

**Yellow Transit Freight Lines, Inc. Special Hauling
Division and William Kusley.** Cases 13-CA-7686
and 13-CA-8161

October 28, 1969

**SUPPLEMENTAL DECISION AND
ORDER**

**BY CHAIRMAN McCULLOCH AND MEMBERS
BROWN AND JENKINS**

On April 29, 1969, the National Labor Relations Board issued a Decision and Order¹ in the above-entitled case, finding, *inter alia*, that Respondent violated Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, by constructively discharging William Kusley because of his union and other protected concerted activities engaged in for the purpose of collective bargaining or other mutual aid or protection. The Board found it unnecessary to decide whether the evidence specifically substantiated the Trial Examiner's finding of a Section 8(a)(4) violation and dismissed that portion of the complaint which alleged a violation of Section 8(a)(4).

The Charging Party sought review of the case in the Court of Appeals for the District of Columbia. The General Counsel moved that the case be remanded to the Board for a reconsideration of its disposition of the Section 8(a)(4) violation, and the court granted the motion for remand on August 15, 1969.

¹175 NLRB No. 113

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel.

The Trial Examiner had found that the discharge of Kusley violated Section 8(a)(4) because the discharge was in part motivated by the fact that Kusley had filed charges with, and given testimony to, the Board. A reconsideration of the evidence fails to establish support for this finding of a Section 8(a)(4) violation. Kusley had been fired on December 9, 1966, after which he had filed unfair labor practice charges against Respondent, but he was thereafter reinstated and a Settlement Agreement was executed. In 1967, Kusley served as spokesman for the drivers at a meeting with Respondent's officials and also organized a protest against the Union's failure to support the driver's demands against Respondent, which resulted in a general strike. He was discharged for the second time on December 6, 1967, and this discharge we have found to be in violation of Section 8(a)(1) and (3). There is no independent evidence in the record to support a finding of a Section 8(a)(4) violation. Having now considered and disposed of the 8(a)(4) allegation on the merits, we reaffirm our prior decision in all other respects.

SUPPLEMENTAL ORDER

It is hereby ordered that the Decision, as modified above, and Order issued in this proceeding on April 29, 1969, be, and it hereby is, affirmed.