

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DRIVERS, SALESMEN, WAREHOUSE-
MEN, MILK PROCESSORS, CANNERY,
DAIRY EMPLOYEES AND HELPERS
UNION, LOCAL NO. 695, affiliated
with the INTERNATIONAL BROTHER-
HOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF
AMERICA,

Complainant,

vs.

STOUGHTON TRAILERS, INC.,

Respondent.

Case XIV
No. 28224 Ce-1914
Decision No. 18796-B

ORDER MODIFYING EXAMINER'S ORDER

Examiner Sherwood Malamud issued his Findings of Fact, Conclusions of Law and Orders on April 26, 1982 in which, inter alia, he ordered the Employer, Stoughton Trailers, Inc., to comply with an Arbitration Award issued by Arbitrator James D. Lynch with regard to Don Hartel and Roger Roehl. The Examiner did not order that interest be paid on the amounts due and owing said individuals by operation of the Examiner's Order. The Examiner has reconsidered the Commission's decision in Madison Metropolitan School District (16471-D), 5/81 aff'd Dane County Circuit Court 1/82. The Commission states at p. 10 of said decision that:

We conclude that the rationale set forth by the Commission in United Contractors, Inc., previously discussed herein, is, and shall continue to be, the policy of the Commission with respect to whether attorney's fees and other costs shall be assessed against the "losing" party in complaint and arbitration proceedings involving the Commission and its staff. Pursuant to that policy no attorney's fees nor costs will be granted, unless the parties have agreed otherwise, or unless the Commission is required to do so by specific statutory language. The only exception shall be in cases where the Commission finds that an employee has, or employees have, been denied fair representation under the circumstances previously discussed herein.

This Commission in decisions rendered by it, without a previous Examiner decision, has not included the payment of interest on back pay or other forms requiring the payment of moneys as part of the remedial order issued in said cases.

However, it also states at p. 11 of said decision that:

In complaint cases seeking enforcement of arbitration awards, interest shall be computed, on the sum of money due and owing under the award, from the date on which the award was received by the party owing said moneys.

The Examiner finds that he erred in his application of the Commission's policy on interest in cases involving enforcement of arbitration awards. Pursuant to Section 111.07 the Examiner may modify his decision within 20 days of its issuance.

Accordingly, the Examiner issues the following

No. 18796-B

ORDER

That the Examiner's Order dated April 26, 1982 specifically at p. 6, paragraph 3 of his Order is modified as follows:

3. (b) Take the following affirmative action which the Examiner finds will effectuate the policies of the Wisconsin Employment Peace Act:
- (i) Comply with the May 15, 1981 Arbitration Award issued by James D. Lynch by paying Hartel back pay and benefits from December 4, 1980 to July 8, 1981 and by restoring his seniority to December 4, 1980.
 - (ii) Comply with the May 15, 1981 Arbitration Award issued by James D. Lynch by recalling Roger Roehl in conformance with said Award and paying to him back pay and benefits from December 15, 1980 to the date Roehl is recalled to work.
 - (iii) Pay Hartel and Roehl interest on sums due and owing under sub. 3(b)(i) and 3(b)(ii) of this Order at the legal rate of interest payable on the execution of judgments entered in the Courts of the State of Wisconsin, which under Sec. 815.05(8), Stats., is 12%. Interest shall be paid from the date the Employer received the Award of Arbitrator Lynch.
 - (iv) Notify all employees by posting in conspicuous places in its plants where employee notices are posted copies of the attached notice marked as Appendix "A". That notice shall be signed by the President of the Employer and shall be posted immediately upon receipt of a copy of this Order and shall remain posted for thirty (30) days thereafter. Reasonable steps shall be taken by the Employer to ensure that said notices are not altered, defaced or covered by other material.
 - (v) Notify the Wisconsin Employment Relations Commission in writing within twenty (20) days from the date of this Order as to what steps it has taken to comply herewith.

Furthermore, the Examiner's Memorandum at p. 15 is hereby modified by deleting the last two paragraphs of said Memorandum and substituting the following paragraph to conform the Memorandum to the Order Modifying Examiner's Order issued herein:

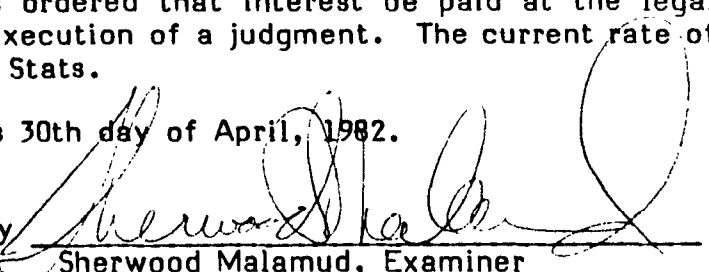
Recently, the Commission affirmed this policy on attorneys' fees in Madison Metropolitan School District, (16471-D) 5/81 aff'd Dane County Circuit Court, 1/82. However, at p. 11 of said decision, the Commission stated that:

In complaint cases seeking enforcement of arbitration awards, interest shall be computed, on the sum of money due and owing under the award, from the date on which the award was received by the party owing said moneys.

Consequently, the Examiner has ordered that interest be paid at the legal rate of interest to be paid upon the execution of a judgment. The current rate of interest is 12% under Sec. 815.05(8), Stats.

Dated at Madison, Wisconsin this 30th day of April, 1982.

By


Sherwood Malamud, Examiner