

# The Burger Court Opinion Writing Database

## *Andrews v. Louisville & Nashville Railroad Co.*

406 U.S. 320 (1972)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



20  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

May 12, 1972

No. 71-300 -- Andrews v. Louisville and Nashville  
Railroad

Dear Bill:

Please join me.

Regards,

WZB

Mr. Justice Rehnquist

Copies to the Conference

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11/9/71

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

THOMAS L. ANDREWS *v.* LOUISVILLE &  
NASHVILLE RAILROAD CO. ET AL.ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 71-300. Decided November —, 1971

MR. JUSTICE DOUGLAS.

I would grant this petition for certiorari and reverse out of hand.

*Moore v. Illinois Central R. Co.*, 312 U. S. 630 (1941), held that a railway employee who feels he has been unjustly discharged has two recourses: (1) he may use the various administrative remedies provided by the collective bargaining agreement and his right of review before the National Railroad Adjustment Board; or (2) he may treat his discharge as final and sue for damages in the courts without exhausting his contractual and administrative remedies if the action is brought in a State which permits such actions without prior exhaustion.

In 1966 Congress amended the Railway Labor Act, 80 Stat. 208, to provide that "the representative" of employees or of "the carrier" may ask for the creation of a special board of adjustment" to rule on a claim otherwise referable to the Adjustment Board and which has been pending before the Board for 12 months.

The purpose of the 1966 amendment was to speed up the work of the Adjustment Board and to break up the backlog of cases. See H. R. Rep. No. 1114, 89th Cong., 1st Sess., p. 11. The 1966 Act gives no remedy to the employee, only to the union. Whether *Moore* survives the 1966 Act is a question on which we reserved opinion in *Walker v. Southern R. Co.*, 385 U. S. 196, 199.

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Recd  
11/11/71

4th DRAFT

## SUPREME COURT OF THE UNITED STATES

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8  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

April 20, 1972

MEMORANDUM TO THE CONFERENCE:

In No. 71-300 - Andrews v. L & N RR, I will  
in due course circulate a dissent.

*W. O. D.*

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

April 28, 1972

MEMORANDUM TO THE CONFERENCE:

I attach my dissent in No. 71-300 - Andrews v. Louisville & Nashville Railroad.

In writing this, I had the Library contact the National Adjustment Board to see if they had any statistics on the number of cases that the Board had which entailed damage claims by employees who wanted to quit the industry and who did not seek benefits such as severance pay under collective bargaining agreements.

The word came back that they had no such claims; that they had never processed claims of that character; and that if such a claim were filed, they would do nothing about it because that kind of claim was beyond their jurisdiction. This report strengthened in my mind the view we expressed in Slocum -- that this type of claim is not within the purview of the Board. We have never heard from the Board officially.

I am really calling this matter to the attention of the Conference with the thought that the Court might want to ask the Board its views, or alternatively, to put the case down for reargument asking the Solicitor General to file a brief addressed to that question. If the report coming to my office is correct, the majority decision in the Andrews case would, as a practical matter, result in depriving the employee of any remedy.

W O  
William O. Douglas

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To: The Chief Justice  
 Mr. Justice Blackman  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Brennan  
 Mr. Justice Marshall  
 Mr. Justice Harlan  
 Mr. Justice Burger  
 Mr. Justice Douglas

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-300

Circulated: 4-28

Thomas L. Andrews, Petitioner, } On Writ of Certiorari  
 v. } to the United States  
 Louisville & Nashville Railroad } Court of Appeals for  
 Company et al. } the Fifth Circuit.

[April —, 1972]

MR. JUSTICE DOUGLAS, dissenting.

If this employee wanted reinstatement and back pay, there would be merit in remitting him to the remedies under the Railway Labor Act. But he does not want that relief. Rather, he desires to quit the railroad, to have no further jobs with it, and to be compensated in dollars for his wrongful discharge.

