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Karna Held v. American Linen Supply Company : Brief of Respondent

Utah Supreme Court

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Dwight L. King; Attorney for Plaintiff and Respondent;

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Case No. 8513

IN THE SUPREME COURT

of the **FILED**
STATE OF UTAH OCT 15 1956

Clerk, Supreme Court, Utah

KARNA HELD,

Plaintiff and Respondent,

—vs—

AMERICAN LINEN SUPPLY COM-
PANY, a corporation,

Defendant and Appellant.

RESPONDENT'S BRIEF

DWIGHT L. KING

Attorney for Plaintiff & Respondent

TABLE OF CONTENTS

	Page
PRELIMINARY STATEMENT	1
STATEMENT OF FACTS	1
STATEMENT OF POINTS	8
POINT I. THE MASTER AGREEMENT BETWEEN AMERICAN LINEN SUPPLY CO. AND AMALGA- MATED CLOTHING WORKERS LOCAL UNION 562 GRANTS TO THE WORKERS OF AMERICAN LINEN SUPPLY COMPANY A RIGHT TO CONTINUING EMPLOYMENT WHICH CAN ONLY BE TERMI- NATED FOR JUST CAUSE	8
POINT II. THE ARBITRATOR'S OPINION INTERPRETED AND APPLIED THE MASTER AGREEMENT AND IS BINDING UPON BOTH PARTIES TO THIS ACTION, IT DETERMINED THAT PLAINTIFF HAD A CONTINUING RIGHT OF EMPLOYMENT TERMI- NABLE ONLY FOR JUST CAUSE.	8
ARGUMENT	8
POINT I. THE MASTER AGREEMENT BETWEEN AMERICAN LINEN SUPPLY CO. AND AMALGA- MATED CLOTHING WORKERS LOCAL UNION 562 GRANTS TO THE WORKERS OF AMERICAN LINEN SUPPLY COMPANY A RIGHT TO CONTINUING EMPLOYMENT WHICH CAN ONLY BE TERMINATED FOR JUST CAUSE.	8
POINT II. THE ARBITRATOR'S OPINION INTERPRETED AND APPLIED THE MASTER AGREEMENT AND IS BINDING UPON BOTH PARTIES TO THIS ACTION, IT DETERMINED THAT PLAINTIFF HAD A CONTINUING RIGHT OF EMPLOYMENT TERMI- NABLE ONLY FOR JUST CAUSE.	26
CONCLUSIONS	29

TABLE OF CONTENTS—(Continued)

Page

AUTHORITIES CITED

Bivons v. Utah Lake, Land, Water, and Power Co. 53 Utah 601, 174 P 1126	28
Gionnopulos v. Pappas 80 U. 442 15P2d 353	28
Inland Steel Co. v. National Labor Relations Board of United Steel Workers of America, C.I.O. et al, v. National Labor Relations Board, 170 F.2d 247	20
Jacob v. Pacific Export Lumber Co. 136 Or. 622, 297 P 848	28
Lee Farris v. Alaska Airlines Inc., 32 L.A. 3547	19
National Labor Relations Board v. Ford, et al, 170 F.2d 735	24
National Labor Relations Board v. Superior Co., 199 F.2d 39	24
National Licorice Co. v. National Labor Relations Board, 309 U.S. 350, 60S.Ct. 569	19
Russell v. Ogden Union Railway and Depot Company,	
U..... 247 P.2d, 257	11
Pilot Freight Carriers, Inc., International Brotherhood of Team- sters, Chauffers, Warehousemen and Helpers of America, C.I.O. 391, A.F.L., No. 1, June 21, 1954, 22 L.A. 761	18
Standard Oil Company & Central States Petroleum Union, Western Michigan Petroleum Association, Local 103, Case No. 50A-129, April 12, 1950, 14 L.A. 516	16
The Atwater Manufacturing Company, United Steel Workers of America Local 3456, C.I.O., Case No. 133-4950-150, December 7, 1949, 13 L.A. 747	12, 14
Utah Construction Co. v. Western Pacific Railroad Company 174 Cal 156, 162P 631; 2 R.C.L. 389	28
Whitney Chain Company, United Automobile Aircraft and Agri- cultural Implement Workers of America, Local 199, C.I.O., Case No. 5354-705, March 16, 1955, 24 L.A. 385	17

IN THE SUPREME COURT of the STATE OF UTAH

KARNA HELD,

Plaintiff and Respondent,

—vs—

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PANY, a corporation,

Defendant and Appellant.

