

**Adolph Coors Company and Booker T. Mays, Sr.**  
Case 27-CA-2678

January 24, 1974

**DECISION AND ORDER**

BY CHAIRMAN MILLER AND MEMBERS  
KENNEDY AND PENELLO

Upon a charge filed on March 10, 1969, by Booker T. Mays, Sr., an individual, herein at times called Mays or Charging Party, and duly served on Adolph Coors Company, herein called the Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 27, issued a complaint on June 8, 1973, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, complaint, and notice of hearing before an Administrative Law Judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges that on February 18, 1969, Respondent discharged employee Mays, and thereafter failed and refused to reinstate him, because of his protected and concerted activities in seeking to implement the terms of the collective-bargaining agreement between Respondent and the Union,<sup>1</sup> and in filing a complaint with the Colorado Civil Rights Commission.<sup>2</sup>

On July 20, 1973, Respondent, in lieu of an answer, filed directly with the Board a Motion for Summary Judgment and supporting memorandum, with appendixes attached. Subsequently, on August 16, 1973, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the Respondent's Motion for Summary Judgment should not be granted. The General Counsel, thereafter, on August 30, 1973, filed a response to the Notice To Show Cause, entitled General Counsel's Response and Opposition.

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.

Upon the entire record in this proceeding, the Board makes the following:

**Ruling on the Motion for Summary Judgment**

Respondent contends, *inter alia*, that the complaint should be dismissed because the issues as to Charging Party Mays' discharge, raised by the complaint, have already been decided adversely both by an arbitrator and also in proceedings under the Colorado Antidiscrimination Act. In its response to the Motion for Summary Judgment, the General Counsel, however, argues that the complaint raises issues which the aforementioned proceedings could not, and did not, determine. We find merit in Respondent's contentions.

Our review of the record herein reflects that the events which gave rise to the instant charge occurred in 1969. On February 10 and 12, Mays was reported for spending excessive time away from his work station. On February 13, Mays' supervisor told him that he would be disciplined therefor. Accordingly, on February 14, Mays filed a grievance under the collective-bargaining agreement between the Respondent and the Union. On February 17, Mays was informed that the discipline would consist of a 5-day suspension which would commence the next day. Mays responded that, unless either he received a written notice of his suspension or his name were removed from the posted work schedule, he would report to work the next day. Mays was warned that, if he did so, he would be subject to discharge for insubordination. On February 18, he reported, and commenced working. He was immediately discharged. On February 19, Mays filed a second grievance.

In his grievances, Mays charged that his suspension and layoff were part of a conspiracy of racial discrimination. Mays' grievances were not informally resolved but proceeded to arbitration, where hearings were conducted on four dates in May and June. Mays was represented by the Union's lawyer and, inasmuch as Mays had, on April 17, filed a charge with the Commission, an agent of the Commission was also present as an observer. On October 17, the arbitrator issued his decision and award, in which he considered and rejected Mays' allegations and found, in substance, that Mays was discharged for insubordination.<sup>3</sup> More particularly, after stating that if the evidence indicated that the reasons assigned for the discharge were pretextual he would have upheld the grievant, the arbitrator noted that a number of elements all contraindicated pretext: among them were the fact that Respondent's agents repeatedly informed Mays of his rights under the collective-bargaining agreement to file grievances, and the lack

<sup>1</sup> International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, AFL-CIO, Brewery Workers Local Union No. 366.

<sup>2</sup> Herein at times called the Commission.

<sup>3</sup> He found that the issues raised by the suspension were moot, but that they did not affect the issues raised by the discharge.

of evidence that Respondent had at any time deviated from its normal procedures.

Thereafter, hearings were conducted before a hearing examiner of the Colorado Commission on various dates between December 1969 and March 1970. Mays was represented by an assistant attorney general of the State and also by the Union's lawyer. The litigation was extensive: the transcript of the arbitral proceedings was made part of the record; 75 new witnesses testified, and the hearings consumed 10 days; additional evidence was provided as to the circumstances surrounding Mays' discharge; and background material, including alleged acts of racial discrimination dating back into the early 1960's, was developed. On May 15, 1970, the hearing examiner issued his decision and order in which he found, independently of the arbitrator, that both the suspension and discharge were for cause.

