

In the Matter of ENGLISH FREIGHT COMPANY *and* INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL 745, AFL

*Case No. 16-C-1093.—Decided April 6, 1945*

DECISION

AND

ORDER

On November 23, 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 affecting commerce and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report annexed hereto. The respondent has filed no exceptions to the Intermediate Report. No request has been made for oral argument before the Board at Washington, D. C., and none has been held. The Board has considered the rulings made by 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 and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner. Nothing in our order hereinafter set forth requiring the reinstatement of D. D. Thomas, found herein to have been discriminatorily discharged by the respondent, shall be construed to preclude the respondent from discharging or otherwise disciplining Thomas, in the event of any future misconduct on his part, for any reason other than his union membership or concerted activities.

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, English Freight Company, Dallas, Texas, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 745, AFL, or any other labor organization of its employees, by dis-

charging or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire or tenure of employment, or any term or condition of employment;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 745, AFL, or any other labor organization, 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) Offer to D. D. Thomas immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority and other rights or privileges;

(b) Make whole D. D. Thomas for any loss of pay he may have suffered or may suffer 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 the discrimination to the date of the respondent's offer of reinstatement, less his net earnings during said period;

(c) Post at its plant at Dallas, Texas, copies of the notice attached hereto, marked "Appendix A." Copies of said notice, to be furnished by the Regional Director of the Sixteenth Region, shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by other material;

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

## APPENDIX A

### NOTICE TO ALL EMPLOYEES

#### PURSUANT TO A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We will not in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 745, AFL, or any other labor organization, 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.

We will offer to the employees named below immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay suffered as a result of the discrimination.

D. D. Thomas

All our employees are free to become or remain members of the above-named union or any other labor organization. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization.

ENGLISH FREIGHT COMPANY  
(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

NOTE.—Any of the above-named employees presently serving in the armed forces of the United States will be offered full reinstatement upon application in accordance with the Selective Service Act after discharge from the armed forces.

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

#### INTERMEDIATE REPORT

*Mr. John H. Garver*, for the Board.

*Mr. Carl B. Callaway*, of Dallas, Tex., for the respondent.

*Messrs. J. L. Davis* and *T. T. Neal*, of Dallas, Tex., for the Union.

#### STATEMENT OF THE CASE

Upon a charge duly filed on July 15, 1944, by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 745, AFL, herein called the Union, the National Labor Relations Board, herein called the Board, by its Acting Regional Director for the Sixteenth Region (Fort Worth, Texas), issued its complaint dated August 22, 1944, against English Freight Company, 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 and notice of hearing thereon were duly served on the respondent and the Union.

With respect to the unfair labor practices, the complaint alleged in substance that the respondent: (1) on or about July 6, 1944, discharged D. D. Thomas,<sup>1</sup> and at all times since that date has failed and refused to reinstate said employee because he was a member of and active in behalf of the Union; and (2) from on or about June 18, 1944, to August 22, 1944, through certain of its officers, agents and employees has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, by vilifying, disparaging and expressing disapproval of the Union; by interrogating its employees concerning their union affiliation; by urging, persuading, threatening, and warning its employees to refrain from assisting, becoming members of or remaining members of the Union; and by keeping under surveillance the meeting places of the Union.

The respondent did not file any written answer, but at the hearing answered orally on the record, denying the commission of any unfair labor practices.

Pursuant to notice, a hearing was held at Dallas, Texas, on September 12 and 13, 1944, before the undersigned Trial Examiner, duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel, and the Union by its representatives. All parties participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues were afforded all parties.

At the close of the case, counsel for the respondent moved to strike from the record all testimony relating to Oscar English and Homer McKinnon on the ground that the evidence did not show them to be so connected with the respondent to make any of their acts or statements binding upon the respondent. Ruling on this motion was reserved. The motion is hereby denied. At the close of the case, counsel for the Board moved to conform the complaint to the facts as to dates and names. This motion was granted without objection.

At the close of the hearing, counsel for the Board and the respondent argued orally on the record before the undersigned. None of the parties filed briefs although given an opportunity to do so.

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 English Freight Company is a Texas corporation having its principal office and place of business in Dallas, Texas. Pursuant to authorization of the Interstate Commerce Commission, the company is engaged in transporting general commodities in the States of Texas and Oklahoma.

