B & P Motor Express, Inc. *and* Willard James. Case 25-CA-6812

July 6, 1977

DECISION AND ORDER

BY MEMBERS JENKINS, PENELLO, AND WALTHER

On February 7, 1977, Administrative Law Judge James L. Rose issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief and the Respondent filed an answering 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 briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge only to the extent consistent herewith.

The Administrative Law Judge dismissed in its entirety the complaint herein which alleged that the Respondent violated Section 8(a)(1) and (3) of the Act by discharging employee Willard James for engaging in protected activity and discriminating against him for filing a grievance. The General Counsel excepted. For the reasons set forth below, we find merit to the exceptions.

The Respondent, B & P Motor Express, Inc., operates an interstate trucking company with a terminal in South Bend, Indiana, the facility here involved. At all times material the South Bend terminal was managed by Joseph Van Mele and his son John Van Mele. The terminal has seven drivers; Willard James, who was hired in 1968, was second in seniority. He was and is considered by the terminal's management to be an excellent driver, a "hustler" who had the most earnings of the terminal's drivers. On December 10, 1974, James was discharged as a "voluntary quit." He was subsequently put back to work on February 21, 1975, without backpay, pursuant to a grievance award.[1] The General Counsel contends that the reason advanced by the Respondent for James' discharge was a pretext and that the true reason is that James threatened to file and did file safety complaints with a Government agency. The General Counsel further contends that the Respondent, in rehiring James, failed to put him on the same or comparable equipment and put him on the bottom of the seniority list, both in retaliation for his filing the grievance.

In the summer of 1974, James had some mechanical difficulties on the tractor and trailer he was driving, and certain repairs were made. Prior to taking a vacation beginning the week of November 25, 1974, James told John Van Mele[2] that his truck needed certain repairs including the trailer brakes which locked up on the road. Repairs were made on the tractor, and a new trailer was obtained. No repairs were made on the tractor's brake system.

On Monday, December 2, 1974, James reported back to work. James saw that his tractor had its wheels blocked, which suggested to him that the parking or maxi brakes had not been repaired. James testified that he had come in ready to work and was angry and "grew hot" when he saw the tractor with its wheels blocked. He asked Joseph Van Mele when the tractor was going to be fixed and said that if it was not fixed to his satisfaction he would take it to the Department of Transportation. James then went to the garage operated by John Van Mele, asked John why the brakes had not been fixed, and told him that he would have the tractor inspected by the Department of Transportation.[3]

James went home and, as found by the Administrative Law Judge, called the Michigan Public Service Commission,[4] the agency responsible for inspecting common carriers in Michigan, where John Van Mele's garage was located. Shortly afterwards, James was called by Larry Saunders,[5] Respondent's area supervisor for safety, who asked about the problem with the tractor. James told him that the parking brakes and the windshield washers did not work and that he had reported the matter to the Michigan Public Service Commission.[6]

Saunders thereupon grounded the vehicle. It is uncontradicted that malfunctioning parking brakes present a safety risk not only when parking, but also when driving. The parking brakes are designed to

[1] James filed a grievance on December 24, 1974. On February 20, 1975, the joint committee, under the applicable grievance procedure, ruled that James was to be "returned to work on the next available dispatch without payment of back wages or fringe benefits and no loss of seniority."

[2] At that time John Van Mele not only helped manage the terminal but also ran a garage in nearby Michigan where repairs were made on the terminal's vehicles. His father, Joseph Van Mele, although semiretired, was then the effective boss of the terminal.

[3] Both the Eastern States and the Central States collective-bargaining agreements provide in art. 16 that employees may refuse to drive unsafe equipment.

[4] The complaint does not mention such an agency but refers to the Department of Transportation. However, within the State, the Michigan agency performs Department of Transportation safety inspections.

[5] Incorrectly called "Sanders" by the Administrative Law Judge.

[6] As found by the Administrative Law Judge. This shows that the Respondent had knowledge that James reported to the Michigan agency. Saunders, however, testified that James told him he was *going* to report to the Department of Transportation. In any event, it is not necessary to determine whether Respondent knew that James had so reported. The record unequivocally establishes that James threatened both Van Meles (and Saunders, if his testimony is believed) that he would report to the Department of Transportation. In the circumstances of this case, the meaningful threat to report safety violations is legally equivalent to actually so reporting.

lock up the vehicle's brakes if the pressure in the regular braking system drops too low. Although James did not report malfunctioning parking brakes prior to his vacation, he did report a problem with the trailer brakes locking up. John Van Mele testified that the cause of such a problem could be in either the trailer or the tractor. Both the parking brakes and the windshield washers needed repairs. John Van Mele testified that the repairs were completed on December 5 or 6, 1974. Saunders inspected and released the tractor around noon on Saturday, December 7, 1974. Joseph Van Mele testified that he put James on an additional week's vacation beginning December 2, but did not tell James he had done so.