Case No.
8513

RESPONDENT'S BRIEF

PRELIMINARY-STATEMENT

All Italics are ours throughout this brief. The Plaintiff and Respondent will be referred to as plaintiff. Defendant and Appellant will be referred to as defendant.

STATEMENT OF FACTS

Respondent accepts the statement of facts contained in the brief of the Appellant as far as it recites the procedural matters which have occurred before the trial court. However, there are many important details of the Master Agreement and of the Arbitrator's opinion which were

not discussed in the statement of facts and which Respondent believes should be contained in a statement of facts.

The collective bargaining agreement appears at pages 44-48 of the record. It is a typical collective bargaining agreement with many of the objects and articles which are commonly found in such agreement.

One of the most important portions of the agreement is contained in Article I. There the agreement states that:

“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 dealing between employer and employee.

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

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

Article II of the agreement contains a no strike clause; Article III contains a provision that the company will not suspend, discipline, discharge or discriminate against any employee for lawful union activities. Article IV describes the employees and the portions of the employers business which shall be governed by the collective bar-

gaining agreement. Article V provides for union recognition, Article VI provides for union security and grants what is in effect a union shop provision. Article VII provides for check-off of union dues and Article VIII provides for seniority. It reads as follows:

“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 X provides for arbitration and reads as follows:

“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:”

Article XI grants to the union a right to access to the plant for the purpose of investigating any grievances which may arise. Article XII provides for a shop steward on the upstairs division and the downstairs division and the two shop stewards and the president of the Union constitute a grievance committee. Article XIII provides for leave of absence for personal reasons. Article XIV

provides for uniforms and places the obligation of furnishing them upon the employer. Article XV grants to the female employees of the Union leave of absence in case of maternity and provides such leaves shall be granted without loss of seniority. Article XVI, entitled "Termination," provides for the ways in which the Master Agreement shall be terminated or shall come to a natural end.

The Master Agreement was in effect at all times during the employment of plaintiff. She was the president of the Local Union. As president she was a member of the grievance committee.

Plaintiff was discharged on December 2, 1954. There was assigned as a cause for her discharge "insubordination and uncooperativeness." The discharge and surrounding circumstances were made the subject of a complaint by the Amalgamated Clothing Workers Local Union 562. Pursuant to the agreement the matter was submitted to the Honorable William H. Leary as sole arbitrator. However, the parties were not able to agree upon the matter to be arbitrated and Mr. Leary was required to frame issues for submission to him for arbitration.

The decision of the arbitrator was submitted to the trial court and was considered by him in reaching his decision and making the memorandum opinion. It is found on pages 49-55 of the record.

The arbitrator's decision contains a recital of the occurrences prior to the submission of the matter for arbitration.

The issue in dispute is set forth as follows (R. 50):

“Was the discharge of Karna Held on December 2nd, 1954, by the Company in violation of Article III of the contract between the parties?”

It was the position of the Union that plaintiff had been discharged because of her union activities as a member of the grievance committee and as president of the Local.

The company's position was that she was discharged for insubordination and uncooperativeness, with regard to her duties as one of the shop stewards.

The Arbitrator made his findings of fact and as a part of the findings he found that plaintiff, during the time that she was president of the local union and on the grievance committee had presented a number of grievances on behalf of the individual employees. A portion of the grievances which she discussed with the employer were the discharges of Ida Gertz and Darlene Fowler.

The discharge of plaintiff occurred after she had presented a grievance concerning overalls which were

assigned to some of the girls whose normal work involved only the pressing of gowns.

The decision of the Arbitrator indicates that plaintiff had been in the employ of defendant for five years eight months, (R 50), that she was one of the most efficient operators in the room and the company had no complaints with her works, (R 52).

The conclusions of the Arbitrator were that the dispute between the company and plaintiff was one which was covered by the Master Agreement and over which the Arbitrator had jurisdiction. But the issue was restricted to the question, of whether or not plaintiff was discharged for lawful union activity, (R 53).

