

1956

# Karna Held v. American Linen Supply Company : Brief of the Appellant

Utah Supreme Court

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## IN THE SUPREME COURT

of the

STATE OF UTAH

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KARNA HELD,

*Respondent,*

Clerk, Supreme Court, Utah

VS.

Case No. 8513

AMERICAN LINEN SUPPLY  
COMPANY, a corporation,*Appellant.*

Appeal from the Third Judicial District Court,  
In and for Salt Lake County, State of Utah  
Honorable Martin M. Larson, District Judge

## BRIEF OF THE APPELLANT

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AMERICAN LINEN SUPPLY  
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*Appellant.*

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Appeal from the Third Judicial District Court,  
In and for Salt Lake County, State of Utah  
Honorable Martin M. Larson, District Judge

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BRIEF OF THE APPELLANT

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INTRODUCTION

This cause is before this Honorable Court pursuant to its Order (R. 23) dated April 25, 1956, granting appellant's (defendant below) Petition for Interlocutory Appeal (R. 25-36) from the Order of the District Court (R. 21) denying appellant's Motion to Dismiss (R. 18). (The citation "R." followed by a number refers to pages of the Record on Appeal).

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INTRODUCTION

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## STATEMENT OF FACTS

Respondent (plaintiff below), a former employee of the appellant, brought this action in the Third District Court in and for Salt Lake County, State of Utah, alleging that appellant had discharged her in breach of contract, and seeking damages in the amount of \$31,900.00 for that breach (R. 1-3). Specifically respondent alleged:

That on the 2nd day of December, 1954, defendant discharged plaintiff and terminated her employment relationship. That said discharge was without good and sufficient cause and was *in violation of the terms and conditions of the collective bargaining agreement* between defendant and the Amalgamated (sic) Clothing Workers of America, local union No. 562. (Paragraph IV of Complaint, R. 2, emphasis added).

Respondent had been employed by appellant for several years as a press operator. She was a member of the Amalgamated Clothing Workers of America, Local Union No. 562, (R. 1, 4), which union had entered into a written collective bargaining agreement with appellant covering certain terms and conditions of employment for certain job classifications at appellant's Salt Lake City plant, including the job classification in which respondent was employed (R. 44-48). A copy of that collective bargaining agreement is printed beginning at page 20 of



the Appendix to this brief for the convenience of the Court.

It is undisputed that at the time of her discharge by appellant on or about December 2, 1954 said collective bargaining agreement was in full force and effect, and that respondent's job-classification was covered thereby (R. 11).

Respondent protested her discharge, and the union, on her behalf and with her knowledge, consent, and participation, submitted the grievance to arbitration before William H. Leary, agreed upon by the union and appellant as sole arbitrator, upon the following issue, to-wit:

Was the discharge of Karna Held on December 2nd, 1954, by the Company in violation of Article III of the contract between the parties? (R. 50).

Article III of the contract reads as follows:

### ARTICLE III DISCRIMINATION

The Company agrees not to suspend, discipline, discharge or discriminate against any employee for lawful union activities. (R. 44, Appendix p. 21).

The arbitrator, after hearing testimony adduced by both the appellant and the union, made his written decision on April 4, 1955 in which he answered the issue submitted in favor of appellant, saying:

2. The discharge of Karma (sic) Held on December 2, 1954, by the Company *was not* in violation of Article III of the Contract between the parties. (R. 55, emphasis added).

Consequently it is clear that respondent cannot rely here on an alleged violation of Article III of the contract. In fact it has been stipulated that the question of a violation of Article III is not an issue in this case. (R. 43).

Appellant answered respondent's complaint, alleging that it failed to state a claim upon which relief could be granted, and denying that respondent's discharge was without just cause, or that it was in violation of the collective bargaining agreement (R. 4, 5).

The case came on for Pre-Trial Hearing before the Honorable Martin M. Larson, District Judge, on January 28, 1956 (R. 19) (the Pre-Trial Order reciting February 28, 1956 is in error) at which time appellant filed its written Motion to Dismiss (R. 18). The Trial Court took the matter under advisement and after considering the written memoranda and arguments of both parties the Trial Court made and entered its written Order dated March 6, 1956 (R. 21), wherein it denied appellant's Motion to Dismiss, holding that:

1. The Master Labor Agreement between the defendant and the union, *even in the*

*absence of an express provision so providing, gives to each employee covered thereby a right to continuing employment which cannot be terminated by the defendant as employer except for just cause.*

2. Any employee working under such a labor agreement has the right to a jury trial on the issue of whether or not his discharge was for just cause. Consequently plaintiff has a right to maintain this action. (R. 21, 22, emphasis added).

