

In the Matter of TIDEWATER EXPRESS LINES, INC. and LOCALS No. 355  
AND No. 430, INTERNATIONAL BROTHERHOOD OF TEAMSTERS,  
CHAUFFEURS, STABLEMEN AND HELPERS OF AMERICA

*Case No. C-146.—Decided January 23, 1937*

*Motor Truck Transportation Industry—Interference, Restraint or Coercion:* expressed opposition to labor organization, threats of retaliatory action—"Yellow Dog" Contract—*Discrimination:* discharge, for union membership and activity; for refusal to sign "yellow dog" contract—*Reinstatement Ordered—Back pay* awarded.

*Mr. Jacob Blum* for the Board.

*Mr. Frederick P. Mett*, of counsel to the Board.

DECISION

STATEMENT OF CASE

On October 16, 1936, Local No. 355 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, hereinafter referred to as Local No. 355, filed with the Regional Director for the Fifth Region a charge that the Tidewater Express Lines, Inc., hereinafter referred to as the respondent, had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of the National Labor Relations Act, 49 Stat. 449, hereinafter referred to as the Act. On the following day Local No. 430 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, hereinafter referred to as Local No. 430, filed a similar charge against the respondent with the Regional Director for the Fourth Region. On November 4, 1936, the National Labor Relations Board, hereinafter referred to as the Board, acting pursuant to Article II, Section 37 (c) of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered the latter charge transferred to the Fifth Region for the purpose of consolidation with the proceeding already instituted in that Region. On November 10, 1936, the Board, by the Regional Director for the Fifth Region, issued a complaint against the respondent based on the aforementioned charges.

The complaint, in brief, alleges that the respondent, a Maryland corporation, with its principal office and place of business at Baltimore, Maryland, is engaged "in the interstate hauling of merchan-

dise and/or freight for anyone who chooses to use its services"; that the respondent discharged Frank Scholl<sup>1</sup> and William D. Lewis, two of its truck drivers, on August 14, 1936, and October 2, 1936, respectively, for the reason that they respectively joined and assisted Local No. 430 and Local No. 355, labor organizations, and engaged in concerted activities with other employees of the respondent for the purpose of collective bargaining and other mutual aid and protection, in violation of Section 8, subdivisions (1) and (3) of the Act; and that the respondent "during the latter part of September, or early part of October, 1936, and on dates thereafter . . ., did foster, encourage, sponsor, dominate, and interfere with the formation . . . and administration of a labor organization of its employees . . .", in violation of Section 8, subdivisions (1) and (2) of the Act.

The respondent did not file an answer to the Board's complaint, but on November 18, 1936, filed with the Regional Director for the Fifth Region a "Plea to the Jurisdiction and Motion to Dismiss". Therein it stated that it was appearing specially for the purpose of objecting to the Board's jurisdiction on constitutional grounds, which it set forth in detail, and moved that the case be dismissed.

Pursuant to notice thereof, duly served on the parties, Robert M. Gates, duly designated by the Board as Trial Examiner, conducted at hearing at Baltimore, Maryland, commencing on November 23, 1936. The Board was represented by counsel. The respondent failed to appear at the hearing. Full opportunity to be heard, to examine and cross-examine witnesses and to produce evidence was afforded to all parties. At the close of the hearing counsel for the Board moved that the complaint be dismissed as to the allegation that the respondent had violated Section 8, subdivision (2) of the Act. The motion was granted by the Trial Examiner. On December 9, 1936, the Board, acting pursuant to Article II, Section 37 (a) of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered that the proceeding be transferred to and continued before it.

The Board has reviewed the entire record in the case. No ruling was made by the Trial Examiner on the respondent's "Plea to the Jurisdiction and Motion to Dismiss". The Board hereby overrules the plea and denies the motion. The Trial Examiner's ruling on counsel for the Board's motion to dismiss the complaint as to the allegation that the respondent had violated Section 8, subdivision (2) of the Act, is hereby affirmed.

Upon the entire record, including the pleadings, transcript of the hearing and exhibits, the Board makes the following:

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<sup>1</sup> This name appears as Frank Scholl throughout the transcript of testimony in this case.

## FINDINGS OF FACT

## I. THE RESPONDENT

The respondent, Tidewater Express Lines, Inc., is a Maryland corporation, having its principal place of business in Baltimore, Maryland. It is engaged in intrastate and interstate hauling of merchandise and freight by truck over the public highways of the District of Columbia and of the States of Pennsylvania and Maryland, and maintains terminal facilities at Baltimore, Maryland, and at York, Pennsylvania. It owns and operates about 27 trucks and employs approximately 33 truck drivers.

