JD–73–10
Baton Rouge, LA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

FIRST TRANSIT, INC. Case No. 15-CA-19494

and

HAROLD PERRY, An Individual

Charles R. Rogers, Esq., for the General Counsel.
Shirlyce M. Ammons, Esq., San Antonio, Texas, for the Respondent.

DECISION

Statement of the Case

ARTHUR J. AMCHAN, Administrative Law Judge. This case was tried in Baton Rouge, Louisiana, on November 8, 2010. Harold Perry filed the initial charge in this matter on March 30, 2010. The General Counsel issued the complaint in this case on August 19, 2010, alleging that Respondent, First Transit, Inc., disciplined Perry, issued him excessive attendance points and then terminated Perry's employment because he engaged in protected concerted activity and because he assisted the Union, Amalgamated Transit Union, Local 1546.

The Complaint also alleges that Respondent violated the Act by threatening employees with termination and creating the impression that their union and/or protected concerted activities were under surveillance.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

Findings of Fact

I. Jurisdiction

Respondent, First Transit, Inc. is a nation-wide corporation providing transportation. It has a facility in Baton Rouge, Louisiana from which it provides bus service to Louisiana State University. Respondent derives gross revenues in excess of $250,000 at its Baton Rouge location and purchases and receives materials from points outside of Louisiana that are valued in excess of $5,000 at that location. Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Amalgamated Transit Union, Local 1546, "the Union," is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

Events leading up to Harold Perry's termination

Harold Perry has been a bus driver for 29 years. Some or all of his career has been spent driving buses for companies servicing Louisiana State University (LSU). Prior to July 14,

2009, Perry worked for Capital Area Transit (CATS), which had a contract with LSU to provide bus service. On July 14, 2009, Perry became an employee of Respondent, which took over the LSU bus service on that date.[1]

Shortly after he was hired, Perry became a supervisor, but was demoted sometime in the fall of 2009. He had been a member of the Union while employed by CATS and sometime in the fall passed out union authorization cards at Respondent's facility and circulated a petition on behalf of the Union. This was common knowledge at the facility and Respondent does not claim that it was unaware of Perry's support and activities in support of the Union.

Among the services Respondent provided in relation to its contract, was the transportation of spectators to and from LSU home football games. In this regard, William Waters, Respondent's Assistant General Manager in Baton Rouge, had a conversation with Perry on Perry's bus on or about November 5, 2009. Waters told Perry that he had heard that Perry had been passing a list around to organize a boycott by Respondent's drivers of work for the upcoming LSU football game. Driving for the LSU games was voluntary, Tr. 33, 76.[2]

Perry denied this and said he was compiling a list of employees who wanted union representation. According to Perry, Waters said he didn't give a damn about a union, Tr. 37-38. Perry testified that when he showed Waters the list of names he was compiling, Waters told him that boycotting the game would be considered insubordination and that Perry could lose his job as a result.

Waters' account of the conversation is not materially different than Perry's account. He testified that a couple of drivers approached him and told him that Perry was encouraging them not to work for the upcoming LSU football game. Several hours later he asked Perry about these reports and Perry denied telling other drivers not to work the next game. Perry showed Waters a clipboard with a list of employees' names and said he was trying to sign people up for a union. Waters then testified that he didn't care whether employees joined a union or not and so informed Perry.

There is no need to make any credibility determinations in this case about the conversation on the bus. Perry's testimony that Waters told him that he didn't give a damn about a union in the context of this case is the equivalent of stating that he was indifferent to whether or not employees organized. There are no alleged expressions of anti-union animus in this record.

Respondent has a corporate "Freedom of Association" policy which states that management will not make derisive comments about unions, will not advise employees to vote against union representation or intimidate or harass employees engaged in organizing activity, R. Exh. 1. Many of its facilities other than the one in Baton Rouge are organized.

On December 23, 2009, Respondent terminated Harold Perry on the grounds that he had accumulated more than ten attendance points within a floating 90-day period, as provided

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[1] Respondent offered Perry employment in a letter dated June 25. Respondent's employees were in training between July 14 and August 1, 2009, when Respondent commenced servicing LSU.