A copy of that Order is printed beginning at page 29 of the Appendix to this brief for the convenience of the Court.

Pursuant to Rule 72 (b), Utah Rules of Civil Procedure, appellant thereupon duly filed in this Honorable Court its Petition for Interlocutory Appeal from said Order (R. 25-29). Said petition was granted by this Honorable Court on April 25, 1956 (R. 23).

## STATEMENT OF POINTS

### POINT I

THE TRIAL COURT ERRED IN MAKING AND ENTERING ITS ORDER DATED MARCH 6, 1956 IN WHICH IT: (a) HELD THAT THE MASTER LABOR AGREEMENT BETWEEN THE APPELLANT AND THE UNION, EVEN IN THE ABSENCE OF AN EXPRESS PROVISION SO PROVIDING, GIVES TO EACH EMPLOYEE COVERED THEREBY A RIGHT TO CONTINUING EMPLOYMENT WHICH CANNOT BE TERMINATED BY THE APPELLANT AS EMPLOYER EXCEPT FOR JUST CAUSE; (b) HELD THAT ANY EM-

PLOYEE WORKING UNDER SUCH A LABOR AGREEMENT HAS THE RIGHT TO A JURY TRIAL ON THE ISSUE OF WHETHER OR NOT HIS DISCHARGE WAS FOR JUST CAUSE; (c) DENIED APPELLANT'S MOTION TO DISMISS THE COMPLAINT.

## ARGUMENT

Respondent has alleged that her discharge by appellant was "without good and sufficient cause" and was "in violation of the terms and conditions of the collective bargaining agreement" (R. 2). Appellant strongly contends that it did have just cause for discharging respondent. However, for purposes of this appeal, it is immaterial whether or not such just cause actually and in fact did exist, as will be developed in the following argument.

### 1. Basic Concepts of the Employer-Employee Relationship.

In a free country employment is a relationship which depends upon mutual consent of the employer and the employee. It may be described as a contractual relationship, terminable at will under the common law. No free man can be compelled to work for another against his will, and an employer has the unquestioned right to discharge or lay off employees at will, except insofar as this right has been restricted by statute or bargained away by contract. As the Maryland Court of Appeals has so aptly put it:

"\* \* \* when not bound by contract, every free man has a natural right to work for

whom he pleases, and to cease to work when he chooses, without liability on his part to the employer. To enforce the opposite view would lead to the establishment of involuntary servitude. Every employer must recognize this right on the part of the employees, and, if by such action loss results, it is *damnum absque injuria*. *The employer has the same undoubted right, when not prevented by contract, to discharge the employees*, which may, and in many cases does, result in loss and injury to the employee and those dependent upon him; yet this loss and injury, too, must be suffered by the employee without being able to maintain an action therefor against the employer.” *Bricklayers, M. & P. Int. Union v. Ruff & Sons, Inc.* (Md. 1931) 160 Md. 483, 154 Atl. 52, 83 ALR 448, 456, (emphasis added).

The text writers have stated the rule as follows:

“In the absence of something in the contract of employment to fix a *definite term of service*, or *other contractual provision to restrict the right of the employer to discharge*, or some statutory restriction upon this right, *an employer may lawfully discharge an employee at what time he pleases and for what cause he chooses without thereby becoming liable to an action against him.*” (35 Am. Jur. 469, Master and Servant, Section 34, citing numerous cases. Emphasis added).

See also 56 C.J.S. 411, Master and Servant, Sec. 29 and cases cited therein.

This right of an employer to discharge at will has been said to be “a constitutional right of the



utmost importance". *N.L.R.B. v. Citizens News Co.* (CA 9th 1943) 134 F.2d 970. And another court has said an employee "may be discharged by the employer for a good reason, a poor reason, or no reason at all, so long as the terms of the statute are not violated." *N.L.R.B. v. Condenser Corp.* (CA 3rd 1942) 128 F. 2d 67, 10 LRRM 483.

