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ADMINISTRATIVE LAW-PRIOR RESORT DOCTRINE-RESORT TO THE RAILROAD ADJUSTMENT BOARD BEFORE COURT ACTION

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ADMINISTRATIVE LAW—PRIOR RESORT DOCTRINE—RESORT TO THE RAILROAD ADJUSTMENT BOARD BEFORE COURT ACTION—The decision in a recent case [1] to the effect that a dispute concerning the construction of a contract of employment between a labor union and a railroad may be adjusted by carrying it before the Railroad Adjustment Board, or by carrying it directly to the courts makes this an apt time to examine the applicability of the doctrine of prior resort [2] to disputes covered by the Railway Labor Act.[3] Such an examination seems especially necessary in view of the fact that in such cases the courts have not even mentioned the doctrine.[4]

[1] Southern Ry. Co. v. Order of Ry. Conductors, (D.C.S.C. 1945) 63 F. Supp. 306. The employer sought a declaratory judgment construing a contract of employment. The court held that prior resort to the National Railroad Adjustment Board was unnecessary.

[2] In effect, this doctrine requires a litigant to seek relief from an appropriate administrative tribunal before invoking the aid of a court. This doctrine is also referred to as the "primary jurisdiction" rule and it has been said that it is the "keystone of the arch of administrative regulation." 51 HARV. L. REV. 1251 (1938). This comment will not be a complete discussion of the "prior resort" doctrine. For a fuller discussion of the doctrine see Stason, "Timing of Judicial Redress from Erroneous Administrative Action," 25 MINN. L. REV. 560 (1941); 51 HARV. L. REV. 1251 (1938); 35 COL. L. REV. 230 (1935); 39 MICH. L. REV. 1408 (1941).

[3] 44 Stat. L. 577 (1926), as amended, 48 Stat. L. 1185 (1934), 45 U.S.C. (1940) § 151, et seq.

[4] The "prior resort" doctrine received some consideration in the case of Washington Terminal Co. v. Boswell, (C.C.A. D.C. 1941) 124 F. (2d) 235 at 251 (1941). In that case the employer sought relief in the courts after the administrative machinery had been set in motion and the court decided that the employer was precluded from a resort to the courts.

The National Railroad Adjustment Board is made up of thirty-six members, half selected from the carriers and half by the standard railroad unions. Such a membership is no doubt more familiar with the language and conditions peculiar to railroads than judges or the ordinary juries would be. That there is such language can readily be seen from an inspection of the reports of the proceedings before the Adjustment Board.[5] One reason given for the doctrine of prior resort is that the members of an administrative tribunal are usually chosen with a view toward their special qualifications in the field in which the cases demanding their decisions arise, and this special knowledge will make for wiser decisions than if a court, generally unfamiliar with the terms or conditions of a particular industry, handed down a decision on the same set of facts.[6] This reason is especially applicable to these disputes involving the interpretation of a collective agreement between a carrier and its employees.

Another reason given for the doctrine is that by having administrative tribunals rule on the questions, a more uniform rule will be established.[7] If prior resort to the courts were allowed, there might conceivably be as many different rules on the same set of facts as there are courts. Such uniformity could be attained by making prior resort to the Adjustment Board a necessity.

Still another reason advanced for the prior resort doctrine is that "it is part of the comity which one branch of the government owes to another...."[8] This reason obviously applies where any administrative tribunal is involved.

Inasmuch as the reasons for the prior resort doctrine are applicable to the grievance disputes over which the Adjustment Board has jurisdiction, it seems that the doctrine should be observed unless the limitations upon the use of the doctrine apply. One of these limitations is

[5] "The whole adjustment procedure up to the point of award, findings and order by the Board, appears to be constructed upon the idea that it is not the business of lawyers but is the business of railroad men, workers and managers alike . . . . They know the language, functions and purposes of railroads and of their collective agreements. Their judgment is informed by experience in negotiating and administering these contracts." Washington Terminal Co. v. Boswell, (C.C. D.C. 1941) 124 F. (2d) 235 at 241. For an example of railroad vocabulary see Garrison, "The National Railroad Adjustment Board: A Unique Administrative Agency," 46 YALE L. J. 567 at 569 (1937).

[6] United States Navigation Co. v. Cunard Steamship Co., 284 U.S. 474, 52 S. Ct. 247 (1932); Stason, "Timing of Judicial Redress from Erroneous Administrative Action," 25 MINN. L. REV. 560 at 564 (1941); 51 HARV. L. REV. 1251 at 1252 (1938).

[7] 51 HARV. L. REV. 1251 at 1253 (1938).

[8] 27 COL. L. REV. 450 at 452 (1927). However, one writer has indicated that this consideration should be given only a minimum amount of importance. 35 COL. L. REV. 230 at 231, note 7 (1935).

that the doctrine is not followed when the only question involved is a legal question.[9] It is debatable whether the interpretation of a contract is a question of law or of fact,[10] but certainly it is not purely a legal question. Since the doctrine has been extended to include certain questions of law, particularly those the answers to which are aided by or depend in large degree upon technical knowledge, [11] and since the Railway Labor Act gives the board jurisdiction over such questions,[12] the above-stated limitation should not defeat the application of the doctrine of prior resort in cases of this kind.