The next Tuesday, December 10, 1974, Joseph Van Mele requested Clifford Orner[7] to send James a "voluntary quit" letter, thereby discharging him. James reported to the terminal on December 12, 1974, and first learned (from Joseph Van Mele) that he was fired. James subsequently received his discharge letter. The term "voluntary quit" is used in the Central States collective-bargaining agreement and means that an employee who fails to report for 3 days may be considered to have quit and be discharged therefor. James, however, was covered by the Eastern States agreement which makes no reference to voluntary quit. There is evidence in the record which suggests that "voluntary quit," although not contained in the contract, is equally applicable under the Eastern States agreement. However, the issue here is not whether the Respondent applied the improper contract or improperly applied the right contract, but whether this was the true reason for James' discharge. For the reasons set forth below, we find that the use of "voluntary quit" was a pretext.

James returned to the terminal on December 16, 1974, to repay Joseph Van Mele for the truck expense advances. He again returned on December 20, 1974, and talked to John Van Mele and Saunders about getting his job back. He was told to come back later and talk with Joseph Van Mele, who was not then available. James returned on December 23, 1974, and talked to Joseph Van Mele and Saunders. After some discussion about repairs to the truck, Saunders, as he testified, made the statement that if there were even any problems that he wished James would bring them to the Company and let it know before he contacted anyone else. James left.

James was the first employee to be fired by either of the Van Meles, and Joseph Van Mele had been managing the terminal for 18 years. It is uncontradicted on the record that James was the first employee to tell Saunders that he was going to the Department of Transportation.[8] It is also uncontradicted that the Respondent, after December 2, 1974, made no attempt to get in touch with James to tell him that his truck had been repaired or to return to work.[9] The Respondent contends that it was not required to do so, but that James was required to keep in touch with the terminal. John Van Mele testified, however, that there has never been a particular rule about what a driver should do while his equipment is being repaired. John Van Mele also testified that a driver is to keep in touch by leaving a phone number where he can be reached for dispatching, even if he is to be gone for 2 hours. The evidence shows that the dispatcher routinely calls drivers when hauls are available if the drivers are not in the terminal.

In our opinion the evidence, as set forth above, proves that the reason given by the Respondent for James' discharge was a mere pretext. The Respondent invoked the so-called "voluntary quit" rule to fire James at the earliest possible opportunity to do so after James threatened to go to the Department of Transportation. Respondent normally operates its terminal on a 5-day week, Monday through Friday. At most there were 3 working days from the date James' tractor was repaired (Thursday or Friday, December 5 or 6) to the date of his discharge (Tuesday, December 10) and 3 actual days from clearance of the tractor (Saturday, December 7) to the discharge. James was a veteran employee of 8 years and was considered to be an excellent driver. It is unbelievable that the Respondent would summarily fire such an employee solely because he did not report for work for 3 days. This is especially so since he purportedly had been put on vacation for the week of December 2 through 6, 1974. And James was the first employee to be fired from the terminal in 18 years.

As stated by the Administrative Law Judge, "the dispute here in its inception and throughout was whether the company should have contacted James." Any reasonable evaluation of the evidence indicates that James should have been called by the Respondent when the truck was repaired. Although drivers are required to keep in touch with the terminal, in practice they are required only to leave a phone number where they can be reached. There is no

[7] Orner was Respondent's director of safety who had control over discharges; discharges could not be effectuated at the terminal.

[8] Although Saunders testified, as found by the Administrative Law Judge, that it was common practice for drivers to say they were going to report their equipment to the Department of Transportation, he immediately clarified that statement and testified, "I have never had a driver tell me he was going to report."

[9] Respondent contends that James was not available for work because he was hunting. Whether or not James was hunting has no bearing on this case, because that question played no part in Respondent's decision to discharge James. Instead the evidence shows that Respondent never tried to get in touch with James.

evidence that James failed to do this. Since the Respondent routinely calls drivers to pick up loads, it is reasonable to expect it to call a driver to tell him that his truck had been repaired. Accordingly, we find that the Respondent failed to call James because it was looking for an excuse, a pretext, to fire him.

