

**Yellow Freight Systems, Inc and Lonnie Bedell**  
Case 22-CA-15817

November 21, 1989

**DECISION AND ORDER**

By CHAIRMAN STEPHENS AND MEMBERS  
HIGGINS AND DEVANEY

On May 18, 1989, Administrative Law Judge James F Morton issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions and to adopt the recommended Order.

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Yellow Freight Systems, Inc., Elizabeth, New Jersey, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

<sup>1</sup> The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950) enf'd 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In agreeing with the judge's credibility resolutions regarding events on the day of Bedell's discharge, we find it unnecessary to rely either on the judge's finding that there had been no rumors that Bedell possessed a gun or on the judge's speculation that if Smidt really believed Bedell had a gun, Smidt would have swiftly disarmed or dismembered Bedell. We note that considering Smidt's evasive demeanor while testifying, the judge concluded that Smidt's claim that Bedell had behaved in a threatening manner was untrue.

We correct the following inadvertent errors of the judge: Bedell worked for the Respondent 4 years and 3 months, not 5 years. Kenneth Dore was the operations manager at the Elizabeth terminal, not the terminal manager, and the correct spelling of the names of the following individuals is Chuck Gruppuso and Joann DeGrosa.

*Maria E Balzano Esq* and *Renee I Crain Esq* for the General Counsel.

*Jeffrey I Pasek Esq* and *Paul J Russoniello Esq (Cohen Shapiro Polisher Shekman & Cohen)* of Philadelphia, Pennsylvania for Yellow Freight Systems, Inc.

**DECISION**

**STATEMENT OF THE CASE**

JAMES F. MORTON, Administrative Law Judge: The complaint alleges that Yellow Freight Systems, Inc. (Respondent) violated Section 8(a)(1) and (3) of the National Labor Relations Act (the Act) by discharging Lonnie Bedell from its employ because he assisted another em-

ployee in filing a charge against Respondent with the United States Equal Employment Opportunity Commission (EEOC) and because he filed a charge with EEOC alleging that Respondent then retaliated against him, both of which are matters assertedly covered by a collective bargaining agreement. Respondent has with a labor organization.

Respondent's answer denies that allegation and states also that Bedell's alleged activity on behalf of another employee was not protected by the Act, based on Respondent's contention that the other employee had been a confidential employee. Further, Respondent asserts that the Board should defer to the findings in an arbitration award that upheld Bedell's discharge.

The hearing on the complaint was heard in Newark, New Jersey, on November 28 and 29, and on December 5 and 20, 1988. On the entire record, including my observation of the demeanor of the witnesses and after due consideration of the briefs filed by the General Counsel and Respondent, I make the following:

**FINDINGS OF FACT**

**I. JURISDICTION AND LABOR ORGANIZATION**

The pleadings establish, and I find, that Respondent is engaged in the interstate and intrastate transportation of freight and that its operations meet the Board's applicable jurisdictional standard. Further, I find, also based on the pleadings, that Local 641, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO (Local 641) is a labor organization as defined in Section 2(5) of the Act.

**II. THE ALLEGED UNFAIR LABOR PRACTICE**

**A. Background**

Bedell was discharged on February 3, 1988, from his employment by Respondent as a dockman at its Elizabeth, New Jersey, terminal. General Counsel contends that his discharge was the culmination of a series of harassing tactics begun in 1986 when he was working at Respondent's Carlstadt, New Jersey, terminal. General Counsel is precluded by the limitations period of Section 10(b) of the Act from asserting that the alleged acts of harassment constitute unfair labor practices under the Act. To put General Counsel's contention in perspective and also to be able to evaluate Respondent's assertions, it is necessary to consider first certain events that occurred at the Carlstadt terminal in 1986 and other events that occurred at Local 641 meetings.

Bedell has worked for about 30 years as a dockman in the freight transportation industry, the last 5 years for Respondent. In 1986, he was working on the night shift at Respondent's terminal in Carlstadt. Kenneth Dore was the branch manager there and Dan Hamlin was the sales manager. Jo Anne DeGrosa was an office employee there.

