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Libel and Slander - Persons Liable - Television Station without Power to Censor Not Liable for Defamation in Political Broadcasts

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Taft-Hartley Act.[11] A thought-provoking aspect of the case stems from the inherent vagueness of the concept of the "secondary boycott". The difficulty encountered in defining that term adequately would seem to leave the way open for achievement of substantially the objectives sought to be reached by the "hot cargo" clause through other means. It is arguable that a union could insist on a higher rate of pay for its members when required to handle non-union goods than it exacts when exclusively union-made goods are utilized by the employer.[12] Equally, a stronger wage policy with regard to employers who consistently handled non-union goods might be effective.

It is felt that it would be better to declare "hot cargo" and similar clauses void, as the union when bargaining for the insertion of such clauses, is merely inducing the employer to agree to a secondary boycott in the future which would nullify the intention and effect of section 8(b) (4) (A) of the Taft-Hartley Act.[13]

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LIBEL AND SLANDER — PERSONS LIABLE — TELEVISION STATION WITHOUT POWER TO CENSOR NOT LIABLE FOR DEFAMATION IN POLITICAL BROADCASTS.— Television company broadcasted political speeches by the qualified candidates for the office of United States Senator. Thereafter, a third candidate requested opportunity to use the broadcasting facilities. The television company believed certain statements in the proposed speech relating to a North Dakota corporation to be libelous and notified the candidate that it would broadcast the proposed script only if demand was made under the provisions of Section 315 of the Federal Communications Act. The script was broadcasted upon demand by the candidate, and the corporation brought action against the television company and the candidate to recover damages for defamatory statements made by the candidate. The Supreme Court of North Dakota *held*, one justice dissenting, that Section 315 grants immunity to a broadcaster from liability for defamatory statements made by candidates, if such statements are germane to political issues discussed by candidates. *Farmers Educational & Coop. Union v. WDAY, Inc.*, 89 N.W.2d 102 (N.D. 1958).[1]

The law of North Dakota makes radio and television stations liable for defamatory publications.[2] Similar law exists in many states.[3] Section 315 of

11. In the instant case the court said, "much that might argumentatively be found to fall within the broad and somewhat vague concept of secondary boycott is not in terms prohibited."

12. The argument is that since employers can obtain non-union goods in many instances at a price which is lower than that paid for union-made goods, that employer will ordinarily make a greater profit from handling such goods, thus furnishing an economic justification for a demand for higher wage rates with respect to such goods on the part of his employees. Moreover, the proscription of the statute extends, as the Supreme Court carefully pointed out in the principal case, only to the conduct specified in the statute itself, namely (1) engaging in a srike or (2) engaging in a concerted refusal to handle such goods in the course of employment. Since neither of these types of conduct would occur in a situation where a union obtained a wage-rate differential for its members when required to handle non-union goods, no violation of the statute would appear to be present.

13. For a more detailed discussion of the "hot cargo" clause see Burstein, *The "Hot Cargo" Clause*, in New York University Eleventh Annual Conference on Labor 153 (1958).

1. *Cert. granted*, 79 S. Ct. 56 (1958).

2. N. D. Rev. Code § 14-0201 (1943). North Dakota also imposes criminal liability for publication of slander by means of radio. See N.D. Rev. Code § 12-2815 (1943). It should be noted that the broadcaster in the instant case alleged as a defense that it was absolved of any liability for damages under the provisions of N.D. Rev. Code § 14-0209 (Supp. 1957) which provides: "The owner, licensee or operator of a visual or sound

the Federal Communications Act of 1934 requires that broadcasting stations grant equal speaking opportunities to all qualified political candidates and prohibits censorship of the material broadcasted.[4] In the situation presented when an uncensored candidate makes defamatory statements while using broadcasting facilities, an early Nebraska case, *Sorensen v. Wood,* found no conflict between state and federal law, interpreting the censorship provision as merely preventing the broadcaster from censoring words as to their political and partisan trend, holding the station liable for publication of defamatory matter.[5] The result of this case was generally followed[6] until the *Port Huron*[7] decision wherein the Communications Commission announced by way of dictum that the federal prohibition against censorship of speeches by candidates is absolute, and no exception exists in the case of libelous material. The Commission said further that Section 315 "appears clearly to constitute an occupation of the field by the federal authority, which under the law, would relieve the licensee of responsibility for any libelous matter broadcasted in the course of a speech coming within Section 315 irrespective of the provisions of state law." A federal court, in refusing to maintain a suit to annul this interpretation denounced the dictum as a mere opinion and not a rule or order having the force of law.[8] However, the broadcaster placed in the situation where a candidate demands to utter is forced either (1) to delete such defamatory matter at the risk of violating the Commission's will as expressed in its interpretation of the federal law, thus risking its license,[9] or (2) to broadcast such statements at peril of transgressing state law.

It appears certain that Congress had power to make the prohibition against censorship absolute and give broadcasters the immunity of common carriers with respect to political broadcasts.[10] Whether Section 315 does so is a question of legislative history.[11] Section 315 was taken over without change from Section 18 of the Radio Act of 1927.[12] Section 18, as originally proposed, made the

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radio broadcasting station or network of stations, and the agents or employees of any such owner, licensee or operator, shall not be liable for any damages for any defamatory statements published or uttered in or as a part of a visual or sound radio broadcast, by one other than such owner, licensee or operator, or agent or employee thereof." The District Court held that this section was unconstitutional under Sections 9, 11 and 22 of the North Dakota Constitution. No exception to this ruling was taken by the defendant and, therefore, the question of the constitutionality of section 14-0209 was not considered by the North Dakota Supreme Court.

