

In the Matter of SAMUEL ROSENBLATT, DOING BUSINESS UNDER THE
TRADE NAME AND STYLE OF ROSENBLATT'S FRIENDLY MOUNTAIN LINE
and MOUNTAIN HIGHWAY DRIVERS ASSOCIATION, UNAFFILIATED

Case No. 2-C-5289.—Decided May 22, 1944

DECISION
AND
ORDER

On February 16, 1944, the Trial Examiner issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had engaged in and was engaging in certain unfair labor practices and recommending that he cease and desist therefrom and take certain affirmative action as set out in the copy of the Intermediate Report attached hereto. Thereafter, the respondent filed exceptions to the Intermediate Report and a brief in support of the exceptions. Neither party has requested a hearing before the Board for the purpose of oral argument.

The Board has considered the rulings of the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following exceptions and additions.

1. The Trial Examiner found, and we agree, that sometime in August 1943, in a conversation with Louis Cohen, an organizer for the Union and a member of its Executive Committee, respondent threatened to blackball all those who engaged in organizational activities in behalf of the Union. However, in finding that the respondent violated Section 8 (1) of the Act, the Trial Examiner specifically excluded from consideration the conversation with Louis Cohen. We do not agree to this exclusion. It is of no significance that Louis Cohen was not the respondent's employee, for statements to a Union organizer and officer are very likely to be relayed to the employees whom he represents. Consequently, we consider the statements made by the respondent to Louis Cohen as part of the totality of the respondent's conduct violative of Section 8 (1) of the Act.

2. The Trial Examiner found that when Fleischer refused to make a "half-double" trip on August 22, 1943, the respondent's act in taking the keys from Fleischer's car and walking away was tantamount to a discharge. We do not agree. Fleischer did not testify that the respondent told him that he was being discharged. There is no evidence in the record to indicate whether it was customary for employees to retain the keys to unattended cars at the end of the day's work. On the other hand, the testimony is undisputed that the employees were not required to make a "half-double" or a "double" trip and that refusal to make such trips would not be cause for discharge. The record also shows that the respondent did in fact use Fleischer's car to round-up the passengers for the "half-double" trip which Fleischer had refused to make. While the matter is not entirely free from doubt, we feel that the evidence is insufficient to warrant an inference that the respondent's conduct constituted a discharge. We find, therefore, that the allegation of the complaint that the respondent discharged and refused to reinstate Fleischer because of his union membership and activities is without substantial support.

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Samuel Rosenblatt, doing business under the trade name and style of Rosenblatt's Friendly Mountain Line, 415 Montauk Avenue, Brooklyn, New York, and his officers, agents, successors, and assigns, shall:

1. Cease and desist from in any manner interfering with, restraining, or coercing his employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Post immediately in conspicuous places throughout the respondent's office and place of business, both at 415 Montauk Avenue, Brooklyn, New York, and at Loch Sheldrake, New York, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to his employees stating that the respondent will not engage in the conduct from which he is ordered to cease and desist in paragraph 1 of this Order;

(b) Notify the Regional Director for the Second Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

AND IT IS FURTHER ORDERED that the complaint, insofar as it alleges that the respondent has discriminated against Robert Fleischer within the meaning of Section 8 (3) of the Act, be, and it hereby is, dismissed.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Order.

INTERMEDIATE REPORT

Mr. Richard J. Hickey, for the Board.

Mr. Henry P. Goldstein, of New York, N. Y., for the respondent.

Mr. Ernest H. Falkowitz, of Brooklyn, N. Y., for the Union.

STATEMENT OF THE CASE

Upon an amended charge duly filed on November 23, 1943, by Mountain Highway Drivers Association, unaffiliated, herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Second Region, (New York, New York), issued its complaint, dated December 9, 1943, against Samuel Rosenblatt, doing business under the trade name and style of Rosenblatt's Friendly Mountain Line, 415 Montauk Avenue, Brooklyn, New York, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3) and Section 2, (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called, the Act. Copies of the complaint, accompanied by notice of hearing thereon, were duly served upon the respondent and the Union.

