The Burger Court Opinion Writing Database

Czosek v. O'Mara

397 U.S. 25 (1970)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University
Forrest Maltzman, George Washington University

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

February 12, 1970

Re: No. 234 - Czosek v. O'Mara

Dear Byron:

I will join your proposed opinion. If I were to reach issue of suit against the union and employer together I would affirm the CA holding.

W.E.B.

Mr. Justice White

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

February 19, 1970

Re: No. 234 - Czosek v. O'Mara

MEMORANDUM TO THE CONFERENCE:

I would dismiss the writ as having been improvidently granted.

W.E.B.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HUGO L. BLACK

January 30, 1970

Dear Byron:

Re: No. 234 - Czoek, et al. v. O'Mara, et al.

I agree.

Sincerely,

Hugo

Hugo

Mr. Justice White

cc: Members of the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN M. HARLAN

January 30, 1970

Re: No. 234 -- Czosek v. O'Mara

Dear Byron:

I feel that the opinion you have circulated should be expanded to resolve the issue you pose, but do not decide, in the opinion's last paragraph -- i.e., whether the CA 2 was correct in holding that the complaint against the employer for damages for breach of contract must be dismissed for failure to exhaust the administrative remedy before the Railway Adjustment Board. In my mind, this case only assumes importance as it relates to resolving how claims brought by an employee against a union for unfair representation and against a railroad for breach of a contract should be handled procedurally in circumstances where both claims arise out of a "single series of events" but there is no conspiracy shown between the union and the railroad. Presently your opinion does not discuss this issue.

In your opinion you do not resolve the issue raised in the last paragraph because (1) "neither the railroad nor aggrieved employees sought review" of the CA 2's holding that the suit against the employer for breach of contract was properly dismissed for failure to exhaust administrative remedies; and (2) because the defendant union, which has raised the issue, is not "materially injured" under the damage allocation rule established by your opinion.

The failure of the employees to seek certiorari as to the dismissal of the complaint against the railroad does not, in my view, deserve the weight you appear to give it. The explanation, I think, is most likely found in the fact that the employees (like the petitioner union which did seek review of that question) thought the union could be held responsible for all of the damages sought by the employees. In their complaint, after all, the employees sought the full sum of their

claimed damages from either the union, or the railroad or both. See App., at 7. Given the complaint, and the fact that the opinion below says nothing to suggest the union would be liable only for a portion of the total damages, it is not surprising that the employees did not cross-petition. Furthermore, the dismissal becomes immaterial to the union only because your opinion decides an issue not resolved below -- the proper allocation of damages between the railroad and union.

In short, I find it somewhat anomalous that your opinion affirms on a ground not decided by the CA 2 (i.e., allocation of damages) and then uses this new ground as a reason for avoiding an issue which was decided below (i.e., whether the dismissal of the complaint against the Railroad was proper). In any event, because the union has asked this Court to determine whether the CA 2 correctly dismissed the complaint against the railroad, we surely have jurisdiction to explore and decide the issue.

I have not myself resolved how the issue which you avoid should be decided. It does seem wasteful that litigation in this sort of case should proceed at the same time in both the district court and the Railway Adjustment Board when both forums may find it necessary to decide whether the railroad breached its contract. This will sometimes be the case under the approach adopted by the CA 2 for it may be essential for an employee to prove that the railroad breached its contract if the employee is to show that the union violated its duty of fair representation by refusing to press the employee's contract claim. As you suggested in Vaca, three-party disputes "are difficult enough when one tribunal has all parties before it; they are impossible if two independent tribunals with different procedures, time limitations, and remedial powers, must participate." 386 U.S., at 188, n.12.

Perhaps I should add that in making these suggestions I have not overlooked the fact that the court of appeals dismissed the case against the railroad not only for failure to exhaust but also on the ground that the cause of action against the railroad was insufficiently pleaded. In light of your holding, with which I fully agree, that the allegations of the complaint were sufficient as to the union, I would suppose we would also hold that the allegations respecting the railroad were good enough to get by.

I am not circulating anything to the Conference, as I should first like to have your own reactions.

Sincerely,

Mr. Justice White

February 19, 1970

Re: No. 234 - Czosek v. O'Mara

Dear Byron:

Confirming my telephone call to you this morning, in light of the Brethren's returns on the recent correspondence between us, I am content to join your opinion, without separate writing on my part. Perhaps I should add, in light of the Chief Justice's expression of view that the writ should be dismissed as improvidently granted, that I have some sympathy with that position, because as the case has turned out I really think that it should never have been here in the first place. However, since the matter is now fait accompli, I would vote to bring the case down on the basis of your opinion.