During the year 1943, the company hauled 140 million pounds of freight, producing a revenue of \$1,250,000.00. Of this amount, 35 million pounds, or about \$400,000.00 in value, represent freight transported to and through States of the United States other than the State of Texas. The transportation of war materials constitutes more than 60 percent of the Company's business. The Company's business during the year 1944, has been approximately the same as during the year 1943.

During the hearing the respondent admitted that it is engaged in commerce within the meaning of the Act.

<sup>1</sup> The complaint incorrectly showed the name to be D V Thomas. This error was corrected at the hearing by a motion to conform the pleadings to the evidence.

## II. THE ORGANIZATION INVOLVED

International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, Local 745, AFL, is a labor organization which admits to membership employees of the respondent.

## III. THE UNFAIR LABOR PRACTICES

A. *Interference, restraint, and coercion*

For several months prior to June, 1944, the respondent's truck drivers had been agitating for wage increases without success. A number of the drivers finally decided that the wage increase situation might be helped if they joined the Union. To this end about 15 drivers met at the Union's headquarters on Sunday, June 18. At this meeting all drivers present joined the Union. Prior to the meeting, drivers Canady and D. D. Thomas, who had arrived early at the meeting hall, decided to go to a nearby restaurant for coffee. On their way they met J. R. Cheatham, respondent's truck superintendent, who was in his car and who asked them where they were going. They replied that they were going to get coffee and Cheatham said, "You can't fool me, I know what you are all up to." Cheatham also asked them where the rest of the drivers were, to which Thomas replied that he had not seen any of the other drivers. Cheatham then remarked that some of their cars were parked on the next street and that they would appear shortly. He then parked his car and accompanied Canady and Thomas to the restaurant. Later, as he was about to leave them, Cheatham said, "You'd better consider what you're getting into; it might be something you'd be sorry of . . . study it over." He further stated that they should "think it over before you join up in anything." Thomas replied that he had a head of his own and knew what he wanted to do.<sup>2</sup>

A few days after the union meeting of June 18, the Union advised the respondent that it represented a majority of the respondent's employees.

On or about June 19 or 20, Thomas had a conversation with Harold Ellis, respondent's agent at Houston, Texas. With respect to this conversation, Thomas testified, and the undersigned finds, that Ellis asked him if he had joined the Union and if he had "one of those union slips" (the slip referred to was a receipt for union dues); that he (Thomas) replied that he had such a slip; and that Ellis then said, "Why don't you give it to me and let me tear it up?" And that he did not think "the company would ever go union." Ellis also had a similar conversation with driver Eugene Coyle. Coyle testified, and the undersigned finds, that Ellis asked him if he had joined the Union and if he had a union slip; that he (Coyle) replied in the affirmative; and that Ellis then said, "Why don't you give me that? This company will never go union. You've just thrown that much money away."<sup>3</sup>

On about June 20 and 21, Cheatham told driver Stubbs that the drivers were "trying to go union" and that Stubbs should "hold up on it for a few days."<sup>4</sup> At about this time or some few days later, Oscar English<sup>5</sup> had a conversation with

<sup>2</sup> Both Canady and Thomas testified to the above conversation with Cheatham, substantially. Although Cheatham was called as a witness by the respondent, he did not deny the statements attributed to him by Canady and Thomas.

<sup>3</sup> The respondent admits that Ellis is a supervisory employee. Ellis testified that he "jokingly" asked for the slips. In effect, his testimony constitutes a denial of the other statements attributed to him by Thomas and Coyle.

<sup>4</sup> Stubbs testified to the above without contradiction.

<sup>5</sup> Respondent contends that Oscar English is not a supervisory employee and therefore that the respondent is not bound by statements made by him. This contention is rejected by the undersigned for reasons that will be fully discussed hereinafter. English was not called as a witness.

Thomas and driver Leonard Price. With respect to this conversation, Thomas testified without contradiction, and the undersigned finds, that English made the following remarks:

He just asked us if we intended to stay in the Union and he says, "It'll break the Company if you boys do. We have tried to keep it one big happy family and we intend to keep it that way." And he said, "If you boys do go ahead and join the union we can always find ways of getting rid of you if we wanted to," and "We like all you boys and want to keep all you drivers."