In respect to the unfair labor practices, the complaint alleged in substance: (1) that from about July 30, 1943, the respondent has vilified, disparaged and expressed disapproval of the Union; interrogated his employees concerning their union affiliations; urged, persuaded and warned his employees against joining or assisting the Union, and threatened them with discharge or other reprisals if they did so; and kept under observation and surveillance the meetings and other activities of the Union; (2) that on or about August 22, 1943, the respondent discharged Robert Fleischer and thereafter refused to reinstate him because he joined or assisted the Union or engaged in other concerted activities for the purposes of collective bargaining or other mutual aid or protection; (3) and that the respondent, by the foregoing acts, interfered with, restrained, and coerced his employees in the exercise of the rights guaranteed in Section 7 of the Act.

On December 15, 1943, the respondent filed his answer, in which he admitted certain facts in respect to his business, and that he discharged and thereafter refused to reinstate Robert Fleischer, but denied all material averments of the complaint relating to the unfair labor practices.

Pursuant to notice, a hearing was held on January 3, 1944, at New York, New York, before W. P. Webb, the Trial Examiner, duly designated by the Chief Trial Examiner. The Board, the respondent and the Union were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues, was afforded all parties.

During the course of the hearing, the respondent's counsel moved (1) to amend the respondent's answer by denying that the respondent discharged and thereafter refused to reinstate Robert Fleischer, (2) to conform the pleadings to the proof

in respect to minor inaccuracies regarding dates and the spelling of names, and (3) to dismiss the entire complaint. Motions (1) and (2) were granted, and motion (3) was denied, by the undersigned.

The opportunity to make oral argument at the end of the hearing, and to file briefs with the Trial Examiner, was waived by the parties.

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent, Samuel Rosenblatt, a private individual, is, and has been since 1935, doing business under the trade name and style of Rosenblatt's Friendly Mountain Line. He maintains two offices for the transaction of his business. One, the main office, is located at 415 Montauk Avenue, Brooklyn, New York, and the other at Loch Sheldrake, New York, which is a small town in the Catskill Mountains about 125 miles from Brooklyn. The respondent is engaged in the business of operating automobiles for the transportation of passengers and baggage for hire through the States of New York and New Jersey under a Certificate from the Interstate Commerce Commission. The respondent's business is seasonal. The season usually begins in May and ends about the middle of September of each year. The respondent's gross revenue from the business during the 1943 season was in excess of \$10,000. The respondent normally employs from 12 to 15 drivers for the season.¹ The respondent admits, for the purposes of this proceeding, that he is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

Mountain Highway Drivers Association is an unaffiliated labor organization, admitting to membership employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

A. Formation of the labor organization involved

Prior to July 1943, there had been no union activity among the respondent's drivers. On July 21, Robert Fleischer, one of the respondent's drivers,² together with 3 other drivers, met at the home of Driver Louis Cohen for the purpose of forming a labor organization among the various drivers of motor cars operating for hire between Brooklyn, New York, and the Catskill Mountains.

On July 28, another meeting was held in Brooklyn and about 50 drivers³ were present, together with Attorney Ernest H. Falkowitz. At that meeting, an organization was formed under the name "Mountain Highway Drivers Association," unaffiliated Jack Goldstein, a driver for the Liberty Mountain Line, was elected president and Fleischer was elected vice-president. As instructed, Attorney Falkowitz prepared a constitution and bylaws which were adopted at a meeting on August 4. According to the constitution the object of the Union was to act as the exclusive agent of its members for the purposes of collective bargaining in

¹ After the season ends, the drivers generally become taxi drivers around New York City, until the season opens again.

² At that time the respondent employed approximately 12 drivers.

³ There were approximately 60 other individuals, besides the respondent, engaged in the same business as the respondent. These operators were associated in an organization known as "Associated Safety Owner Drivers."

respect to rates of pay, wages, hours of employment, or other conditions of employment. All drivers were eligible for membership. Weekly meetings of the Union were held. Employee Fleischer was also a member of the organizing committee and in that capacity was very active in securing members among the respondent's employees. In fact, he was the leading spirit in the formation of the Union.

