

Labor Law--Application of Norris-LaGuardia Act--Measure of Damages for Civil and Criminal Contempt (United Mine Workers of America v. United States, 67 Sup. Ct. 677 (1947))

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LABOR LAW — APPLICATION OF NORRIS-LA GUARDIA ACT — MEASURE OF DAMAGES FOR CIVIL AND CRIMINAL CONTEMPT.—The United States was in possession of, and operating, a major portion of the country's bituminous coal mines under the authority of the War Labor Disputes Act. Members of defendant union were employed therein under the terms of an agreement between defendant Lewis for the union and Secretary of the Interior Krug for the United States. Defendant Lewis requested renegotiation of the agreement concerning the question of wages and hours, but was informed that the agreement was valid for the entire period of Government operation of the mines and could not be renegotiated. Several conferences were held between defendant Lewis and Secretary Krug on these matters. On November 15, 1946, defendant Lewis, by letter, declared the agreement terminated as of November 20, 1946, and circulated this letter to members of the union. The miners traditionally would not work without a contract. The United States then asked the federal district court for a restraining order requiring defendant to suspend the termination notice and alleging it a strike notice. A temporary order was granted restraining defendants from continuing the notice, encouraging a strike, or from any action interfering with the court's jurisdiction and determination of the case. This order and complaint was served on defendants on November 18, 1946 and was ignored by defendants. On that date the miners began a "walkout," and by November 20, 1946 there was a complete strike. Defendants were cited for contempt, and on the return day notified the court that no action had been taken concerning the notice, and then denied the jurisdiction of the court to issue the restraining order and rule to show cause. Defendants filed a motion to discharge and vacate the rule to show cause, challenging the jurisdiction of the court. The trial court held that the power to issue a restraining order was not affected by the Norris-LaGuardia or Clayton Acts¹ and that defendants permitted the notice to remain outstanding and encouraged a strike, therefore interfering with governmental functions and the jurisdiction of the court. Defendants were found guilty of criminal and civil contempt and a new preliminary injunction was issued pending final determination of the case. Defendant Lewis was fined \$10,000.00 and defendant union \$3,500,000.00. *Held*, affirmed, but the fine of the union is reduced to \$700,000.00. *United Mine Workers of America v. United States*, — U. S. —, 67 Sup. Ct. 677.

As the Norris-LaGuardia Act is broader than the Clayton Act in application,² it is possible to base the decision on the Norris-LaGuardia Act, and if that doesn't apply, neither will the Clayton

¹ 47 STAT. 70 (1932), 29 U. S. C. § 101 (1940); 38 STAT. 730, 738 (1914), 29 U. S. C. § 52 (1940).

² See *United States v. Hutcheson*, 312 U. S. 219, 231, 85 L. ed. 788, 793 (1941).

Act.³ Under the rule of construction that statutes, which in general terms divest pre-existing rights or privileges, will not be applied to the sovereign without express words to that effect,⁴ which rule was known to Congress when it passed the Norris-LaGuardia Act, this Act cannot be applied to this case. This is so particularly since the wording of Articles 2, 4, 7 and 13 of the Act all indicate that it was not intended to affect the relations between the United States and its employees,⁵ and as the records of the voting and discussion of Congress show only an intent to prevent the United States from intervening by injunction in purely private labor disputes and not to include the United States and its employees within the Act.⁶ The terms of the regulations under which the Government operated the mines,⁷ as well as the dealings between the parties and their actions, show that an employer-employee relationship existed between the miners and the Government regardless of arrangements between the Government and the private owners of the mines.

Though orders of a court having no jurisdiction to make them may be disregarded without liability to process for contempt,⁸ in cases where only the Supreme Court can decide the question of jurisdiction, the federal district court may make the necessary orders to preserve existing conditions and the subject of the petition.⁹ Pending a decision on a doubtful question of jurisdiction, the district court has power to maintain the *status quo* and punish violations as contempt.¹⁰ An order issued by a court with jurisdiction over the subject matter and person must be obeyed by the parties until it is reversed by orderly and proper proceedings.¹¹ Violations of an order are punishable as criminal contempt even though the order is set aside on appeal¹² or though the basic action has become moot;¹³ therefore, regardless of the application of the Norris-LaGuardia Act

³ See *Allen Bradley Co. v. Union*, 325 U. S. 797, 805, 89 L. ed. 1939, 1946 (1945).

