

**Wilson Freight Company and Robert Lewis Ayers.**  
Case 10-CA-14372

September 30, 1980

**DECISION AND ORDER**

BY CHAIRMAN FANNING AND MEMBERS  
JENKINS AND PENELLO

On July 16, 1980, Administrative Law Judge William F. Jacobs issued the attached Decision in this proceeding. Thereafter, counsel for the General Counsel filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,<sup>1</sup> and conclusions of the Administrative Law Judge and to adopt his recommended Order.

**ORDER**

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

<sup>1</sup> In agreeing with the Administrative Law Judge that Ayers' discharge was not violative of the Act, we rely solely on his finding that Ayers walked off the job despite Morgan's repeated warnings that "If you leave, you know what this means." Member Penello does not rely on the Administrative Law Judge's citation of *Suburban Motor Freight, Inc.*, 247 NLRB No. 2 (1980). Although no exceptions were filed with regard thereto, Member Penello notes that he adheres to his dissent in that case.

**DECISION**

STATEMENT OF THE CASE

WILLIAM F. JACOBS, Administrative Law Judge: This case was heard in Atlanta, Georgia, on August 23 and September 13, 1979. The charge was filed by Robert L. Ayers, an individual, on February 8, 1979, and a complaint issued March 16, 1979, alleging that the Respondent, Wilson Freight Company, discharged Ayers because of his membership in International Brotherhood of Teamsters, Local 728, hereinafter called the Union, and because of his activities on its behalf. Respondent filed its answer in due course denying the substantive allegations contained in the complaint.

All parties were represented at the hearing and were afforded full opportunity to be heard and present evidence and argument. All parties filed briefs. Upon the entire record, my observation of the demeanor of the

witnesses and after giving due consideration to the briefs,<sup>1</sup> I make the following:

**FINDINGS OF FACT**

**I. THE BUSINESS OF RESPONDENT**

Jurisdiction is not in issue. The complaint alleges, Respondent admits, and I find that at all times material herein, Respondent has been engaged in the interstate transportation of freight from and to its terminal in Atlanta and elsewhere and has been and is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

**II. LABOR ORGANIZATION**

Respondent admits and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**III. UNFAIR LABOR PRACTICES**

*A. Background*

Wilson Freight Company, Respondent herein, has had a collective-bargaining relationship with the Union since 1964. At its Atlanta location Respondent succeeded to the contract between Associated Transport and the Union in 1976, and all rights under that labor agreement inuring to employees of Associated were transferred with them intact when said employees began working for Respondent in that year. The Charging Party, Robert Ayers was one of these employees. He was hired October 3, 1977.<sup>2</sup>

When Ayers first came to work for Respondent he requested that his seniority with Associated be honored by Respondent. The terminal manager, Marvin Vaughn, however, told Ayers that he was considered a new man and for that reason did not have any seniority. Ayers then went to Local 728 and talked with President Al Johnson who confirmed that Ayers had no seniority with Respondent because he was in layoff status at Associated Transport when hired by Respondent. Ayers then brought the subject up with his steward, Bill Denson, who questioned Vaughn about it once again. Vaughn, however, maintained his previous position, so on December 12, 1977, Ayers filed a grievance.

Shortly after filing his grievance Ayers became involved in a conversation with Respondent's dock foreman, Ross Gowens,<sup>3</sup> about his grievance. Gowens stated that he had worked for Meadows Freight Lines for years and was unable to gain credit for time worked there when he came to work for Respondent and could not see how Ayers could expect to get credit for his years at Associated.<sup>4</sup>

<sup>1</sup> On November 20, 1979, General Counsel filed a motion to strike or alternate motion to receive evidence as admission. General Counsel's alternate motions are both denied.

<sup>2</sup> Ayers had received a layoff letter from Associated dated December 17, 1974, which, according to Ayers, protected his seniority rights with Associated and any successor for 3 years.

<sup>3</sup> Gowens is a supervisor.

<sup>4</sup> I do not conclude, as General Counsel would have me, that Gowens' remark indicates animus.

In January 1978, Ayers had a conversation with Charles Chappell, the office manager,<sup>5</sup> about his grievance. During this conversation Chappell told Ayers that Vaughn was in hot water because if Ayers won his grievance, all employees would have to be given their rightful seniority everywhere that Wilson had bought Associated rights.<sup>6</sup>

General Counsel contends that these two conversations indicate animosity on the part of Respondent toward Ayers because he filed the grievance. I find them inadequate evidence thereof.