The true reason for the discharge can be inferred from the timing—James was fired as soon as possible after he threatened to report the truck to the Department of Transportation. James was the first employee to make such a threat to Saunders. On December 23, 1974, Saunders told James that he should bring such problems to the Company before contacting anyone else. Precisely, James was fired because he did not do so.

For the above reasons, we find that the Respondent fired James because he threatened to make safety complaints to a Government agency. Making safety related complaints, particularly when such matters are embodied in a collective-bargaining agreement, as herein, is protected, concerted activity. *Roadway Express, Inc.*, 217 NLRB 278 (1975). Accordingly, we find that the Respondent has violated Section 8(a)(1) of the Act by discharging employee Willard James for engaging in protected, concerted activity.

The Respondent put James back to work on February 21, 1975, pursuant to a grievance award. However, for 7 months James was assigned to a tractor without a sleeper, while his prior rig, which had a sleeper, was driven by a less senior employee. We find that the Respondent, by assigning James a less desirable vehicle for 7 months, continued to discriminate against him. The Respondent also put James' name on the bottom of the seniority list, when James was number 2 in seniority, for the same 7 months. Although there is no evidence that James lost any wages or otherwise suffered any specific adversity as a result of his seniority change, we nonetheless find that the Respondent thereby discriminated against James. Keeping James on the bottom of the seniority list had a chilling effect on engaging in protected activity and served as a symbol and object lesson to other employees. We find that the discrimination in truck assignment and seniority placement was a continued retaliation for James' engaging in protected activity and therefore violative of Section 8(a)(1) of the Act. We also find that it was in retaliation for James' having filed a grievance. As the grievance was processed through union channels, it constitutes union activity. *Mrs. Baird's Bakeries, Inc.*, 189 NLRB 606 (1971). Accordingly, we find that Respondent's discrimination against James also violated Section 8(a)(3) of the Act.

The Remedy

Having found that the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act, we shall order it to cease and desist therefrom and take certain affirmative action, including the posting of notices, designed to effectuate the policies of the Act. Having found that the Respondent unlawfully discharged Willard James, we shall order it to reinstate him and make him whole for all earnings lost by reason of the discrimination against him by payment of a sum of money equal to that he normally would have earned but for the discrimination, less net earnings, with backpay and interest thereon to be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, B & P Motor Express, Inc., South Bend, Indiana, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging or otherwise discriminating against employees in regard to hire or tenure, assignment of type of equipment, reduction in seniority, or any other term or condition of employment for engaging in concerted activity protected by Section 7 of the Act.

(b) Discriminating against employees for engaging in union activities.

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

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Offer to Willard James immediate and full reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of pay, in the manner set forth in "The Remedy" section of this Decision.

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Restore James to the position on the seniority roster he would have occupied had the Respondent not unlawfully reduced him from being number 2 in seniority.

(d) Assign to James equipment similar to that which he operated prior to February 21, 1975.

(e) Post at its terminal in South Bend copies of the attached notice marked "Appendix."[10] Copies of said notice, on forms provided by the Regional Director for Region 25, after being duly signed by Respondent's representative, shall be posted by the Respondent immediately 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.

(f) Notify the Regional Director for Region 25, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

[10] 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."

APPENDIX

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

WE WILL NOT discharge or otherwise discriminate against any employee in regard to hire or tenure of employment, assignment of type of equipment, reduction in seniority, or any term or condition of employment because he has engaged in concerted activity protected by Section 7 of the Act.

WE WILL NOT discriminate against any employee because he has filed a grievance.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed in Section 7 of the Act.

WE WILL offer Willard James immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of pay suffered as a result of the discrimination against him.

WE WILL restore James to the position on the seniority roster he would have occupied had we not unlawfully reduced him from being number 2 in seniority.

WE WILL assign to James equipment similar to that which he operated prior to February 21, 1975.

B & P MOTOR EXPRESS, INC.