⁴ *United States v. Herron*, 20 Wall. 251, 22 L. ed. 275 (1873).

⁵ See *United States v. Cooper Corp.*, 312 U. S. 600, 604, 85 L. ed. 1071, 1074 (1941); *United States v. Fox*, 94 U. S. 315, 321, 24 L. ed. 192, 193 (1876).

⁶ 75 CONG. REC. 5464, 5473, 5503, 5505, 5509 (1932).

⁷ Revised Regulations for the Operations of the Coal Mines Under Government Control §§ 15, 16, 17, 23, 24, 31, 40 issued by Coal Mines Administrator on July 8, 1946.

⁸ *In re Sawyer*, 124 U. S. 200, 31 L. ed. 402 (1887); *Ex parte Fisk*, 113 U. S. 713, 28 L. ed. 1117 (1884).

⁹ *Carter v. United States*, 135 F. (2d) 858 (C. C. A. 5th 1943).

¹⁰ See *Treines v. Sunshine Mining Co.*, 308 U. S. 66, 74, 84 L. ed. 85, 91 (1939).

¹¹ *Russell v. United States*, 86 F. (2d) 389 (C. C. A. 8th 1936); *Howat v. Kansas*, 258 U. S. 181, 66 L. ed. 550 (1922).

¹² See *Worden v. Searls*, 121 U. S. 14, 25, 30 L. ed. 853, 857 (1887).

¹³ *Gompers v. Bucks Stove & Range Co.*, 221 U. S. 418, 55 L. ed. 797 (1911).

to this case, defendants are guilty of criminal contempt though they may be purged of civil contempt.¹⁴

Pleadings which fairly and completely apprise the defendants of the charges against them, though on information and belief, and which are not harmful to defendants by omission to specifically charge them with criminal contempt under rule 42 (B) of the Rules of Criminal Procedure,¹⁵ as shown by defendants' pleadings and actions, are not prejudicial to defendants.¹⁶

It is proper to try both civil and criminal contempt actions at the same time if the defendants enjoy all of the protections that would have been afforded them in a criminal contempt proceeding.¹⁷

The United States may proceed as a party to civil proceedings in controversies to which the United States shall be a party.¹⁸ This includes allowing the United States to bring civil contempt proceedings.

Sentences for criminal contempt are punitive¹⁹ and the court may consider the extent of the wilful and deliberate defiance of the court, the seriousness of the defendant's actions, and the public interest. In sentencing for civil contempt the court has a twofold purpose, to force defendant to comply with its order, and to compensate the plaintiff for his losses;²⁰ therefore the magnitude of the harm threatened and the probable effectiveness of the fine is considered.²¹

In its decision the court placed great emphasis on the threat to orderly constitutional government and the economic and social welfare of the nation as well as on the lack of respect shown for the court by the defendants.

H. A. R.

NEGLIGENCE—LIABILITY OF SHIPOWNER FOR PERSONAL INJURIES TO STEVEDORES EMPLOYED BY INDEPENDENT CONTRACTOR.—Plaintiffs, stevedores, contracted a dermatitis when handling leaky steel drums containing cashew nut oil, which leaked out of the drums and onto the deck while plaintiffs were unloading ship owned by

¹⁴ *Salvage Process Corp. v. Acme C. Process Corp.*, 86 F. (2d) 727 (C. C. A. 2d 1936).

¹⁵ FED. R. CRIM. P., 42 (b).

¹⁶ *Conley v. United States*, 59 F. (2d) 929 (C. C. A. 8th 1932); *Kelly v. United States*, 250 Fed. 947 (C. C. A. 9th 1918).

¹⁷ *Cooke v. United States*, 267 U. S. 517, 69 L. ed. 767 (1925); see *Michaelson v. United States*, 266 U. S. 42, 67, 69 L. ed. 162, 168 (1924).

¹⁸ *McCrone v. United States*, 307 U. S. 61, 83 L. ed. 1108 (1939); REV. STAT. §§ 563, 629 (1875), as amended, 28 U. S. C. § 41 (1940).

¹⁹ *Gompers v. Bucks Stove & Range Co.*, 221 U. S. 418, 55 L. ed. 797 (1911).

²⁰ *Leman v. Krentler-Arnold Co.*, 284 U. S. 448, 76 L. ed. 389 (1932).

²¹ See *In re Chiles*, 22 Wall. 157, 168, 22 L. ed. 819, 823 (U. S. 1874).