

Yellow Freight System, Inc. and Anna Allen. Case 10-CA-11302

February 14, 1978

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS
JENKINS AND PENELLO

On June 18, 1976, the National Labor Relations Board issued a Decision and Order in this proceeding, finding, contrary to the Administrative Law Judge, that Respondent had not violated Section 8(a)(3) and Section 8(a)(1) and dismissing the complaint.¹

Thereafter, the Charging Party filed with the United States Court of Appeals for the District of Columbia Circuit a petition to review the Board's Decision and Order. On July 26, 1977, the court issued its opinion reversing the Board's order and remanding the case for further proceedings.²

The Board accepted the court's remand and, on October 19, 1977, advised the parties that they could submit statements of position. Thereafter, Respondent filed a motion to reopen the record and request for reconsideration and a supporting brief and the Charging Party filed a brief in opposition.

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.

Having fully considered the views of the court of appeals and the parties' contentions, we accept as the law of this case the court's findings and conclusions. In so doing, however, we note that the only 8(a)(1) violation that was alleged and litigated in this proceeding concerns the May 22, 1975, statements made by Respondent's representatives Cowles and McClure to the Charging Party. While the court found a lack of legitimate economic concerns to support the Board's conclusions that the statements were not an unfair labor practice, the court apparently further found that the discharges of Melanie Allen and Betty Hildebrand, which were not alleged as violations or litigated, also constituted 8(a)(1) violations. In the circumstances we do not interpret the court's remand as directing the reinstatement of Melanie Allen and Betty Hildebrand, or as requiring

an 8(a)(1) remedy in addition to that recommended by the Administrative Law Judge.³

AMENDED ORDER

Pursuant to remand by the United States Court of Appeals for the District of Columbia Circuit, we hereby substitute the following for our original Order of June 18, 1976:

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Yellow Freight System, Inc., Marietta and Atlanta, Georgia, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Expressly or impliedly threatening employees with discharge or other reprisal for engaging in union activities.

(b) Discouraging membership in Teamsters Local Union No. 728, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, or in any other labor organization, by discharging employees, or in any other manner discriminating in regard to hire or tenure of employment, or any term or condition of employment.

(c) In any other manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Offer Anna Allen immediate and full reinstatement to her former job or, if such job no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges, and make her whole for any loss of earnings, in the manner set forth in "The Remedy" section of the Decision of the Administrative Law Judge, as reported at 224 NLRB 1306, 1311.

(b) Preserve and make available to the Board or its agents all payroll and other records, as set forth in The Remedy section of the Decision of the Administrative Law Judge.

(c) Post at its Marietta and Atlanta, Georgia, terminal and facilities, copies of the attached notice marked "Appendix."⁴ Copies of said notice, on forms provided by the Regional Director for Region 10, after being duly signed by Respondent's representative, shall be posted by Respondent immediately

¹ 224 NLRB 1306, then-Member Fanning dissenting.

² *Anna Allen v. N.L.R.B.*, 561 F.2d 976 (C.A.D.C., 1977). Subsequently, the General Counsel for the Board filed a petition for rehearing concerning the court's interpretation of the discharges of casual employees Melanie Allen and Betty Hildebrand. While their discharges were not litigated before the Board as discriminatory, Respondent's comments leading up to their discharges were alleged and litigated as 8(a)(1) violations. The General Counsel's petition was denied by the court on September 1, 1977.

³ Respondent's motion to reopen the record and request for reconsideration is hereby denied as it does not raise any substantial issue warranting further proceedings.

⁴ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 10, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing in which both sides had the opportunity to present their evidence, the National Labor Relations Board has found that we violated the law and has ordered us to post this notice. We intend to carry out the Order of the Board and abide by the following:

WE WILL NOT expressly or impliedly threaten employees with discharge or other reprisal for engaging in union activities.

WE WILL NOT discharge, or otherwise punish, employees, in order to discourage membership or support for Teamsters Local Union No. 728, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, or any other labor organization.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of their rights guaranteed in the National Labor Relations Act, which are as follows:

- To engage in self-organization
- To form, join, or help unions
- To bargain collectively through a representative of their own choosing
- To act together for collective bargaining or other mutual aid or protection
- To refuse to do any or all of these things.

Since it has been found that we unlawfully discharged Anna Allen, WE WILL offer her her regular job or, if such job no longer exists, we will give her a substantially equivalent job; and WE WILL pay her for the earnings she lost because of the discrimination against her, plus interest.

YELLOW FREIGHT
SYSTEM, INC.