Mr. Leary states in his conclusions the following, (R 53):

“The decisions of the present arbitrator should not in any way be construed as foreclosing or prejudicing her rights to proceed in a court of law against the company for discharge without ‘just cause’ ”.

At another point in his conclusions, the Arbitrator states as follows, (R 54):

“The weight of the evidence substantiated the Company’s contention that Mrs. Held was discharged for alleged insubordination and uncooperativeness. Whether or not the Company did, or

can, substantiate such justifications is another matter not involved in this dispute.”

The decision of the Arbitrator then reads as follows:

“The Arbitrator Decides:

1. That the objection of Counsel for the Company that the Arbitrator has no jurisdiction to decide the present dispute concerning the discharge of Karna Held, because the contract between the parties has no provision relating to discharges, is overruled.

2. The discharge of Karna Held on December 2, 1954, by the Company was not in violation of Article III of the contract between the parties.”

After the decision of the Arbitrator plaintiff commenced her action against the defendant and alleged that she had been wrongfully discharged and that the defendant terminated her employment without “just cause” and contrary to the contract of employment which is entitled “Master Agreement”.

At the hearing on defendant’s motion to dismiss for lack of facts sufficient to constitute a cause of action, the trial court asked for the submission of briefs. The briefs were submitted and the matter re-argued.

It was determined that under the terms of the Master Agreement and the interpretation that had been given to it by the arbitrator defendant, plaintiff and the Union,

plaintiff's right under the contract, was for continuing employment which could not be terminated without "just cause".

STATEMENT OF POINTS

POINT I.

THE MASTER AGREEMENT BETWEEN AMERICAN LINEN SUPPLY CO. AND AMALGAMATED CLOTHING WORKERS LOCAL UNION 562 GRANTS TO THE WORKERS OF AMERICAN LINEN SUPPLY COMPANY A RIGHT TO CONTINUING EMPLOYMENT WHICH CAN ONLY BE TERMINATED FOR JUST CAUSE.

POINT II.

THE ARBITRATOR'S OPINION INTERPRETED AND APPLIED THE MASTER AGREEMENT AND IS BINDING UPON BOTH PARTIES TO THIS ACTION, IT DETERMINED THAT PLAINTIFF HAD A CONTINUING RIGHT OF EMPLOYMENT TERMINABLE ONLY FOR JUST CAUSE.

ARGUMENT

POINT I.

THE MASTER AGREEMENT BETWEEN AMERICAN LINEN SUPPLY CO. AND AMALGAMATED CLOTHING WORKERS LOCAL UNION 562 GRANTS TO THE WORKERS OF AMERICAN LINEN SUPPLY COMPANY A RIGHT TO CONTINUING EMPLOYMENT WHICH CAN ONLY BE TERMINATED FOR JUST CAUSE.

A careful examination of the Master Agreement will reveal that the American Linen Supply Co. and the Amalgamated Clothing Workers Local Union 562 agreed that the employees of American Linen Supply Co. would be granted a right to continuing employment, that this

right to continuing employment would not be something which could be arbitrarily and capriciously terminated by unilateral action of the employer.

If the position of defendant is correct the collective bargaining agreement has no substance whatsoever. It is an illusory agreement. Any time defendant desires to cease to be governed by the provisions of the Master Agreement it could arbitrarily and capriciously terminate the employment of all members of the Amalgamated Clothing Workers Local Union 562. If it had a right to discharge which it could exercise arbitrarily whenever one of its employees was obtaining that degree of seniority which gave to the employee a right to certain types of preferred employment, the employment of such an employee could be terminated. The same would be true as to the maternity rights which are granted to the employees. Whenever an employee sought maternity leave her employment could be terminated and no grounds would need be recited for the termination.

It is submitted that an interpretation which defendant seeks would reduce the Master Agreement to annulity and is therefore one which is absurd and cannot, as a consequence, be the interpretation which was intended by the parties to the agreement.

If the defendant has the right to arbitrarily and capriciously discharge its employees who are members

of the local union, that would not promote the objects which are set forth in Article I. A right to arbitrarily and capriciously discharge, is not a right which would effectuate a spirit of fair dealing between the employer and the employee.