As has been stated above, an employer's otherwise complete and absolute right to discharge without liability for so doing can be limited by statute or by contractual provision. The typical limitation imposed by state and federal labor laws is that an employer may not discharge because of lawful union activity on the part of an employee. It should be noted that this same limitation is also imposed upon the appellant here by the terms of Article III of the Master Labor Agreement (R. 44, Appendix p. 20). However, it is stipulated in this case that there is no question of a violation of Article III herein involved.

## **2. Collective Bargaining Agreements and Employment Contracts Distinguished.**

There is a basic difference between a collective bargaining agreement and an employment contract. The former is typically an agreement in writing between an employer and a union which sets forth certain terms and conditions for the job classifica-

tions covered thereby. Ordinarily the individual employees are not parties thereto, although they benefit directly therefrom, and in several jurisdictions they can directly enforce the provisions thereof, usually under the theory of third party beneficiary. A collective bargaining agreement usually does not create or specify definite tenure of employment for the individual employees, but merely provides that in the event employees work in the job classifications covered by the agreement that the terms therein contained shall be applied. Generally such agreements in effect establish minimums as to wages and other conditions below which an employer cannot go.

On the other hand, an employment contract is ordinarily between an employer and the individual employee. While it may be written, it is most generally oral. It is the device by which the actual hiring is accomplished and the employer-employee relationship is established. It is this individual employment contract, generally which creates the job tenure, if any in fact exists. Such individual employment contracts or hirings are of course subject to and entitled to the benefits of the collective bargaining agreement if one exists. Mr. Justice Jackson, in speaking for the United States Supreme Court, has stated it in this manner:

“Contract in labor law is a term the implications of which must be determined from



the connection in which it appears. Collective bargaining between employer and the representative of a unit, usually a union, results in an accord as to terms which will govern hiring and work and pay in that unit. The result is not, however, a contract of employment except in rare cases; *no one has a job by reason of it and no obligation to any individual ordinarily comes into existence from it alone.* The negotiations between union and management result in what often has been called a trade agreement, rather than a contract of employment. Without pushing the analogy too far, the agreement may be likened to the tariffs established by a carrier, to standard provisions prescribed by supervising authorities for insurance policies, or to utility schedules of rates and rules for service, which do not of themselves establish any relationships but which do govern the terms of the shipper or insurer or customer relationship whenever and with whomever it may be established.

\* \* \* \*

“After the collective trade agreement is made, the individuals who shall benefit by it are identified by individual hirings. *The employer, except as restricted by the collective agreement itself and except that he must engage in no unfair labor practice or discrimination, is free to select those he will employ or discharge.* But the terms of the employment already have been traded out. There is little left to individual agreement except the act of hiring. This hiring may be by writing or by word of mouth or may be implied from conduct. In the sense of contracts of hiring, individual contracts between the employer and

employee are not forbidden, but indeed are necessitated by the collective bargaining procedure." *J. I. Case Company v. N.L.R.B.* (U.S. Sup. Ct. 1944) 321 U.S. 332; 64 S. Ct. 576; 88 L. Ed. 762; 14 LRRM 501, 503, emphasis added.

### 3. Contractual Limitations on Appellant's Right to Discharge.

#### (a) Term of Employment

The general rule is that a general or indefinite hiring is *presumed* to be a hiring at will (56 C.J.S., Master and Servant, Section 8 (b)), and in the absence of express stipulations as to duration a contract of employment may be terminated at the will of either party without cause and without liability to the other for such termination. *Culver v. Kurn* (Missouri 1946) 193 SW 602, 166 A.L.R. 644. The rule goes even further, to the effect that even where the employment contract, without specifying a fixed duration, purports to be for life, or for permanent employment, where the employee furnishes no consideration other than his services incidental to the employment, such an employment contract amounts only to an indefinite general hiring, terminable at the will of either party, and that a discharge without cause does not constitute a breach of such contract as will justify recovery of damages. (Annotation: 135 A.L.R. 646, citing many cases including *Price v. Western Loan & Savings Co.* (Utah 1909)

35 U. 379, 100 Pac. 677). In the *Price* case this Honorable Court said:

“\* \* \* As hereinbefore observed, the contract, neither expressly nor impliedly, bound him to act as appellant’s attorney for any specified period of time. *Therefore it lacked the essential element of mutuality of obligation and was terminable at will by either party.*” (ibid, 100 Pac. 677, 680, emphasis added).

