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Administrative Law—Exhaustion of Remedies

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accordance with statutory procedure. Because it was the last day of the license period, and the record wouldn't be ready for at least three more days, the Liquor Authority, in making the revocation, proceeded on some "notes" prepared by the hearing commissioner from memory. The revocation was affirmed by the Appellate Division.[32] The Court of Appeals reversed, pointing out that even though the actual report may have contained substantially the same facts as were given to the Liquor Authority in the "notes", and even though the decision may have been the same, the fact remains that the Liquor Authority cannot wholly disregard procedural methods set up in the statute and regulations.

From the decision of this case it is clear that administrative action will not be upheld, regardless of the propriety of the decision, when the procedure set out in the statute, or regulations adopted pursuant thereto, has not been closely adhered to. In *Wignall v. Fletcher,* discussed above, the Court of Appeals held that administrative tribunals, like judicial tribunals, are bound to proceed in a manner consistent with the requirements of due process. An agency may have express authority to conduct a proceeding against an individual and to invoke the prescribed sanctions; however, it may not do so without proper notice to the individual involved. Such notice includes the requirement that a person be duly informed whenever there is any change in the nature of the proceeding against him.

Exhaustion of Remedies

The doctrine referred to as "exhaustion of remedies" stands for the proposition that before litigants may take their cases to the courts, they must first exhaust the administrative remedies available.[33] Even though a case has been before an agency, and a determination has been secured therefrom, the doctrine requires that the whole administrative process be utilized.[34] If there is further process or appeal possible before an agency, the courts will not assume jurisdiction to review, even though the determination of which review is sought was made by an administrative tribunal.[35]

A "jurisdictional dispute" between the Brotherhood of Railroad Trainmen and the Switchmen's Union involved the inter-

32. 278 App. Div. 917, 195 N. Y. S. 2d 909 (1st Dep't 1951).

33. *Aircraft & Diesel Corp. v. Hirsch,* 331 U. S. 752 (1947).

34. *Myers v. Bethlehem Shipbuilding Corp.,* 303 U. S. 41 (1938).

35. *Ibid.*

pretation of agreements which the two unions had with the same employer, the Delaware, L. & W. R. Co. Each union contended that its contract allowed it to assign men to certain jobs. Jurisdiction over "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" is vested in the National Railway Adjustment Board by the Railway Labor Act.[36] And the Supreme Court of the United States held in *Slocum v. Delaware, L. & W. R. Co.*[37] that such jurisdiction is "exclusive jurisdiction." Thus, parties cannot go to the courts with disputes described in the act, without having first proceeded before the Railway Adjustment Board.

In the instant case,[38] the parties first went to the Board, but the Board "dismissed" the claim, on what ground does not appear. Thus, the parties were left to further negotiations. Such negotiations having failed, the plaintiff union sued to enjoin the other union from assigning men to the jobs in question and sought a declaration of their respective rights under the contracts. Defendant union counter-claimed for the same relief. Supreme Court, Erie County, entered a judgment in favor of plaintiff union.[39] The Appellate Division, fourth department, reversed and dismissed the complaint and counter-claim.[40]

The Court of Appeals affirmed the Appellate Division[41] on the ground that there was no jurisdiction in the lower court to hear the case, since the jurisdiction of the Railway Adjustment Board over such disputes is "exclusive." This decision does not, however, constitute a determination that the "exclusive jurisdiction" of the Board means that the courts may never take jurisdiction of such a case, even to review the Board. The court made clear the point that its holding is based on the fact that the determination of the Railway Adjustment Board was not a final adjudication on the merits. What the case holds, in effect, is that parties to a dispute which falls within the jurisdiction of the Railway Adjustment Board must first proceed to a final determination before the Board, and then go to the courts for a review of such determination. They may not get an initial determination on the merits in the courts, even though the Board has once "dismissed" the case.

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36. 45 U. S. C. § 153, *subd.* 1 (i).

37. 339 U. S. 239 (1950).

38. *Brennan v. Delaware, L. & W. R. Co.*, 303 N. Y. 411, 105 N. E. 2d 532 (1952).

39. 91 N. Y. S. 2d 376 (Sup. Ct. 1949).

40. 278 App. Div. 886, 105 N. Y. S. 2d 368 (4th Dep't 1951).

41. *Supra* n. 38.

Apparently, what the parties should do in order to settle their dispute, if further negotiations between them fail, is to return to the Railway Adjustment Board and seek a determination on the merits. Under the instant case, such a determination would be reviewable in the courts. If the Board does not render a final determination, but again dismisses the proceeding, the parties should bring an action, in the nature of mandamus, to compel the Railway Adjustment Board to render a decision on the merits of this case.

Judicial Review

The basic problem of judicial review of administrative action is: to what extent should a court go into the record of the agency? Only recently has the federal rule on the problem been clarified.[42] In New York State, judicial review of administrative action is conducted under Article 78 of the Civil Practice Act.[43] The issues that the court must determine are: "whether there was any competent proof of all the facts necessary to be proved in order to authorize the making of the determination,"[44] and if "there was such proof, whether upon all the evidence there was such a preponderance of proof against the existence of any of those facts that the verdict of a jury, affirming the existence thereof, rendered in an action in the supreme court triable by a jury, would be set aside by a court as against the weight of evidence."[45]

As viewed by the courts, the statutory requirement for upholding a determination of an agency is that there be "substantial evidence" to support such determination.[46] The evidence is to be viewed in the light of the record as a whole,[47] and if the reviewing court concludes that others might reasonably have reached the same result as the agency, the determination should be upheld.[48] These rules were neither originally laid down nor changed in the past term, but they were reiterated and explained.[49]

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42. *Universal Camera Corp. v. N.L.R.B.*, 340 U. S. 474 (1951).

43. §§ 1283-1306.

44. C. P. A. § 1296 *subd.* 6.

45. C. P. A. § 1296 *subd.* 7.

46. *Lynch Builders Restaurant v. O'Connell*, 303 N. Y. 408, 103 N. E. 2d 531 (1952).

47. *McCormack v. National City Bank*, 303 N. Y. 5, 99 N. E. 2d 887 (1951).

48. *Kopec v. Buffalo Brake Beam-Acme Steel & Malleable Iron Works* ,*supra* n. 5.

49. *Ibid.*