B. Interference, restraint, and coercion

According to the undenied testimony of Abraham Freundlich one of the respondent's drivers called as a witness by the respondent, which is credited by the undersigned, he attended the meeting of the drivers at Cohen's home on July 21, and the next morning he told the respondent, Rosenblatt, about it. Rosenblatt then asked Freundlich who was at the meeting, and he told him. Rosenblatt then said "Well, did you join up?" Freundlich replied, "Not yet." A short time after this incident, Rosenblatt asked Freundlich if he was going to join the Union and if he knew what was "going on" in the Union. When Freundlich told Rosenblatt that he had been asked to join the Union, Rosenblatt told him that he did care what the drivers did, and he was not afraid of the Union, because he was paying the "proper amount of salary."

About 7:00 p. m. on August 1, a number of the respondent's drivers were standing in front of the Brooklyn office talking about the Union, when Rosenblatt came out of the office and called employee Fleischer to one side and said to him, "Listen, Bob, I want you to cut that out or else, you will have to look for a new job."⁴ Fleischer replied, "Sam, it is for the benefit of the men." The next day after the Union meeting on August 4, Rosenblatt said to Fleischer, "I thought I told you to cut that out." Fleischer replied, "Look, Sam, it is for the benefit of the men, and it has nothing got (sic) to do with you . . . It is only for your benefit and our benefit."⁵

In August, just after the formation of the Union, employee Joseph Stern told Rosenblatt that when he was at the Orsack Boys Restaurant⁶ he heard the drivers talking about the Union and he was asked to join. Rosenblatt replied, "Anything the boys want, let them come to me and I'll give them . . . Anything the union wants, I'll give them."

Sometime in August 1943, Louis Cohen, not an employee of the respondent, but who had known Rosenblatt for the past 20 years or more, met the latter in the Orsack Boys' Restaurant.⁷ Cohen was a member of the Executive Committee of the Union. Rosenblatt asked Cohen if he was organizing a union and Cohen said that he was. Rosenblatt then asked him what was the purpose of the Union. Cohen told him that they were not going to do any harm to anyone, and that it was "just a matter of being together." Rosenblatt replied, "I'll see that those who organize the union will be blackballed and see that they do not get any jobs." Rosenblatt further said to Cohen, "Well, anyway, I don't have to worry. I have made my \$25,000 and I can afford to fight."⁸

⁴ Rosenblatt was referring to Fleischer's talking about the Union.

⁵ These findings are based upon the credible testimony of employee Fleischer. Rosenblatt made a general denial that he had discouraged union activities.

⁶ This restaurant was located between Brooklyn and Loch Sheldrake and was a rest stop and popular meeting place for drivers.

⁷ Cohen testified that he believed this incident occurred after Fleischer was discharged on August 22, 1943.

⁸ These findings are based upon the credible testimony of Louis Cohen. Rosenblatt admitted that he had known Cohen for the past 20 years and that he had met him once or twice on the road and had said "Hello" to him, but denied having had the above conversation with Cohen. The undersigned credits the testimony of Cohen and finds that Rosenblatt made the statements substantially as testified to by Cohen.

The undersigned concludes and finds that by the above-described acts and statements of the respondent, other than his conversation with Louis Cohen, as above related, Samuel Rosenblatt, the respondent interfered with, restrained, and coerced his employees in the exercise of the rights guaranteed in Section 7 of the Act.