A right to arbitrarily and capriciously discharge employees would not bring about and establish a high order of discipline and efficiency by the intelligent co-operation of employee and employer. It would defeat the second objective set forth in Article I of the agreement.

Certainly a right to arbitrarily and capriciously discharge employees would defeat the objects of sub-paragraph (c) which provides for adjustments of all matters by arbitration.

On this particular matter we need not remain in doubt further than to examine the Arbitrator's decision, for the Arbitrator has determined that the matter of the discharge of an individual employee was a fit subject for arbitration under the terms of the agreement. Both parties, now before this court, are bound by the Arbitrator's opinion. Within the four corners of the Arbitrator's decision, plaintiff respectfully submits there is a further finding, that under the terms of the Master Agreement, plaintiff cannot be discharged without "just cause".

The basic contention of defendant is that because there is no specific provision in the Master Agreement, which categorically states that the company shall not discharge without “just cause”, none can be inferred. Such a provision in collective bargaining agreements is not a usual thing. A number of such agreements have been examined by boards of arbitration as well as by this court and there was no specific provision against discharge without cause.

In *Russell v. Ogden Union Railway and Depot Company*, U.....247 P.2d, 257, this court had before it an example of a collective bargaining agreement which did not specifically provide that the individual employee could not be discharged without cause. Within the four corners of the agreement, however, there was provisions for a hearing on grounds cited for discharges. It was determined by the court that an employee had a right to continuing employment and could not be discharged without just cause.

It would appear that both parties to collective bargaining agreements have assumed that the employer was not claiming or attempting to reserve his right to arbitrarily and capriciously discharge an employee. As a consequence, the most obvious of the provisions was not placed in the agreement. Such was the situation in the *Russell* case.

The right of an employee where a collective bargaining agreement which does not, by its terms, specifically set out and provide that the employee shall not be discharged without good and sufficient cause, has been before a number of Boards of Arbitration. One of the most enlightening of such decisions is: In re *The Atwater Manufacturing Company, United Steel Workers of America. Local 3456, C.I.O.*, Case No. 133-4950-150, December 7, 1949, 13 L.A. 747 decided by the Connecticut State Board of Mediation and Arbitration composed of Joseph F. Donnelly, Mitchell Sviridoff and W. Stuart Clark.

The company, in the *Atwater* case took the position; (1) that the collective bargaining agreement by its terms provided that only disputes as to the meaning and application of the terms of the agreement are arbitrable; (2) no agreement is arbitrable unless it is processed in accord with the grievance procedure. Under position (1), the basic question was whether or not a discharge of employees was an arbitrable dispute or grievance. The employer contended that it was not and the union contended that it was.

The company claimed that discharges are not arbitrable since the agreement provides only for the arbitration of disputes as to the meaning and application of the agreement and the agreement has no clause covering discharge. The union claimed, as does plaintiff, that if

the employer has the right to arbitrarily discharge his employees, many of the most important provisions of the agreement have little meaning. The Board of Arbitration accepted the union's position and stated that no sound argument could be made against it because if the company by a unilateral decision may discharge without restriction or protest the company could also violate many of the provisions of the agreement without restriction or protest by simply discharging this or that employee. As a result the seniority clause would not have any meaning whatsoever and there would be no restriction of any effect as to lay-offs. The company, by simply discharging this employee or that employee when it chooses and without regard to cause, could discharge those employees with the highest seniority rating and in effect completely disregard the seniority provisions of the collective bargaining agreement. The Board of Arbitration stated its position in the following language:

“If the Company can discharge without cause, it can lay off without cause. It can recall, transfer, or promote in violation of the seniority provisions simply by invoking its claimed right to discharge. Thus to interpret the agreement in accord with the claim of the Company would reduce to anullity the fundamental provisions of a labor-management agreement — the security of a worker in his job.”

The defendant, in the present case, argues that there is nothing in the written collective bargaining agreement

which specifically covers the company's right to discharge or any restrictions on that right. The same thing was true in the *Atwater* case and the Board of Arbitrators in discussing and disposing of such contentions stated as follows (p.749, 750):

“In view of the above, it is difficult to accept the company's claim that since the agreement contains no expressed limitation of managements discretion in the matter of discharges, its action is not reviewable under the grievance procedure. Such a provision either explicit or implicit is seldom found in the collective bargaining agreement today.