Thomas told English that he intended to remain in the Union:

About 1 week after June 18, the drivers held a meeting in Cheatham's office. This meeting was held for the purpose of deciding whether or not the drivers wanted to remain members of the Union. Cheatham was present prior to the meeting and said to the drivers, "You can all go ahead and have a meeting in my office and lock the doors." Cheatham did not attend the meeting. At the meeting all the drivers decided to remain members of the Union and signed a paper to that effect.<sup>6</sup>

Either immediately prior to or just after the above related meeting of the drivers in Cheatham's office, approximately 15 drivers conferred with Myra C. English, president and owner of all common stock of the respondent corporation. This meeting took place in the office used jointly by Myra C. English, and Clarence Callaway, vice-president and general manager of respondent. With respect to this meeting Stubbs testified, and the undersigned finds, that Homer McKinnon,<sup>7</sup> a clerk for the respondent at Dallas, came to Stubbs and some other drivers and told them that Myra English wanted to talk to them in the office, that at the meeting Myra English told the drivers that she had heard of "this misunderstanding" among the drivers,<sup>8</sup> that she said she did not know "what this was all about," and that she promised that a request for increases would be mailed to the War Labor Board that night.<sup>9</sup>

It is undisputed that both McKinnon and Cheatham solicited the drivers on company time to resign from the Union. Between them they obtained approximately 17 resignations. McKinnon solicited Thomas' resignation but Thomas refused. It further appears that Thomas was the only employee who refused to resign from the

---

<sup>6</sup> Other than Cheatham's presence prior to the meeting and his offer to let the drivers use his office, the record does not show directly that Cheatham knew the purpose of the meeting. The above facts were testified to without contradiction by Canady and the undersigned credits his testimony in this connection. Further, the undersigned believes and finds that Cheatham knew the purpose of and the result of this meeting. The subsequent acts of the respondent which will be hereinafter related clearly show this to be a reasonable conclusion. The undersigned does not find that Cheatham's actions in this connection constitute interference, restraint, and coercion, but merely relates the above incident as background for subsequent events.

<sup>7</sup> McKinnon's connection with management will be hereinafter discussed.

<sup>8</sup> Stubbs at first testified that English said that she had heard that some of the drivers had joined the Union. During cross-examination he denied that she had used the word "union." Stubbs impressed the undersigned favorably as a witness, and believes that he thought that English was referring to the organizational campaign of the Union when she said that she had heard of a "misunderstanding."

<sup>9</sup> Myra English's version of what was said by her at the meeting does not differ substantially from the above. She testified that at the beginning of the meeting she said, "Well boys I understand you are all unhappy about something so just get it off your chests and tell me what it is, all about it"? She testified that she had heard that the drivers were dissatisfied over wages, but denied that she knew at the time of the meeting that the drivers had joined the Union. She further testified that McKinnon had told her that the drivers wanted to see her. McKinnon testified, in substance, that he first suggested to the drivers that they talk to Myra English and that the drivers then expressed a desire for the meeting.

Union It is noteworthy that excepting two resignations dated June 21, and another dated June 23, the balance of the resignations bear dates within a few days after Thomas' discharge.<sup>10</sup> The resignations that McKinnon secured were either handed to Cheatham by McKinnon or placed by him on Cheatham's desk. Cheatham mailed the resignations to the Union in envelopes that were supplied by the respondent. All the resignations excepting one were mailed at the same hour on July 12.<sup>11</sup>

A sample of such solicitation is afforded by Canady's testimony. He testified, and the undersigned finds, that Cheatham called him to his office, that he (Cheatham) mentioned that Thomas was one of the leaders of the Union (Thomas had been discharged at this time), and that after asking him to resign from the Union, Cheatham said, "Well, the majority of the boys has withdrew and I'd like for you to help me out if you could."<sup>12</sup>

In soliciting driver Clevinger's resignation from the Union, McKinnon told him that "some way" would be found to discharge those who did not resign. Further, it is Stubbs' uncontradicted testimony that McKinnon told him, "We could always find cause to weed you out; you know you boys are always doing something and we never do nothing to you for it but we can always find some way to weed you out"<sup>13</sup>

#### CONCLUSIONS AS TO INTERFERENCE, RESTRAINT, AND COERCION

Oscar English is the brother-in-law of Myra English, and Homer McKinnon is Oscar English's son-in-law. Aside from the family connections, the undersigned is convinced that the evidence shows that the respondent is responsible for their actions and statements, and so finds. Callaway testified as follows with respect to Oscar English's duties:

Mr. Oscar English's headquarters are at Houston, Texas and he works with our commission agents in solving any problems they might have in regard to claims on freight or service by the trucks or not receiving freight or solicitation of business or any items that might come up in connection with those agencies with respect to trying to help them with their agency problems.

