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Associations--Right of a Trade Union to Expel Members Thereof (Polin v. Kaplan, 257 N.Y. 277 (1931))

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RECENT DECISIONS

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ASSOCIATIONS—RIGHT OF A TRADE UNION TO EXPEL MEMBERS THEREOF.—Plaintiff, a member of an unincorporated trade association, had brought an action against its officers charging that they had violated the constitution and by-laws and requiring them to account to the union for moneys alleged to have been misappropriated by them. In connection with the action, plaintiff, together with other members of the association, distributed to their fellow members circular letters explaining the action and the reason therefor. The recording secretary of the union thereafter presented charges against the plaintiff to the association at one of its regular meetings, specifying, in substance, (1) that plaintiff had violated the union's constitution in bringing the action; (2) that he had circulated letters of a libelous nature concerning officers; and (3) that he had violated his oath of obligation by committing the acts charged in "(1)" and "(2)." The executive board, after hearing proof, sustained the charges and the union, at a regular meeting, fined plaintiff for the violation specified in "(1)" and "(2)" and expelled him from the union for the third. In this action to have the proceedings adjudged to be null and void and to procure plaintiff's reinstatement, plaintiff's complaint was dismissed. On appeal, by permission, from a judgment of the Appellate Division unanimously affirming the Special Term, *held,* reversed (Pound and O'Brien, *JJ.,* dissenting). Plaintiff was expelled without power and illegally, and should be reinstated. He is also entitled to recover damages for loss of wages. *Polin* v. *Kaplan,* 257 N. Y. 277, 177 N. E. 833 (1931).

The relations between members of an association are contractual. The terms of the contract are found in the constitution and by-laws which enumerate the privileges secured and duties assumed by those who have become members,[1] and the implied obligation of members to loyally support the association in the attainment of its proper purposes.[2] If a tribunal of the association finds a member should be expelled because he has committed the offenses charged and the constitution and by-laws reasonably provide that such acts constitute sufficient cause for expulsion, the proceeding will not be reviewed by the courts provided the member was accorded a fair trial and pro-

[1] Strauss v. Thoman, 60 Misc. 72, 111 N. Y. Supp. 745, *aff'd,* 129 App. Div. 905, 113 N. Y. Supp. 1148 (1st Dept. 1908); Ranken v. Probey, 131 App. Div. 328, 115 N. Y. Supp. 832 (3d Dept. 1909); Grassi Bros. v. O'Rourke, 89 Misc. 234, 153 N. Y. Supp. 493 (1915).

[2] Polin v. Kaplan, 257 N. Y. 277, 283, 177 N. E. 833, 834 (1931), citing Otto v. Journeymen Tailors' Protective & Benevolent Union, 75 Calif. 308, 314, 17 Pac. 217, 219 (1888); Weiss v. Musical Mut. Protective Union, 189 Pa. 446, 451, 42 Atl. 118, 120 (1899). See also Brennan v. United Hatters, 73 N. J. L. 729, 65 Atl. 165 (1906).

vided, further, that there was evidence to sustain the finding.[3] The courts, however, strictly construe the penal provisions covering the internal regulations of unions and similar organizations and such provisions must be in accord with the law of the land.[4] In the principal case, the expulsion could not be predicated upon the fact that plaintiff had brought a court action, for the constitution and by-laws did not prohibit resort to the courts, but merely provided for a system of appeals within the union and its parent body, and also because "it was the absolute right of the plaintiff to bring the suit, whether he could successfully maintain it or not, and he might not be expelled for having so done." [5] The first charge, therefore, failed because the act charged was not in contravention of the constitution or by-laws or the implied obligation.[6] As to whether the circulation of the letters would have justified an expulsion on the ground that it contravened the implied obligation, query. The court did not pass on that because the plaintiff had not been expelled but fined on this charge. With reference to the third charge, since charge No. 1 failed and the expulsion under the third charge was predicated on guilt of the first and second charges combined, the penalty must fall. It follows that plaintiff was expelled without power and illegally and should be reinstated. While ordinarily courts are loath to interfere in the internal affairs of unions and other unincorporated membership bodies,[7] they will protect an individual against wrongful damage, because it is not the policy of the law to permit members of an association "to suffer without redress from the whims or at the caprice of those to whom they have in good faith temporarily intrusted themselves and their affairs." [8] Moreover, in view of the fact that in unionized trades a man's livelihood may depend upon his membership in the trade union, it is of the utmost importance that courts sedulously protect the rights of men to their union membership.[9] The pronouncement of the court is in accord with these principles. The

[3] Belton v. Hatch, 109 N. Y. 593, 17 N. E. 225 (1888); *In re* Haebler v. N. Y. Produce Exchange, 149 N. Y. 414, 428, 44 N. E. 87, 91 (1896); Wilcox v. Royal Arcanum, 210 N. Y. 370, 104 N. E. 624 (1914).

