

Westlaw.

65 S.Ct. 235
 89 L.Ed. 187, 9 Fair Empl.Prac.Cas. (BNA) 389, 1 Empl. Prac. Dec. P 9608
 (Cite as: 323 U.S. 210, 65 S.Ct. 235)

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Supreme Court of the United States

TUNSTALL

v.

BROTHERHOOD OF LOCOMOTIVE FIREMEN
 AND ENGINEMEN, OCEAN LODGE NO. 76, et
 al.

No. 37.

Argued Nov. 14, 1944.
 Decided Dec. 18, 1944.

Action by Tom Tunstall against the Brotherhood of Locomotive Firemen and Enginemen, Ocean Lodge No. 76, Port Norfolk Lodge No. 775, and others for declaratory judgment, injunction and damages on account of discriminatory contract entered into between bargaining representative chosen under Railway Labor Act and carrier in favor of white and against negro members of the craft to which plaintiff belonged. From a judgment of the Circuit Court of Appeals, 140 F.2d 35, affirming a judgment of the District Court dismissing action for want of jurisdiction, the plaintiff appeals.

Judgment reversed and cause remanded to Circuit Court of Appeals for further proceedings.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fourth Circuit.

West Headnotes

[1] **Federal Courts** ⇐206
 170Bk206 Most Cited Cases
 (Formerly 106k289)

Where a negro fireman claimed discrimination on account of race in contract between bargaining representative chosen under Railway Labor Act and carrier, the federal District Court had jurisdiction of action though there was no diversity of citizenship, since the right granted by Railway Labor Act was

infringed and case arose under law regulating commerce of which federal court had jurisdiction. Jud.Code, § 24(8), 28 U.S.C.A. § 1337; Railway Labor Act, § 1 et seq., 45 U.S.C.A. § 151 et seq.

[2] **Labor Relations** ⇐416.4
 232Ak416.4 Most Cited Cases
 (Formerly 232Ak416, 255k15(1))

A negro fireman claiming discrimination on account of race in contract between bargaining representative chosen under Railway Labor Act and carrier was without adequate administrative remedies, and could resort directly to equity for relief without attempting to secure administrative relief. Railway Labor Act, § 1 et seq., 45 U.S.C.A. § 151 et seq.

[3] **Labor Relations** ⇐250
 232Ak250 Most Cited Cases
 (Formerly 255k15(23))

A complaint by negro fireman declaring that trade union chosen as bargaining representative under Railway Labor Act, entered into contracts with carriers discriminating against negro firemen in favor of white firemen without notice to negro members of the craft, stated a cause of action. Railway Labor Act § 1 et seq., 45 U.S.C.A. § 151 et seq.

**236 *210 Mr. Charles H. Houston, of Washington, D.C., for petitioner.

*211 Mr. James G. Martin, of Norfolk, Va., for respondent Norfolk Southern ry. co.

Mr. Harold C. Heiss, of Cleveland, Ohio, for respondents Brotherhood of Locomotive Firemen and Enginemen et al.

Mr. Chief Justice STONE delivered the opinion of the Court.

This is a companion case to No. 45, Steele v. Louisville & N.R. Co., Brotherhood of Locomotive

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Firemen & Enginemen et al., 323 U.S. 192, 65 S.Ct. 226, in which we answered in the affirmative a question also presented in this case. The question is whether the Railway Labor Act, 48 Stat. 1185, 45 U.S.C. s 151 et seq., 45 U.S.C.A. s 151 et seq., imposes on a labor organization, acting as the exclusive bargaining representative of a craft or class of railway employees, the duty to represent all the employees in the craft without discrimination because of their race. The further question in this case is whether the federal courts have jurisdiction to entertain a non-diversity suit in which petitioner, a railway employee subject to the Act, seeks remedies by injunction and award of damages for the failure of the union bargaining representative of his craft to perform the duty imposed on it by the Act, to represent petitioner and other members of his craft without discrimination because of race.

Petitioner, a Negro fireman, employed by the Norfolk & Southern Railway, brought this suit in the District Court against the Railway, the Brotherhood of Locomotive Firemen *212 and Enginemen and certain of its subsidiary lodges, and one of its officers, setting up, in all material respects, a cause of action like that alleged in the Steele case. The Brotherhood, a labor union, is the designated bargaining representative under the Railway Labor Act, for the craft of firemen of which petitioner is a member, and is accepted as such by the Railway and its employees.

Acting as such the Brotherhood gave to the Railroad the notice of March 28, 1940, and later entered into the contract of February 18, 1941 and its subsequent modifications, all of which were the subject of our consideration in the Steele case. Petitioner complains of the discriminatory application of the contract provisions to him and other Negro members of his craft in favor of 'promotable', i.e., white, firemen, by which he has been deprived of his preexisting seniority rights, removed from the interstate passenger run to which he was assigned and then assigned to more arduous and difficult work with longer hours in yard service, his place in the passenger service being filled by a white fireman.