The doctrine is also inapplicable in those cases where the administrative remedy is not clearly available.[13] It would seem that this limitation is the only possible justification for the trend of the decisions ignoring the prior resort doctrine in cases involving the settlement of grievances such as were relied on as precedent in the *Southern Railway* case.[14] It has been the practice of the Adjustment Board not to set down claims by *individual* employees for hearing,[15] with the result that individual employees would have been left without a remedy unless allowed to assert their claims in court.

In the case of *Evans v. Louisville and Nashville Railroad Company*,[16] an individual was allowed to resort to the courts without prior resort to the Adjustment Board. The case involved the interpretation of a collective-bargaining contract. The court, in disposing of the defense that prior resort to the Adjustment Board was necessary, said that "Decisions to the effect that a failure to invoke administrative remedies before the Interstate Commerce Commission or other Federal administrative boards precluded or rendered premature a resort to the courts were based upon statutes which by express terms or necessary implica-

[9] Stason, "Timing of Judicial Redress from Erroneous Administrative Action," 25 MINN. L. REV. 560 at 566 (1941).

[10] It has been said that a controversy involving the interpretation of a contract is *usually* a legal question, but that "it also involves a special type of contract—a collective bargaining agreement . . ." the interpretation of which is a matter for the board's determination. 39 MICH. L. REV. 1408 at 1409 (1941). "The National Railroad Adjustment Board . . . is, so far as I know, the only administrative tribunal, federal or state, which has ever been set up in this country for the purpose of rendering judicially enforceable decisions in controversies arising out of the interpretation of contracts." Garrison, "The National Railroad Adjustment Board: A Unique Administrative Agency," 46 YALE L.J. 567 (1937).

[11] Stason, "Timing of Judicial Redress from Erroneous Administrative Action," 25 MINN L. REV. 560 at 565 (1941).

[12] Note 11, supra.

[13] 35 COL. L. REV. 236 (1935).

[14] Note 1, supra.

[15] FINAL REPORT OF THE ATTORNEY GENERAL'S COMMITTEE ON ADMINISTRATIVE PROCEDURE 188 (1941).

[16] 191 Ga. 395, 12 S.E. (2d) 611 (1940), noted in 39 MICH. L. REV. 1408 (1941).

tion gave to the administrative board exclusive jurisdiction or made the exhaustion of administrative remedies a condition precedent to judicial action."[17] An inspection of the act[18] under which the prior resort doctrine has been held to be applicable[19] in respect to the Interstate Commerce Commission makes it difficult to sustain this view, for it reads as follows:

> "...any person...claiming to be damaged by any common carrier...may either make complaint to the Commission...or may bring suit in his . . . own behalf for the recovery of damages . . . in any district or circuit court of the United States of competent jurisdiction . . . ."

If anything, this language seems to give more opportunity for concurrent jurisdiction than does the language embodied in the Railway Labor Act.[20]

In *Moore v. Illinois Central Railroad Company*,[21] an individual employee brought an action for damages for an alleged wrongful discharge contrary to a collective agreement. The court held that the Railway Labor Act did not preclude the employee from seeking relief from the courts without first resorting to the Adjustment Board. The Supreme Court followed much the same line of reasoning as was used by the Georgia court in the *Evans* case.[22]

However, in the *Southern Railway* case[23] a federal district court applied this reasoning to a situation where the plaintiff was a carrier and, in effect, did away with the doctrine of prior resort, at least insofar as the Railway Labor Act is concerned.

Conceivably, the *Southern Railway* decision may be reversed if it is appealed to the Supreme Court. In June, 1945, the Supreme

[17] 191 Ga. 395 at 401, 12 S.E. (2d) 611 (1940).

[18] 24 Stat. L. 379 at 382, c. 104, § 8 (1887).

[19] Texas & Pacific Ry. Co. v. Abilene Cotton Oil Co., 204 U.S. 426, 27 S. Ct. 350 (1906).

[20] "(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on June 21, 1934, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but failing to reach an adjustment in this manner, the disputes *may* be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board . . . ." 45 U.S.C. (1940) § 153 (h), subdivision (i). (Italics supplied.) It would seem that the courts could very easily hold that this section required the parties to resort to the ordinary methods of grievance settlement, i.e., getting together among themselves, before seeking relief from the Adjustment Board.

[21] 312 U.S. 630, 61 S. Ct. 754 (1941).

[22] 312 U.S. 630 at 635.

[23] (D.C.S.C. 1945) 63 F. Supp. 306.

Court[24] decided that an individual employee had the right to appear before the Railroad Adjustment Board; so if the board allows an employee such a right in the future, it would seem that the only justifiable reason for allowing concurrent jurisdiction has disappeared and consequently, the prior resort doctrine should be applied, not only where the plaintiff is an employee, but also where the plaintiff is a union or a carrier. There never has been a justification for allowing the latter two to resort to the courts for an interpretation of a collective-bargaining contract before resorting to the Adjustment Board and there is even less reason in view of the *Elgin* case.

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[24] Elgin, J. & E. Ry. Co. v. Burley, 325 U.S. 711, 65 S. Ct. 1282 (1945).