**B. Events in April 1986**

Bedell testified as follows: In April 1986, he was in the parking lot at the Carlstadt terminal just prior to the

start of his shift when he noticed that a woman was crying and that she had dropped her car keys while trying to open her car. He asked her if he could help. She told him that she had been subjected to sexual harassment by Dore and Hamlin. Bedell calmed her down and told her he would talk to his shop steward. The woman was DeGrosa.

Local 641 represents the dockmen at Carlstadt. It also represents the office employees there.

Bedell testified that he saw the shop steward, Charles Kaminski, the next evening and asked him to speak to Dore about what DeGrosa had told him. Bedell further related that, on the following day, Dore told him, Bedell, that Kaminski had spoken to him about DeGrosa and that Dore also told him that DeGrosa "is not a union person and that's none of your business." Bedell testified further that he answered that he felt it was his business and that Dore walked away, saying again that it was none of Bedell's business.

Kaminski was called as a witness by Respondent. He testified on his direct examination on various matters but not as to his conversation with Bedell in April 1986 pertaining to DeGrosa. Dore also testified for Respondent. He answered in the negative when asked, on his direct examination, whether he was aware of any efforts made by Bedell to help DeGrosa prior to her discharge in July 1986. I credit Bedell's detailed account, which was, in material respects, corroborated by DeGrosa.

#### *C Incidents Involving EEOC in 1986 and 1987 and Alleged Harassment*

In addition to the above-described incidents in April 1986, the following evidence was proffered by the General Counsel as to Bedell's alleged protected activities and Respondent's hostility to them.

DeGrosa was discharged on July 11, 1986. Bedell took her to the office of the New Jersey Division of Civil Rights on several occasions thereafter, including August 29, 1986, when she filed a charge of discrimination against Respondent, alleging therein sordid details of sexual harassment purportedly committed by Dore and Hamlin.

On November 29, 1986, according to Bedell, he posted on Local 641's bulletin board at the Carlstadt terminal, a newspaper advertisement which promoted a special report on the subject, "Sexual Harassment on the Job" to be shown on a television news program throughout that week. Bedell testified that Respondent's operations manager, John McNamara, was present when he posted that advertisement. Bedell testified, without contradiction, that one of Respondent's supervisors, Chuck Gruppiano, asked him what the posting was all about and that he replied that Dore and Hamlin "shouldn't have done that to Joanne DeGrosa."

Bedell testified that, soon after he posted the newspaper advertisement on the subject of sexual harassment, he was given more arduous work assignments in retaliation. Thus, he testified that before December 1986, he, as the most senior dockman at Carlstadt, had rarely been assigned heavy loads to move and when he was assigned to heavy loads, he had been given a forklift truck to move them. In December 1986, according to Bedell, all

that changed, he had to "walk" heavy loads almost everyday. Bedell testified that Respondent also began to assign him regularly to work in an area in front of Dore's office and in "the hazardous area." The latter is an area where corrosive liquids are stored which on occasion leak. Bedell's testimony is that these onerous assignments continued until the end of July 1987 when Dore was removed as branch manager at Carlstadt.

Respondent called witnesses who testified in substance that Bedell was never treated differently from any other employee, except that it kept him under close supervision because he was not a productive worker. Respondent's witnesses testified that it kept no records of his productivity or lack thereof and that it could not issue a warning to a dockman even if his productivity was poor. Records subpoenaed by General Counsel disclose that Respondent has issued written warnings to an employee for, *inter alia*, poor productivity.

Bedell's account was corroborated by John Buchmuller, a dockman who worked at Carlstadt with Bedell. The parties stipulated that three other dockmen there, if they were called as witnesses would testify as Buchmuller did. I credit Bedell's testimony as to his receiving more arduous work assignments while under Dore at Carlstadt for the period December 1986 to July 1987. Bedell's account did not appear to be contrived and it was independently corroborated. Respondent's explanations were unconvincing and the limited documentary evidence did not support them.