DECISION

STATEMENT OF THE CASE

JAMES L. ROSE, Administrative Law Judge: This matter was heard at South Bend, Indiana, on October 26, 1976. The principal allegation of the Regional Director's complaint is that the Charging Party, Willard James, was discharged on or about December 10, 1974,[1] because he engaged in protected concerted activity—he filed safety complaints with the "Department of Transportation"—in violation of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, 29 U.S.C. § 151, *et seq.* It is also alleged that the Respondent violated these sections by putting James on the bottom of the seniority list and assigning him to a less desirable piece of equipment when he was reinstated on February 21, 1975.

Upon the record as a whole, including my observation of the witnesses, briefs, and arguments of counsel, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

The Respondent, B & P Motor Express, Inc., has its principal place of business in Pittsburgh, Pennsylvania, with various terminals in other States including the one in South Bend, Indiana, the facility here involved. The Respondent is a common carrier engaged in interstate motor freight hauling.

During the year preceding the issuance of the complaint, a representative period, the Respondent purchased, transferred, and delivered to its Indiana facility, goods, products, and materials valued in excess of $50,000 which originated outside the State of Indiana. During this period the Respondent received gross revenues in excess of $50,000 for services rendered outside the State of Indiana. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated that Local Union Nos. 261 and 364, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, are labor organizations within the meaning of Section 2(5) of the Act and I so find.

[1] All dates are in 1974 unless otherwise indicated.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Factual Background*

Given that the events here took place nearly 2 years prior to the hearing, there was little serious dispute concerning what happened. A brief summation of the facts shows that Willard James was, and still is, considered by the Respondent's management to be an excellent driver. He is considered to be "a hustler" and because of this has the most earnings of any driver operating out of the South Bend facility.

James testified that throughout the summer of 1974 he had been having some mechanical difficulty with his tractor and trailer. He made notations of this and from the documentary evidence, it appears that certain repairs had been made.

In any event, upon returning from a run on November 21 or 22, James advised John Van Mele, now the Respondent's agent at South Bend, that he wanted to go on vacation the week of November 25, and while gone he wanted certain repairs to be made on his tractor and trailer. While some repairs were made, it appears that the parking or "maxi" break and the windshield washer were not.

On Monday, December 2, James went to the terminal ready, he said, to go to work. He saw his tractor with a rock under the wheel as a block. This suggested to him that the parking breaks had not been fixed and, though he did not actually inspect the tractor, he went to Joseph Van Mele, John's father and the man who for 18 years had been the South Bend agent and who was the effective boss, although semiretired. James testified that "I grew hot. I got mad. I was ready to work. And I went in and I had a few words with Joe. I asked him when was John going to fix the tractor. He said he didn't know. I didn't think he did. I told him if I couldn't get that tractor fixed to my satisfaction I would take it down the road to the Department of Transportation."

James then went to the Firestone garage operated by John, and the place where most of these types of repairs were made. He had a conversation with John to the effect that the breaks had not been fixed and that he would have the tractor inspected by "DOT."

James then returned home, and in fact called the Michigan Public Service Commission, the agency responsible for inspecting common carriers operating in the State of Michigan. (While the terminal is located in Indiana, the truck's physical location was in Michigan as is the Firestone garage.)

Just as James finished talking to the Michigan Public Service Commission agent, Larry Sanders called. Larry Sanders is the Respondent's area supervisor of safety. Sanders asked what the problem was with the vehicle. James told him that the parking brakes and windsield wipers did not work and that he had reported this matter to the Michigan Public Service Commission.

Sanders testified that he then immediately grounded the vehicle and according to his testimony and that of John Van Mele, by the next Wednesday or Thursday, December 5 or 6, the vehicle had been repaired.

There is inconsistent testimony concerning whether James had any further contact with the Van Meles until he received a letter from Clifford L. Orner, the Respondent's Director of Safety which said in part, "B & P Motor Express, Inc. hereby accepts your voluntary quit effective 12–10–74."

While the return receipt of this letter shows delivery on December 17, James testified that he went to the terminal on December 12 to turn in the logsheets which Orner had requested. At that time he was told by Joseph Van Mele he had voluntarily quit because he had not reported in for 3 days as required by the collective-bargaining agreement.

Joseph Van Mele testified that when James arrived on December 2, he was in a rage but this had happened once before and that he determined to let James cool off for a week. Thus Van Mele testified that rather than putting James down as a voluntary quit at that time, in effect he gave him another week's vacation. This meant that Van Mele remitted on James' behalf $48 to cover his health, welfare, and pension benefits. No mention of this, however, was made by Van Mele to James nor did the Company contact James when the vehicle was fixed on December 6 or 7.

