

In the Matter of HOUSTON CARTAGE COMPANY, INC. and LOCAL UNION
No. 367, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
STABLEMEN, AND HELPERS OF AMERICA, and L. S. BROOKS

Case No. C-153.—Decided June 12, 1937

Motor Truck Transportation Industry—Interference, Restraint or Coercion: persuading employees not to join union; discrediting union; expressed opposition to union, threats of retaliatory action; engendering fear of loss of employment for union membership and activity—*Discrimination:* discharge—*Reinstatement Ordered—Back Pay:* awarded.

Mr. Karl H. Mueller for the Board.

Mr. Charles A. Perlitz, Jr., of Houston, Tex., for respondent.

Mr. Rolland Bradley, of Houston, Tex., for Local Union No. 367 and L. S. Brooks.

Mary Lemon Schleifer, of counsel to the Board.

DECISION

STATEMENT OF CASE

On November 17, 1936, L. S. Brooks, individually and as President of Local Union No. 367, International Brotherhood of Teamsters, Chauffeurs, Stablemen, and Helpers of America, filed a charge with the Regional Director for the Sixteenth Region (Fort Worth, Texas), alleging that Houston Cartage Company, Inc., Houston, Texas, hereinafter referred to as the respondent, had engaged in and was engaging in unfair labor practices within the meaning of the National Labor Relations Act, 49 Stat. 449, hereinafter referred to as the Act. On December 21, 1936, the Acting Regional Director for the Sixteenth Region duly issued and served upon the parties a complaint and notice of hearing. The complaint alleged that the respondent, by the discharge of L. S. Brooks on October 23, 1936, had engaged in unfair labor practices affecting commerce, within the meaning of Section 8, subdivisions (1) and (3), and Section 2, subdivisions (6) and (7) of the Act.

Pursuant to the notice, a hearing was held in Houston, Texas, on December 28 and continued on December 29, 1936, before George O. Pratt, the Trial Examiner duly designated by the National Labor Relations Board, hereinafter referred to as the Board. The respondent was represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses and to

introduce evidence bearing on the issues was afforded all parties. At the opening of the hearing, counsel for the respondent filed an answer to the complaint. The answer alleged that the Act is unconstitutional in several respects, denied that L. S. Brooks had been discharged because of his union activities and alleged that "on or about October 23, 1936, it was required for the good of its business to discharge the said L. S. Brooks on account of his having violated certain of its rules and orders . . ." The Trial Examiner ruled that as to those portions of the answer which constituted a motion to dismiss, such motion was denied. Objections to the introduction of evidence were made by counsel for the respondent and counsel for Local Union No. 367. The Board has reviewed the rulings of the Trial Examiner on motions and objections and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On February 16, 1937, the Board, acting pursuant to Article II, Section 37 of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered the case to be transferred to and continued before it.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE RESPONDENT'S BUSINESS

The respondent, a Texas corporation, was organized in April, 1936, for the sole purpose of performing services under a contract with a railroad system commonly known as the Southern Pacific Lines. The application of the respondent to the Interstate Commerce Commission states that the respondent requests a certificate of public convenience as a contract carrier to transport freight by means of trucks in Houston, Texas, and contiguous municipalities for the Southern Pacific Lines, T. & N. O. Railroad Company, and Southern Pacific Transport Company.¹

The services performed by the respondent consist of picking up less-than-carload lots of freight at the places of business of consignors in Houston, Texas, and delivering it to the freight docks of the railroads operated under the name of Southern Pacific Lines, for the purpose of shipment by the railroads; and of delivering less-than-carload lots of freight received by rail at the Houston stations of the Southern Pacific Lines, to the places of business of consignees in Houston, Texas. This door-to-door pick-up and delivery system is one which has recently been offered by many railroads in an effort to compete with long run hauls of freight by motor trucks. As is customary in other cases no additional charge is made, as such,

¹ These railroads are apparently all parts of the system called Southern Pacific Lines.

to the customer for this service; the charge, if any, being included in the total freight charges. The Southern Pacific Lines pays the respondent a flat rate based upon the weight for every package so picked up or delivered.

Due primarily to keen competition among the railroads and between the railroads and the motor transportation companies, great efficiency and speed are required of the respondent by the railroad. Schedules of pick-up are geared to meet train schedules, so that freight is dispatched with the least possible delay. The respondent and the railroads make every effort to have all freight in transit or delivered on the same day it is received.

The respondent, through arrangement with the Southern Pacific Lines, maintains a daily schedule of places where it stops to pick up freight. These places include among others the steamship docks in Houston, Texas, where freight carried by steamship companies is deposited for further shipment on the railroads of the Southern Pacific Lines. The record shows that one of these steamship companies operates from Philadelphia, Pennsylvania, to Houston, Texas, with only one port of call at Norfolk, Virginia, and another from New York to Houston, Texas. In addition, the respondent receives telephone requests for occasional pick-up services on its own wire and maintains a dispatcher in the office of the Southern Pacific Lines to receive calls made directly to the railroad companies for pick-up service.