\* \* \* \* \*

No, sir, other than being interested in seeing that they [drivers] perform their duties properly if they make any mistakes on their routes or runs, and he catches them, he does report them to the company.

This testimony in itself clearly identifies Oscar English as part of management. As for McKinnon, it is clear from the evidence that he solicited resignations from the Union with the full knowledge, consent and approval of at least Cheatham. In addition he acted as the agent of the respondent in arranging for the meeting between Myra English and the drivers.

The undersigned finds that Myra English referred to the organizing campaign of the Union when she mentioned a "misunderstanding" among the drivers and that the purpose of her talk was to apprise the drivers that she was making a request to the War Labor Board for an increase in wages, for the purpose of discouraging membership in the Union.<sup>14</sup> Her testimony that she did not know at the time

<sup>10</sup> Thomas was discharged on July 6.

<sup>11</sup> Cheatham's testimony on this point was evasive and absurd on its face.

<sup>12</sup> Cheatham denied making any reference to Thomas' discharge but otherwise admitted the conversation. Coyle and Stubbs also testified without contradiction that Cheatham had requested them to resign from the Union.

<sup>13</sup> Clevinger testified to the above statement without contradiction.

<sup>14</sup> *Western Cartridge Co v. N. L. R. B.*, 134 F. (2d) (C. C. A. 7), cert. den 320 U. S. 746.

that the drivers had joined the Union is somewhat naive.<sup>35</sup> Aside from the knowledge of Cheatham and other of respondent's officials concerning the Union's organizational efforts, the Union itself had notified the respondent that it represented a majority of employees at which time Callaway consulted with respondent's counsel. It is unreasonable to suppose that Callaway would not have transmitted this information to Myra English. Moreover, the sequence of events conclusively shows a deliberate and intensive campaign on respondent's part to stamp out the Union.

Accordingly, the undersigned finds that, by the statements and actions of Cheatham, Oscar English, Ellis, McKinnon and Myra English, the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them in Section 7 of the Act.

#### B *The discharge of D. D. Thomas*

Prior to his discharge, Thomas worked for the respondent for about 4 years. He joined the Union at the meeting held on June 18, 1944, and thereafter solicited drivers to join the Union while on company time and property. The record conclusively shows that Thomas was the most active employee on behalf of the Union. Thomas' conversations with Cheatham on June 18, and his subsequent conversations with Oscar English and Ellis have been heretofore related. Also as above stated, McKinnon solicited Thomas' resignation from the Union and Thomas refused. It has been found that Thomas was the only driver who refused to resign from the Union.

On July 6, 1944, Cheatham advised Thomas that Callaway wanted to see him in his office. Thomas reported to the office as requested and Callaway discharged him.<sup>36</sup>

#### The respondent's contentions

It is undisputed that for several years prior to July, 1944, the respondent had had considerable difficulty placing public liability and property damage insurance due to its high accident record; that equipment, and especially tires, were not readily replaceable; and that starting about May, 1944, the respondent held safety meetings twice a week. Further, the undersigned finds that on or about June 26, 1944, Callaway, by letter, advised Cheatham that drivers would be dismissed if they drove in excess of 40 miles per hour.<sup>37</sup>

McKinnon testified in substance that, at some time within 9 months from the date of the hearing, he accompanied Thomas on a trip to Houston; that Thomas at times drove between 50 and 60 miles per hour; that Thomas raced another truck, switching off his lights until he passed it; and that he did not report Thomas' driving when he returned to Dallas but did tell Callaway at a later

<sup>35</sup> Myra English testified in effect that she was at the office for only part of the time and that she knew very little concerning the operation of the business.