He alleges that the contract was signed and put into effect without notice to him or other Negro members of his craft, and without opportunity for them to be heard with respect to its terms, and that

his protests and demands for relief to the Railway and the Brotherhood have been unavailing. Petitioner prays for a declaratory adjudication of his rights, for an injunction restraining the discriminatory practices complained of, for an award of damages and for other relief.

The District Court dismissed the suit for want of jurisdiction. The Circuit Court of Appeals for the Fourth Circuit affirmed, 140 F.2d 35, on the ground that the federal courts are without jurisdiction **237 of the cause, there being no diversity of citizenship and, insofar as the suit is grounded on the wrongful acts of respondents, it is not one arising under the laws of the United States, even *213 though the union was chosen as bargaining representative pursuant to the Railway Labor Act. See *Gully v. First Nat. Bank*, 299 U.S. 109, 112, 114, 57 S.Ct. 96, 97, 98, 81 L.Ed. 70.

[1] For the reasons stated in our opinion in the Steele case the Railway Labor Act itself does not exclude the petitioner's cause of action from the consideration of the federal courts. Cf. *Switchmen's Union North America v. National Mediation Board*, 320 U.S. 297, 64 S.Ct. 95; *General Committee of Adjustments of Brotherhood of Locomotive Engineers for Missouri-Kansas-Texas R. v. Missouri-Kansas-Texas R. Co.*, 320 U.S. 323, 64 S.Ct. 146; *General Committee of Adjustments of Brotherhood of Locomotive Engineers for Pacific Lines of Southern Pacific Co., v. Southern Pacific Co.*, 320 U.S. 338, 64 S.Ct. 142; *Brotherhood of Railway & Steamship Clerks, etc., v. United Transport Service Employees*, 320 U.S. 715, 816, 64 S.Ct. 260, 435, with *Texas & N.O.R. Co. v. Brotherhood of Ry. & S. S. Clerks*, 281 U.S. 548, 50 S.Ct. 427, 74 L.Ed. 1034; *Virginian R. Co. v. System Federation No. 40, Railroad Employees Department of American Federation of Labor*, 300 U.S. 515, 57 S.Ct. 592, 81 L.Ed. 789.

We also hold that the right asserted by petitioner which is derived from the duty imposed by the Railway Labor Act on the Brotherhood, as bargaining representative, is a federal right implied from the statute and the policy which it has adopted. It is the federal statute which condemns as unlawful the Brotherhood's conduct. 'The extent and nature of the legal consequences of this condemnation though left by the statute to judicial determination, are nevertheless to be derived from it and the

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federal policy which it has adopted.' Deitrick v. Greaney, 309 U.S. 190, 200, 201, 60 S.Ct. 480, 484, 485, 84 L.Ed. 1036; Board of Com'rs of Jackson County v. United States, 308 U.S. 343, 60 S.Ct. 285, 84 L.Ed. 313; Sola Electric Co. v. Jefferson Electric Co., 317 U.S. 173, 176, 177, 63 S.Ct. 172, 173, 174, 87 L.Ed. 165; cf. Clearfield Trust Co. v. United States, 318 U.S. 363, 63 S.Ct. 573, 87 L.Ed. 838. The case is therefore one arising under a law regulating commerce of which the federal courts are given jurisdiction by 28 U.S.C. s 41(8), 28 U.S.C.A. s 41(8), Judicial Code s 24(8); Mulford v. Smith, 307 U.S. 38, 46, 59 S.Ct. 648, 651, 83 L.Ed. 1092; Peyton v. Railway Express Agency, 316 U.S. 350, 62 S.Ct. 1171, 86 L.Ed. 1525; cf. Illinois Steel Co. v. Baltimore & O.R. Co., 320 U.S. 508, 510, 511, 64 S.Ct. 322, 323, 324.

[2] For the reasons also stated in our opinion in the Steele case the petitioner is without available administrative remedies, resort to which, when available, is prerequisite *214 to equitable relief in the federal courts. Goldsmith v. United States Board of Tax Appeals, 270 U.S. 117, 123, 46 S.Ct. 215, 217, 70 L.Ed. 494; Porter v. Investors' Syndicate, 286 U.S. 461, 471, 52 S.Ct. 617, 620, 76 L.Ed. 1226, affirmed 287 U.S. 346, 53 S.Ct. 132, 77 L.Ed. 354; Natural Gas Pipeline Co. of America v. Slattery, 302 U.S. 300, 309, 58 S.Ct. 199, 203, 82 L.Ed. 276; Atlas Life Ins. Co. v. W. I. Southern Inc., 306 U.S. 563, 59 S.Ct. 657, 83 L.Ed. 987.

[3] We hold, as in the Steele case, that the bill of complaint states a cause of action entitling plaintiff to relief. As other jurisdictional questions were raised in the courts below which have not been considered by the Court of Appeals, the case will be remanded to that court for further proceedings.

Reversed.

Mr. Justice MURPHY concurs in the result for the reasons expressed in his concurring opinion in Steele v. Louisville & N.R. Co.

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