The cases on which the Court relies to overrule *Moore* are quite different. *Brotherhood of Railroad Trainmen v. Chicago R. & I. R. Co.*, 353 U. S. 30, involved claims of existing employees, not for damages for wrongful discharge, but for "additional compensation" and for "reinstatement," and involved a "minor" dispute, that is, a controversy "over the meaning of an existing collective bargaining agreement." *Id.*, at 32-33. *Machinists v. Central Airlines*, 372 U. S. 682, also involved reinstatement "without loss of seniority and with back pay." *Id.*, at 683. In *Republic Steel Corp. v. Maddox*, 379 U. S. 650, the aggrieved employee wanted "severance pay" allegedly owed under the collective-bargaining agreement. *Id.*, at 65-651. In *Walker v. Southern R. Co.*, 385 U. S. 196, the dispute basically involved an issue of seniority, though the opinion does not disclose it.<sup>1</sup>

<sup>1</sup> The opinion of the Court of Appeals in the *Walker* case makes clear that the seniority dispute was based on the collective agreement. 354 F. 2d, at 950.

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U. S. DEPARTMENT OF JUSTICE

4, 5, 7

joined with

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

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

No. 71-300

Circulated: \_\_\_\_\_

Recirculated: 5-3

Thomas L. Andrews, Petitioner, } On Writ of Certiorari  
v. } to the United States  
Louisville & Nashville Railroad } Court of Appeals for  
Company et al. } the Fifth Circuit.

[April —, 1972]

MR. JUSTICE DOUGLAS, dissenting.

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Chavez Thurgood

To : The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Black  
Mr. Powell  
Mr. Renquist

4th DRAFT

SUPREME COURT OF THE UNITED STATES

From : Douglas, J.

No. 71-300

Circulate:

Thomas L. Andrews, Petitioner, } On Writ of Certiorari  
v. } to the United States  
Louisville & Nashville Railroad } Court of Appeals for  
Company et al. } the Fifth Circuit.

Regulated: 5/4/72

[April —, 1972]

MR. JUSTICE DOUGLAS, dissenting.

I

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U. S. DEPARTMENT OF JUSTICE

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

OFFICE OF THE CLERK OF THE SUPREME COURT

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

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-300

Thomas L. Andrews, Petitioner, } On Writ of Certiorari  
v. } to the United States  
Louisville & Nashville Railroad } Court of Appeals for  
Company et al. } the Fifth Circuit.

5/5/72

[April —, 1972]

MR. JUSTICE DOUGLAS, dissenting.

I

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4m  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR. April 20, 1972

RE: No. 71-300 - Andrews v. Louisville  
& Nashville R. Co.

Dear Bill:

I agree.

Sincerely,

Bill

Mr. Justice Rehnquist,

cc: The Conference

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U.S. SUPREME COURT OF CONSTITUTION

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

CHAMBERS OF  
JUSTICE POTTER STEWART

April 20, 1972

71-300 - Andrews v. L&N R. Co.

Dear Bill,

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

Sincerely yours,

P.S.  
/

Mr. Justice Rehnquist

Copies to the Conference

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U.S. SUPREME COURT RECORDS

(3) *[Handwritten mark]*  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

April 20, 1972

Re: No. 71-300 - Andrews v.  
Louisville & Nashville Rd  
Co.

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Dear Bill:

Please join me.

Sincerely,

*[Handwritten signature]*

Mr. Justice Rehnquist

Copies to Conference

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SSSBNOC 50 ADV 1 IN

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

April 20, 1972

Re: No. 71-300 - Andrews v. Louisville & Nashville

Dear Bill:

Please join me.

Sincerely,

  
T.M.

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

April 24, 1972

Re: No. 71-300 - Andrews v. Louisville and  
Nashville Railway Co.

Dear Bill:

Please join me.

Sincerely,

*H. A. B.*

Mr. Justice Rehnquist

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

SECTION OF ADVISORY BOARD

10: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
✓ Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell

1st DRAFT

From: Rehnquist, J.

SUPREME COURT OF THE UNITED STATES

Recirculated: 4-19-72

No. 71-300

Recirculated: \_\_\_\_\_

Thomas L. Andrews, Petitioner, } On Writ of Certiorari  
v. } to the United States  
Louisville & Nashville Railroad } Court of Appeals for  
Company et al. } the Fifth Circuit.