Sincerely,

J.M.H.

Mr. Justice White

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
STICE WM. J. BRENNAN, JR.

February 18, 1970

RE: No. 234 - Czosek v. O'Mara

Dear Byron:

This is only formally to confirm that I join you in the above. I do feel strongly that we should not get into the morass of deciding whether there are any circumstances in which the employees must first resort to the Adjustment Board. I should think that to force them to do that would be to send them to certain defeat. I can't imagine a Board equally divided between employer and Union having any sympathy for employees who are after them both.

Sincerely,

W. J. B. Jr.

Mr. Justice White

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

February 9, 1970

No. 234 -- Czosek v. O'Mara

Dear Byron,

I am glad to join your opinion for the Court in this case.

Sincerely yours,

P.S.

Mr. Justice White

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

February 10, 1970

No. 234 - Czosek v. O'Mara

Dear Byron,

I have joined your opinion in this case and continue to be content with the opinion as written. If it is the view of the Conference that we should in this case follow John Harlan's recommendation and pass upon the correctness of the holding of the Court of Appeals with respect to the propriety of suing the union and employer together when they have acted independently, my tentative view is that the Court of Appeals was correct.

Sincerely yours,

P.S.
J.S.

Mr. Justice White

Copies to the Conference

SUPREME COURT OF THE UNITED STATES

No. 234.—October Term, 1969

Henry J. Czosek et al., Petitioners, *v.* John R. O'Mara et al. | On Writ of certiorari to the United States Court of Appeals for the Second Circuit.

[February —, 1970]

Mr. Justice White delivered the opinion of the Court.

In 1960, the corporate respondent, Erie Lackawanna Railroad Company, was formed by the merger of the Erie Railroad and the Delaware, Lackawanna, and Western Railroad. Thereafter, the individual respondents, former employees of the Delaware Lackawanna continued as employees of the Erie Lackawanna until 1962, when they were furloughed; after the 1962 furlough, the respondent employees were never recalled by the railroad. Deeming the furlough a final discharge, the individual respondents brought suit against the Erie Lackawanna and against the International Brotherhood of Firemen and Oilers, subordinate organizations within the union, and local and national officers of the union. The allegations were that the railroad had wrongfully discharged the plaintiffs in violation of § 5 *et seq.* of the Interstate Commerce Act, 49 U. S. C. § 5 *et seq.*, the Railway Labor Act, 45 U. S. C. § 151 *et seq.*, and the agreement between the Erie Lackawanna and its employees entered into to implement the 1960 merger of the Erie and the Delaware Lackawanna; and that the union defendants had been "guilty of gross nonfeasance and hostile discrimination" by arbitrarily and capriciously refusing to process the claims of plaintiffs, who had "been replaced by 'pre-merger' employees of the Erie Railroad." Damages in

WBD

February 2, 1970

Re: No. 234 - Czosek v. O'Mara

Dear John:

In view of Vaca v. Sipes, the present circulation establishes no new rule about the damages recoverable from the union. And the end result of applying the rule to the facts of this case is not reached, nor could it be. I seriously doubt that the employees are under any misapprehension in this respect. It is much more likely that they failed to petition for certiorari because they were satisfied with the opportunity to replead against the railroad.

The fact that the union challenges the qualified dismissal of the railroad may be a sufficient basis for our dealing with the issue, but because the union has little or no stake in the matter, I feel no compulsion to resolve this question while we are sitting with eight hands and might waste more time than this case is worth. After all, some votes to grant were influenced by the conflict between the Second Circuit and the Eighth Circuit on the pleading questions.

Nevertheless, if the Conference prefers, I have no great objection to dealing with the question of whether the railroad may always be sued with the union where the latter is accused of a breach of duty. Where employer and union act together I think our cases sufficiently resolve the question and permit the employer to be joined in the action against the union. At least the Courts of Appeals seem to think so, and I think they are right. This leaves the case where both employer and union have injured the employee,

but independently and without interaction, the classic situation being where the employer, acting on his own, discharges the employee and the union, for its own discriminatory reasons, refuses to process the grievance before the Adjustment Board.

In such a case, if Moore and Koppal are still good law--and the Court expressly refused to overrule them in Walker, 385 U.S. 196--the employee, by accepting his discharge as final, could sue the employer under state law if that law permitted him to do so. I preferred your dissent in Walker, and still do. The general rule should be that the employee must have his breach of contract claim adjudicated by the Board, subject to special circumstances such as contemplated in the cases from Steele to Glover. These cases are enough to permit joining employer with union where the former participates in the union's breach of duty. But why should the jurisdiction of the Adjustment Board, which we have said is exclusive over contract claims, be sidetracked and the employee excused from exhausting his administrative remedies, where he is also suing the union and union and employer have acted independently? Inconvenience to the employee is one consideration. Another basic objection to making him pursue the employer before the Board is that the Board is composed of union and employer representatives and both elements appear to stand against him. This ground surfaced in Glover and may be sufficient in itself.

In any event, state law is unavailable to petitioner in this case. There is no diversity and New York law requires exhaustion of administrative remedies. At least this is what the District Court said.

This is a tangled skein. Hugo and Bill Douglas have joined but I have not asked them their preferences on the matter you raise. Bill Brennan has not yet joined but when I talked to him before I got your letter, he indicated that he preferred not to reach the question.

Sincerely,

Mr. Justice Harlan

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 9, 1970

Re: No. 234 - Czosek v. O'Mara

MEMORANDUM TO THE CONFERENCE

The Court of Appeals held in this case that if the union and the employer act independently, the employee must pursue his breach of contract claim against the employer before the Adjustment Board and may not combine his case against the employer with his federal court suit against the union for breach of the duty of fair representation. The employees did not challenge this holding here and in the present circulation I avoided discussing the holding's correctness.

Justice Harlan would prefer to decide the issue. Copies of his letter to me and my response are enclosed.

If the Conference desires to dispose of the question, the possibilities include these:

(1) hold that the employee, without going to the Adjustment Board, can always join the employer when he is suing the union in the District Court for breach of duty for failure to remedy a breach of contract by the employer;

(2) hold that in such circumstances the employee can join the employer in a suit in the District Court against the union but that action on both claims should be stayed until the employee exhausts his remedies before the Board and has his breach of contract claim decided there;

(3) hold, as the Court of Appeals did, that if union and employer have acted independently, the employer may not be joined in a suit against the union; the exclusive remedy against the employer is before the Board.

It should be noted that Moore, 312 U.S. 630, and Koppal, 345 U.S. 653, were left undisturbed in Walker, 385 U.S. 196, and would permit an employee to treat his discharge as final and sue the employer in federal court for breach of a contract if there is the requisite diversity and applicable state law does not require exhaustion of administrative remedies. Seemingly, the continuing vitality of Moore and Koppal, debated in Walker, is not at issue here since the District Court held that diversity was absent and that New York law required exhaustion of administrative remedies before suit.

Your views will be appreciated either before or at the next conference.

B.R.W.

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 5

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Fortas
Mr. Justice Marshall

From: White, J.

Circulated: _____

Recirculated: 2-20-70

SUPREME COURT OF THE UNITED STATES

No. 234.—October Term, 1969

Henry J. Czosek et al., Petitioners, *v.* John R. O'Mara et al.	On Writ of certiorari to the United States Court of Appeals for the Second Circuit.

[February 24, 1970]

Mr. Justice White delivered the opinion of the Court.

In 1960, the corporate respondent, Erie Lackawanna Railroad Company, was formed by the merger of the Erie Railroad and the Delaware, Lackawanna & Western Railroad. Thereafter, the individual respondents, former employees of the Delaware Lackawanna continued as employees of the Erie Lackawanna until 1962, when they were furloughed; after the 1962 furlough, the respondent employees were never recalled by the railroad. Deeming the furlough a final discharge, the individual respondents brought suit in the District Court for the Western District of New York against the Erie Lackawanna and against the International Brotherhood of Firemen and Oilers, subordinate organizations within the union, and local and national officers of the union. The allegations were that the railroad had wrongfully discharged the plaintiffs in violation of § 5 *et seq.* of the Interstate Commerce Act, 24 Stat. 380, as amended, 49 U. S. C. § 5 *et seq.*, the Railway Labor Act, 44 Stat. 577, as amended, 45 U. S. C. § 151 *et seq.*, and the agreement between the Erie Lackawanna and its employees entered into to implement the 1960 merger of the Erie and the Delaware Lackawanna; and that the union defendants had been "guilty of gross nonfeasance and hostile discrimination" in arbitrarily and capriciously refusing to

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 18, 1970

Re: No. 234 - Czosek v. O'Mara

Dear Byron:

In reply to your memorandum of February 9th, I adhere to my vote to join your original opinion.

Sincerely,

T.M.

Mr. Justice White

cc: The Conference