C. The discriminatory discharge of Robert Fleischer

The complaint alleges that employee Fleischer was discharged by the respondent on or about August 22, 1943, and thereafter refused reinstatement because he joined or assisted the Union. The respondent, Rosenblatt, testified that he did not discharge Fleischer or refuse to reinstate him, but that on August 22, 1943, Fleischer voluntarily quit his job and never thereafter requested reinstatement. Fleischer began working for the respondent as a driver, on June 15, 1943, at \$55 a week.⁹ About July 1, his salary was increased to \$60 a week, and about August 7, to \$65 a week. Fleischer was an experienced chauffeur having been employed as a driver by one Edelstein of the Howard Mountain Line for 10 years. Prior to the commencement of Fleischer's union activities, Rosenblatt expressed his approval of him as a driver, but, after the first meeting of the drivers on July 21, his attitude toward Fleischer changed. On Friday, August 20, just 2 days before Fleischer was discharged, Fleischer and Rosenblatt had an argument in respect to a trip from Brooklyn to the mountains, which resulted in Rosenblatt's discharging Fleischer, but he was reinstated a few hours later, without loss of pay, due to the intercession of driver Louis Blumberg on behalf of Fleischer. In regard to this incident, Fleischer testified as follows, which is credited by the undersigned:

On August 20, 1943; I had come in from the mountains to the city, [Brooklyn] and there was a couple of drivers there at the time, in the office, and there was a couple of trips to go up to the mountains and somehow or other Mr. Sam Rosenblatt gave the easiest trips to the other fellows and saved this trip of five passengers for me, which took me all around the mountains. I said to him, "Sam," I says, "I am going to try to change a couple of people at the rest stops, to make it easier for you and easier for me." And he said, "No, I want you to deliver it this way." I looked at him and I said, "It is going to be late, and I will get home late, and I won't be able to work tomorrow," and then he fired me.

This incident occurred at about 2:30 p. m. on Friday, August 20. Rosenblatt immediately tendered a check to Fleischer for his salary. The regular pay day was Sunday. Fleischer declined to accept the check. That night, through the solicitation of driver Louis Blumberg, Rosenblatt reconsidered his decision to discharge Fleischer and the latter was permitted to continue working without loss of pay.¹⁰ Rosenblatt's testimony in regard to this occurrence was substan-

⁹ The respondent did not operate his motor cars on a fixed schedule. Usually, passengers arranged their trips in advance by telephone. Rosenblatt made up the daily lists of passengers and destinations and gave them to the various drivers. The trips were entirely dependent upon the number of passengers to be transported. Drivers were paid so much a week, regardless of whether they made any trips or not. A round trip between Brooklyn and Loch Sheldrake was considered a day's work. However, it sometimes became necessary to make extra round trips or half round trips. A bonus of \$10 and \$5 respectively was paid to the drivers by the respondent for these extra trips. A special trip to Roscoe, New York, paid a bonus of \$2. Extra trips were not compulsory, but were entirely optional with the drivers. Usually, if a driver had not put in a full week's work and was not tired or in need of immediate rest, he would willingly accept the extra trip in order to get the bonus. However, the record shows that extra trips had been declined by drivers for various reasons and that Rosenblatt did not hold that against them.

¹⁰ These findings are based upon the credible testimony of Fleischer, Blumberg and Rosenblatt.

tially the same as that of Fleischer. Rosenblatt further testified that some of the drivers asked him about the incident that night and he said to them "I am sorry, he [Fleischer] is through. I have nothing to do with the man any more. I can't stand him any longer because he is not the only man that I employ." According to Blumberg, Fleischer had complained to him that he, Fleischer, was getting the hard trips and "was going to Roscoe all the time."