We submit that a cursory examination of the Master Labor Agreement between the appellant and the union will show that it does not constitute an agreement for a *definite term of service*. We submit that under the general rules, *supra*, the employment of the respondent was for an indefinite term and consequently could be terminated at the will of either appellant or respondent. She could have terminated her employment at any time without incurring any legal liability for such termination. We submit that the corollary of respondent’s right to terminate at any time is the right of appellant to terminate the employment at any time, for if this were not the case there would be no mutuality of obligation and consequently no legally enforceable agreement for continuing employment. *Price v. Western Loan & Savings Co.*, *supra*; *Swart v. Huston* (Kansas 1941) 117 P. 2d 579.

Since the Master Labor Agreement contains no

provision expressing or implying employment for a definite term the presumption is that respondent's employment was terminable at will and she must fail in her case unless the contract otherwise restricts appellant's right to discharge.

(b) Other Provisions of the Master Labor Agreement

Since the agreement does not provide for a definite term of employment, and since Article III of the agreement is not herein involved, the basic issue narrows itself to a search for some other provisions of the agreement upon which the Trial Court's Order may be justified. Such a search is fruitless, for of course there are no such provisions. It should be remembered that the burden is on respondent to show that the agreement gives her the right she seeks to enforce, that is, the right to continue employment for as long as she wants it. The agreement must affirmatively create respondent's right to continuing employment. Appellant's right to discharge exists unimpaired unless affirmatively taken away by the agreement.

A contractual provision which limits or restricts such a "constitutional right of utmost importance" (*Citizens News Co.* case, *supra*) must clearly show that such was the intent of the parties. There is no express provision which gives respondent the cause of action she seeks to enforce, and we submit

that there are no provisions from which such a limitation on appellant's right to discharge can be reasonably inferred or implied.

At the Pre-Trial hearing, respondent urged and relied upon the seniority provisions of the agreement. Those provisions do not support respondent's cause of action. Seniority rights arise solely by virtue of contract. They are not inherent, natural, or constitutional rights. *Colbert v. Railroad Trainmen* (CA. 9th 1953) 206 F. 2d. 9, 32 LRRM 2459; *Zdero v. Briggs Mfg. Co.* (Mich. 1953) 61 NW 2d 615, 33 LRRM 2405. In this regard the United States Court of Appeals for the Tenth Circuit has recently said:

*“Collective bargaining agreements creating a seniority system do not create a permanent status or give an indefinite tenure to employees. (Citing cases). Seniority among railroad employees is contractual and does not arise from mere employment. (Citing cases). Those who acquire seniority rights under a contract are bound by the possibility that the contract may be changed, and the rights thereunder revised or abrogated. (Citing cases). Employees have no vested right in the seniority created by contract and the Railway Labor Act does not undertake to guarantee them a job for life. The employer has the right to select and discharge them, so long as the collective bargaining processes are not impaired.” (Citing cases). McMullans v. Kansas, Okla., & Gulf Ry. (CA 10th 1956) 229 F.2d 50, 37 LRRM 2363, 2364.*

Where seniority rights do in fact exist as a result of contract they are not inconsistent with the employer's right to discharge. (56 C.J.S. 64, citing *Fine v. Pratt* (Texas) 150 S.W. 2d 308). Since they exist by virtue of contract only, seniority rights are only as broad as the express terms of the contract. The *only* language in the agreement here relating to seniority is as follows:

## ARTICLE VIII

### SENIORITY

The Company agrees in layoffs and re-hiring of employees to observe the principle of departmental seniority wherever reasonable in the light of efficiency. The Company, however, to be the judge of qualifications in such matters. In applying seniority, the Employer shall take into consideration length of service, merit and ability of the employee. (R. 46, Appendix p. 23).

Note that under the agreement seniority will apply *only in lay-offs and rehiring*s, and even in those cases *only when reasonable in the light of efficiency, the company to be the judge*. The term "lay-off" means a temporary or prolonged separation *as a result of lack of work*. (CCH Glossary of Labor Terms). No one contends that respondent was merely "laid off".

Respondent argues that the above seniority clause gives her the complete right to uninterrupted



job tenure until she is guilty of conduct constituting “just cause” for discharge. This argument does violence to the English language and to common sense and reason.

