own labor force. This was not the intention of Congress, but is a necessary effect from Congress' refusal to project the impact of its laws beyond the territorial boundaries of the United States. It would appear therefore, that, "the desirability of having the Railway Labor Act applicable to all employees alike, whether they be hired in foreign territory for service be-

§ 151 of 45 U.S.C. which is incorporated into this amendment in turn incorporates the Interstate Commerce Act, 24 Stat. 379 (1887) as amended 72 Stat. 568 (1958); 49 U.S.C. § 1-27 (1958).

5 162 F. Supp. 684 (D. Minn. 1958).

6 Supra note 4. The court states that § 181 does not have its own independent definition of the words "every," "air carrier," and "employee" because § 181 incorporates by reference § 151 and § 151 in turn incorporates by reference the Interstate Commerce Act which limits the scope of § 181 to flights which take place within the United States and its territories.

7 In Air Line Dispatchers Association v. National Mediation Board, 89 App. D.C. 24, 189 F.2d 685 (1951), cert. den. 342 U.S. 849 (1951) at 690 the court held:

". . . the act does not extend to an air carrier and its employees located entirely outside the continental United States and its territories."

8 In Air Line Stewards and Stewardesses Association, International v. Trans World Airlines, Inc., 173 F. Supp. 369 (S.D.N.Y. 1959) at page 378 the court held:

"Appraising the statute (45 U.S.C. § 181) . . . the court concludes that the statute does not apply to foreign nationals, based abroad, and flying wholly without the continental limits of the United States and its territories."

9 Steele v. Bulova Watch Co., Inc., 344 U.S. 280 (1952); Foley Bros., Inc. v. Filardo 336 U.S. 281 (1949); Vermilya-Brown Co., Inc. v. Connell 335 U.S. 377 (1948).

10 Sen. Doc. No. 163, 83rd. Cong., 2nd Sess., Aviation Study 69-70 (1955).

11 Supra note 9.

tween foreign ports or otherwise . . . addresses itself to the congress and not to the courts."[12]

RONALD E. OLIVEIRA

Mortgages—Effect of a Nonjudicial Sale Under a Contractual Power on a Junior Federal Tax Lien.—*United States v. Bank of America Trust & Sav. Ass'n.*[1]—The plaintiff was a mortgagee under a deed of trust on certain corporate realty. Subsequent to the execution of the deed of trust the federal government liened the land for unpaid taxes. Upon the corporation's default on the mortgage obligation the property was sold under a power of sale contained in the deed of trust. Plaintiff, the purchaser, brought an action to clear the title of the tax lien pursuant to 28 U.S.C. § 2410 (1958).[2] The action was removed to the United States District Court for the Southern District of California where judgment was entered for the plaintiff. On appeal to the United States Court of Appeals for the Ninth Circuit, reversed. Held: a federal tax lien, even though junior to a mortgage, cannot be extinguished by a nonjudicial foreclosure of the mortgage under a power of sale, since federal statutes provided specific methods for the extinguishment of tax liens,[3] and foreclosure under a power of sale is not among those enumerated. Consequently the court is powerless to clear the title.

The instant case relies heavily on *Metropolitan Life Insurance Co. v. United States*,[4] in which the Court of Appeals for the Sixth Circuit held that once a federal tax lien attached to property it could not be removed except by prescribed statutory methods. Only in such manner can the government be said to have waived its sovereign immunity from suit. Therefore a judicial determination in a proceeding other than those prescribed would have no effect in determining the status of the government's lien when an attempt is being made to remove it.

Opposed to this doctrine is the holding of *United States v. Boyd*,[5] in which the Court of Appeals for the Fifth Circuit determined that the government, as a junior lien-holder, does not have to be made a party in foreclosure proceedings in those situations where state law does not require,

[12] 267 F.2d 170 at 178.

[1] 265 F.2d 862 (9th Cir. 1959), cert. granted 361 U.S. 811 (1959).

[2] "The United States may be named a party in any civil action or suit . . . in any state court having jurisdiction of the subject matter to quiet title, or for the foreclosure of a mortgage or lien upon real or personal property on which the United States has or claims a mortgage or other lien." 28 U.S.C. § 2410(a) (1958).

[3] In addition to 28 U.S.C. § 2410, supra note 1, see also 28 U.S.C. § 7424 (1958) (providing for a judicial proceeding in which the court will adjudicate the validity of all claims and where a valid lien of the government is found to exist, the court may at its discretion decree a resale), and 68A Stat. 781 (1954), as amended, 26 U.S.C. § 6325 (1958) (providing for an administrative hearing to discharge valueless liens).

[4] 107 F.2d 311 (6th Cir. 1939).

[5] 246 F.2d 477 (5th Cir. 1957).