The trucks operating out of the respondent's Baltimore terminal carry merchandise and freight on a regular daily schedule between Baltimore and the following cities, servicing intermediate as well as off-route points: Rockville, Maryland; Frederick, Maryland; Sykesville, Maryland; York, Pennsylvania; Chambersburg, Pennsylvania; Harrisburg, Pennsylvania; and Washington, D. C. The trucks operating out of the respondent's York terminal carry merchandise and freight between York and the following cities, servicing intermediate as well as off-route points: Lancaster, Pennsylvania; Harrisburg, Pennsylvania; Windsor, Pennsylvania; York Haven, Pennsylvania; and Baltimore, Maryland. At points along its routes the respondent effects an interchange of traffic with independent connecting common carriers. In addition to operating as a contract carrier of freight and merchandise for anyone who chooses to use its services, the respondent acts as agent for a great number of common carriers, performing their collection and delivery services from and to innumerable points in Pennsylvania, Maryland, and the District of Columbia.

In its applications for a certificate to operate as a common carrier of property under the Motor Carrier Act of 1935,<sup>2</sup> filed with the Interstate Commerce Commission on December 26, 1935, and on February 7, 1936, the respondent admitted under oath that it was engaged in the business of transporting property in interstate commerce.

The respondent is engaged in traffic, commerce and transportation within the District of Columbia, between the District of Columbia and the States of Maryland and Pennsylvania, and between the State of Maryland and the State of Pennsylvania; the trucks owned by the respondent are instrumentalities of, and the employees of the respondent are directly engaged in, such traffic, commerce and transportation.

<sup>2</sup> 49 U. S. C., Chap 8; 49 Stat. 543.

## II. THE ORGANIZATIONS INVOLVED

Locals No. 355 and No. 430 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, affiliated with the American Federation of Labor, are labor organizations, membership in which is open to drivers of vehicles and their helpers, freight handlers, and platform workers. The jurisdiction of Local No. 355 extends over the entire State of Maryland. Local No. 430 exercises jurisdiction over York, Pennsylvania, and over the area within a 30 mile radius of that city.

## III. THE UNFAIR LABOR PRACTICES

*Frank Scholl*, a truck driver employed by the respondent, began working for the respondent in March, 1936. As a truck driver, assigned to the respondent's York, Pennsylvania, terminal, his duties consisted of picking up merchandise and freight in and about York, and in and about numerous other towns in the south central and southeastern part of the State of Pennsylvania. This merchandise and freight, most of which was usually destined to go beyond the borders of the State of Pennsylvania, particularly to points in Maryland and the District of Columbia, would then be brought by him to the York terminal and to other places in the State of Pennsylvania and there transferred to other of the respondent's trucks to be transported to their ultimate destinations. His duties further consisted of taking a load of merchandise and freight from York to Baltimore twice every week, making deliveries to various points on the way. Returning from Baltimore, he would carry a full load to York.

On August 9, 1936, Scholl joined Local No. 430. On August 22, 1936, Scholl was discharged by the respondent. On that day, D. H. Brown, the respondent's general manager in charge of its York terminal, called Scholl in and told him that he had learned that Scholl was a member of the Union, and that he had had orders from his main office to dispense with the service of all union men. Brown also told Scholl that he had always been a good worker that but for his membership in the Union he would still be employed, and that he might be reinstated later if he would quit the Union.

Before his discharge Scholl earned approximately \$22.00 per week. During the three and one-half weeks immediately following his discharge he was completely without work. Thereafter he secured employment as a truck driver with another employer at an average weekly wage of \$13.00.

*William D. Lewis* worked for the respondent as a truck driver assigned to its Baltimore terminal. The record does not indicate

when he began working for the respondent. His regular duties involved driving back and forth between Baltimore, Maryland, and the District of Columbia. At the hearing he testified as follows: "I would come in the morning, and load my truck, and go to Washington, and deliver at stops in Washington, and would pick up my load and come back to Baltimore." Occasionally, when the respondent's York terminal was short-handed, he would drive his truck there from Baltimore and help out.

On September 15, 1936, Lewis became a member of Local No. 355 and thereafter actively solicited memberships in that organization among the respondent's drivers. On several occasions during the latter part of September, 1936, Hurl Wilson, the respondent's general manager in charge of the Baltimore terminal, informed Lewis that the respondent did not approve of Local No. 355 and that none of its employees would ever be allowed to join that organization.

Late in September, 1936, and early in October, 1936, the respondent coerced its employees to sign certain contracts which it had proposed to them during the early part of September and which they had at that time voted not to accept. According to Lewis, these contracts were individual anti-union or "yellow dog" contracts which bound the signers to refrain from joining any union.

After completing his run from Washington, D. C., on Friday evening, October 2, 1936, the afternoon of which day had been set by the respondent as the dead-line for the signing of the aforementioned contracts, Frank M. Hamby, the respondent's vice-president, called Lewis to his office and asked him whether he had already signed up. When Lewis answered that he had not, Hamby discharged him, stating, "Well, you know we don't allow no Union workers on this platform."