In January 1978, after Ayers completed his shift, he was asked by his supervisor to put some chemicals into the tractor and trailer to keep the brakes from freezing. Ayers stated that he had completed his 8 hours, that putting the chemicals into the trucks was mechanical work, that he was not a mechanic, and that he was going home. He then left. Subsequently Ayers was told that he was discharged for walking off the job. Ayers went to the union hall and told Johnson what had happened. Johnson then went to the terminal and talked to Vaughn about Ayers' discharge. As a result, Ayers' discharge was rescinded and in lieu thereof Ayers was given a 1-day suspension and a warning.

In March 1978, one of Respondent's over-the-road drivers retired leaving an opening for another driver. The terminal manager assigned a casual employee to the job so Ayers went to Vaughn and told him the job should have been posted so that city-drivers with seniority could bid on the job. Vaughn told Ayers that he was going to hire the casual permanently to fill the over-the-road slot. Ayers then reported the situation to the Union. Al Johnson, the Union's secretary-treasurer, called the terminal manager and asked about the matter. When he hung up the phone he told Ayers, who had been present during the telephone conversation, that Vaughn had repeated that he was not just going to employ the casual to fill the over-the-road slot but was going to hire him permanently for the job. Subsequently, the Union contacted Respondent's home office in Cincinnati and despite the initial position taken by Vaughn the job was eventually posted, bid on, and gotten by a city driver.

The incident was offered by the General Counsel as an example of Ayers' activities on behalf of the Union for which Ayers was allegedly discriminated against. I find that Ayers' activity was protected.

In April 1978, Ayers approached Vaughn to complain about Respondent's subcontracting out certain city work rather than using its own drivers. Ayers also brought the matter to the Union's attention. Shortly thereafter the subcontracting was discontinued.

<sup>5</sup> Ayers testified that Chappell was the assistant terminal manager and exercised supervisory authority by sending drivers home, calling them to work, and assigning them runs. He was, according to Ayers, a dispatcher. Vaughn testified that Chappell, the office manager, ran the terminal in his absence but only at Vaughn's direction. He also testified that anyone called to work by Chappell had to be called from an approved list made up by Vaughn. Chappell had authority to sign checks and to instruct employees. I find him to be a supervisor.

<sup>6</sup> Evidence discussed *infra* indicates that the effect of Ayers' grievance on Respondent's operations was minimal. I therefore find that Chappell's remark reflected most likely his personal opinion and had very little, if any, basis in fact. Thus, I do not conclude that Chappell's statement convincingly indicates animosity on Respondent's part toward Ayers.

Also in April Ayers became ill with the flu. Though he called in on a Monday to advise Respondent that he was ill he did not do so the next few days. He subsequently received a discharge notice based on his failure to call in. Ayers went to the union hall and informed his representative of what had occurred. He was told to go home until he was well, then report to work. When he reported to work, he was given his job back again.

At one point in time, not clear from the record, following a reorganization of management, Respondent placed in Ayers' employee file a notice concerning excessive absenteeism. When Ayers was notified of this fact he filed a grievance. As a result of the grievance the notice was removed from his file.

In September 1978 Ayers won the grievance which he had filed the previous December and was awarded full seniority. The award resulted in Ayers being placed higher on the seniority board than he had been before. *In toto* the decision affected three employees situated at two of Respondent's 61 terminals. The net effect appears negligible.

#### B. The Events of October 18, 1978

Ayers testified that on October 18, 1978, he reported to work at 8:30 a.m. He waited in the break room until 9 a.m. at which time he punched in. Two other individuals were present in the break room at the time.<sup>7</sup> After punching in, Ayers was dispatched out with tractor H-101<sup>8</sup> by Ross Gowens, the dispatcher. When Ayers checked out the truck he found that it only had one windshield wiper which was on the left side; there was no defroster; the signal lights were extremely dim; the right door window had been replaced with a blue tinted celluloid window rather than glass; and the brakes were very bad. The checking out of the truck, which took place in the terminal yard, took about 30 minutes.