“The fact is that the agreement does not, in specific language, confer on management the right to discharge at will, nor does it, by specific language confer upon the union the right to process discharges under the grievance procedure. Hence, the dispute here is not one as to the application of specific terms of the agreement but rather a dispute as to the meaning of the provisions in the agreement and as such by mutual agreement of the parties properly, it is within the jurisdiction of the Board. This point deserves further discussion.”

The Board then discussed the nature of collective bargaining agreements and the restrictions that such an agreement placed both on the employees' rights and on the employer's rights and then as its conclusion, it stated as follows:

“In the instant case, the Company claims an unlimited right to discharge. The basis of its claims is that the agreement does not state that the company does not have this right. The fact is, however, that in the agreement both the company and union have agreed on definite employee rights, which rights would be meaningless if they did not necessarily imply a severe modification of the company’s right to discharge. We must consider the agreement to be logical and consistent and we must conclude that the parties deliberately worked for that logic and consistency in drawing the agreement.

“Thus, the explicit terms of the agreement by establishing rights which are wholly inconsistent with the claims of the company must logically be considered to have modified any claimed rights which are not fairly expressed and which are inconsistent with the explicit terms of the agreement. In the face of that conclusion, the claim of the company will not stand.”

The decision of the Board of Arbitrators then quoted extensively from a prior decision written by one Saul Wallen and a part of the portion of his decision quoted reads as follows (p.750):

“In our opinion, the meaning of the contract, (collective bargaining contract), when viewed as a whole is that a limitation on the employer’s right to discharge was created with the birth of the instrument. Both the necessity of maintaining the integrity of the contract’s component parts and the very nature of collective bargaining agreements are the basis for this conclusion. Inasmuch

as this limitation is an implied term of the contract, discharges are subject to the grievance procedure and arbitration.”

The decision of the Board of Arbitration was that discharges are arbitrable grievances under the collective bargaining agreement even though they are not specifically mentioned by the agreement, and further that the contract which provides for seniority rights and worker's security implied provides that the employer shall not have an unrestricted, unlimited right to discharge without cause.

An additional case on the question of a right of an employer to discharge without cause, employees who are under a collective bargaining agreement is *In re Standard Oil Company & Central States Petroleum Union, Western Michigan Petroleum Association, Local 103*, Case No. 50A-129, April 12, 1950, 14 L.A. 516. This decision was made by a three man Board of Arbitration under the laws of the State of Michigan. The Board of Arbitration had to consider the question of whether or not the company was within its right in discharging certain employees and whether or not the company is required to submit the question of their discharge to arbitration. As stated in the decision of the Board, the question was as follows: Whether or not where the current contract is entirely silent on the question of discharges, the company's right to relieve an employee from its service with or without

cause rests exclusively with management and its action in respect thereto is challengeable.

The Board of Arbitration points out in the decision that the company had followed practice of not discharging its employees without good and sufficient cause.

It will be noted that in the decision of the Arbitrator, Mr. Leary recites the fact that the defendant assigned a cause for the discharge of plaintiff and on two other occasions, when discharges were made of employees, they were the subject of grievance procedures. Plaintiff herself, as president of the Union, had discussed with American Linen grievance officials the discharge of two employees, namely, Ida Gertz and Darlene Fowler, (R 51).

Plaintiff submits that both the employees and the employer have followed a uniform course in the interpretation of the Master Agreement. The employees have always claimed that they had a right to continuing employment which could not be terminated without just cause. The defendant, has recognized that claim because it has never attempted to discharge without cause.