[2] There may have been some unhappiness amongst the drivers because they were off the clock 2 hours for lunch when working the LSU football games, which may have been a change from CATS' policy.

in its Absenteeism Policy. Pursuant to that policy as in effect in December 2009, an employee received 1 attendance point if less than five minutes late to work or failed to complete more than half of his or her shift. An employee was supposed to receive 2 attendance points if more than 5 minutes late, but less than 30 minutes late. An employee was supposed to receive 4 attendance points for a "No Show, No Call, Miss Out," which was defined as a situation in which the driver failed to show up for a shift without notifying Respondent, or arrived more than 29 minutes late. Three consecutive days of "No Show, No Call" was supposed to result in termination.

Respondent kept track of employees' attendance, albeit very haphazardly, on an "employee attendance report." In most examples that are in this record, the top half of this document was filled out by one of Respondent's three dispatchers. The dispatcher checked one of five boxes, which characterizes the employee's failure to show up on time as either an absence, tardy, failure to complete entire shift, No Call/No Show or Sick. The bottom half of the form was filled out by a manager who assessed points and added up the accrued number of points. However, as the General Counsel's brief points out, in Harold Perry's case the top half of his November 15 attendance report was filled out by then General Manager Catherine Utt and some of the bottom half of his December 23 report was filled out by dispatcher Jackie Martin.

On September 13, 2009 Harold Perry arrived at work 1 hour and ten minutes late. He was marked tardy by the dispatcher and assessed one attendance point. If Respondent's attendance policy had been applied correctly, he should have been assessed 4 points.

On November 6, Perry arrived at work 10 minutes late. He was marked as tardy and assessed zero points because he was given credit for good attendance. Respondent contends that had it applied its policy correctly, Perry should have received another point (2 points minus 1 credited point).

On November 15, Perry was 20 minutes late. He received 2 more points.

On December 7, Perry called in sick at 5:08 a.m., 52 minutes before the start of his shift. He was assessed 4 points.

On December 12, Perry overslept and missed his shift entirely. He was assessed 2 attendance points, which Respondent submits is consistent with Respondent point system.[3]

On December 23, Perry overslept and called the dispatcher at 6:04 a.m.[4] It is unclear whether Perry was required to be at work by 5:45 or by 6:00 a.m. His uncontradicted testimony, which I credit, is that he told the dispatcher, Jackie Martin, that he was putting his uniform on and was seven minutes away. Perry's termination letter states that his shift "pulled out" at 6:15 a.m.[5]

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[3] There appears to be an ambiguity or incongruity either in Respondent's point system or its application. I do not understand why Perry was assessed 4 points for his December 7 absence, but only 2 for his December 12 absence—unless Perry reported to work late on December 12. It appears that Perry called the dispatcher at 6:00 a.m. on December 12 to inform her that he had overslept. There is no evidence in the record as to whether or not he worked that day.

[4] Perry's testimony that he called in at 6:04 is corroborated by the dispatcher's notes and his termination letter, Exh. G.C. – 2.

[5] Martin no longer works for Respondent and did not testify.

According to Perry's uncontradicted testimony, Martin told him that she had an extra man for his route. He asked her if he could come in and work "something else." Martin said he could not do so and that he should come and talk to Steve Vacek, Respondent's safety director, when Vacek arrived at work, Tr. 41.

Perry called Martin again at about 6:11 to ask if there was work he could perform. Martin said no, that he should come in to Respondent's facility when Vacek arrived. Respondent assessed Perry 4 attendance points for a total of 12 points within the prior 3 months. If Perry had been allowed to report, as he requested, he should have only been assessed 2 points.[6]

At about 9:00 a.m. on December 23, Perry arrived at Respondent's facility and went to Vacek's office. There he met with Vacek and Casey Lewis, who had become Respondent's Assistant General Manager on December 14.[7] Vacek presented Perry with a termination letter signed by Lewis and told Perry he was being terminated for excessive absentee points.

I do not credit Lewis' testimony at Tr. 79-80 as to how the decision to terminate Perry was made. While Lewis signed the termination letter, it is apparent from Perry's account of his conversation with Jackie Martin, that Vacek had some involvement in the decision. Vacek apparently no longer works for Respondent and did not testify.

Lewis also testified that he consulted with Catherine Utt in deciding to terminate Perry. Utt was the General Manager of Respondent's Baton Rouge operations from August at least through December 23, 2009. Lewis did not testify as to what he discussed with Utt. It is probable that Utt was aware that Perry may have tried to organize a boycott of LSU games. It would be highly unlikely that Waters would not have mentioned this to her. Utt no longer worked for Respondent at the time of the instant hearing and did not testify.