We submit that the provisions of the agreement individually and/or collectively do not constitute a contractual limitation upon appellant’s complete and absolute right to discharge. Above all, those provisions do not give to respondent “a right to continuing employment which cannot be terminated except for just cause” as the Trial Court held in its Order. The ruling of the Trial Court in effect adds an express restriction against discharge to every collective bargaining agreement by judicial fiat. It grants to each employee covered by such an agreement a substantial property right, permanent job tenure, all without the agreement or consent of the contracting parties. The ruling overturns the historical and heretofore unquestioned rights of employers which have always existed. It is extremely doubtful that such a rule would be constitutional if established by the legislature. For it to be established by the District Court is unthinkable.

#### 4. The Russell Case.

At the Pre-Trial respondent’s counsel cited the Utah case of *Russell v. Ogden Union Ry and Depot Co.*, (Utah 1952) ——Utah——, 247 P. 2d 257, as



being a Utah case supporting respondent's position. A cursory reading of it shows that contrary to the impression that counsel tried to create the Russell case does not support respondent's contention.

In the *Russell* case, Russell sued his employer for an alleged arbitrary and wrongful discharge, and recovered substantial damages in the trial court. This Honorable Court reversed the judgment for plaintiff and remanded the case for a new trial. The contract of employment relied on by Russell provided that:

“\* \* \* No yardman will be suspended or dismissed *without first having a fair and impartial hearing and his guilt established.*  
\* \* \*” (Emphasis added).

The case was reversed for certain errors in refusing to allow the employer to present evidence at the trial, and for errors with regard to damages.

Counsel for the respondent would equate the purposes clause and the seniority clause of appellant's agreement with the provision in the Russell case contract quoted above. To argue that this may be done is to ignore the plain meaning of the words used and to ignore all common sense and judgment. It would be difficult to conceive or draft a stronger or more complete limitation on an employer's right to discharge than is quoted in the Russell case. Under such a provision an employer must hold a hearing

and the guilt of the employee must be established before he can be discharged. The majority opinion in the Russell case says that *where such a provision existed* the employee established a prima facie case by proving such a contract, his performance thereof up to the time of his discharge, and damages. Then the burden falls upon the employer to prove justification for the discharge. But this rule as enunciated by the court is expressly *limited to cases where the contract has such a limitation on the right to discharge as was therein involved*.

*There is no such clause in the instant case.* The Russell case does not aid the respondent, nor justify the Trial Court's Order.

## CONCLUSION

1. At common law respondent has no cause of action, since appellant may discharge with or without cause and incur absolutely no liability therefor. This right to discharge remains complete and unabridged except insofar as it may be limited by statute or bargained away by contract.

2. Since no question of statutory limitation is involved, respondent must rely on breach of contract, which she has alleged. But the Master Labor Agreement herein neither grants to respondent job tenure for a definite or continuing period nor directly or indirectly limits or restricts appellant's right to dis-

charge. Consequently respondent's employment is terminable at will and there can be no liability on appellant for discharging her.

3. The Trial Court erred as a matter of law when it held that the Master Labor Agreement gave to respondent a right to continuing employment which could not be taken away except for just cause. Its Order constitutes highly improper judicial legislation.

The Order of the Trial Court should be reversed and the cause remanded with instructions to dismiss the complaint with prejudice.

Respectfully submitted

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APPENDIX  
M A S T E R  
A G R E E M E N T

THIS COLLECTIVE BARGAINING AGREEMENT, made and entered into this Ninth day of September, 1948, by and between the AMERICAN LINEN SUPPLY CO., Salt Lake City, Utah located at 35 East Sixth South, hereinafter referred to as the "Company", and the AMALGAMATED CLOTHING WORKERS LOCAL UNION #562, hereinafter referred to as the "Union"; WITNESSETH THAT: The parties hereto mutually agree as follows:

ARTICLE I  
OBJECTS

The objects of this agreement, and the aims and intentions which the parties are desirous of attaining are:

(a) To effectuate a spirit of fair dealings between employer and employee.

(b) To bring about and establish a high order of discipline and efficiency by the intelligent cooperation of employer and employee.

(c) To provide for adjustment of all matters subject to arbitration by procedure hereinafter set forth.

(d) To increase the standards of workmanship and conduct so as to insure a fair and proper quantity, quality and cost of production.

(e) To raise the standards of the linen supply industry in the City of Salt Lake and vicinity so that it may command the respect and increased patronage of the public.