Bedell uncontrovertedly related the following incident. In May 1987, Dock Supervisor Gruppiano posted on Respondent's bulletin board at Carlstadt an excerpt from a handbook which pertained to EEOC rules. Bedell asked Gruppiano if he could look at the handbook, stating to Gruppiano that there has to be something in it on the subject of sexual harassment. Gruppiano gave him the book. Bedell testified that the subject of sexual harassment was discussed on page 43 of the handbook. He asked Gruppiano for a copy of the handbook. Gruppiano replied that he would have to clear the request with Dore. Two hours later, according to Bedell, he repeated his request of Gruppiano when he saw him. Gruppiano then stated, according to Bedell, that Dore "went off the wall" when he heard of the request, that Dore told him not to give Bedell a copy and that Dore also told him that he should never even have shown the handbook to Bedell. Again, I credit Bedell's uncontroverted testimony.

Bedell testified as follows to an order he received later that month from an operational supervisor at Carlstadt, Robert Sparks. He was ordered to finish unloading a trailer, then one quarter full, by lunchtime. It was then 20 minutes before lunch. When Bedell said that he could not possibly finish before lunch, Sparks told him that he would have to see Dore with his steward if he did not finish by lunch. Later that day and after it had taken him 2 hours to empty the trailer, Sparks told him that, if he cannot handle the pressure, he should retire. Sparks testified and denied that he had harassed Bedell in any way. I credit Bedell's detailed account.

Bedell also gave the following uncontroverted testimony respecting a remark made to him by Dock Supervisor Mike Lensack in May or June 1987. While making a dock check at the time the shifts were changing, Lensack said to Bedell, "you're going to get yours." Bedell asked what that meant. Lensack gave him an angry look and kept walking. I credit Bedell's account as to this incident.

On July 28, 1987, Dore issued a letter to Bedell warning him for having left work early on July 18. Bedell saw Dore and told him, in substance, that he does not take time off from work without a good reason. Dore looked at Bedell's file and observed that it was true that Bedell does not "lose work." Dore left the Carlstadt facility on July 30. His replacement, John McNamara, sent Bedell a letter on July 31, rescinding the July 28 warning.

#### D *Bedell's Transfer to Elizabeth*

In early October 1987, Respondent decided to open a terminal in Elizabeth, New Jersey. Its employees at the Carlstadt terminal were notified that, if they wanted to be eligible to transfer there, they had to sign a register on or before November 13, 1987. Bedell waited until almost the last moment before signing that register. According to him, he signed it because the assistant shop steward, Peter Enrico, had informed him that he was not going to sign that register. His testimony indicates, that, notwithstanding, Enrico then signed the register. Bedell was aware then of a rumor that Dore would be the terminal manager at Elizabeth when it opened.

Bedell, who at one time had been a shop steward, was aware when he signed the register, that the Local 641 contract contained a provision whereby employees who transferred had a 30-day grace period during which they could return to their former terminal. However, Local 641's business representative, John Bowers, informed the Carlstadt employees 2 weeks later that the 30-day return provision would not apply to the transfers to Elizabeth.

The Elizabeth terminal opened on December 7, 1987. Bedell reported to work there the next day. Dore was terminal manager there.

#### E *Alleged Harassment of Bedell at Elizabeth*

Among the first assignments Bedell received when he reported on December 8 was an order given him by Respondent's shift operations manager, Peter Esposito, to clean the coffee room. That job is the responsibility of porters who were working there then. Respondent offered evidence that it had decided to assign the most senior man on each shift to clean the coffee room in order that he might set an example for the other dockmen. That explanation strikes me as highly suspicious.