James testified that he called Orner two or three times and was advised by Orner to meet with Sanders and Van Mele. And John Van Mele testified that James called him on December 16 asking for his job back. Thus on December 20, James met at the terminal with Sanders and John Van Mele, at which time James asked for his job back. John said that it was all right with him but that he would like for James to talk to his father.

While there is some dispute concerning precisely what happened at the meeting of December 20, all parties agree that it did take place at the terminal with John, Sanders, and James present. It was arranged for James to return on December 23 to speak with Joseph Van Mele which he did. At this meeting were Joseph, Sanders, and James. There was general discussion and then Sanders said something to the effect that the Respondent hoped that if James had any complaints concerning his vehicle he would bring them to the Company. In James' version, he should not report defects to Government agencies. With this, according to Sanders and Van Mele, James got irritated, got up said that he was going to "get an education" and left.

Joseph Van Mele testified that he had a load that he was going to assign to James at that time but because of the way James acted, he did not.

James further testified that in a phone call that he received from John Van Mele setting up the meeting of December 23, John suggested that the purpose of this was to get James to agree not to report safety problems to the Public Service Commission. James also testified that at the December 20 meeting John told him, "My father told me not to call you, then I could fire you."

Following the December 23 meeting, James filed a grievance with his local union which was the subject of a joint board hearing and determination on February 21, 1975, wherein it was decided that James should be reinstated but with no backpay. Following this determination James in fact was reinstated first to a different truck

than he had been driving and then in September 1975 to his old truck.

B. *Analysis and Concluding Findings*

The General Counsel's principal contention in this matter is that James was terminated because he filed a safety complaint with Michigan Public Service Commission, denominated in the complaint as "The Department of Transportation." While there are allegations of discharge for union activity there was no evidence at all to support those. There is no allegation or evidence of independent 8(a)(1) violations.

The principal issues here are: (a) whether by contacting the Michigan Public Service Commission, James engaged in protected, concerted activity, and if so (b) whether he was terminated for having done so.

To make complaints of possible violations of state or Federal law, even though done individually, is activity protected by Section 7 of the Act. To discharge an individual for this reason is violative of Section 8(a)(1) of the Act. *G. V. R., Inc.*, 201 NLRB 147 (1973).

It is also alleged that James was discriminated against on reinstatement presumably because he had availed himself of the contractual grievance procedure. If proved, such discrimation is violative of Section 8(a)(1). *Farmers Union Cooperative Marketing Ass'n.*, 145 NLRB 1 (1963).

Thus, the principal question here is whether or not in fact James' employment relationship with the Respondent was terminated on or about December 10 because he had complained to the Michigan Public Service Commission.

From the totality of the evidence it is my conclusion that the General Counsel has not sustained his burden of proving that the reason the Company terminated James on or about December 10 was for the reasons alleged.

The General Counsel of course does not have the burden of proving by a preponderance of the credible evidence all allegations of subjective facts making up a violation of the Act. This may be done by direct evidence or by inference. Here, there is no direct evidence that the fact James called the Michigan Public Service Commission entered into the Company's determination to terminate him. In fact the direct evidence on this point is to the contrary.

Further, there is no reasonable inference that his call motivated the Company's action. The General Counsel has not demonstrated by any evidence or inference that there is any particular reason why the Company would terminate an employee because he called the Michigan Service Commission or the Department of Transportation. There is no demonstration that this act by James harmed the Respondent or even had the potential to do so, nor can I infer it did.

This Respondent is engaged in the interstate operation of motor vehicles as a common carrier. There is substantial exposure to liability if vehicles malfunction. While maintenance standards are required by Federal law, there is no reason to believe that the Respondent does not voluntarily and to the best of its ability maintain those standards. The Respondent in fact has a safety inspector whose principal responsibility is to inspect all the vehicles of the Respondent coming through his area and has the authority to "ground" them on his inspection. In fact Sanders did ground James' vehicle on December 2.

There is no evidence that the Michigan Public Service Commission contacted, much less fined, the Respondent as a result of James' call. In short, there is no evidence and no basis to infer that the Respondent had any kind of motive for disciplining James as a result of his having contacted the Michigan Public Service Commission. Absent such a showing, a necessary element of the General Counsel's case is lacking. There must be shown a causal connection between James' known act of contacting the Michigan Public Service Commission and the events which transpired subsequently. The mere fact that one event occurs after another does of itself mean that the first event caused the second.

The totality of the evidence in this matter, and the generally credible testimony of all the witnesses, shows that James got mad at the Company for what he considered to be its failure to repair his vehicle during the week that he was on vacation. That certain repairs had not been made makes little difference. The point is that James in fact had a confrontation with the Company's principals concerning the repair of his vehicle and following this confrontation he had no further contact with the Company for a period of almost 2 weeks.

The managers say, and the parties stipulated, that the collective-bargaining agreement requires individual drivers to keep in contact with the Company. A fellow driver testified that they must call the Company even if they leave home for 2 hours. James said that the Company always called him.

In any event, the evidence is that had, in fact, James contacted the Company on or before December 10, he would have found that his vehicle had been repaired and he would have been dispatched. James did not do this. Rather he chose, for reasons undisclosed on the record, not to contact the Company but to wait for the Company to contact him. It may very well have been that James was not available for work. His testimony concerning whether during the week of December 2 he was available or was hunting, was not credible. Whichever, he certainly reasonably should have contacted the Company at least by December 9—the following Monday after he found his vehicle not repaired. When he did not, the Company certainly had some justification for considering him to have voluntarily quit.

The dispute here in its inception and throughout was whether the Company should have contacted James when his vehicle was finished or vice versa; and whether the Company could have considered him to have voluntarily quit when he did not. This was the subject of a grievance under the collective-bargaining agreement and was resolved.

The Act does not give employees blanket protection from discharge, even where the discharge is unreasonable. The Act simply protects employees who engage in union or other protected activity.

The question, therefore, is whether James was terminated for a reason proscribed by the Act, or for some other reason.

I do not believe after listening to the testimony of all the witnesses that the fact that James called the Michigan Public Service Commission was of particular importance either to him or to the Company in regard to the problem of whether to terminate James in the first instance, or to reinstate him.

There is testimony concerning the meeting subsequent to his termination involving the question of contacting the state agency with regard to safety problems. I find Sanders' testimony that he initiated this subject at the December 23 meeting to be generally persuasive. The Company would prefer to have employees tell them if they have safety problems so that the Company would know about them. Sanders also credibly testified that it is quite common for drivers to threaten to call the DOT.

From the totality of the evidence I cannot conclude that James' calling the Michigan Public Service Commission on December 2 was a cause of the Company's determination to consider him to have voluntarily quit when he did not contact the Company for over a week after December 2. Upon the evidence before me I cannot conclude that the Company violated Section 8(a)(1) of the Act.

It should also be noted that there is no evidence of animus toward either of the labor organizations involved or toward the employees for engaging in union activity or other protected concerted activity. Indeed there is no evidence demonstrated of animus toward James. In fact the Company's officials all testified that he was their best driver. James, however, admitted to getting mad on both December 2 and December 23. I am persuaded that the substance of this matter involved James' getting mad, and how the Company chose to deal with him. The dispute involved the personal relationship between James and the company officials, triggered no doubt by what he considered to be the Company's failure appropriately to repair his vehicle. Nevertheless, the dispute was between James and the Company on a personal basis and had nothing to do with the Michigan Public Service Commission. That James contacted the Michigan Public Service Commission was only an incidental factor known, but not considered.

Therefore upon the record as a whole it is my conclusion that the Company did not violate Section 8(a)(1) and (3) as alleged and that the complaint should be dismissed.

While James was assigned a different tractor when he was reinstated, there is no evidence this was done with a discriminatory motive. His usual tractor had been assigned to someone else. Testimony of a union business agent is to the effect that equipment has no seniority, that is, a company need not assign the best equipment to senior drivers. Thus the fact that James did not immediately get his tractor back does not imply a discriminatory motive. Finally, even though James' name was placed on the bottom of the seniority roster when he was first reinstated, there is no evidence that he lost "seniority" or was not given every available haul.

Conclusions of Law

1. The Respondent, B & P Motor Express, Inc., is an employer engaged in interstate commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Local Union Nos. 261 and 364, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America are labor organizations within the meaning of Section 2(5) of the Act.

3. The Company did not violate Section 8(a)(3) or (1) of the National Labor Relations Act by concluding on or about December 10, 1974, that Willard James voluntarily quit his employment.

4. The Company did not violate Section 8(a)(3) or (1) of the Act by not assigning him to tractor no. 6601 when he was reinstated on February 21, 1975.

[Recommended Order for dismissal omitted from publication.]