Finally, Lewis may have been aware of Respondent's suspicions regarding Perry, through conversations with Waters, Utt, Vacek and/or others. He testified that he was unaware of Perry's efforts to organize employees. He did not testify that he unaware that Respondent's managers had heard rumors that Perry was organizing a boycott.

Moreover, from Perry's uncontradicted testimony, I infer that Respondent was "laying in wait" to find a reason to terminate Perry. The fact that dispatcher Martin filled in much of section two of the employee attendance report, which was apparently not the normal practice, suggests as much. Given the disparity in the scrutiny Respondent gave to Perry's tardiness and absences, as compared to the lack of attention given to attendance violations of other employees, I infer that at least some of the people involved in the decision to terminate Perry were aware that he may have trying to organize a boycott of the LSU games.

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[6] The process by which Respondent calculated points is very confusing. By my calculation, Perry should have been assessed 13 points within the 3 months prior to his discharge, if Respondent's attendance policy had been applied correctly. Respondent, in G.C. 4, contends Perry earned 17 points. However, Perry's September 13 tardiness was more than 3 months prior to his discharge, and thus should not be included in his 90 day total.

[7] Lewis apparently replaced William Waters as Assistant General Manager. Waters went to another of Respondent's locations on December 18, but returned as General Manager in Baton Rouge on May 15, 2010. Thus, in December 2009, Lewis and Waters worked together in Baton Rouge for only four days.

Respondent concedes that its dispatchers made numerous errors in deciding which box to check on the employee attendance report and that its managers made numerous errors in assessing and adding up attendance points. It contends these errors were not discriminatorily motivated but were rather simply honest mistakes.

Evidence of Disparate Treatment

As of December 23, 2009 there were several of Respondent's employees whose attendance records in the prior three months were as bad as, or worse than that of Harold Perry. They were not assessed the correct number of attendance points per Respondent's attendance policy. If the points had been assessed correctly, each of these employees would have had more attendance points than Perry and should have been terminated if Respondent's attendance policy was enforced uniformly.

Respondent became aware that its system for characterizing absences and tardies and assessing attendance points was riddled with errors. It contends that it became aware of this fact when reviewing the attendance policy in approximately June 2010, Tr. 87, 92. I infer that this review was related to the instant litigation. Upon discovering these errors, Respondent "refreshed everybody's points" to zero. However, it did not offer to reinstate Perry, nor is there any evidence that it terminated other employees who had accumulated more than 10 attendance points within a 90 day period in the fall of 2009.

Tina Smith

The most glaring example of the disparate treatment concerns Tina Smith, who even with Respondent's errors had accumulated more attendance points in the month of November 2009 than Perry did in the 90 days prior to his termination. Respondent concedes that Smith had accumulated 16 points between September 14, and November 20, GC Exh. 4. However, its calculation is incorrect. The employee attendance report dated November 30, 2009, GC Exh. 3, establishes that by November 30, Respondent had assessed Smith 22 attendance points. There is no evidence that Respondent took any disciplinary measures against Smith.

GC Exhibit 3 shows the following with regard to Tina Smith:

On November 10, Smith missed work and was assessed 3 points (4-1 pt. good attendance credit. She apparently had been assessed one attendance point previously.

On November 12, Smith was 40 minutes late to work and was assessed 1 point (2- 1pt. credit).

On November 16, Smith was 23 minutes late and was assessed 1 point giving her a total number of points of 6.

On November 17, Smith did not show up for work and was assessed 4 points. William Waters totaled her number of points at 10, which should have led to her termination under Respondent's policy.

On November 19, Smith was seven minutes late. Waters assessed her 1 point and added up her number of points as 11.

On November 20, Waters assessed Smith 1 point for showing up 8 minutes late and calculated her total number of points at 12.

On November 23, Waters assessed at least 2 more points for a total of 14.

On November 24, Smith was a No Call/No Show. Waters assessed another 4 points for a total of 18.

On November 30, Smith was again a No Call/No Show. Waters assessed another 4 points for a total of 22.[8]

Thus, even allowing for Respondent's errors, it had assessed Tina Smith far more points just in the month of November 2009 than it assessed Harold Perry when it fired him.

Alvin Grosserand

The record shows the following with regard to the attendance of employee Alvin Grosserand between August 25, and September 23, 2009. For those instances for which Grosserand was not assessed attendance points, the record does not contain an employee attendance report, but contains a stipulation of the parties, Tr. 12-13.

