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ANTHONY C. MARKITELL AND JOHN H. DENT, PARTNERS, D/B/A
TRAFFORD COACH LINES, AND TRAFFORD COACH LINES *and* AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES OF AMERICA, DIVISION 1214. *Case No. 6-CA-281.*
May 29, 1952

Supplemental Decision and Order

On January 3, 1952, the Board issued a Decision and Order in the above-entitled proceeding, finding, among other things, that the evidence was insufficient to support the complaint allegation that the discharge of employee DiRito constituted a violation of Section 8 (a) (3) of the Act.¹ On March 3, 1952, the General Counsel filed a motion for reconsideration, requesting the Board to reconsider its decision and to find a violation as to DiRito. None of the other parties filed any documents in response to the motion. The Board has considered the motion and, after reevaluating the entire record, makes the following finding and conclusion respecting DiRito.

The General Counsel's motion is based on the ground that the Board has accorded insufficient weight to the evidence pointing to illegal motivation in the discharge of this employee. The General Counsel argues particularly the persuasiveness of an affidavit, received in evidence, given by Markitell to the Board agent who investigated the charge before issuance of the complaint. When all four of the employees involved in this case—Cole, Taylor, Hopkins, and DiRito—were discharged, Markitell was the owner of the bus company for which they worked, and was himself named as a party Respondent.²

In our original decision we found that Cole, Taylor, and Hopkins were discharged because of their persistent activities on behalf of the Union generally. As it was clear that their grievance committee protest on behalf of William Miller on September 27 was the provocative incident giving rise to Markitell's ire, we did not adopt the Trial Examiner's specific finding that they were discharged for the additional reason that they had engaged in a short-lived strike 3 weeks earlier. Our doubt as to the sufficiency of the evidence supporting the complaint allegation respecting DiRito stemmed from the fact that he was in the hospital, and therefore did not participate in the grievance protest when the group was discharged. We were hesitant to

¹ 97 NLRB 938.

² As set forth in detail in the Intermediate Report, in the affidavit in question Markitell stated that all four employees were discharged because they were responsible for a strike on September 5 and 6, 1949.

find illegality in DiRito's discharge after his illness if such a finding had to rest entirely on Markitell's admission in his affidavit to the Board agent, an admission which conflicted directly with his oral testimony at the hearing.

After carefully reexamining the entire record, however, we are convinced that the statements made by Markitell in his repudiated affidavit are corroborated by the direct and correctly credited testimony of Business Agent Welsh as to his conversation with Markitell on September 27. Markitell told Welsh that the "committee" was discharged because it gave him "too many headaches." Thus he neither limited the discharge to Cole, Taylor, and Hopkins nor the cause of this action to the union activity of that day. His statement to Walsh therefore is consistent with and corroborates his later explanation, made in the affidavit, that he discharged all four employees, *including* DiRito, because of their earlier strike activity. One of the "headaches" which he attributed to DiRito was the September 5 strike;³ as to the other three discharges, the "headaches" also included their later attempt to gain reinstatement for William Miller. This logical and related appraisal of all the evidence finds additional support in the fact that, although Carl Miller did join in the committee action on September 27, he was not discharged because, as Markitell's affidavit also explains, Carl Miller had not participated in the earlier strike.⁴ Against this affirmative evidence of illegal motivation in the discharge of DiRito, including Markitell's unequivocal admission of an intent to rid himself of an active union representative, DiRito's hospital stay of which the Respondent was at least aware does not appear, as the Respondent asserts, to have been the true reason for his discharge. Upon the entire record, therefore, we are satisfied and find, as did the Trial Examiner, that like Cole, Taylor, and Hopkins, DiRito was discharged because of his activities on behalf of the Union, and that the Respondent thereby violated Section 8 (a) (3) of the Act.

Accordingly, we shall grant the General Counsel's motion, and shall reverse our previous Order to the extent that it dismissed the complaint as to DiRito.

Order

IT IS HEREBY ORDERED that the General Counsel's motion for reconsideration be, and it hereby is, granted.

IT IS HEREBY FURTHER ORDERED that our previous Order, dated January 3, 1952, is reversed to the extent that it dismisses the allegation of the complaint as to DiRito, and that said Order be further modified

³ Another portion of Markitell's affidavit, not set forth in the Intermediate Report, reads as follows: "When DiRito left the hospital in October 1949, he visited me and I told him he was discharged because he was one of those responsible for the wildcat strike on Labor Day and because he failed to notify the company he was going to the hospital."

⁴ Carl Miller is also the father of William Miller.

by the insertion therein, and in Appendix A attached thereto, of the name "Bennie DiRito" immediately after the names "William Cole," "George Hopkins," and "Harry Taylor," wherever they appear in said Order and Appendix A.

MEMBERS STYLES and PETERSON took no part in the consideration of the above Supplemental Decision and Order

METROPOLITAN AUTO PARTS, INCORPORATED and LOCAL 841, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, AND LODGE 1898, DISTRICT 48, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL, PETITIONER. *Case No. 1-RC-2664. May 29, 1952*

Decision and Order

Pursuant to a stipulation for certification upon consent election by the Employer and Petitioner, an election was held under the direction of the Regional Director on March 13, 1952. At the close of the election, the tally of ballots showed that of approximately 14 eligible voters, 13 cast valid ballots, of which 4 voted for the Petitioner, 9 against the Petitioner, and 2 were challenged. The Petitioner filed timely objections to conduct affecting results of the election.

The Regional Director caused an investigation to be made of the Petitioner's objections, and on April 8, 1952, issued his report in which he found merit in the Petitioner's objections and recommended that the election be set aside. Thereafter, the Employer duly filed exceptions to the Regional Director's report.

Upon the entire record in this case, the Board¹ finds:

The Petitioner objected to the election on the ground that the Employer interfered with the election by making an antiunion speech on company time and property while denying the Petitioner an equal opportunity to address the employees.

The Regional Director's investigation disclosed the following facts:

On March 7, 1952, the Petitioner mailed to the Employer a registered letter which stated, among other things, that as an election was scheduled for March 13, 1952,

. . . we are hereby demanding that, in the event the Company addresses these employees on Company time and property, we be granted the same privileges.

¹ Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Herzog and Members Styles and Peterson].