Bedell's testimony is that Respondent's supervisors, during the 2-month period he worked in Elizabeth until his discharge, assigned him to put heavy loads in carts and to walk them instead of permitting him the use of a forklift truck or of the drag line. The drag line is a cable that pulls carts along to the stations where they are unloaded. In contrast to the treatment given him, according to Bedell, the other dockmen who were all less senior to

him used the drag line every day. Bedell's testimony too is that he unlike other dockmen, was frequently assigned to work directly in front of a supervisor's desk and that he was never assigned a helper, except for one occasion. On that occasion, he had sought to use a forklift truck to move a rug but a supervisor told him not to use it and instead assigned a dockman to help him carry the rug.

Respondent offered testimony that Bedell did have use of the drag line, was given forklifts and helpers and that it frequently assigned him to work directly in front of a supervisor because his productivity was poor. Bedell's account is the more persuasive and I accept it.

#### F *Bedell's Discharge*

General Counsel contends that Respondent's harassment of Bedell culminated in his discriminatory discharge on February 3, 1988. Respondent asserts that Bedell was discharged solely because he assaulted, and thereby placed in fear of bodily harm, a dock supervisor on that day.

On January 19, 1988, Bedell filed a charge of discrimination with the New Jersey Division of Civil Rights, alleging therein that Respondent has been constantly harassing him since 1986 because he "opposed" Dore in having assisted DeGrosa's claim that she had been subjected to sexual harassment. That charge was served on Respondent that same day. Bedell testified that he filed that charge after Local 641 officials had told him that they could do nothing for him until DeGrosa withdrew her claim against Dore.

On February 3, 1988, Bedell was assigned to unload 40 cartons, each weighing 24 pounds, from a truck and to bring them to another location on the shipping dock. He placed 15 of these cartons in one cart, also called a wheeler, and 11 in a second cart. He moved those carts about 15 feet away and was in the process of unloading the remaining cartons from the truck onto a third cart. When he had placed about seven of the remaining cartons into that cart, his supervisor, Joseph Smidt, came by. Smidt ordered him to consolidate the shipment of the 40 cartons in two carts, not three. Each cart weighs between about 160 pounds and 200 pounds and when loaded with 20 cartons at 24 pounds, each cart would weigh another 480 pounds.

Bedell testified that he was in the process of complying with Smidt's order in that he continued to unload the truck onto the third cart which he then would have wheeled over to the first two, he related that he, at that point would divide the contents of the third cart into the first two and walk those to the shipping location. While in the process of unloading the truck, Bedell was asked by Smidt if he was going to comply with the order he was given. Smidt told him he was disobeying a direct order. Bedell responded according to his account, by stating that he was not disobeying an order and that he (Bedell) was not a "piece of shit." Bedell testified that he made that remark because of the way he was being harassed since he came to the Elizabeth terminal.

Smidt's account of this incident is that, when he asked Bedell if he intended to comply with a direct order,

Bedell said in a loud voice, "No, Joe, and you're a big piece of shit."

General Counsel and Respondent called witnesses to corroborate the respective accounts of Bedell and Smidt. It is unnecessary to decide that credibility issue as Respondent asserts that Bedell was discharged because of what transpired after the exchange between Bedell and Smidt. Were it necessary to resolve that credibility issue, I would credit Bedell as, for the reasons discussed below, I find that Smidt's testimony cannot be relied on.

Respondent asserts that, right after Bedell and Smidt had their discussion on February 3, Bedell's actions put Smidt in imminent fear of bodily harm and that Bedell thereby had committed a dischargeable offense as contemplated by the provisions of the collective-bargaining agreement Respondent has with Local 641. The General Counsel contends that Bedell engaged in no such assault and that Respondent contrived the account in order to discharge Bedell because he had pressed DeGrosa's claim of sexual harassment and his own claim that he was also being harassed by Respondent because he had helped her.

Local 641's contract, according to a stipulation received at the hearing, provides that Respondent will not engage in any unlawful discrimination, including that based on one's sex.

In support of Respondent's contention, Respondent offered the following:

Smidt testified as follows as to what transpired after the verbal exchange he had with Bedell on February 3. Bedell came toward him with a crazed look in his eyes and with his arms moving up and down repeatedly and in an agitated manner. Smidt became terrified. He, Smidt, was aware of rumors that Bedell owned a gun and thought that Bedell might have one inside the winter clothing he had on. He, Smidt, then ran to Dore's office. Later in his testimony, Smidt related that, when he saw Bedell coming towards him, he turned and walked quickly to Dore's office.