On August 25, Grosserand was 5 minutes late and received no points.
On August 26, Grosserand was 5 minutes late and received no points.
On August 31, Grosserand was 2 hours late and received 1 point; pursuant to Respondent's policy he should have received 4.
On September 9, Grosserand was 17 minutes late and received no points.
On September 11, Grosserand was 4 minutes late and received no points.
On September 16, Grosserand was 9 minutes late and received no points.
On September 21, Grosserand was 30 minutes late and received no points.
On September 22, Grosserand was 15 minutes late and received 1 point; he should have received 2.

On September 23, Grosserand notified Respondent that he was not coming to work 15 minutes before his shift started. He was assessed 4 points.

There is no explanation in the record as to why Grosserand was not assessed attendance points on so many occasions. On September 23, William Waters had calculated Grosserand's total number of points as 6. Had Respondent even assessed one point for all the other occasions in the prior month that Grosserand was late, he would have had at least 12 points, enough for termination in accordance with Respondent's attendance policy. If assessed in accordance with Respondent's attendance policy, Grosserand had accumulated 16 points within one month.

Ethel Finley

On September 30, 2009, Ethel Finley was 10 minutes late and received 1 point.
On November 13, Ethel Finley was 5 minutes late and received no points.
On November 16, Ethel Finley was 13 minutes late and received 1 point.
On November 18, Ethel Finley was 6 minutes late and received no points.
On January 5, 2010, Ethel Finley was 9 minutes late and received either 1 or 2 points.[9]

The employee attendance report of January 5, was signed by Casey Lewis, the Assistant Manager who terminated Perry, GC Exh. 5.

[8] The parties' stipulation at Tr. 13-14 that Smith did not receive any attendance points for not showing up at work on November 23, 24 and 30, is simply incorrect, G.C. Exh. 3.

[9] I find that Exh. G.C. 5, Respondent's recitation of the number of points assessed for January 5, is ambiguous.

On January 7, Ethel Finley was 18 minutes late and received no points.
On January 11, Ethel Finley was 8 minutes late and received no points.
On January 29, Ethel Finley was 5 minutes late and received no points.

From this it is apparent that Respondent was not looking as closely at Finley's attendance history as it did at Perry's. Between November 13, and January 29, Finley had earned more than 10 points and should have been terminated if Respondent was strictly enforcing its attendance policy.

Denise Williams

On September 9, 2009, Denise Williams was 9 minutes late and received 1 point, instead of 2 as called for in Respondent's attendance policy.
On October 7, Denise Williams was 2 hours and 30 minutes late and received 1 point, instead of 4.
On October 13, Denise Williams missed work completely and received 2 points, instead of 4.
On October 27, Denise Williams was 60 minutes late and received 2 points, instead of 4.[10]
On November 10, Denise Williams was 5 minutes late and received no points.
On November 13, Denise Williams was 8 minutes late and received no points.
On November 16, Denise Williams was 35 minutes late and received 1 point, instead of 4.
On November 24, Denise Williams was 8 minutes late and received no points.
On December 1, Denise Williams was 9 minutes late and received no points.
On December 11, Denise Williams was 12 minutes late and received 1 point.
On January 10, 2010, Denise Williams was 12 minutes late and received no points.

Thus, in accordance with Respondent's attendance policy, Williams should have been terminated both before and after Perry was discharged. Not only did Respondent not keep track of Williams' attendance record very well, but on its employee attendance reports for her, it did not keep on running total of the points assessed, as it did for Perry. Williams apparently abandoned her job in February 2010.

Analysis

Harold Perry's termination

As stated previously, Respondent terminated Perry's employment on December 23, 2009. The General Counsel alleges that Respondent did so because it believed that Perry, on or about November 5, 2009, asked employees to engage in a work stoppage by telling them not to work on Saturday in protest of Respondent's pay system and to discourage employees from engaging in these or other concerted activities. The General Counsel also alleges that Respondent terminated Perry because he assisted the Union and to discourage other employees from doing so.