On Sunday, August 22, Fleischer completed a trip from Loch Sheldrake to Brooklyn, and back to Loch Sheldrake. He left Loch Sheldrake that day about 9:00 a. m. and returned about 7:00 p. m. Rosenblatt met him at the Loch Sheldrake office and told him that he wanted him to make another trip to Brooklyn that night.¹¹ Fleischer replied, "Look, Mr. Rosenblatt, I am very tired, I can't take that trip down. If I take the trip down, I am liable to hurt people and hurt myself." Rosenblatt replied, "It seems as though you do not want to make doubles account the Association." Fleischer then said, "Sam, the Association has got nothing to do with this. It is just because I am tired, and I am liable to fall asleep in the car and hurt people." Rosenblatt then took the keys out of Fleischer's car and walked away. Fleischer then went home.¹² Fleischer had already received his week's wages that day while he was in Brooklyn.¹³ After Fleischer had left the office, Rosenblatt took Fleischer's car and picked up part of the load to Brooklyn and came back to the Loch Sheldrake office and turned the trip to Brooklyn over to Sam Erkus, another driver. Rosenblatt testified that "I took the keys out of the car because I did not want him [Fleischer] to drive it." Rosenblatt also testified that he did not discharge Fleischer on Sunday, August 22, 1943, and that he never refused to reinstate him. A few days later Fleischer went to the respondent's office at Brooklyn and turned in a cash fare which he had previously collected from a passenger. Rosenblatt saw Fleischer on that occasion, but he did not inquire of him why he had not reported for work. In fact, Rosenblatt said nothing to him.

Concluding Findings

The respondent, Rosenblatt, knew that his drivers were forming a union and that Fleischer was active in the movement as he, Rosenblatt, had elicited this information from one of his drivers, on the next morning after the first meeting of the drivers on July 21. The record reveals several instances of Rosenblatt's hostility toward the Union. On August 1, Rosenblatt threatened to discharge Fleischer if he did not cease his union activities. This threat was actually put into execution on August 20, when Fleischer was summarily discharged because he had complained that he was being discriminated against by the respondent in the assignment of trips. It is true that Fleischer was reinstated on the same day, but not until other drivers had interceded in his behalf. The record shows that about one half of the respondent's drivers were members of the Union, due principally to the efforts of Fleischer, and that he was active in soliciting the others to join.

While Rosenblatt did not actually say to Fleischer, on August 22, that he was discharged, the fact that he took the keys out of Fleischer's car and walked away, was tantamount to a discharge. Rosenblatt testified that he took the keys out of

¹¹ That would have been a "half round trip" which paid a bonus of \$5.

¹² Fleischer and his family lived only about 100 yards from the respondent's Loch Sheldrake office.

¹³ These findings are based upon the credible testimony of Fleischer. Rosenblatt denied making any reference to the Association and testified that Fleischer refused to make the extra trip unless he was paid more than the usual \$5 for the trip. The undersigned credits Fleischer's version of this incident.

the car because "I did not want him to drive it." This action made it clear to Fleischer that his services were no longer required, coming as it did just 2 days after his previous discharge. Since it had already been agreed that Fleischer was not to drive the car that night, this action of Rosenblatt and his testimony clearly indicate that he did not intend for Fleischer to drive for him any longer, and it was so interpreted by Fleischer. Assuming Rosenblatt's contention that he did not discharge Fleischer to be true, his actions thereafter were inconsistent with this premise. He did not endeavor to ascertain why Fleischer did not report for duty the next day, although Fleischer lived only about 100 yards from the Loch Sheldrake Station, nor did Rosenblatt express any surprise to Fleischer for not reporting for work when Fleischer settled his account with Rosenblatt a few days after his discharge.³⁴

In summary, the undersigned concludes and finds from the entire record, that the respondent discharged Robert Fleischer on August 22, 1943, because he joined and assisted in the formation of the Union and engaged in concerted activities with other employees for the purposes of collective bargaining or other mutual aid or protection; thereby discouraging membership in the Union, and by such acts, the respondent interfered with, restrained, and coerced his employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Since it has been found that the respondent has engaged in unfair labor practices, it will be recommended that the respondent cease and desist therefrom, and take certain affirmative action designed to effectuate the policies of the Act.

It has been found that the respondent discharged Robert Fleischer and thereafter refused to reinstate him because he joined or assisted a labor organization and engaged in other concerted activities for the purposes of collective bargaining or other mutual aid or protection.