Bedell's account as to what happened after the verbal exchange is as follows. When he told Smidt that he, Bedell, was not a piece of shit, Smidt walked away and spoke into a "walkie-talkie." Smidt asked Pete Esposito, the shift operations manager, if he had heard what had transpired. Esposito was about 30 to 40 feet away. Smidt walked towards Esposito and talked with him. Esposito had a puzzled look on his face. Smidt talked further with Esposito and then turned toward Bedell to order him to go to Dore's office because he had disobeyed a direct order and because he had assaulted him, Smidt. Smidt, is 6 feet, 2 inches tall, weighs 260 lbs, and is about 20 years younger than Bedell. Bedell is 5 feet 10 inches and weighs 170 lbs. Bedell's hair is graying and he wears thick glasses. Smidt has the following accomplishments in martial arts—national champion in Judo, East Coast Champion in Judo, and Long Island Champion in Karate.

I have considerable difficulty in accepting Smidt's testimony that he was terrified of Bedell on February 3. First, Smidt physically compared to Bedell, is immense. If he really believed that Bedell had a gun, I am certain that he would have very quickly pinned Bedell's arms to

his sides should Bedell have made any effort to reach into or beneath his winter clothing to retrieve a gun. Bedell likely would have found himself swiftly disarmed and indeed, perhaps dismembered by Smidt. Secondly, it is highly unlikely that Smidt would have turned his back on Bedell and walked quickly away as he testified, if he was afraid that Bedell might shoot him. Thirdly, General Counsel's brief lists about 50 transcript references where Smidt answered, "I don't know" or "I don't remember" or "(no response)" to questions posed to him on cross-examination. For example, he testified that he could not remember if he was afraid because of the way Bedell's arms were swinging, or because of the crazed look he had said was in Bedell's eyes, or because of Bedell's physique. It seemed to me that Smidt was masking his real feeling behind a professed inability to recall why he was afraid. Rather, I sensed from his responses that the very idea that he could be afraid of Bedell annoyed him and that he found it easier to answer that he could not recall why he was afraid. Fourthly, Shift Operations Manager Esposito's own testimony reveals that he had no fear of Bedell's supposedly "crazed" look or of Bedell's using a gun. Esposito related that he had gone directly over to Bedell to instruct him to report to Dore's office.

Fifthly, Smidt's account that he was aware of a "rumor" that Bedell carried a gun at times is unpersuasive. Respondent presented several witnesses in an effort to establish that this "rumor" was widespread. That effort, in my judgment, was not very successful. Thus, Respondent called Robert Miller to demonstrate that, in 1987, Bedell had threatened to use a gun and had one on his person then. Miller is a Local 641 steward at another terminal and, in 1987, supported certain candidates for Local 641 offices in an intraunion election then. Bedell supported opposing candidates. Miller and Bedell gave conflicting accounts as to an argument they had then. Without belaboring the point, I do not credit Miller's testimony that Bedell, while drinking at a bar, showed Miller a gun, and when he threatened to use it, Miller called Bedell a "faggot" and in effect dared Bedell to use the gun. This account strikes me as improbable. I cannot believe that Miller would have so taunted Bedell if Bedell was drinking and threatened to use a gun. Even more absurd is Miller's other testimony that Bedell acts in a "macho" manner. Bedell's personality is entirely low key. Respondent also called its director of security to testify about the rumor that Bedell carried a gun. He related that Michael Curley, Respondent's break bulk manager at the Elizabeth terminal, asked him in January 1988, for advice as to Respondent's potential liability concerning a rumor that Bedell was alleged to be carrying a fire-arm and, he advised Curley that there was nothing Respondent could do as it was based on "speculation and hearsay." The director of security further testified that Curley asked him to check further as to New Jersey penal law, and that the law confirmed his earlier advice. Such a cavalier approach to a purported concern that an employee had a gun does very little to support Smidt's account that he was afterwards terrified by Bedell's actions. In short, I find the evidence most deficient to support Respondent's effort to demonstrate that there was a