## ARTICLE II

### NO STRIKE

It is agreed that strikes, lockouts and sympathy strikes and stoppage of work are prohibited, subject to arbitration under Article X hereof.

## ARTICLE III

### DISCRIMINATION

The Company agrees not to suspend, discipline, discharge or discriminate against any employee for lawful union activities.

## ARTICLE IV

### UNIT

The term "employees" as used in this agreement shall include: All employees of the American Linen Supply Co. at 35 East Sixth South, Salt Lake City, Utah, employed in the sewing department, soil sorting department, washing department, iron-

ing department, bundling department, shipping department, cafeterial department, shop department, garage department, and janitors, excluding supervisory employees with the power to hire or fire or to effectively recommend such hiring or firing, such as superintendent, floor walker, floor lady, chief engineer, washroom foreman, soil counter foreman, floor lady in the sewing department, head engineer, watchman, all office employees, all truck drivers and driver salesmen.

## ARTICLE V

### RECOGNITION

The Company hereby recognizes the Union as the collective bargaining agent as provided for by law with respect to the employees described in Article IV, the appropriate unit for the purposes of collective bargaining, with respect to wages and other working conditions.

## ARTICLE VI

### UNION SECURITY

All present employees covered by this contract shall become members of the Union not later than thirty (30) days following its effective date and shall remain members as a condition precedent to continued employment. This section shall apply to newly hired employees thirty (30) days from the date of their employment with the Company.



The foregoing section shall become effective after certification by the National Labor Relations Board issued in accordance with Section 8 (a-3-e) of the National Labor Relations Act as amended.

## ARTICLE VII

### CHECK-OFF

The Company agrees during the term of this agreement to accept written assignments from employees, executed and delivered in conformance with Section 49-14-1, Utah Code Annotated 1943, and the Labor Management Act of 1947 as amended.

## ARTICLE VIII

### SENIORITY

The Company agrees in lay-offs and rehiring of employees to observe the principle of departmental seniority wherever reasonable in the light of efficiency. The Company, however, to be the judge of qualifications in such matters. In applying seniority, the Employer shall take into consideration length of service, merit and ability of the employee.

## ARTICLE IX

### TRANSFER TO LOWER JOB CLASSIFICATION

If the Company temporarily transfers an employee to a lower job classification, because of emergency, the employee will not suffer a reduction in



his wage rate until such time as the Employer shall notify the Union or the employee that the transfer is permanent.

## ARTICLE X

### ARBITRATION

All controversies as to the interpretation and application of this Master agreement that cannot be settled by the representative of the Employer and the Union, within the period of one week from the date that the grievance is called to the attention of the other party in writing, shall submit the matter for decision to a Board of Arbitration to be constituted as hereinafter set forth:

- (a) The Employer and the Union shall each select an arbitrator within forty-eight (48) hours, and the two thus chosen shall select a third impartial arbitrator. In the event that the two so chosen are unable to agree upon a third member within forty-eight hours, then it is understood and agreed that the matter in controversy shall then be immediately submitted to the American Arbitration Association for settlement by appointment of an arbitrator and a hearing in accordance with the procedure of said Association.
- (b) Any and all decisions made in accordance with the procedure hereof set forth shall be binding upon parties to this agreement. Failure to abide by such decisions shall be considered a breach of this agreement and

the Union or Employer shall be free to enforce such decision by such action as it seems appropriate, anything under Article II to the contrary notwithstanding.

The parties hereto agree that the expenses and fee of the third member or the American Arbitration Association shall be borne equally.

## ARTICLE XI

### ACCESS TO PLANT TO INVESTIGATE GRIEVANCES

A representative of the Union shall have access to the plant for the purpose of investigating grievances or disputes. However, he must first receive permission from the plant manager or his representative.

## ARTICLE XII

### SHOP STEWARD

The Company agrees to recognize a shop steward for the upstairs division and one for the downstairs division. These two stewards, together with the President of the Union, shall constitute the grievance committee.

## ARTICLE XIII

### LEAVE OF ABSENCE

Leave of absence may be granted, without pay, for personal reasons for a period not to exceed thirty

(30) days upon written application of the employee and the approval of the Company. Any leave of absence extending over thirty (30) days shall be in writing and may be extended for an indefinite length of time upon agreement between the Company and the employee, with the approval of the Union.