Lewis had performed his duties in a satisfactory manner. The respondent never complained to him about his work. On more than one occasion Hamby had complimented him for his good work in improving business on his run. At the time of his discharge he was earning approximately \$22.00 per week. Since his discharge he has earned approximately \$30.00.

At the time of his discharge, Scholl was the only driver working for the respondent who was a member of Local No. 430. He was told by Brown that the reason for his discharge was his union membership. Lewis was told as much by Hamby at the time of his discharge. Furthermore, Lewis' discharge immediately followed his refusal to sign the individual anti-union or "yellow dog" contract submitted to him by the respondent. On the basis of the aforementioned findings of fact it must be concluded that Scholl was discharged because he was a member of Local No. 430, and that Lewis was dis-

charged because he was a member of and active in Local No. 355, and because he refused to sign an individual anti-union or "yellow dog" contract.

By the discharge of Scholl and Lewis, the respondent has discriminated against its employees in regard to hire and tenure of employment, has thereby discouraged membership in Locals No. 355 and No. 430, and has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

#### IV. EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

As we said in *In the Matter of Pennsylvania Greyhound Lines, Inc.*, Case No. C-1, decided December 9, 1935 (1 N. L. R. B. 1):

"Interference with the activities of employees in forming or joining labor organizations results in strikes and other forms of industrial unrest which in the field of transportation have the effect of impairing the safety and efficiency of the instrumentalities of such transportation. About 50% of the strikes and lock-outs that occurred in the motor transportation industry from January, 1935, to July, 1935, inclusive, involving 32,732 employees and 162,721 man-days of idleness, arose over the issue of employee organization. It is common knowledge that in the industrial scene numerous and prolonged strikes have resulted from denial by employers of the rights now guaranteed by Section 7 and from their interference with employees attempting to exercise such rights (1934) 39 Monthly Labor Review No. 1, p. 75, Table 9). The Board cannot be blind to such knowledge or fail to realize the disruption of commerce that results from such strikes and unrest. The motor transportation industry has achieved an important place in the transportation systems of this country and it is the desire of Congress to prevent the interference with transportation and the impairment of the safe and efficient operations of its instrumentalities that results from such strikes and unrest. It is significant that, unlike the parallel legislation in the railway field, there are no provisions for collective bargaining and employee freedom of organization and representation in the recent Motor Carrier Act of 1935, imposing federal regulation of interstate motor transportation. The omission was succinctly explained on the floor of the Senate by Senator Wheeler, Chairman of the Committee on Interstate Commerce, on the ground that the Wagner Act then before Congress would cover the field of motor transportation and that therefore such provisions need not be incorporated in

the Motor Carrier Act (Cong. Record, 74th Congress, 1st Session, Vol. 79, p. 5887)."

On the basis of the experience in the motor carrier transportation and other industries, we conclude that the respondent's conduct, and each item of such conduct, burdens and obstructs commerce and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce, by impairing the efficiency, safety and operation of instrumentalities of commerce.

#### CONCLUSIONS OF LAW

Upon the basis of the foregoing findings of fact, the Board makes the following conclusions of law:

1. Locals No. 355 and No. 430 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America are labor organizations, within the meaning of Section 2, subdivision (5) of the Act.

2. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (1) of the Act.

3. By discriminating in regard to hire and tenure of employment, thereby discouraging membership in Locals No. 355 and No. 430 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (3) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2, subdivisions (6) and (7) of the Act.

#### ORDER

On the basis of the findings of fact and conclusions of law, and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent Tidewater Express Lines, Inc., its officers and agents, shall:

1. Cease and desist:

(a) From discouraging membership in Locals No. 355 and No. 430 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, or any other labor organization of its employees, by discriminating against its employees in regard to hire and tenure of employment or any term or condition of employment;

(b) From in any other manner interfering with, restraining, or

coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Offer to Frank Scholl and William D. Lewis immediate, full, and unconditional reinstatement to their former positions, without prejudice to any rights and privileges previously enjoyed by them;

(b) Make whole Frank Scholl and William D. Lewis, and each of them, for any losses of pay they have suffered by reason of their discharge, by payment to each of them, respectively, of a sum of money equal to that which each of them would normally have earned as wages from the date of his discharge to the date of the respondent's offer of reinstatement, computed on the basis of the average weekly earnings of each for one month immediately preceding such discharge, less the amount earned by each from the date of his discharge;

(c) Post notices to its employees in conspicuous places in its terminal at Baltimore, Maryland, and in its terminal at York, Pennsylvania, stating: (1) that it will cease and desist in the manner aforesaid; and (2) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting.