

The Burger Court Opinion Writing Database

Norfolk & Western Railway Co. Nemitz
404 U.S. 37 (1971)

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

November 4, 1971

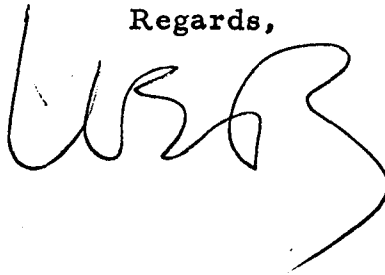
CHAMBERS OF
THE CHIEF JUSTICE

No. 70-97 - Norfolk and Western Railway Company v.
Richard Nemitz et al.

Dear Harry:

Please join me in your dissent.

Regards,

A handwritten signature in dark ink, appearing to be 'WRB', written in a cursive, stylized manner.

Mr. Justice Blackmun

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

SECTION OF CONGRESS

October 22, 1971

Dear Chief:

In No. 70-97 - Norfolk & Western
Ry. Co. v. Henitz, I will keep the opinion
for myself.

William O. Douglas

The Chief Justice

Wm Douglas
70-97
Oct 71

*Please join me
TH*

To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall ✓
Mr. Justice Blackmun

1st DRAFT

SUPREME COURT OF THE UNITED STATES, J.

No. 70-97

10/26/71

Norfolk and Western Rail- } On Writ of Certiorari to
way Company, Petitioner, } the United States Court
v. } of Appeals for the Sixth
Richard Nemitz et al. } Circuit.

[October —, 1971]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

In connection with a 1964 consolidation by which petitioner railway company absorbed New York, Chicago & St. Louis R. Co. (Nickel Plate), the so-called Sandusky Line, running from Columbus, Ohio, to Sandusky, Ohio, was acquired from the Pennsylvania Railroad System. Respondents were at the time employees of the Sandusky Line. Their work was seasonal because the winter freeze barred navigation on Lake Erie. In that event junior employees of Sandusky worked at other points on the Pennsylvania's Toledo Division.

In anticipation of the 1964 consolidation, petitioner entered into an agreement with 19 labor organizations for protection of the employees of the several railroads coming into the consolidation, including those on the Sandusky Line. By its terms, petitioner agreed to employ "all employees of the lines involved *with the guarantee that they will not be adversely affected in their employment* as a result of the proposed transactions or for any reason other than furloughs due to seasonal requirements or a decline in volume of traffic or revenue." The method of determining the amount of compensation protection afforded was to compute the average monthly compensation of the employee for the prior 12 months in which

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. SUPREME COURT RECORDS

BP

change throughout

Please join me
James H.
10/27

To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall ✓
Mr. Justice Blackmun

2nd DRAFT

SUPREME COURT OF THE UNITED STATES, J.

No. 70-97

Circulated: 10/29/71

Norfolk and Western Rail- } On Writ of Certiorari to
way Company, Petitioner, } the United States Court
v. } of Appeals for the Sixth
Richard Nemitz et al. } Circuit.

[November —, 1971]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

In connection with a 1964 consolidation by which petitioner railway company absorbed New York, Chicago & St. Louis R. Co. (Nickel Plate), the so-called Sandusky Line, running from Columbus, Ohio, to Sandusky, Ohio, was acquired from the Pennsylvania Railroad System. Respondents were at the time employees of the Pennsylvania on the Sandusky Line. Their work was seasonal because the winter freeze barred navigation on Lake Erie. During those periods junior employees of Sandusky worked at other points on the Pennsylvania's Toledo Division.

In anticipation of the 1964 consolidation, petitioner entered into an agreement with 19 labor organizations for protection of the employees of the several railroads coming into the consolidation, including those on the Sandusky Line. By its terms, petitioner agreed to employ "all employees of the lines involved *with the guarantee that they will not be adversely affected in their employment* as a result of the proposed transactions or for any reason other than furloughs due to seasonal requirements or a decline in volume of traffic or revenue."

Each employee was to receive a monthly supplement to his post-consolidation monthly earnings equal to the

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION
U.S. DEPT. OF JUSTICE

56
1

To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

No. 70-97

11/3/71

Norfolk and Western Rail- } On Writ of Certiorari to
way Company, Petitioner, } the United States Court
v. } of Appeals for the Sixth
Richard Nemitz et al. } Circuit.

[November —, 1971]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

In connection with a 1964 consolidation by which petitioner railway company absorbed New York, Chicago & St. Louis R. Co. (Nickel Plate), the so-called Sandusky Line, running from Columbus, Ohio, to Sandusky, Ohio, was acquired from the Pennsylvania Railroad System. Respondents were at the time employees of the Pennsylvania on the Sandusky Line. Their work was seasonal because the winter freeze barred navigation on Lake Erie. During those periods junior employees of Sandusky worked at other points on the Pennsylvania's Toledo Division.

In anticipation of the 1964 consolidation, petitioner entered into an agreement with 19 labor organizations for protection of the employees of the several railroads coming into the consolidation, including those on the Sandusky Line. By its terms, petitioner agreed to employ "all employees of the lines involved *with the guarantee that they will not be adversely affected in their employment* as a result of the proposed transactions or for any reason other than furloughs due to seasonal requirements or a decline in volume of traffic or revenue."

Each employee was to receive a monthly supplement to his post-consolidation monthly earnings equal to the

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

BS
M

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

October 27, 1971

RE: No. 70-97 - Norfolk and Western RR
v. Nemitz

Dear Bill:

I agree.

Sincerely,

Bul

Mr. Justice Douglas

cc: The Conference

32
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

October 27, 1971

Re: No. 70-97, Norfolk & Western R. Co.
v. Nemitz

Dear Bill,

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

Sincerely yours,

P.S.
1.

Mr. Justice Douglas

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. SUPREME COURT MANUSCRIPTS

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

October 29, 1971

Re: No. 70-97 - Norfolk & Western
Ry Co. v. Nemitz

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Douglas

Copies to Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. SUPREME COURT

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

*Ready for
back to chief*

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

October 27, 1971

Re: No. 70-97 - Norfolk and Western v. Nemitz

Dear Bill:

Please join me.

Sincerely,

T.M.
T.M.

Mr. Justice Douglas

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. DEPARTMENT OF JUSTICE

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

October 28, 1971

Re: No. 70-97 - N & W Railway Co. v. Nemitz, et al.

Dear Bill:

As you anticipated, I may try my hand at a dissent.
I shall let you know definitely by Monday.

Sincerely,

H. A. B.

Mr. Justice Douglas

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. SUPREME COURT RECORDS

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Blackmun, J.

Circulated: 11/2/71

No. 70-97

Recirculated: _____

Norfolk and Western Rail- } On Writ of Certiorari to
way Company, Petitioner, } the United States Court
v. } of Appeals for the Sixth
Richard Nemitz et al. } Circuit.

[November —, 1971]

MR. JUSTICE BLACKMUN, dissenting.

I am sympathetic with the respondents and with the unfortunate predicament in which, largely by their own acts, they find themselves. I feel, however, that the Court's decision to the effect that federal district court jurisdiction exists here and that the judgment of the Court of Appeals is to be affirmed amounts only to a sympathetically imposed judicial cure that is not authorized by the Interstate Commerce Act, that is violative of Congress' intent, and that ignores unusually clear legislative history.

In January 1962 the Norfolk & Western and the respondents' own Brotherhood, and others, entered into an agreement for the protection of employees in the event of approval of the anticipated merger. This agreement, by the express terms of its paragraph VIII, was directed to "the last sentence of Section 5 (2) (f) of the Interstate Commerce Act." In October 1965 the railroad and the union, and others, entered into an Implementing Agreement. It then follows, it seems to me, that a number of factors demand a result opposite to that reached by the Court:

1. *The very language of the statute.* Section 5 (2) (f) was added to the Interstate Commerce Act by the Transportation Act of 1940, 54 Stat. 898, 906-907. It is the Act's only provision relating to employee benefits. The

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

OFFICE OF THE CLERK OF THE SUPREME COURT

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Blackmun, J.

No. 70-97

Circulated: _____

Norfolk and Western Rail- } On Writ of Certiorari
way Company, Petitioner, } the United States Court
v. } of Appeals for the Sixth
Richard Nemitz et al. } Circuit.

Recirculated: 11/12/71

[November 15, 1971]

MR. JUSTICE BLACKMUN, with whom THE CHIEF JUSTICE and MR. JUSTICE WHITE join, dissenting.

I am sympathetic with the respondents and with the unfortunate predicament in which, largely by their own acts, they find themselves. I feel, however, that the Court's decision to the effect that federal district court jurisdiction exists here and that the judgment of the Court of Appeals is to be affirmed amounts only to a sympathetically imposed judicial cure that is not authorized by the Interstate Commerce Act, that is violative of Congress' intent, and that ignores unusually clear legislative history.

In January 1962 the Norfolk & Western and the respondents' own Brotherhood, and others, entered into an agreement for the protection of employees in the event of approval of the anticipated merger. This agreement, by the express terms of its paragraph VIII, was directed to "the last sentence of Section 5 (2) (f) of the Interstate Commerce Act." In October 1965 the railroad and the union, and others, entered into an Implementing Agreement. It then follows, it seems to me, that a number of factors demand a result opposite to that reached by the Court:

1. *The very language of the statute.* Section 5 (2) (f) was added to the Interstate Commerce Act by the Transportation Act of 1940, 54 Stat. 898, 906-907. It is the Act's only provision relating to employee benefits. The