An additional decision out of the State of Connecticut and from the State Board of Mediation and Arbitration is *In re Whitney Chain Company, United Automobile Aircraft and Agricultural Implement Workers of America, Local 199, C.I.O.*, Case No. 5354-705, March 16,

1955, 24 L.A. 385. There, the Board of Arbitration held that the company's right to discharge was a proper subject for arbitration. That the company did not have a right to discharge without cause, even though there was no specific term which prohibited the company from discharging without cause. The decision was made in the face of a claim by the management that the right of discharge was one vested exclusively in the management and therefore, not subject to arbitration. The Board decided that there must be proper cause shown by management before a discharge can be upheld. An additional decision from a Board of Arbitration is *In re Pilot Freight Carriers, Inc., International Brotherhood of Teamsters, Chauffers, Warehousemen and Helpers of America, C.I.O.* 391, *A.F.L.*, No. 1, June 21, 1954, 22 L.A. 761. A three member Board of Arbitration in Pennsylvania rendered the following decision (p. 761):

“Despite absence of contract clause requiring that discharges be for just cause, the employer may not discharge without just cause, since one of the passive assumptions underlying every collective bargaining agreement is that employer will not arbitrarily exercise his power to discharge.”

In addition to the claim that the terms of the Master Agreement did not give to plaintiff a right to any job security whatsoever nor any protection against arbitrary, capricious and willful discharges, defendant claims that there is no right under the Master Agreement to arbi-

trate or even consider controversies arising out of wrongful discharges. Their position is that Article X, entitled "Arbitration", does not cover wrongful discharges. Article X states:

"All controversies as to the interpretation and application of this Master Agreement that cannot be settled by a representative of the employer and the union," etc. shall be submitted to arbitrators.

On very similar language it has been held that cause for discharge was a matter subject to arbitration. *Lee Farris v. Alaska Airlines Inc.*, 32 L.A. 3547.

The United States Supreme Court has held that an agreement which provided that the rights of discharged employees could not be arbitrated violates the National Labor Relations Act. The inclusion of such a provision in a contract is an unfair labor practice. Defendant now contends and asks this court to hold that an agreement which does not, by its specific terms, prohibit arbitration on discharges does so by inference. See *National Licorice Co. v. National Labor Relations Board*, 309 U.S. 350, 60 S.Ct. 569.

The Supreme Court of the United States in the *National Licorice Co.* case had before it a contract which had been entered into by a union dominated by the employer. The employer by the terms of the contract, re-

quired each employee to agree not to demand a closed shop or a signed agreement by his employer with any union. The agreement contained language which prohibited collective bargaining or arbitration with respect to the discharge of employees. It provided that a discharged employee could submit to his employer a statement indicating that his discharge was unreasonable. Then the agreement stipulated that the question as to the propriety of an employee discharge could in no event be one for arbitration or mediation (60 S.Ct 575).

Justice Stone specifically stated that such a provision in a collective bargaining agreement was an unfair labor practice. A later circuit court case interpreting and applying the *National Licorice Co.* case is *Inland Steel Co. v. National Labor Relations Board of United Steel Workers of America, C.I.O. et al, v. National Labor Relations Board*, 170 F.2d 247. In clear and unequivocal language, the decision sets forth the background and philosophy behind the Supreme Court decision (p.252):

“The Supreme Court, in *National Licorice Co. V. N.L.R.B.*, 390 U.S. 350, 360, 60 S.Ct. 569, 84 L.Ed. 799, held that collective bargaining extends to matters involving discharge actions and, as already noted, the Company in its contract with the Union has so recognized. We are unable to differentiate between the conceded right of a Union to bargain concerning a discharge, and particularly a nondiscriminatory discharge of any employee and its right to bargain concerning the age

at which he is compelled to retire. In either case, the employee loses his job at the command of the employer; in either case, the effect upon the 'conditions' of the person's employment is that the employment is terminated, and we think, in either case, the affected employee is entitled under the Act to bargain collectively through his duly selected representatives concerning such termination."

The decision also contains language which is the very heart of the argument now presented by plaintiff to the court. In the decision, in discussing job security and whether or not such important rights are subjects which can be protected, the Seventh Circuit Court states as follows (p.252):

"The Company also concedes that seniority is a proper matter for collective bargaining and, as already noted, has so recognized by its contract with the Union. It states in its brief that seniority is 'the very heart of conditions of employment.' Among the purposes which seniority serves is the protection of employees against arbitrary management conduct in connection with hire, promotion, demotion, transfer and discharge, and the creation of job security for old workers. * * *"

Even in plaintiff's case defendant did not claim an arbitrary, capricious right to discharge without cause. It set forth a cause and claimed that the cause of her discharge was "Insubordination, Uncooperative to Supervision".