<sup>36</sup> Thomas testified that Callaway said he was going to lay him off until December 27. In this connection Callaway testified that he discharged Thomas and that as Thomas was about to leave the office he (Callaway) gave him his draft deferment card and said, "Doc, this at least is good until December the 27th." The undersigned is convinced and finds that Thomas was discharged. Thomas' confusion on this point is readily understandable in view of the above.

<sup>37</sup> The letter was not posted on the bulletin board and Cheatham did not testify that he had ever advised the drivers concerning the speed limit or the contents of the letter. Cheatham, however, did testify that he was constantly requesting the drivers to cut their speed. None of the driver witnesses, from their testimony, appeared to have been acquainted with this rule of a forty mile per hour speed limit.

date, some two or three months prior to the hearing and prior to Thomas' discharge.<sup>18</sup>

Ellis testified that at sometime in April, 1944, he trailed some of respondent's trucks from Houston to Dallas, one of which was driven by Thomas; that most of the way Thomas drove between 50 and 55 miles per hour; and that without mentioning names he told Callaway that he should check the speed of his drivers on this run.<sup>19</sup> Callaway testified he passed his report on to Cheatham and told him to "check up on it." Cheatham testified that he called Ellis' report to Thomas' attention; that he told Thomas he would have to cut down his speed; and that Thomas promised he would reduce his speed.<sup>20</sup>

On about May 31, 1944, Thomas' truck turned over and caught fire. Driver Cecil McMillan was "deadheading" back to Dallas with Thomas since McMillan's truck had turned over the night before. With respect to Thomas' accident, Callaway testified that McMillan told him that before leaving Houston he and Thomas had had about 5 or 6 bottles of beer apiece, that they drove 25 or 30 miles before eating dinner, and that in his (McMillan's) opinion the accident had been caused by Thomas falling asleep.<sup>21</sup>

Callaway testified that on about July 3, a woman telephoned him and told him that a certain numbered truck of respondent had the night before cut in on her car and forced it off the road, that the same truck had later cut in on several other cars; and that he reported this to Cheatham who then told him that the truck in question was Thomas' truck.

With respect to the conversation at the time of discharge, Callaway testified in substance that he related the incident complained of by a woman a few nights before; that Thomas replied that he did not remember forcing a lady off the road; that they then discussed Thomas' fast driving and previous accident; that Thomas admitted that he had been driving too fast, and that he finally told Thomas that he would have to discharge him ". . . because we couldn't continue to stay in business if we were going to operate our trucks on that basis"<sup>22</sup>

<sup>18</sup> It is noteworthy that, according to McKinnon, he probably told Callaway concerning the incident approximately at sometime after the union meeting on June 18. Thomas denied switching off lights to pass other trucks and racing them on this trip. Callaway testified that the trip in question was made in March or April. Cheatham testified that he called McKinnon's report to Thomas' attention and that Thomas replied that he would correct his faults. Cheatham did not testify as to the time of this conversation.

<sup>19</sup> Thomas admitted that he was trailed by Ellis and that he was driving approximately 50 miles per hour for part of the time.

<sup>20</sup> Thomas denied this conversation and the undersigned credits his denial. Since Ellis in his testimony indicated that he had trailed more than one of respondent's trucks and testified that he had not mentioned any names in his report to Callaway, it is not plausible that Cheatham would have talked to Thomas in particular concerning excessive speed.

<sup>21</sup> McMillan was not available as a witness. Callaway testified that McMillan first told the above story to Cheatham who then reported it to him (Callaway) and that he spoke to McMillan when he next saw him. Callaway further testified that his conversation with McMillan took place about 2 or 3 weeks after the accident, and that he did not discuss the accident with Thomas until he discharged him. Cheatham, however, testified that McMillan definitely did not tell him about the accident until after Thomas had been discharged and that this conversation took place about a week after the discharge.

Thomas denied that he had had any beer on that night, and testified that the accident was caused by a tire blowout. The undersigned credits Thomas' denial.

<sup>22</sup> Thomas also testified substantially as above, excepting that Thomas testified that he told Callaway that he had driven 50 miles per hour which was too fast but that "you hardly ever do catch me running over 50 miles per hour at any place down hill or anywhere else." The undersigned credits Thomas' testimony in this connection. It is not clear from Callaway's testimony if he mentioned at the time of discharge McMillan's story concerning beer drinking. Thomas testified that he first heard of the beer drinking after his discharge.