Freight received at the Houston freight depots of the Southern Pacific Lines is picked up by the respondent at the freight docks of the railroads and delivered to consignees in the vicinity of Houston or to the docks of the steamship companies for further transportation.

The railroads operated under the name Southern Pacific Lines extend from California through many western and southern States including Nevada, Utah, Arizona, New Mexico, Texas, and Louisiana and into the country of Mexico. The record does not show exactly what proportion of the freight handled by the respondent is consigned for shipment in interstate commerce or has already been shipped in interstate commerce when it arrives in Houston, Texas. It does show that shipments from consignors outside the State of Texas are handled frequently; that the respondent accepts all freight whether it is to be or has been shipped outside the State of Texas or within the State of Texas; that one of the customers sending and receiving shipments daily is a branch of the Ford Motor Company and that it receives shipments from time to time from Detroit; and, as previously stated, it handles freight which has been or is to be transported by intercoastal steamship lines.

The freight has been wrapped or crated and marked for shipment by the consignor, before it is delivered to the respondent. The re-

spondent's drivers issue bills of lading in the name of Southern Pacific Transport Company to the consignors and make out a shipping order which goes to the railroad. The drivers also collect freight charges for the railroad when such charges have not been prepaid.

The services rendered by the respondent for the railroads begin or end the interstate journey of the freight and are in no sense apart from the interstate transportation.

We find that the respondent in the activities above described is engaged in traffic, commerce, and transportation among the several States, and that the truck drivers employed by the respondent to receive or deliver such freight are directly engaged in such traffic, commerce, and transportation.

II. THE UNION

International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, affiliated with the American Federation of Labor, granted a charter to Local Union No. 367, hereinafter referred to as Local 367, in October, 1936. Local 367 is a labor organization which admits to membership truck drivers, helpers, and warehousemen employed by others as well as such persons employed by the respondent.

III. THE DISCHARGE OF L. S. BROOKS

L. S. Brooks began working for the respondent at the time the respondent began operations on April 17, 1936, and worked constantly for the respondent until the time of his discharge on October 23, 1936. He was employed at all times as a truck driver, and was engaged in the pick-up and delivery of freight and the duties incident thereto as above described. At the time of his discharge Brooks was earning \$18 per week.

The evidence shows that during the period from April 17, 1936, to September 15, 1936, there was no organization among the respondent's employees and that in that period only one of the 16 drivers employed by the respondent was discharged. Shortly after September 15, 1936, the drivers and helpers employed by the respondent began to organize; the charter was issued to Local 367 on October 7, and officers were elected on October 18, 1936. Within the period from September 15 to October 23, 1936, the respondent discharged five or six drivers, all of whom had joined Local 367.

That the respondent's officers were clearly aware that their men were organizing is shown by the remarks of W. C. Smith, president of the respondent, to the employees at meetings called by him on or about October 3, 1936, and on or about October 17, 1936. The gist of these remarks was that while Smith had no objection to his men

joining any union he, personally, thought all unions were bad and this was particularly so of the International Longshoremen's Association, and that if they formed a union the longshoremen on the docks would demand the right to load freight coming off the boats into the respondent's trucks and that the respondent might be compelled to discharge the helpers then employed on the trucks. He also stated that he "didn't want any of the Union boys messing around with the negro laborers" he had working for him in the W. R. Smith Transfer Company "because he had a good bunch of Negroes."² The attitude of Smith towards the union activities of his employees is apparent in such remarks and the remarks are not rendered innocuous by his statement that he had no objection to his men joining a union.

Smith's determination to prevent his employees from joining a union was also expressed in other ways. During this period he found it necessary to discharge five or six drivers, all of whom were members of Local 367, for minor infractions of company rules. He told the employees that he was planning to give them a bonus at Christmas time but in the case of an employee who asked him for a raise he stated "he wasn't going to raise nobody until this Union business was settled; that he might have to hire a whole new crew of men".

The result of the respondent's antagonism was that at the time of the hearing no driver or helper employed by the respondent was a member of Local 367, or if he had previously joined he was not paying dues or attending the meetings of Local 367, although the record shows that on or about October 15th a majority of the drivers then employed by the respondent were members of Local 367.

On October 18, 1936, Brooks was elected president of Local 367. Since Smith knew of the previous activities of his employees in organizing, and since the record shows that a non-union employee working for the respondent addressed Brooks at work the following morning as "Mr. President", it is a reasonable inference that Smith knew that Brooks had been elected president. Even if Smith did not know Brooks had been elected president of Local 367, the record shows Smith knew Brooks was active in union affairs.