Ayers then went back to Gowens, reported the condition of the truck to him, and asked for a different truck. Gowens replied that H-101 was the only truck available. Ayers replied that in that case he would have to talk to Gowens' superior, David Morgan, the terminal manager.

Ayers then went to Morgan's office and reported to him the condition of H-101. Morgan replied that he would have to stand behind Gowens, and if Gowens told Ayers to drive H-101, he would have to do it. He added that Ayers should at least take the truck out on the road for a mile or two and then call back to the terminal and Morgan would send him another truck. Ayers again objected to the condition of H-101 and complained how he had recently been sent out with two other trucks in poor condition and had almost been involved in accidents. In describing one of the incidents, wherein Ayers was almost struck by an automobile while putting flares out on the highway near his stalled truck, he took off his hat, waved it, and dropped to his knees, just as he had done during the near accident, the day before. Morgan, however, just laughed at Ayers and insisted that he take the truck out. Ayers said that the truck was unsafe and he

<sup>7</sup> Neither of the two individuals was called to testify.

<sup>8</sup> Ayers had driven this truck just once before. It was the oldest truck on the lot.

would not take it out but that he would be glad to go to work if he were assigned another truck. Ayers testified that there were four other trucks available for driving that day.

When Ayers continued to refuse to take the truck assigned to him and go to work and Morgan became angry and began to raise his voice. So did Ayers. Ayers said he was going to call the Union to get the matter straightened out. Both Morgan and Ayers then left Morgan's office. As they came out onto the dock, Bill Denson, the job steward, happened to be standing there. Ayers therefore explained the entire situation to Denson, particularly the condition of H-101, and the reasons why he was refusing to drive it. In so doing, Ayers once again demonstrated, this time for Denson's benefit, what had occurred the previous day, waving his cap and playing the scene out in graphic fashion. At this point, Morgan asked Ayers if he had been drinking. Ayers smiled and said, "I don't drink. You're trying to twist it for me—for me turning the truck down, for me to be drinking. I don't drink." Morgan then asked Ayers to go to Hapeville Clinic to get a blood test but Ayers countered that he felt that he "would get a fair shake if he would go to any private organization . . . or to Grady's Hospital." Morgan, however, insisted that Ayers go to Hapeville Clinic.

Meanwhile, Denson had advised Ayers that in his opinion the Company could request a man to take a truck out on the street. Ayers, however, disagreed and stated once again that he would call the union hall to get the matter straightened out. He proceeded into the break room where he called the union hall but was unable to contact either of the two union officials who represented Respondent's employees. Ayers then told Morgan that he was going to the union hall to try to get matters straightened out, meaning apparently both the question of his having to take out H-101 and the question of where he should take the blood test.

Ayers got into his car and drove to the union hall where, by that time, Freddie Thomas, one of the union officials, had arrived at work. He told Thomas what had occurred. Thomas then called Morgan and discussed with him the problem or the "bad equipment" and Ayers' refusal to drive it as well as the accusation that Ayers had been drinking. Thomas tried to get Morgan to put Ayers back to work. After hanging up the phone, however, he informed Ayers that Morgan had refused to give him his job back because he had abandoned his job when he walked off.

Ayers testified that he had not been drinking on the morning of October 18 and in fact does not drink at all.

Ross Gowens, Respondent's dispatcher, was called to testify concerning the events of October 18. His version is quite different from that of Ayers. According to Gowens, Ayers punched in at 9 a.m. at which time he dispatched him out on tractor H-101.<sup>9</sup> Ayers picked up his written assignment, looked at it, said, "I ain't driving that damned thing," and threw the assignment and the

<sup>9</sup> Gowens credibly testified that vehicle H-101 had a short trailer which required the use of a single axle tractor. Since Ayers was next out and H-101 was the next tractor available, Ayers was assigned H-101.

clipboard to which it was attached down on the table.<sup>10</sup> Gowens replied that Ayers should talk to Morgan and pointed through the window where Morgan and Denson could be seen standing in the dock area. Ayers, as instructed, went out to the dock where Morgan and Denson were standing and began to talk with them. He did so for 25 or 30 minutes. He did not, according to Gowens, go to the lot to check out H-101. After Ayers left to talk to Morgan, Gowens went about his business.

About 9:30 a.m.<sup>11</sup> or thereafter, Gowens walked into Morgan's office to ask him a question. Morgan was there with Ayers and Denson. Gowens observed that Ayers was talking in a loud manner when he first walked in<sup>12</sup> and testified further that when he walked into the office he could smell alcohol.<sup>13</sup> He asked his question of Morgan, then left.