## Conclusions as to D. D. Thomas' discharge

The undersigned finds that Thomas was discharged on July 6, 1944, by the respondent because of his membership in and activities on behalf of the Union.

All of the respondent's witnesses admit that Thomas was a good driver except for his speed. In this connection it is significant that on August 21, 1944, drivers Tate and McMillan were checked for speed and were found to be driving at the rate of from 48 to 50 miles per hour. The respondent took no disciplinary action against these employees except to warn them that "further violation will necessitate more drastic action." Coyle testified without contradiction, and the undersigned finds, that on the Friday preceding the hearing Cheatham told him that he (Cheatham) had a report that (Coyle) had been checked at 60 miles per hour; that he was to receive a week's lay-off as punishment; and that when he (Coyle) said he did not want a lay-off for that length of time, Cheatham replied that the lay-off would be only for the following Sunday night or "one trip off."<sup>23</sup> The undersigned is convinced that the various charges or alleged charges against Thomas were not taken seriously by the respondent until such time as it was determined to discharge him for his union stand. The discrepancies in the testimony of Cheatham<sup>24</sup> and Callaway with respect to the date when McMillan first related his story clearly shows this to be the case. The fact that McKinnon did not report on his trip to Houston with Thomas until sometime shortly before Thomas' discharge further shows that the respondent was looking for an excuse to fire him. In this connection Oscar English's and McKinnon's statements to employees, as found above, to the effect that the respondent could always find an excuse to discharge an employee become significant. Thomas was the only driver who refused to resign from the Union. This stamped him as a leader of the opposition. That this was recognized by the respondent is evident from Cheatham's statement to Canady to the effect that Thomas was one of the leaders of the Union. This attitude of the respondent is further exemplified by the uncontradicted testimony of Stubbs, to the effect, that after Thomas' discharge, Cheatham told him in a joking manner that he (Cheatham) guessed that "Doc Thomas got about fifty dollars" for organizing the drivers.

## 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 it cease and desist therefrom, and that it take certain affirmative action designed to effectuate the policies of the Act.

The undersigned has found that the respondent discriminated in regard to the hire and tenure of employment of D. D. Thomas. The undersigned will recommend therefore that the respondent offer immediate and full reinstatement to Thomas to his former or substantially equivalent position, without prejudice to

<sup>23</sup> Callaway testified, in effect, that he decided to discharge Thomas, one of respondent's oldest employees, in order to set an example for new drivers and thereby discourage speeding.

<sup>24</sup> Cheatham's testimony in this connection is supported by Thomas' version of the facts.

his seniority or other rights and privileges, and that the respondent make him whole for any loss of pay he has 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 such discrimination to the date of the offer of reinstatement, less his net earnings,<sup>25</sup> during said period. As stated above, the date of said discrimination was July 6, 1944.

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. International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 745, AFL, is a labor organization within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of D. D. Thomas and thereby discouraging membership in International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 745, AFL, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

3. By interfering with, restraining, and coercing its 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.

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, English Freight Company, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 745, AFL, or any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire and tenure of employment, or any term or condition of employment;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights 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 undersigned finds will effectuate the policies of the Act.

(a) Offer to D. D. Thomas immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights or privileges;

<sup>25</sup> 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 the respondent's discrimination against him and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company*, 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.

(b) Make whole D. D. Thomas for any loss of pay he had 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 the discrimination to the date of the respondent's offer of reinstatement, less his net earnings during said period;

(c) Immediately post in conspicuous places in all of the places of business wherein its employees are engaged, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is recommended that it 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 or remain members of International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 745, AFL, or any other labor organization and that the respondent will not discriminate against any employee because of membership or activities in this organization;

(d) File with the Regional Director for the Sixteenth Region on or before ten (10) days from the receipt of this Intermediate Report a report in writing setting forth in detail the manner and form in which the respondent has complied with the foregoing recommendations.

It is further recommended that unless on or before ten (10) days from the receipt of this Intermediate Report, the respondent notify said regional Director in writing that it will comply 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—as amended, effective November 26, 1943, any party 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 relied upon, together with the original and four copies of a brief in support thereof. 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 to the Board within ten (10) days from the date of an order transferring the case to the Board.

JOHN H. EADIE,  
*Trial Examiner.*

Dated November 23, 1944.