Thereafter, on November 5, 1970, after oral argument, the Commission issued its own decision, in which it found, contrary to its hearing examiner, that Mays' race was one of the motivating factors or reasons for his discharge. However, on March 25, 1971, the District Court of Jefferson County, Colorado, accepting the factual findings of the Commission, found there was no substantial evidence upon which the Commission could base its conclusions, and therefore set aside the Commission's decision. On November 8, 1972, the lower court's decision was affirmed by the Colorado Court of Appeals, and on June 28, 1972, the Supreme Court of Colorado denied certiorari.

The General Counsel now contends that the decisions of the arbitrator and the Colorado tribunals do not meet the *Spielberg* criteria<sup>4</sup> and the Board ought not defer to them. He argues that the complaint herein alleges that Mays was discharged for engaging in the protected concerted activity of filing grievances in order to implement the collective-bargaining contract between the Respondent and Union and for filing a charge with the Commission, while the decisions of the arbitrator and of the state tribunals considered only whether or not Mays was discharged because of his race. He further argues that the contract so limited the authority of the arbitrator that he could not have considered the issue of pretext. We disagree.

The record of these proceedings clearly indicates that both the arbitrator and the Colorado tribunals were alert to the possibility that the reason advanced by Respondent for the discharge might be pretextual. As noted above, the arbitrator expressly considered, but rejected, the possibility. In the proceedings under the Colorado Antidiscrimination Act, the tribunals

considered whether Respondent's actions constituted either disparate treatment or a departure from normal procedures, but could find evidence of neither. Instead, it was found Mays' behavior was unprecedented and that both the suspension and the discharge were warranted.

In all the circumstances, we conclude that it will best effectuate the purposes of the Act to defer and give conclusive effect to the decisions in the proceedings before the arbitrator and under the Colorado Antidiscrimination Act. We rely particularly on the grounds that the discharge sought here to be litigated has already been the subject of extraordinarily lengthy proceedings before numerous tribunals in which it was found that the discharge was properly imposed without pretext, that these proceedings appear to have been fair and regular, and that the decisions therein were not clearly repugnant to the policies and purposes of the Act. Accordingly, we shall grant the Respondent's Motion for Summary Judgment and we shall dismiss the complaint.<sup>5</sup>

On the basis of the entire record, the Board makes the following:

## FINDINGS OF FACT

### I. THE BUSINESS OF THE RESPONDENT

The Respondent, Adolph Coors Company, is now, and at all times material herein has been, a corporation duly organized under and existing by virtue of the laws of the State of Colorado, and maintains its principal office and place of business at Golden, Colorado. The Respondent is now, and at all times material herein has been, engaged at its plant in Golden, Colorado, in the manufacture and distribution of beer. The Respondent, in the course and conduct of its business operations, annually manufactures, sells, and ships products valued in excess of \$50,000 directly to points and places outside the State of Colorado.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

### II. THE LABOR ORGANIZATION INVOLVED

International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, AFL-CIO, Brewery Workers Local Union No. 366, is a labor organization within the meaning of Section 2(5) of the Act.

contentions raised by the parties.

<sup>4</sup> *Spielberg Manufacturing Company*, 112 NLRB 1080

<sup>5</sup> Our disposition makes it unnecessary to consider any of the other

## CONCLUSIONS OF LAW

1. Respondent, Adolph Coors Company, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, AFL-CIO, Brewery Workers Local Union No. 366, is a labor organization within the meaning of Section 2(5) of the Act.
3. The decisions of the arbitrator and of the Colorado tribunals under the Colorado Antidiscrimi-

nation Act are entitled to deference and, therefore, in order to effectuate the policies of the Act, the Respondent's Motion for Summary Judgment will be granted and the complaint herein will be dismissed.

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the complaint herein be, and it hereby is, dismissed in its entirety.