187 N.Y.S. 889

Supreme Court, New York County, New York,

Special Term.

JACKEL et al.

v.

KAUFMAN et al.

October 12, 1920.

Action by one Jaeckel and others against one Kaufman and others. On application for injunction pendente lite. Application granted.

West Headnotes (1)

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| **[1]** | [**Labor and Employment**](http://www.westlaw.com/Browse/Home/KeyNumber/231H/View.html?docGuid=I26dd50d1d87211d98ac8f235252e36df&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation))  [Right to Picket in General](http://www.westlaw.com/Browse/Home/KeyNumber/231Hk1376/View.html?docGuid=I26dd50d1d87211d98ac8f235252e36df&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)) |
|  | Labor organizations may by lawful means secure adequate compensation for their services and fair hours of labor; but picketing pursuant to strike, while lawful, if peaceably conducted, will not be permitted when its purpose is to effect an interference with the business of employers, as to compel them to accept a contract with unions prohibiting the discharge of any employee except with approval of a board of arbitrators providing that no factory shall operate for more than five days a week, irrespective of trade conditions, etc.  [3 Cases that cite this headnote](http://www.westlaw.com/Link/RelatedInformation/DocHeadnoteLink?docGuid=I26dd50d1d87211d98ac8f235252e36df&headnoteId=192013880050120040813115047&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=CitingReferences&contextData=(sc.UserEnteredCitation)) |

**Attorneys and Law Firms**

**\*889** Chas. Eno, of New York City, for plaintiffs.

Meyer London, of New York City, for defendants.

**Opinion**

NEWBURGER, J.

The plaintiffs are retail furriers engaged in business in this city and it is claimed that the defendant unions are attempting to force the plaintiffs to enter into a contract which it is claimed is unfair, unreasonable, against public policy, and against the laws of the land. On May 27, 1920, the defendant unions without any warning ordered the employees of the plaintiff to go out on a strike, and plaintiffs were informed by the defendants that no employee would return to work unless the contract referred to was signed. It is not denied that the defendants organized a body of pickets, who have patrolled in front of plaintiff’s business and prevented employees from entering. It is also shown in the moving papers that a number of employees of plaintiffs have been assaulted, and that large numbers of men congregate in front of some of the places of business of the plaintiffs, so that it was necessary to call upon the police department for assistance, **\*890** and in a number of cases there were arrests and convictions in the Magistrates’ Courts. The affidavits disclose assaults, intimidation, threats, and violence.

In reply there has been submitted but one affidavit, that of Morris Kaufman, the president of the defendant union, which in substance is a denial of any attempt to injure, but fails to answer the numerous charges in the moving papers. In fact, it amounts to a general denial, but claims that the object of the strike was to enforce a 40-hour a week employment, and that the strike became inevitable by reason of the discharge of large numbers of workmen because of the unsettled condition of the industry. There is no denial from any of the other defendants against whom especially the charges of intimidation have been made. It is not denied that the agreement attached to the complaint was prepared by the union, and provides, among other things:

(a) While the retailers were maintaining what are termed ‘union shops,’ the agreement provides that none but members of the defendant unions should be so employed, and prohibits the employment of any other men or person, and insisting upon what is known as ‘closed shops.’

(b) It provides for 5 days’ work in the week to wit: Monday to Friday, inclusive, from 8 a. m. to 12 noon, and from 1 p. m. to 5 p. m., or a total of 40 hours per week.

(c) It provides for the discharge of any employee who ceases to be a member in good standing in the union.

(d) It prohibits the discharge of any employee unless and until a board of arbitrators should decide that the cause for the discharge was justified.

(e) It provides that no factory shall operate for more than 5 days a week, irrespective of trade conditions.

(f) It provides that no worker shall be laid off, discharged, or suspended because of lack of work, but all available work shall be distributed among all the workers in an equitable manner, irrespective of the quantity of work which the individual or separate shop might have.

(g) It prohibits overtime work, excepting 2 hours every night between the 15th day of September and the 15th day of November, and then only allows such overtime work provided there are no members of the union unemployed, and would be sent to do the work during the usual hours, and in any event only permitted such overtime work during the first 5 working days of the week, and requires that overtime work should be paid at the rate of time and one-half of the regular pay.

(h) It requires the employers to observe May 1 as a labor holiday, although it is well known that that day is considered a day of the anarchist or communists’ festal day.

(i) It prohibits the employment of more than one apprentice during apprenticeship term, and before employing another apprentice the term of the prior apprenticeship must expire.

**\*891** (j) It provides that firms, consisting of two partners or more, who work upon any of the crafts covered by the agreement, all partners except one shall be bound by all its provisions relating to hours of employment, overtime, etc., and nonobservance of that clause shall be considered a breach of the agreement, and it further provides that the partners excluded from the union rules must be registered with the union.

(k) It provides for the establishment by the firm of an unemployment fund for the benefit of such members of the union as may be out of employment.

It is clear, from the affidavit of the defendant Kaufman and brief submitted on behalf of defendants, that the strike is not for the purpose of an increased wage, nor for the purpose of bettering the conditions of the employees, but rather an attempt to meet a situation by depression in business to obtain employment for men conceded by defendants to have been properly discharged. It is apparent that the means pursued by the defendants were unlawful, and tended to injure plaintiffs in their business and cause great loss. It is well settled that labor organizations may by lawful means secure adequate compensation for their services, fair hours of labor, and that picketing, while lawful, if peaceably conducted, will, however, not be permitted when its purpose is to effect an interference with another’s business. See [Auburn Draying Co. v. Wardell, 227 N. Y. 1, 124 N. E. 97, 6 A. L. R. 901;](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1919103634&pubNum=577&originatingDoc=I26dd50d1d87211d98ac8f235252e36df&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)) [Stuyvesant, Lunch & Bakery Corporation v. Reiner, 110 Misc. Rep. 357,](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1920138114&pubNum=550&originatingDoc=I26dd50d1d87211d98ac8f235252e36df&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)) [181 N. Y. Supp. 212;](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1920138114&pubNum=601&originatingDoc=I26dd50d1d87211d98ac8f235252e36df&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)) [Grand Shoe Co., Inc., v. Children’s Shoe Workers’ Union, 187 N. Y. Supp. 886;](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1920138799&pubNum=601&originatingDoc=I26dd50d1d87211d98ac8f235252e36df&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)) [W. B. Coon Co., Inc., v. Meinhart, 112 Misc. Rep. 650,](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1920139017&pubNum=550&originatingDoc=I26dd50d1d87211d98ac8f235252e36df&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)) [183 N. Y. Supp. 713](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1920139017&pubNum=601&originatingDoc=I26dd50d1d87211d98ac8f235252e36df&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)).

The application for an injunction pendente lite is granted. Order signed.

**All Citations**

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