It will therefore be recommended that the respondent make whole Robert Fleischer for any loss of pay he may have suffered by reason of the respondent's discrimination against him by payment to him of a sum of money equal to that which he normally would have earned as wages from the date of his discharge to

³⁴ Not only did the respondent's answer admit that Fleischer was discharged on August 22 (which was amended by oral motion during the hearing to deny the discharge) but Rosenblatt, himself, after first denying that he discharged Fleischer on August 22, testified as follows:

(Rosenblatt) I discharged him Friday afternoon.

Q. August 20, 1943?

A. That is right.

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Q. And you took him back the same night?

A. The same night.

Q. And your testimony is you did not subsequently fire him for any reason?

A. Sunday, August 22d.

In response to further questioning, Rosenblatt denied having discharged Fleischer on August 22.

the date on which the respondent's business season closed in September 1943, less his net earnings¹⁵ during such period.

It will be further recommended that the respondent offer Robert Fleischer full reinstatement to his former or substantially equivalent position without prejudice to his seniority and other rights and privileges, such reinstatement to become effective on or about June 1, 1944, or at such time as the respondent's seasonal business next begins. Should the respondent fail to offer Robert Fleischer reinstatement as stated above, it will be recommended that the respondent, in addition to the above, make whole Robert Fleischer for any loss of pay he may suffer by reason of the respondent's failure to offer him such reinstatement, by payment to him of a sum of money equal to that which he normally would have earned as wages from the date on which the respondent begins his next seasonal business to the date of the offer of such reinstatement, less his net earnings during such period.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, the undersigned makes the following:

CONCLUSIONS OF LAW

1. Mountain Highway Drivers Association, unaffiliated, is a labor organization within the meaning of Section 2 (5) of the Act.
2. By interfering with, restraining, and coercing his employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.
3. By discriminating in regard to the hire and tenure of employment of Robert Fleischer, thereby discouraging membership in a labor organization, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.
4. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law, the undersigned recommends that the respondent, Samuel Rosenblatt doing business under the trade name and style of Rosenblatt's Friendly Mountain Line, 415 Montauk Avenue, Brooklyn, New York, and his agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Mountain Highway Drivers Association or in any other labor organization by discharging, laying off, or refusing to reinstate any of his employees or in any other manner discriminating in regard to the hire and tenure of employment or any term or condition of employment of his employees;

(b) In any other manner interfering with, restraining, or coercing his employees in the exercise of the right to self-organization, to form, join,, or assist labor

¹⁵ By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company and United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local 2590*, 8 N. L. R. B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See *Republic Steel Corporation v. N. L. R. B.*, 311 U. S. 7.

organizations, to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Offer to Robert Fleischer full reinstatement to his former or substantially equivalent position without prejudice to his seniority and other rights and privileges in the manner set forth above in the Section entitled "The remedy" less his net earnings during such period;

(b) Make whole Robert Fleischer for any loss of pay he may have suffered by reason of the respondent's discrimination against him by payment to him of a sum of money in the manner set forth in the Section entitled "The remedy";

(c) Post immediately in conspicuous places throughout the respondent's office and place of business, both at 415 Montauk Avenue, Brooklyn, New York, and at Loch Sheldrake, New York, and maintain for a period of at least sixty (60) consecutive days from the date of posting notices to his employees stating: (1) that the respondent will not engage in the conduct from which he is recommended to cease and desist in paragraph 1 (a) and (b) of these recommendations; (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) and (b) of these recommendations; and (3) that the respondent's employees are free to become and remain members of Mountain Highway Drivers Association or any other labor organization they may wish to join and that he will not discriminate against any employee because of membership in or activity on behalf of any labor organization;

(d) Notify the Regional Director for the Second Region within ten (10) days from the receipt of this Intermediate Report what steps the respondent has taken to comply herewith.

It is further recommended that unless on or before ten (10) days from the receipt of this Intermediate Report the respondent notifies said Regional Director in writing that he has complied with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, effective November 26, 1943, any party or counsel for the Board may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. Immediately upon the filing of such statement of exceptions and/or brief, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. As further provided in said Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writing within ten (10) days from the date of the order transferring the case to the Board.

W. P. WEBB,
Trial Examiner.

Dated February 16, 1944.