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U.S. Supreme Court

DORCHY v. STATE OF KANSAS, 272 U.S. 306 (1926)

272 U.S. 306

DORCHY
v.
STATE OF KANSAS.
No. 119.Argued Oct. 7, 1926.
Decided Oct. 25, 1926.

[272 U.S. 306, 307] Messrs. John F. McCarron, of Washington, D. C., and Redmond S. Brennan, of Kansas City, Mo., for plaintiff in error.

Messrs. John G. Egan, of Topeka, Kan., Chester I. Long, of Wichita, Kan., and C. B. Griffith, of Topeka, Kan., for the State of Kansas.

Mr. Justice BRANDEIS delivered the opinion of the Court.

Section 17 of the Court of Industrial Relations Act, Laws of Kansas Special Session 1920, c. 29, which reserving to the individual employee the right to quit his employment at any time, makes it unlawful to conspire 'to induce others to quit their employment for the purpose and with the intent to hinder, delay, limit or suspend the operation of' mining. Section 19 makes it a felony for an officer of a labor union willfully to use the power or influence incident to his office to induce another person to violate any provision of the act. [272 U.S. 306, 308] Dorchy was prosecuted criminally for violating section 19. The jury found him guilty through inducing a violation of section 17; the trial court sentenced him to fine and imprisonment, and its judgment was affirmed by the Supreme Court of the State. *Kansas v. Howat*, 112 Kan. 235, 210 P. 352. Dorchy duly claimed in both state courts that section 19, as applied, was void because it prohibits strikes, and that to do so is a denial of the liberty guaranteed by the Fourteenth Amendment. Because this claim was denied, the case is here under section 237 of the Judicial Code as amended (Comp. St. 1214).

This is the second writ of error. When the case was first presented, it

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appeared that after entry of the judgment below certain provisions of the act had been held invalid by this court in *Charles Wolff Packing Co. v. Court of Industrial Relations*, [262 U.S. 522](#), 43 S. Ct. 630, 27 A. L. R. 1280. The

question suggested itself whether section 19 had not necessarily fallen, as a part of the system of so-called compulsory arbitration, so that there might be no occasion to consider the constitutional objection made specifically to it. That question being one of statutory interpretation, which had not been passed upon by the state court, the case was reversed, without costs, and remanded for further proceedings not inconsistent with the opinion of this court. *Dorchy v. Kansas*, [264 U.S. 286](#), 44 S. Ct. 323. Thereupon the Supreme Court of Kansas decided that section 19 is so far severable from the general scheme of legislation held invalid that it may stand alone with the legal effect of an independent statute, and it reaffirmed the judgment of the trial court. *Kansas v. Howat*, 116 Kan. 412, 227 P. 752. By the construction thus given to the statute we are bound. The only question open upon this second writ of error is whether the statute as so construed and applied is constitutional.

The state court did not, in either of its opinions, mention the specific objection to the validity of section 19 now [\[272 U.S. 306, 309\]](#) urged. In the second, it discussed only the question of statutory construction. In the first, it stated merely that the case is controlled by *State v. Howat*, 109 Kan. 376, 198 P. 686, 25 A. L. R. 1210. *Court of Industrial Relations v. Charles Wolff Packing Co.*, 109 Kan. 629, 201 P. 418, and *State v. Howat*, 109 Kan. 779, 202 P. 72. In these cases, which came to this court for review in *Howat v. Kansas*, [258 U.S. 181](#), 42 S. Ct. 277, and *Charles Wolff Packing Co. v. Court of Industrial Relations*, [262 U.S. 522](#), 43 S. Ct. 630, 27 A. L. R. 1280; *Id.*, [267 U.S. 552](#), 45 S. Ct. 441, there was no occasion to consider the precise claim now urged-the invalidity of section 19 when treated as an independent statute. Nor was this question referred to, in any way. But the claims made by *Dorchy* below properly raised it, and, as the judgment entered involves a denial of the claim, we must pass upon it. The question requiring decision is not, however, the broad one whether the Legislature has power to prohibit strikes. It is whether the prohibition of section 19 is unconstitutional as here applied. *Dahnke-Walker Milling Co. v. Bondurant*, [257 U.S. 282, 289](#), 42 S. Ct. 106. The special facts out of which the strike arose must therefore be considered.