rumor that Bedell carried a gun There was no gun, there was no rumor

### G Analysis

The credited evidence discloses that Bedell in 1986 intervened with Respondent on behalf of DeGrosa's claim of sexual harassment, that he was told by Dore that he should mind his own business and that, when he posted an advertisement relating to the problem of sexual harassment on Local 641's bulletin board later that year and also sought to learn more of Respondent's policy concerning sexual harassment as contained in its handbook, he was subjected to considerable harassment in his work—until Dore left Carlstadt in July 1987 The harassment resumed the very first day he reported to the Elizabeth terminal where Dore was terminal manager and it continued until the day he was discharged The reason given by Respondent for discharging him is spurious

Bedell's support of DeGrosa's claim, which is a matter protected by the collective-bargaining agreement, his own EEOC claim also protected by the contract and which was filed shortly before his discharge, Respondent's knowledge thereof, its relentless hostility to Bedell's actions and the pretextual reason given for Bedell's discharge make out a clear prima facie showing that Bedell was discharged because he supported DeGrosa's claim of sexual harassment by Dore

General Counsel has thus met the burden imposed under *Wright Line*, 251 NLRB 1083, 1089 (1980), the burden thereby shifted to Respondent to demonstrate that it would have taken the same action even in the absence of union activity Respondent failed to meet this burden as, for the reasons set forth above, its asserted justification was a sham In that regard, see *K & M Electronics*, 283 NLRB 279 (1987), and cases cited therein Respondent simply relied on the testimony of Smidt and other witnesses to demonstrate that Bedell had acted in a threatening manner on February 3 I have discredited that testimony Respondent had also sought to show that it had discharged two employees because of similar threats made Suffice it to note that even that its attempt to demonstrate that Bedell was not treated in a disparate manner was badly flawed Among other things, it appears that one of those two employees had engaged in a number of egregious acts before his employment with Respondent terminated In any event, I need not consider the matter of disparate treatment as I have found that Bedell had not, on February 3, assaulted Smidt

Respondent raised two collateral defenses, discussed in the next subsections First, it asserts that DeGrosa was a confidential employee not protected by the Act and argues that Bedell's activity in support of her claim of sexual harassment is not protected by the Act because it was not done in concert with an employee covered by the Act Secondly, Respondent asserts that the Board should defer to the findings of fact made by the arbitrator, Respondent does not now assert that the Board should defer to the award itself

### H DeGrosa's Job

Respondent's first witness in support of its contention that DeGrosa was a confidential employee was Charles Kaminski, a driver at the Carlstadt terminal and Local 641's steward there He testified that she was Dore's private secretary and that she did work for Sales Manager Dave Hamlin Local 641 represents a separate unit of about 23 clerical employees at Carlstadt DeGrosa was not in that unit

Dore testified for Respondent that, when he was branch manager at Carlstadt, he hired DeGrosa as a confidential secretary, that he told her she was a confidential secretary, and that she did work for him and Hamlin He testified that she was the only one who had access to employee personnel files and that she typed all correspondence of a confidential nature concerning performance reports, evaluations, and disciplinary actions in addition to her duties involving sales

Respondent's office manager at Carlstadt, Mary Anne Fish, was not called by Respondent to support its claim that DeGrosa was a confidential employee