After Gowens left Morgan's office, he noticed that Morgan, Denson, and Ayers went back out onto the dock again where they continued to talk. While this discussion was continuing, Gowens reassigned H-101<sup>14</sup> to another driver named Lydle.<sup>15</sup> Gowens described the discussion out on the dock as a commotion. When asked to explain his terminology he indicated how Ayers had been swinging his hat, evidently describing his near accident of the day before.

Respondent called David Morgan<sup>16</sup> to testify concerning the events of October 18. According to Morgan, a little after 9 a.m. Ayers approached him while he was standing on the dock talking to the job steward, Bill Denson.<sup>17</sup> Ayers stated that he was not going to drive H-101. Morgan asked him why, and Ayers replied that he thought that H-101 was a piece of junk and that he wanted to drive one of the two rental tractors which were parked at the terminal. Morgan explained that the rental tractors were only used in emergency.<sup>18</sup> When Ayers continued to object to having to drive H-101, Morgan told Ayers that if he had been assigned to drive H-101, he would have to drive it unless he determined that it was unsafe in which case the Company would

<sup>10</sup> Ayers denied throwing his assignment back at Gowens that morning. I credit Gowens.

<sup>11</sup> Gowens initially testified that it was a little after 9 a.m. when he walked in Morgan's office. Later, he stated that it was 9:30 a.m. or later. I find the discrepancy not controlling.

<sup>12</sup> After Gowens entered and began to ask Morgan his question, Ayers quieted down.

<sup>13</sup> Gowens testified that earlier that morning when he assigned Ayers to H-101, he did not notice alcohol on his breath. He also testified, however, that when he walked into Morgan's office a while later, he did smell alcohol. He did not state that it necessarily emanated from Ayers.

<sup>14</sup> There were at the time, according to Gowens, one or two rented trucks and perhaps 2 Wilson over-the-road tractors at the terminal. As noted *infra*, Morgan testified that these could not be hooked to the trailer which H-101 was scheduled to pull.

<sup>15</sup> Unbeknownst to Gowens, Lydle did not immediately go out on his route. As Morgan testified, *infra*, the truck was first checked out by a mechanic.

<sup>16</sup> Morgan was operations manager at the time.

<sup>17</sup> Morgan denied any earlier conversation with Ayers.

<sup>18</sup> Respondent is charged \$55 per day plus mileage if the rental trucks are used but nothing if they are not. They are therefore only used if there are no Wilson tractors available. Morgan testified credibly that the two Wilson tractors at the terminal were over-the-road tractors which could not be hitched to the trailer already hooked to H-101.

have a mechanic check out the truck and repair it if necessary.

Ayers complained that H-101 was, indeed, unsafe to which Morgan replied that a driver cannot simply decide that a truck is unsafe without even getting into the cab. He would first have to get into the unit and then determine whether or not it was safe. According to Morgan, Ayers admitted that he had not yet tested the unit so Morgan insisted that he do so. Denson joined the discussion by attempting to assure Ayers that no driver would be forced to drive an unsafe vehicle.

Ayers continued to object to having to drive H-101 and while on the subject of safety began to relate an incident which had occurred the day before when his tractor had stalled near a busy intersection. While describing the event Ayers physically demonstrated how he had gotten out of his truck, placed flares out on the road, and waved the traffic on through the intersection and away from his truck. He related how a woman driving through almost struck him, describing the incident in a loud voice, demonstrating by removing his hat and waving it in the air. Morgan testified that as Ayers went through his description of the incident he sounded irrational, appeared unsteady on his feet, and Morgan could detect the smell of alcohol on him.