The three discharges of which we have evidence show a consistent, uninterrupted practice by defendant under this collective bargaining agreement. Discharges are not made without cause. Only when there exists just cause did defendant claim a right of discharge. The union and the employer have mediated, arbitrated, discussed and considered the claimed cause for discharge and have specifically resolved the difference as to whether or not the discharge was merited and whether or not the cause actually existed for such discharge in two of the three cases.

Plaintiff considers the rights which she is claiming in this matter to be those of the greatest importance to the laboring man. Rights to job security from day to day as long as loyal and efficient services are rendered is the very foundation of all seniority rights.

An employee who works for years at one job establishes a prior right to that job and builds for his protection seniority rights. These seniority rights are earned through the years of service tendered and received by the employer and if there is a right to arbitrarily, capriciously and without cause to discharge such an employee, the whole field of seniority rights would be completely destroyed.

If an employer can discharge without cause what good would years of loyal and faithful service do for an employee? At the capricious and arbitrary will of his

employer all his rights could be destroyed and he could be thrown back on the labor market without the benefit of a preferred place in industry and possibly at an age where further employment or new employment would be impossible to obtain. Certainly, the objects of the Master Agreement would not be sustained, promoted or in any way assisted if the court rules that under the Master Agreement the employer can arbitrarily and capriciously discharge his employees.

It is impossible for plaintiff to believe that the defendant seriously claims that a right to arbitrarily and capriciously discharge any employee without any cause is calculated "to effectuate a spirit of fair dealing between an employer and employee" or that such a right would "bring about and establish a high order of discipline and efficiency by the intelligent cooperation of employer and employee" or would it tend "to provide for adjustment of all matters subject to arbitration by the procedure herein set forth". Certainly, it would not "increase the standards of workmanship and conduct so as to insure fair and proper quantity, quality and cost of production." Such a right would completely destroy rather than promote the standards of the linen supply industry in the City of Salt Lake and vicinity. It would destroy any respect that the employee group as a whole would have for the industry and would in that way destroy the patronage and respect of the public for the industry.

What benefit can any employee receive from the clause prohibiting the discharge for lawful union activity if no cause is needed for discharge. The cases seem uniformly to recognize the principles that when an employer is called upon to show that an employee is discharged not for union activity only by coming forward with another cause, can the employer sustain his discharge? If the discharge is for no cause, that is if the discharge is not for some disciplinary purpose, then restoration of employment or damages is recognized by all the decisions.

See *Russell v. Ogden Union Ry. & Depot Co.*, supra; *National Labor Relations Board v. Ford, et al*, 170 F.2d 735.

In *National Labor Relations Board v. Superior Co.*, 199 F.2d 39, the court stated the principle in the following language:

“It is conceded by the Board that the Act does not interfere with the normal exercise of the right of the employer to select its employees or to discharge them for any reason except union activity or relationship. If a discharge is not arbitrarily made with a purpose, or as an excuse, to avoid the statute, it is not unlawful. *N.L.R.B. v. Jones & Laughlin*, 301 U.S. 1, 45, 57 S.Ct. 615, 81 L.Ed. 893; *N.L.R.B. v. Tennessee Coach Co.*, 6 Cir., 191 F.2d 546, 550. The employer’s right to hire and fire includes the right to make reasonable rules and regulations and to discipline employees for violation thereof. *N.L.R.B. v. Mylan-Sparta Co.*,

6 Cir., 166 F.2d 485, 491; *N.L.R.B. v. Thompson Products*, 6 Cir., 162 F.2d 287, 300. But the discriminatory enforcement of a rule against an employee engaged in union activities will cause a court to inquire carefully into the facts to determine whether the action taken against the employee was in reality because of his violation of the rule or because of his union activities. *N.L.R.B. v. Ford*, 6 Cir., 170 F.2d 735, 738-739. The Board contends in the present case that the real reason for the disciplinary action taken against the five members of the Union Committee was their union activities rather than their violation of the order prohibiting them from taking the day off to attend the conference at Dayton. If the refusal of the Respondent to grant the requested leave of absence was valid, disciplinary action which followed for a violation of the order was not improper. However if the refusal to grant the requested leave of absence was invalid under the Act, the disciplinary action which followed was likewise invalid.* * *

It is respectfully submitted that within the four corners of the Master Agreement the right is afforded to the plaintiff for job security and protection is given her against arbitrary and capricious discharges. That as a consequence she should have the right to have a jury determine, in a court of law, whether or not there has been any grounds for her discharge or whether or not it is arbitrary and capricious and without just cause.