In rebuttal, DeGrosa testified for the General Counsel that her job title at Carlstadt was sales secretary and dispatcher In her EEOC charge filed in September 1986, she asserted that she was "terminated from (her) position as Secretary Dispatcher" As to her job duties, she testified that she spent 4 hours each day in the dispatcher's office handling the dispatcher's phone which "rang all day long," that she spent a half hour to an hour each day handling "shift calls" from dockmen and that she spent the remainder of her workday as sales secretary dealing with salesmen, typing expense checks, preparing bills of lading, typing sales letters and accident reports, and in photostating job applications for mailing to Respondent's principal office She testified that she typed several letters that Dore gave her in longhand and that these had to do with vending machines, yard construction work, and a letter on a general matter, the subject of which she did not recall She did the filing for sales She denied that she did any filing for Dore She testified that the office manager of Carlstadt, Mary Anne Fish, Dore, and Local 641 Steward Kaminski were the only ones who had keys to a filing cabinet in Dore's office She states that she never attended any meetings pertaining to union-management matters and stated that Mary Anne Fish handled everything involved in the preparation of "labor-law information"

I credit DeGrosa's detailed testimony There is no probative evidence that she was a confidential employee It is unnecessary to consider the General Counsel's contention that Bedell's activity would still be protected even were DeGrosa a confidential employee

### I The Arbitration Award

Respondent placed in evidence an arbitration award dated August 11, 1988, which denied Bedell's grievance that Respondent did not have "just cause under the col-

lective bargaining agreement for [his] discharge"<sup>1</sup> General Counsel put in evidence the opening pages of the transcript of the arbitration hearing. Respondent placed in evidence the balance

Bedell's attorney at the arbitration hearing made it clear at the outset that he was not there to litigate any of the matters involved in Bedell's EEOC charge. The issue before me—whether Bedell was discriminated against because he assisted DeGrosa as to her EEOC charge and also filed an EEOC charge on his own behalf—was not presented to the arbitrator. In these circumstances, deferral is not warranted. See *Olin Corp.*, 268 NLRB 573 (1984).

Respondent requested that I defer to the credibility resolutions of the arbitrator. It would not be appropriate to do so as the conflicting accounts presented to me for resolution are necessarily enmeshed with the evidence bearing on the EEOC matters. To ignore the testimony as to Bedell's aid to DeGrosa and other EEOC matters is to ignore the whole case.

#### CONCLUSIONS OF LAW

1 Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2 Local 641 is a labor organization as defined in Section 2(5) of the Act.

3 As General Counsel established a prima facie case that Bedell was discharged for discriminatory reasons, as Respondent has not rebutted that showing, as DeGrosa was not a confidential employee and as deferral to the arbitral findings is unwarranted, I conclude that Respondent, in discharging Bedell on February 3, 1988, committed an unfair labor practice proscribed by Section 8(a)(1) and (3) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it should be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily discharged Bedell, it must offer him reinstatement and make him whole for any loss of earnings and other benefits, computed on a quarterly basis from the date of discharge to date of a proper offer of reinstatement, less any net interim earnings, as prescribed in *F W Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>2</sup>

#### ORDER

The Respondent, Yellow Freight Systems, Inc., Elizabeth, New Jersey, its officers, agents, successors, and assigns, shall

1 Cease and desist from

(a) Discharging, refusing to reinstate, or otherwise discriminating against any employee for having engaged in concerted activities, protected by the National Labor Relations Act.

(b) In any like or related manner coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2 Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Lonnie Bedell, immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of the decision.

(b) Remove from its files any reference to his unlawful discharge and notify him in writing that this has been done and that the discharge will not be used against him in any way.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its terminal in Elizabeth, New Jersey, copies of the attached notice marked "Appendix"<sup>3</sup>. Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>1</sup> Respondent's posthearing motion that I take judicial notice of a New Jersey Court decision confirming that award is granted, in order that the full record in that proceeding may be considered. That motion and General Counsel's statement of opposition are received as ALJ Exh. 4.

<sup>2</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

<sup>3</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice

WE WILL NOT discharge, refuse to reinstate, or otherwise discriminate against any of you for engaging in concerted activities, protected by the National Labor Relations Act

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act

WE WILL offer Lonnie Bedell, immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed and WE WILL make him whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest

WE WILL remove from our files, and WE WILL notify him that we have removed from our files any reference to his discharge and that the discharge will not be used against him in any way

YELLOW FREIGHT SYSTEMS