Employees selected to a Union position by the Union to do work which takes him from his employment with the company, shall, upon written request of the Union, receive temporary leave of absence for the period of his service with the Union for the duration of this agreement, and upon his return shall be re-employed at work in line with his seniority status in the classification in which he was engaged last prior to his leave of absence.

## ARTICLE XIV

### UNIFORMS

All uniforms and protective clothing now furnished by the Company shall be continued and maintained for the life of this agreement. There shall be no change in medical or insurance plans.

## ARTICLE XV

### MATERNITY LEAVE

It is agreed that any female employee requesting leave of absence in maternity cases shall be granted such leave without loss of seniority.

## ARTICLE XVI

### TERMINATION

This Master Agreement shall remain in force and effect from date hereof, to and including the 8th day of September, 1957. On or before sixty (60) days prior to the expiration date of this Master Agreement, either party may give written notice of its desire to change, modify or terminate this Master Agreement or any portion thereof. In the event that either party or both desire to modify or change the same, then and in that event the parties shall meet immediately after receiving such notification, for the purpose of discussing such changes or modifications. In the event of the failure of the parties to agree as to any such proposed changes or modifications, either of the parties to this agreement may at any time during such negotiations express its desire to have the matters submitted to arbitration as provided for in Article X. In the event that such notice is given by either party, the matters then in dispute at the time of receiving such notice shall be submitted to arbitration as provided for herein.

The parties agree that during such arbitration or negotiations, there shall be no lock-out, strikes, slow downs or work stoppages.

It is further understood and agreed that in the event that it shall be determined by the National

Labor Relations Board or a Federal Court of competent jurisdiction, that the period of time agreed to for the duration of this contract is an unreasonable length of time, then and in that event it is understood and agreed that this contract shall continue in force and effect for what such agency or court determines to be a reasonable length of time.

IN WITNESS WHEREOF, the parties have affixed the signatures of their authorized representatives this 14th day of Sept., 1948.

AMERICAN LINEN SUPPLY CO.  
(SALT LAKE CITY, UTAH)

BY /s/ F. G. Steiner, Pres.

/s/ O. A. Knapp, Sec'y

AMALGAMATED CLOTHING  
WORKERS LOCAL UNION  
#562

BY /s/ Arthur J. Christensen,  
Pres.

/s/ Henrietta June Davis,  
Sec.

/s/ Frank Bonacci  
CIO Regional Director

In the  
THIRD JUDICIAL DISTRICT COURT  
in and for Salt Lake County  
STATE OF UTAH

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KARNA HELD,

*Plaintiff,*

vs.

AMERICAN LINEN SUPPLY  
CO., a corporation,

*Defendant.*

ORDER  
Civil No.  
105216

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This matter came on regularly for pre-trial hearing on Saturday, January 28, 1956 before the Honorable Martin M. Larson, one of the Judges of the above entitled Court. Plaintiff was represented by her counsel, Dwight L. King, and defendant being represented by its counsel, Peter W. Billings, Louis H. Callister, and Nathan J. Fullmer. Defendant filed its written motion to dismiss alleging that the pleadings, together with plaintiff's answer to defendant's interrogatories and defendant's requests for admissions, showed that plaintiff did not have a claim against defendant upon which relief can be granted.

The Court heard the arguments of counsel, received written briefs of counsel for both sides, and reviewed a copy of the Master Labor Agreement between the defendant and a labor union, which copy was furnished by the parties, under which plaintiff's rights must be determined. For the purpose of ruling on defendant's motion to dismiss the legal issue which must be determined by the Court is whether or not the Master Labor Agreement prohibits the defendant from discharging its employees without just cause.

The Court, having considered the provisions of the contract as well as the arguments and briefs of counsel, and being fully advised in the premises now rules as follows:

1. The Master Labor Agreement between the defendant and the union, even in the absence of an express provision so providing, gives to each employee covered thereby, a right to continuing employment which cannot be terminated by the defendant as employer except for just cause.

2. Any employee working under such a labor agreement has the right to a jury trial on the issue of whether or not his discharge was for just cause. Consequently plaintiff has a right to maintain this action.



3. Defendant's motion to dismiss is, accordingly, denied.

4. This case is set for jury trial on Friday, April 13, 1956.

Dated this 6th day of March, 1956.

/s/ MARTIN M. LARSON  
JUDGE