POINT II.

THE ARBITRATOR'S OPINION INTERPRETED AND APPLIED THE MASTER AGREEMENT AND IS BINDING UPON BOTH PARTIES TO THIS ACTION, IT DETERMINED THAT PLAINTIFF HAD A CONTINUING RIGHT OF EMPLOYMENT TERMINABLE ONLY FOR JUST CAUSE.

The Master Agreement is clear upon one part of the rules governing the action between plaintiff and defendant. In Article X entitled "Arbitration" it states:

"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".

Both the Union and defendant selected and agreed upon Dean Leary as the Arbitrator. They did not set forth in writing as is usually the case, the question to be settled by arbitration. However, the matter was submitted to the Arbitrator. The decision of the Arbitrator concerning the dispute which was submitted to him certainly would be binding upon both the defendant and the Union and if binding upon the Union is binding upon plaintiff.

The Arbitrator, because of the dispute between the Union and defendant concerning the question to be ar-

bitrated resolved that matter in a clearly worded paragraph under the title "The Issue in Dispute" (R 50). There he states that the question in issue was the following:

"Was the discharge of Karna Held on December 2nd, 1954 by the Company in violation of Article III of the contract between the parties".

Article III forbids discrimination against employees and discharge for Union activity. Dean Leary found the discharge was not for Union activity, but specifically reserved the right of plaintiff to have the question of whether or not there was "just cause" for her discharge submitted to a court of law where that particular question could be decided.

This conclusion of the Arbitrator reads as follows:
(R 53)

"The decision of the present Arbitrator should not in any way be construed as foreclosing or prejudicing her right to proceed in a court of law against the company for a discharge without 'just cause' ".

The Arbitrator not only was interpreting Article III of the Master Agreement but also interpreted the agreement in its overall purpose. The opinion and specifically that portion of the conclusion of the Arbitrator which is quoted shows beyond possible dispute that the arbitrator found plaintiff could not be discharged without "just

cause.” An interpretation and application of the Master Agreement gave to her a right of continuing employment which could not be terminated except for just cause.

It is respectfully submitted that the defendant cannot now claim that a new and different interpretation should be placed on the Master Agreement. In the case of *Gionnopulos v. Pappas* 80 U. 442 15P2d 353, this court held that both parties were bound by an arbitration award and set forth the rule of law which should be applied here. It is generally recognized that the award of an Arbitrator acting within the scope of his authority determines the rights of the parties to it as efficiently as a judgment. It is as binding on the parties as a judgment until its validity is questioned in some proper manner. The law encourages persons who wish to settle their differences by arbitration as an inexpensive, speedy method of adjudicating differences. A court will not review the actions of the arbitrator to correct errors or to substitute its conclusion for that of the Arbitrator acting honestly and within the scope of his authority. See: *Bivons v. Utah Lake, Land, Water, and Power Co.* 53 Utah 601, 174 P 1126; *Jacob v. Pacific Export Lumber Co.* 136 Or. 622, 297 P 848; *Utah Construction Co. v. Western Pacific Railroad Company* 174 Cal 156, 162P 631; 2 R.C.L. 389.

Both parties having submitted the agreement and the grievance to the Arbitrator it is respectfully submitted

that both parties should be required to give full faith and credit to his opinion and should be bound to accept the interpretation that he placed upon the Master Agreement. He concluded that plaintiff has a continuing right of employment which cannot be terminated without "just cause."

CONCLUSIONS

It is respectfully submitted that the decision of the trial court should be affirmed that this court should declare that the Master Agreement between American Linen Supply Co. and Amalgamated Clothing Workers Local Union 562 grants to the individual workers a right to continuing employment which can only be terminated for just cause. That the court should then remand the case to the trial court for further proceedings and for a trial at which it shall be determined whether or not defendant had any just cause for discharging plaintiff.

Respectfully submitted,

DWIGHT L. KING

Attorney for Plaintiff