3. See 58 Yale L. J. 787 (1949) n. 2.

4. 48 Stat. 1088 (1934); 47 U.S.C. § 315 (1952).

5. 123 Neb. 348, 243 N.W. 82 (1932) (Liability was based on an analogy between radio stations and newspapers.), *appeal dismissed,* 290 U.S. 599 (1933) (The decision was based on adequate non-federal grounds.)

6. See Coffey v. Midland Broadcasting Co., 8 F. Supp. 889 (W.D. Mo. 1934); Miles v. Louis Wasmer, Inc., 172 Wash. 446, 20 P.2d 847 (1933). *Contra,* Josephson v. Knickerbocker Broadcasting Co., 38 N.Y.S.2d 985, 179 Misc. 787 (Sup. Ct. 1942).

7. Port Huron Broadcasting Co., 12 F.C.C. 1069 (1948). The Commission rejected the analogy between radio and newspapers and used instead that of the telegraph, reasoning that inability of a station to censor puts it in the same position as a telegraph company which must accept all messages. See O'Brien v. Western Union Tel. Co., 113 F.2d 539 (1st Cir. 1940).

8. See Houston Post Co. v. United States, 79 F. Supp. 199 (S.D. Tex. 1948).

9. The Federal Communications Commission has power to grant, deny, revoke, or refuse to renew a license in accordance with the standard set up by Congress: "public convenience, interest, or necessity". See 48 Stat. 1083 (1934), 47 U.S.C. § 307 (a) (1952).

10. *Cf,* Sola Electric Co. v. Jefferson Electric Co., 317 U.S. 173 (1942); O'Brien v. Western Union Tel. Co., 113 F.2d 539 (1st Cir. 1940).

11. See, *e.g.,* United States v. Universal C.I.T. Corp., 344 U.S. 218 (1952).

12. 44 Stat. 1170 (1927) *repealed,* 48 Stat. 1102 (1934).

radio station a common carrier.[13] A Senate amendment deleted the common carrier provision, providing for prohibition against both censorship and liability for defamation.[14] The latter prohibition was dropped without reason in the final bill.[15] In 1952 Congress amended Section 315 to prohibit broadcasters from charging candidates above normal rates to cover possible loss through liability for defamation.[16]

It is submitted that the decision in the instant case treats fairly the broadcaster who acted in good faith, and is the result of sound reasoning. Nevertheless, it does leave present a situation where an insolvent candidate can speak freely and leave the defamed nothing but his insolvency from which to seek damages. On the other hand, had the court not interpreted the Act as granting immunity, the broadcaster would remain in the precarious position where he faces possible loss at either the hands of the state or the Communications Commission, regardless of what course he takes, each time the candidate demands to broadcast defamation. A solution to the dilemma here presented which will be uniform throughout the states is needed, and must be arrived at either through congressional amendment[17] or through a final interpretation of Section 15 by the federal judiciary.[18]

CECIL E. REINKE.

WORKMEN'S COMPENSATION — AGGRAVATION OR ACCELERATION OF PARTICULAR CONDITIONS — NERVOUS TENSION RESULTING IN STROKE COMPENSABLE WITHOUT SHOWING OF UNUSUAL EXERTION. — A woman employee suffered a stroke while on duty which resulted in paralysis. The evidence showed that she had been afflicted with hypertension and was a perfectionist in the performance of her duties. Due to this attitude toward her work, she was subjected to considerable mental and emotional strain. The Supreme Court of Mississippi *held*, one justice dissenting, that where mental and emotional strain of employee's work aggravated employee's preexisting hypertension, and such aggravation was a factor contributing to employee's disability, workmen's compensation could be recovered for such disability. *Insurance Department of Mississippi v. Dinsmore*, 102 So.2d 691 (Miss. 1958).

Workmen's Compensation Laws are to be liberally construed to provide indemnity for accidents peculiarly incidental to the employment;[1] but they do not provide the employee with a general health, accident and old-age insurance policy.[2] The injury does not have to be an accident physica in nature, however, to be compensable.[3] For example, insanity resulting from

13. 67 Cong. Rec. 12501 (1926).
14. *Ibid.*
15. H.R. Rep. No. 1886, 69th Cong., 2d Sess. (1927).
16. See 66 Stat. 717 (1952), 47 U.S.C. § 315 (b) (1952).
17. Attempts have been made, without success, to amend Section 315 to include either the interpretation of Sorenson v. Wood or that of the instant case. See 98 Cong. Rec. 7401-4 (1952).
18. The principal case has already been cited with approval in one federal decision which also interpreted Section 315 as granting immunity to the broadcaster. See Lamb v. Sutton, 164 F. Supp. 928 (M.D. Tenn. 1958).

1. See, *e.g.*, Rucker v. Michigan Smelting & Refining Co., 300 Mich. 668, 2 N.W.2d 808 (1942); Booke v. Workmen's Comp. Bureau, 70 N.D. 714, 297 N.W. 779 (1941).
2. See, *e.g.*, Rucker v. Michigan Smelting & Refining Co., 300 Mich. 668, 2 N.W.2d 808 (1942); McKinnon v. North Dakota Workman's Comp. Bureau, 71 N.D. 228, 299 N.W. 856, (1941); Tweten v. North Dakota Workmen's Comp. Bureau, 69 N.D. 369, 287 N.W. 304 (1939).
3. Schneyder v. Cadillac Motor Car Co., 280 Mich. 127, 273 N.W. 418 (1937); Simon v. R. H. H. Steel Laundry, 25 N.J. Super. 50, 95 A.2d 446 (1953).