Some years prior to February 3, 1921, the George H. Mackie Fuel Company had operated a coal mine in Kansas. Its employees were members of District No. 14, United Mine Workers of America. On that day, *Howat*, as president, and *Dorchy*, as vice president, of the union, purporting to act under direction of its executive board, called a strike. So far as appears, there was no trade dispute. There had been no controversy between the company and the union over wages, hours, or conditions of labor; over discipline or the discharge of an employee; concerning the observance of rules; or over the employment of nonunion labor. Nor was the strike ordered as a sympathetic one in aid of others engaged in any such controversy. The order was made and the strike was called to compel the company to pay a claim of one *Mishmash* for \$180. The men were told this; and they [\[272 U.S. 306, 310\]](#) were instructed not to return to work until they should be duly advised that the claim had been paid. The strike order asserted that the claim had 'been settled by the joint board of miners and operators but (that) the company refuses ... to pay Brother *Mishmash* any part of the money that is due him.' There was, however, no evidence that the claim had been submitted to arbitration, nor of any contract requiring that it should be. The claim was disputed. It had been pending nearly two years. So far as appears, *Mishmash* was not in the company's employ at the time of the strike order. The men went out in obedience to the strike order, and they did not return to work until after the claim was paid, pursuant to an order of the Court of Industrial Relations. While the men were out on strike, this criminal proceeding was begun.

Besides these facts, which appear by the bill of exceptions, the State presents for our consideration further facts which appear by the record in *Kansas v. Howat*, 109 Kan. 376, 198 P. 686, 25 A. L. R. 1210; *Id.*, [258 U.S. 181](#), 42 S. Ct. 277, one of the cases referred to by the Supreme Court of Kansas in its first opinion in the case at bar. These show that *Dorchy* called this strike in violation of an injunction issued by the state court, and that the particular controversy with *Mishmash* arose in this way. Under the contract between the company and the union, the rate of pay for employees under 19 was \$3.65 a day and for those over 19 the rate was \$5. *Mishmash* had been paid at the lower rate from August 31, 1917, to March 22, 1918, without protest. On that day he first demanded pay at the higher rate, and claimed back pay from August 31, 1917, at the higher rate. His contention was that he had been born August 31, 1898. The company paid him, currently, at the higher rate beginning April 1, 1918. It refused him the back pay, on the ground that he was in fact less than nineteen years old. One entry in the *Mishmash* family Bible gave [\[272 U.S. 306, 311\]](#) August 31, 1898, as the date of his birth; another August 31, 1899. Hence the dispute. These additional facts were not put in evidence in the case at bar. *Kansas v. Howat*, 109 Kan. 376, 198 P. 686, 25 A. L. R. 1210, was a wholly independent proceeding. Mere reference to it by the court as a controlling decision did not incorporate its record into that of the case at bar. See *Pacific R. Co. v. Missouri Pacific Ry. Co.*, [111 U.S. 505, 517](#), 518 S., 4 S. Ct. 583. And it does not appear that the court treated these facts as matters of which it took judicial notice. We must dispose of the case upon the facts set forth in the bill of exceptions.

The right to carry on business-be it called liberty or property-has value. To interfere with this right without just cause is unlawful. The fact that the injury was inflicted by a strike is sometimes a justification. But a strike may be illegal

because of its purpose, however orderly the manner in which it is conducted. To collect a stale claim due to a fellow member of the union who was formerly employed in the business is not a permissible purpose. In the absence of a valid agreement to the contrary, each party to a disputed claim may insist that it be determined only by a court. Compare Guaranty Trust Co. v. Green Cove R. R., [139 U.S. 137, 143](#), 11 S. Ct. 512; Red Cross Line v. Atlantic Fruit Co., [264 U.S. 109](#), 44 S. Ct. 274. To enforce payment by a strike is clearly coercion. The Legislature may make such action punishable criminally, as extortion or otherwise. Compare People v. Barondess, 16 N. Y. S. 436, 61 Hun. 571; Id., 133 N. Y. 649, 31 N. E. 240. 1 And it may subject to punishment him who uses the power or influence incident to his office in a union to order the strike. Neither the common law, nor the Fourteenth Amendment, confers the absolute right to strike. Compare Aikens v. Wisconsin, [195 U.S. 194, 204](#), 205 S., 25 S. Ct. 3.

Affirmed.

Footnotes

[[Footnote 1](#)] Reported in full in the North Eastern Reporter; not reported in full in New York Reports.

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