[April —, 1972]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Petitioner brought suit in the state trial court of Georgia seeking damages for alleged "wrongful discharge" by the respondent. He alleged that prior to an auto accident in 1967, he had been an employee in good standing of the respondent, employed "under specified conditions and with a stipulated schedule of benefits." He alleged that following the accident, he had fully recovered and was physically able to resume his work for respondent, but that respondent had refused to allow him to return to work, and that respondent's actions amounted to a wrongful discharge. He prayed for damages consisting of loss of past and future earnings and for attorneys' fees. Respondent removed the case to the United States District Court and there moved to dismiss the complaint for failure to exhaust the remedies provided by the Railway Labor Act, 45 U. S. C. § 153 First (i), 44 Stat. 577, as amended by 80 Stat. 208. The District Court granted the motion, and the Court of Appeals for the First Circuit affirmed. We granted certiorari, — U. S. —, and are once more confronted with the question of whether *Moore v. Illinois Central Railroad Co.*, 312 U. S. 630 (1941), shall be overruled.

*Moore* held that a railroad employee who elected to treat his employer's breach of the employment contract

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To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
✓ Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Rehnquist, J.

No. 71-300

Circulated: \_\_\_\_\_

Recirculated: 4-25-72

Thomas L. Andrews, Petitioner, } On Writ of Certiorari  
v. } to the United States  
Louisville & Nashville Railroad } Court of Appeals for  
Company et al. } the Fifth Circuit.

[April —, 1972]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

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SSBPCNOC 30 ADV 111 IN

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 1, 1972

MEMORANDUM TO THE CONFERENCE:

Re: 71-300 - Andrews v. Louisville & Nashville Railroad

I hope to circulate within the next couple of days a revised draft of my proposed majority opinion in the above entitled case, in which I will attempt as best I can to respond to several of the points made by Bill Douglas in his dissent. Because Bill, in his memorandum to the Conference of April 28, suggested that perhaps the case should be set down for reargument, or that the Court might wish to ask the National Adjustment Board for its views, I thought it best to circulate as soon as possible my tentative reasons for believing that these steps are not warranted here.

1. At least two of this Court's earlier cases say that the Adjustment Board does have the authority to award back wages in connection with a claim for wrongful discharge. Gunther v. San Diego and C.E.R. Co., 382 U.S. 257 (1965); Walker v. Southern Railway Co., 385 U.S. 196 (1966). While in Gunther the employee also requested and sought reinstatement, nothing in the logic of the Court's holding there nor in the tenor of the statute as I read it would condition the authority of the Board to grant back wages upon that sort of a claim being accompanied by a claim for reinstatement.

2. Lost wages are a significant element in the common law measure of damages for breach of contract, although they may not be a complete equivalent. I think this is made clear

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OFFICE OF THE CLERK OF THE SUPREME COURT

- 2 -

in Judge Craven's opinion, the trial judge in the Walker case, 237 F. Supp. 278 (1965), which, incidentally, he treats as a claim for "wrongful discharge". Since, as his opinion points out, an able bodied plaintiff is under a duty to mitigate damages by seeking other employment, the prospect of a successful claim for extensive future loss of earnings would not be good in the usual case.

3. I think that the legal disagreement in this case is based on one's approach to the type of claim asserted by Andrews here, and by Walker in his case. Is the claim by an employee employed under a collective bargaining contract with a railroad to the effect that his employer has so breached the employer's obligation of performance under the contract as to entitle the employee to treat the employer's conduct as a "discharge" such a different breed of cat from any other claim arising under the collective bargaining contract as to justify the exception to mandatory grievance processing carved out for that sort of claim in Moore v. Illinois Central, 312 U.S. 630? Or, since the employee's right to claim damages at all for a refusal to continue his employment on the part of the railroad must necessarily stem from some sort of an agreement, and since the only agreement that the employee claims here is the collective bargaining contract, must he submit to mandatory processing of this claim under the contract as he must to such processing of all other claims? As I read the Court's opinions over the past thirty years, there has been continuing disagreement on this issue. For me, I think the pros and cons have been adequately thrashed out by the briefs and the oral argument in this case, further argument or briefing would not assist me in making up my own mind. This is particularly true since this decision would not foreclose ultimate resort to the courts for relief unavailable from the Board but permitted under the Act and state law.

  
W.H.R.

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
✓ Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Rehnquist, J.

No. 71-300

Circulated: \_\_\_\_\_

Recirculated: 5-2-72

Thomas L. Andrews, Petitioner, } On Writ of Certiorari  
v. } to the United States  
Louisville & Nashville Railroad } Court of Appeals for  
Company et al. } the Fifth Circuit.

[April —, 1972]

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U. S. DEPARTMENT OF JUSTICE