Morgan asked Ayers, at this point, if he had been drinking. Ayers denied that he had. Morgan then stated that he wanted Ayers to take a blood alcohol test and explained why he thought it was necessary.<sup>19</sup> Ayers refused. Morgan offered to take Ayers to the company doctor but Ayers refused the offer. Denson at this point, asked Morgan if Ayers could have the day off. Morgan replied that they should first find out what was going on and discuss it. Denson then took Ayers to one side and talked with him, after which he and Ayers entered Morgan's office where Morgan had, in the meantime gone. Denson renewed his request to Morgan to let Ayers take the day off. Morgan refused and, after the entire situation was rediscussed, once again insisted that Ayers take the alcohol test. Ayers again refused and accused Morgan of forcing him to take the alcohol test in retaliation for Ayers' refusing to drive H-101, an accusation which Morgan denied. When Morgan again insisted on the blood test Ayers walked out the door. Both Morgan and Denson followed Ayers out the door to the corner of the dock where Morgan warned Ayers that if he left the premises "under these circumstances" he would be abandoning his employment. Ayers continued walking with Morgan and Denson following him half way across the parking lot. Ayers continued to walk in the direction of his car while Morgan and Denson again advised Ayers that if he left, he would be abandoning his employment. Ayers had, at one point, stated that he wished to speak to his union representative, so Morgan and Denson suggested that he go into the break room and

<sup>19</sup> Morgan testified that he had authority to require an employee to take a blood test by virtue of the bargaining agreement in effect at the time between Respondent and the Union. That bargaining agreement contains the provision that being under the influence of alcohol while on duty is grounds for discharge. The blood test, according to Vice President of Services and Administration Fisher, has been used within the Company and throughout the industry as a means of protecting both the employee and the Company where an accusation of drinking is made.

call the union hall, but not to leave the premises. Ayers did not follow their suggestion but stated that he would not take the blood test, got into his car, and left. Respondent takes the position that Ayers, by walking off the job, voluntarily quit. That day, by certified mail, Ayers was so advised.

About 2 p.m., according to Morgan, he received a call from Freddy Thomas, the union representative, who asked him what had happened. Morgan described the events of that morning. Thomas then advised him that Ayers would now agree to a blood test and requested that he be permitted to go to his doctor and have it done. Morgan refused to agree to a blood test at that time since it was 4 or 5 hours later and a true reading was no longer possible. Thomas then offered to send Ayers to the company doctor but Morgan again refused.

Respondent called the job steward, W. E. Denson, to testify as to the events of October 18, 1978. Denson testified that on the morning of October 18 he had been in a meeting with Morgan between 8:30 and 9 a.m. At or about 9:05 a.m. he and Morgan came out onto the dock at which time Ayers came up and began talking about tractor H-101. He told Morgan that he did not want to drive that particular truck because it was no good, a piece of junk, and unsafe. Denson told Ayers that before he refused to drive a vehicle he should go out there and check it out, then tell Morgan and himself what is wrong with it. Ayers replied he had done so but Denson testified that they had started talking 5 minutes after Ayers punched in and "he wasn't out of my sight until he walked off the dock." In other words, Ayers did not check out H-101. There followed, according to Denson, a heated argument. Then Morgan asked Ayers if he had been drinking and Ayers said, "no." Morgan, however, insisted that Ayers take a blood test.<sup>20</sup> Denson asked Morgan to let him talk to Ayers alone. Morgan agreed and went into his office leaving Denson and Ayers alone on the dock. Denson told Ayers, "Don't look like we're going to get anywhere here. Why don't you let me get him to let you take the day off?" Ayers replied, "Well, we'll see." Denson and Ayers were then called into his office<sup>21</sup> by Morgan where they renewed their earlier discussion about Ayers not wanting to drive the truck because it was not safe.<sup>22</sup>

Denson testified that during the discussion in Morgan's office he had succeeded in getting Morgan to agree to let Ayers go home and "just mark off for that day,"<sup>23</sup> but that when the three of them left the office and were back out on the dock, Morgan stated that he could not agree, that he wanted Ayers to take a blood test. After several more minutes of discussion Ayers said he was leaving and started walking across the dock with Morgan and Denson following. Morgan then stated, "If you leave, you know what this means." Ayers did not

<sup>20</sup> When Denson was asked whether he, at any time, smelled alcohol, Denson replied, "I can't say that I did or didn't."

<sup>21</sup> Denson recalled Gowers coming into the office during the conversation between Morgan, Ayers, and Denson.

<sup>22</sup> Denson recalled Ayers talking about the incident of the day before but did not elaborate to any great degree.

<sup>23</sup> Denson testified that he asked Morgan to let Ayers take the day off because they were all upset due to the argument that had occurred.

reply, as far as Denson could tell. Morgan repeated the warning twice more but Ayers got in his car and left.