[4] Weston v. Ives, 97 N. Y. 222 (1884); Connell v. Stalker, 21 Misc. 609, 48 N. Y. Supp. 77 (App. T. 1897); Fritz v. Knaub, 57 Misc. 405, 103 N. Y. Supp. 1003 (Sup. Ct. Orange Co. 1907); Robinson v. Dahm, 94 Misc. 729, 159 N. Y. Supp. 1053 (Sup. Ct. N. Y. Co. 1916); see also Matter of Brown, 34 Misc. 556, 70 N. Y. Supp. 397, *aff'd*, 66 App. Div. 259, 72 N. Y. Supp. 806, *aff'd*, 176 N. Y. 132, 68 N. E. 145 (1903).

[5] Polin v. Kaplan, *supra* note 2, at 284, 177 N. E. at 835.

[6] *In re* Haebler v. N. Y. Produce Exchange, *supra* note 3; Bricklayers' P. & S. Union v. Bowen, 183 N. Y. Supp. 855, 860, *aff'd*, 198 App. Div. 967, 189 N. Y. Supp. 938 (4th Dept. 1921); Connell v. Stalker, 21 Misc. 609, 48 N. Y. Supp. 77 (App. T. 1897).

[7] See Chafee, *The Internal Affairs of Associations* (1930) 43 HARV. L. REV. 993.

[8] Bricklayers' P. & S. Union v. Bowen, *supra* note 6, at 859.

[9] Jose v. Savage, 123 Misc. 283, 205 N. Y. Supp. 6 (Sup. Ct. N. Y. Co. 1924), opinion by Proskauer, J.

allowance to plaintiff of the earnings which he lost by reason of the wrongful expulsion was proper.[10]

R. L.

CONSTITUTIONAL LAW—WORKMEN'S COMPENSATION LAW—SECTION 20 PROVIDING THAT THE DECISION OF THE STATE INDUSTRIAL BOARD "SHALL BE FINAL AS TO ALL QUESTIONS OF FACT" NOT VIOLATIVE OF DUE PROCESS.—Appellant-employer challenges an award of the State Industrial Board on the ground that the procedure under the New York State Workmen's Compensation Law deprives the employer of his property without due process of law in that the board has been made the final arbiter of the facts without any review upon the weight of evidence in a court of law. *Held,* order affirmed and contention of appellant dismissed. *Matter of Helfrick* v. *Dahlstrom, M. D. Co.,* 256 N. Y. 199, 176 N. E. 141 (1931).

Although the decision of the board upon questions of fact is conclusive, an appellate court will review the findings to determine whether there is any evidence to support the award and it may reverse the award if there be a failure of evidence to support it.[1] The provisions of section 20 should be read "decision by the board shall be final as to all questions of fact which are supported by legal evidence."[2] To leave to the decision of the board questions of conflict in evidence or reasonable inferences to be drawn from the evidence is not a denial of due process. The due process clause does not guarantee to the citizen of any state any particular form or method of state procedure. Its requirements are satisfied if he has reasonable notice and reasonable opportunity to be heard and to present his claim or defense, due regard being had to the nature of the proceeding and the character of the rights which may be affected by it.[3] The United States Supreme Court, while not passing on the particular question of the finality of the board's decision on questions of fact, has said in treating with the New York Compensation Law "no question is made but that the procedural provisions of the act are amply adequate to afford the notice and opportunity to be heard, required by the Fourteenth Amendment."[4] Directly bearing on the

[10] Merscheim v. Musical Mutual Protective Union, 55 Hun 608, 8 N. Y. Supp. 702 (1890).

[1] Glatzl v. Stumpp, 220 N. Y. 71, 114 N. E. 1053 (1917), and cases cited therein.

[2] Kade v. Greenhut Co., 193 App. Div. 862, 185 N. Y. Supp. 9 (3d Dept. 1920).

[3] Dohany v. Rogers, 281 U. S. 362, 369, 50 Sup. Ct. 299, 302 (1930).

[4] New York Central R. R. Co. v. White, 243 U. S. 188, 207, 37 Sup. Ct. 247, 254 (1917).