I find that Respondent did not violate Section 8(a)(3) and (1) of the Act by discharging Harold Perry for union activity. On the other hand, I find that it violated Section 8(a)(1) for discharging Perry for its belief that he tried to encourage other employees not to work for a

[10] The stipulation at Tr. 13 is incorrect with regard to this date, G.C. Exh. 6

Saturday LSU football game. Assuming that Perry testified truthfully that he did not try to organize such a boycott, Respondent violated the Act for discharging Perry in material part for its mistaken belief that he did so, *Gulf-Wandes Corporation,* 233 NLRB 772, 778 (1977). Since working during LSU football games was voluntary work, encouraging other employees not to sign up for this work and does not constitute an unlawful partial strike, and constitutes concerted activity protected by Section 7 of the Act, *The Dow Chemical Company,* 152 NLRB 1150, 1151 (1965).

In order to establish that a discharge violated Section 8(a)(1), the Board generally requires the General Counsel to make an initial showing sufficient to support an inference that the alleged discriminatee's protected conduct was a 'motivating factor' in the employer's decision. Then the burden shifts to the employer to demonstrate that the same action would have taken place even in the absence of protected conduct, *Wright Line,* 251 NLRB 1083 (1980), enfd. 662 F.2d 889 (lst Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.,* 462 U.S. 393, 399-403 (1983) ; *American Gardens Management Co.*, 338 NLRB 644 (2002).

I have found that Perry either engaged in protected concerted activity or that Respondent, by William Waters and possibly others, suspected that he had done so. As stated previously, I find that at least some of the management officials involved in Perry's termination were aware that Perry may have tried to organize a boycott of the LSU home football games.

That Respondent harbored animus towards Perry's protected concerted activity is established by Waters' statement to Perry in November that soliciting employees to boycott the upcoming LSU game constituted insubordination and might cost Perry his job. The causal relationship between Perry's protected conduct and his discharge, as well as Respondent's animus towards his protected concerted activity, is established by the disparate manner in which Respondent treated Perry's attendance violations compared with that of other employees who also should have been terminated if Respondent had been enforcing its attendance policy in a nondiscriminatory fashion.[11]

I do not credit Respondent's nondiscriminatory explanation of why Perry was treated differently than other employees with similar or worse attendance records. There is no explanation, for example, why Respondent's dispatcher, Jackie Martin, immediately seized upon the number of points Perry had accumulated when he called in at 6:04 a.m. on December 23. I infer that management had told Martin to keep track of Perry's points, while it did not do so with regard to other employees. The change in Assistant General Managers does not explain the heightened scrutiny to Perry's attendance record. Assistant General Manager Casey Lewis who testified that he discharged Perry, apparently paid no attention to Ethel Finley's attendance record when she reported late on 4 different occasions in January 2010.

Similarly, there is no explanation for Respondent's refusal to allow Perry to report to work late on December 23. Other employees, including Tina Smith, Alvin Grosserand, Ethel Finley and Denise Williams were allowed to work after reporting to work as much as 2 hours late.

[11] Respondent suggests that any finding of discriminatory motive is negated by the fact that it could have terminated Perry on December 7, for accumulating 10 points within 90 days, but did not do so. I reject this argument because there is no evidence that Respondent was aware that Perry had accumulated 10 points until December 23.

Finally, I infer discriminatory motive from Respondent's failure to offer to reinstate Perry when it discovered that it had treated him disparately and the very precipitous manner in which Perry's discharge was effected, see*, Levi Strauss & Co.,* 172 NLRB 732, 741-44(1968).

Other Alleged Violations

Paragraph 8 of the complaint alleges that Respondent violated the Act by issuing attendance points and/or excessive attendance points to Perry on November 15, 2009 and December 7, 12 and 23. While I do not find that Respondent discriminatorily issued Perry more points than he should have received on those dates, I do find that Respondent violated Section 8(a)(1) in assessing attendance points on these dates because it was enforcing its policy against Perry more strictly than it had prior to its awareness of his protected concerted activity and more strictly than it was enforcing this policy with respect to other employees.

The complaint also alleges that Respondent threatened employees with termination and created an impression among its employees that their union and/or protected activities were under surveillance by Respondent in violation of Section 8(a)(1) of the Act. There is no evidence to support the allegation regarding surveillance and it is dismissed.

I credit William Waters' testimony that a couple of drivers told him that Perry was organizing a boycott of the LSU games. There is no evidence indicating any other source for Waters' belief. If Perry was not organizing a boycott, he would not have assumed that Waters' was spying on him and thereby discovered such false information. On the other hand, if Perry had spoken to other drivers about not volunteering for the LSU games, it is more likely that he would have assumed that another driver told this to Waters, as opposed to Waters actively seeking information about protected concerted activity on the part of Perry. In either case, I find that Waters' conduct does not amount to surveillance that violates Section 8(a)(1), *SKD Jonesville Division L.P.,* 340 NLRB 101 (2003).