Respondent called W. L. Nicholson to testify concerning certain events which occurred on October 18. Nicholson is owner of Nicholson & Son Diesel Service, the company which services Respondent's trucks. On October 18 about 10 or 10:30 a.m., according to Nicholson, he received a call from Morgan who asked him to come over and check out a truck. When he arrived he was told to check out H-101. Nicholson and another one of his mechanics drove H-101 around the parking lot. He had not been told what, if anything was wrong with the truck. He checked the lights, windshield wipers, brakes,<sup>24</sup> and everything else. Nothing was found to be wrong<sup>25</sup> with the truck except that it needed a bulb in one of the signal lights.<sup>26</sup> This was replaced.

On October 19, 1978, Ayers filed a grievance concerning his discharge. During the week of December 4 in Biloxi, Mississippi, the Southern Multi-state Grievance Committee heard Ayers' case. The committee was deadlocked and no decision was rendered. On January 9, 1979, the case was taken a step further and the Union lost. Ayers' discharge was upheld.<sup>27</sup>

#### Analysis and Conclusion

The facts surrounding the discharge of Ayers on October 18, I find to be as testified to by Morgan, Gowens, and Denson.<sup>28</sup> Where the testimony of Ayers differs

<sup>24</sup> H-101 previously had brake trouble which Nicholson repaired sometime before October 18.

<sup>25</sup> Subsequently, on November 6, the truck was found in need of a brake repair job and the work was done. The truck had, however, been used frequently between October 18 and November 6.

<sup>26</sup> Since Nicholson found only one thing wrong with H-101 while Ayers enumerated a number of specific problems, a credibility issue arises between Nicholson and Ayers. I credit Nicholson as to his testimony concerning the condition of H-101 on October 18. I find that Ayers' description of the truck probably was based on its condition the previous time he was assigned to drive it. Nicholson had been called by Morgan after the confrontation with Ayers just to check out anything that might have been wrong with the truck and presumably to support his position with respect to Ayers' termination.

<sup>27</sup> As far as the record indicates, the question of whether Ayers was discharged because of his having engaged in protected activity was never really considered by the grievance committee though Ayers had charged that this was one of several reasons. For that reason, I find that the Board has jurisdiction. *Suburban Motor Freight, Inc.*, 247 NLRB No. 2 (1980).

<sup>28</sup> Certain minor discrepancies in the testimony of Respondent's witnesses have been considered but are found to be basically innocuous. For the most part Respondent's witnesses supported each other's testimony

from theirs. I do not credit Ayers. From the credited testimony I find that the incident which occurred on the morning of October 18 and which gave rise to the discharge of Ayers was totally spontaneous and the sole reason for his termination.<sup>29</sup> The record is totally devoid of any evidence which can logically be used to connect Ayers' discharge to the protected activity in which he had participated during his tenure with Respondent. I find, therefore, that the General Counsel has failed to prove that Ayers' discharge was founded on pretextual grounds<sup>30</sup> or that it was motivated by discriminatory considerations. I recommend that the complaint be dismissed in its entirety.

#### CONCLUSIONS OF LAW

1. The International Brotherhood of Teamsters, Local 728, is a labor organization within the meaning of Section 2(5) of the Act.

2. Respondent is an employer within the meaning of Section 2(2) of the Act and is engaged in commerce as defined in Section 2(6) and (7) of the Act.

3. Respondent has not committed any of the unfair labor practices alleged in the complaint.

Upon the foregoing findings of fact, conclusions of law, and the entire record in this case, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

#### ORDER<sup>31</sup>

It is ordered that the complaint be, and it hereby is, dismissed in its entirety.

and whatever minor differences appear in the transcript I charge to a failure of memory or honest mistake rather than to a lack of veracity.

<sup>29</sup> Thus, I find that Ayers did not get into tractor H-101 and try it out in the lot before refusing to drive it; that an argument ensued; that Morgan honestly suspected Ayers of having been drinking and legitimately demanded he take a blood alcohol test; and that Ayers refused and walked off the job.

<sup>30</sup> The General Counsel, in part, relies on the disparate treatment of another employee to support his theory that Ayers' discharge was pretextual. I find, however, that the circumstances surrounding the discharge of the other employee are factually distinguishable.

<sup>31</sup> In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order and all objections thereto shall be deemed waived for all purposes.