Regarding the alleged threat, Perry testified that William Waters told him in early November 2009 that passing around a list in order to organize a boycott of Saturday work at the LSU football games constituted insubordination and that Perry could lose his job as a result. This testimony is uncontradicted. I have found that Perry was engaged in protected concerted activity in urging such a boycott or that Respondent suspected that he was engaged in such activity. Thus, I find that Respondent, by Waters, violated Section 8(a)(1).

The complaint also alleges that Respondent violated Section 8(a)(3) and (1) by issuing discipline and excessive attendance points to Charging Party Harold Perry on four separate dates. While Respondent made mistakes in assessing points for a number of employees, the record establishes that Harold Perry was treated disparately particularly when compared to Ethel Finley and Denise Williams. These two employees were not assessed any points on several occasions when they should have been between November 2009 and January 2010. Respondent has not offered any convincing explanation as to why Perry was assessed points every time he showed up late from November 15 to December 23, while Finley's and Williams' tardiness was ignored on a number of occasions.

In the absence of an alternative explanation, I conclude that Respondent was keeping closer tabs on Perry's violations of its attendance policy, due to its animus emanating from its belief that he may have tried to organize a boycott of Saturday work. Thus, I find that Respondent violated Section 8(a)(1) in its assessment of attendance points to Perry.

Conclusions of Law

1. Respondent violated Section 8(a)(1) by terminating Harold Perry's employment on December 23, 2010.

2. Respondent violated Section 8(a)(1) by enforcing its attendance policy against Perry more strictly than it had prior to its awareness of his protected concerted activity and more strictly than it enforced this policy with respect to other employees.

3. Respondent violated Section 8(a)(1) of the Act by telling Perry that organizing a boycott of voluntary work constituted insubordination and that this could cost him his job.

Remedy

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

The Respondent having discriminatorily discharged Harold Perry, it must make him whole for any loss of earnings and other benefits, computed on a quarterly basis less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest compounded daily, *Kentucky River Medical Center,* 356 NLRB No. 8 (October 22, 2010) 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[12]

ORDER

The Respondent, First Transit, Inc., Baton Rouge, Louisiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against any employee for engaging in protected concerted activity.

(b) Telling any employee that he or she could be discharged for engaging in protected concerted activity.

(c) Treating any employee in a disparate manner when enforcing its attendance policy if that disparate treatment is related to activities protected by Section 7 of the Act.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

[12] 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.

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

(a) Make Harold Perry whole for any loss of earnings and other benefits suffered as a result of the discrimination against him as specified in the remedy portion of this decision.

(b) Within 14 days from the date of the Board's Order, offer Harold Perry 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.

(c) Refreshing Harold Perry's attendance points to zero.

(d) Within 14 days from the date of the Board's Order, remove from its files any reference to Harold Perry's unlawful discharge and within 3 days thereafter notify him in writing that this has been done and that his discharge will not be used against him in any way.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its Baton Rouge, Louisiana facility copies of the attached notice marked "Appendix."[13] Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 5, 2009.

In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[13] 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."

Dated, Washington, D.C., December 30, 2010.

_____
Arthur J. Amchan
Administrative Law Judge

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 Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT discharge or otherwise discriminate against any of you for engaging in concerted activities for your mutual aid or protection

WE WILL NOT tell any employee that he or she is being insubordinate and may lose his or her job for engaging in concerted activities for employees' mutual aid or protection.

WE WILL NOT treat any employee in a disparate manner when enforcing our attendance policy because that employee has engaged in concerted activities for employees' mutual aid or protection.

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, within 14 days from the date of this Order, offer Harold Perry 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.

WE WILL make Harold Perry whole for any loss of earnings and other benefits resulting from his discharge less any net interim earnings, plus interest compounded daily.

WE WILL refresh Harold Perry's attendance points to zero.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful discharge of Harold Perry and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

FIRST TRANSIT, INC.

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

600 South Maestri Place, 7th Floor

New Orleans, Louisiana 70130-3408

Hours: 8 a.m. to 4:30 p.m.

504-589-6361.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 504-589-6389.