On Wednesday, October 21, three days after Brooks was elected president of Local 367, E. O. Schubert, secretary-treasurer of the respondent, followed the truck Brooks was driving for several hours during the afternoon for the purpose of observing Brooks. Schubert was in his own car, some distance behind the truck and Brooks was not aware that he was being followed. On the following day, Thursday, October 22, two supervisors employed by the respondent fol-

² W. C. Smith also operates the W. R. Smith Transfer Company, a transfer and storage company.

lowed Brooks in a similar manner and for the same purpose. At the close of work on Friday, October 23, Schubert handed Brooks a letter signed by Smith which read :

“There has come to my attention that on Wednesday of this week you were not performing rail services of this company as we require of our drivers. You were some 45 minutes when en route between the Ford Motor Company and the Mengden & Company, during which time you were far off your scheduled route. On this same day you again left your route after leaving the Shipside Warehouse and went to the Harbor Hotel, where you remained some 15 or 20 minutes. You also apparently in order to make up time which you had thus lost drove your truck far in excess of the speed limit on Canal Street.

“For these infractions and for the good of our company, I am therefore required to discharge you as of today”.

At the hearing Smith testified that the letter incorrectly stated that all of these offenses were committed on Wednesday, October 21, but that it should have stated that some of them occurred on Thursday, October 22. Comparison of the testimony of Schubert, Brooks, Miller, one of the supervisors who followed Brooks on October 22, and Evans, a helper who was riding on the truck with Brooks on both days and who has been employed as the driver of the truck since Brooks' discharge, shows that Brooks did not spend 45 minutes nor get off his route between the Ford Motor Company and Mengden & Company on either day; that Brooks did stop at the Harbor Hotel on Thursday for the purposes of buying some cigarettes and to see a man at the hotel on business not connected with his work for the respondent but that the man was not in and Brooks returned promptly to his truck; that in stopping at the Harbor Hotel Brooks was not off his route; that Brooks did exceed the 20 mile speed limit on Canal Street on both days but that he handled his truck skillfully and competently at all times and was not driving at an excessive speed in comparison with other traffic on the street.

It is true that to some extent Brooks did not perform his duties in strict compliance with the respondent's rules. It is also true that at the hearing it was shown Brooks made two additional stops on Thursday October 22, not mentioned in the letter of dismissal, on personal business. It is not for us to determine whether or not these infractions of the respondent's rules were sufficiently grave to justify the discharge of Brooks. What we are concerned with is whether or not Brooks was discharged because of these infractions or whether the respondent, desiring to rid itself of Brooks because of his union activities, searched for some cause to cloak its real motive for the discharge. Experience has shown this Board that there is no field

of employment where employers can so easily find means to cloak their real motives for discharging employees as in the employment of bus or truck drivers. In practically every case which has come before us involving such employees,³ it has been charged and proven that the discharged employees have exceeded the speed limit, left their route or made stops not strictly in line with their duties. But from the very nature of the work of bus or truck drivers it is apparent that an employer has only to follow any truck or bus driver for a comparatively short time, to find him guilty of many such violations. We are, therefore, not impressed with the sincerity of an employer who advances such reasons for a discharge, where he fails to show that such violations were flagrant or repeated and where the surrounding circumstances indicate that the employee was active in union activities to which the employer was opposed.

What we have just said is peculiarly pertinent to this case. The evidence shows that Brooks was a careful and conscientious worker, that up until the time just preceding his discharge the respondent considered him a very good worker, so good in fact that while the respondent had four supervisors who followed the trucks in the same way they followed Brooks, no evidence was introduced to show that Brooks had ever been observed in this manner during the previous six months or that he had been found violating any company rules. The trailing of Brooks by the respondent for two successive days so soon after he had been elected president of Local 367 is more than a coincidence.

Coupled with this are the further significant facts that Brooks was given the letter of dismissal by Schubert with no explanation, and was refused permission by both Schubert and Smith to discuss the matter when he informed them the letter did not state the facts correctly; and that in the main the letter was actually incorrect in the violations charged. We think the conclusion inescapable that the respondent had resolved to get rid of Brooks because of his union activities, and sought and found violations of company rules and assigned them as the reason for the discharge.

We find that the respondent by discharging L. S. Brooks has discriminated in regard to hire and tenure of employment to discourage membership in a labor organization.

The respondent by the discharge of L. S. Brooks has interfered with, restrained, and coerced its employees in the exercise of the rights of self-organization, to form, join or assist labor organizations,

³ See for example, *In the Matter of Pennsylvania Greyhound Lines, Inc., Greyhound Management Company, Corporations and Local Division No. 1063 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, I N. L. R. B. 1*, decided December 7, 1935, and *In the Matter of Hill Bus Company, Inc. and Brotherhood of Railroad Trainmen, Rockland Lodge No. 329, Spring Valley, New York*, Case No C-141, decided May 3, 1937 (*supra*, p. 781).

to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining and other mutual aid and protection.

We find that L. S. Brooks was an employee of the respondent at the time of his discharge and ceased work because of the unfair labor practices of the respondent.

On the basis of 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 and upon the entire record in the proceeding, the Board makes the following conclusions of law:

1. Local Union No. 367, International Brotherhood of Teamsters, Chauffeurs, Stablemen, and Helpers of America, is a labor organization, within the meaning of Section 2, subdivision (5) of the Act.

2. L. S. Brooks was an employee of the respondent at the time of his discharge, within the meaning of Section 2, subdivision (3) of the Act.

3. The respondent, by discriminating in regard to the hire and tenure of employment of L. S. Brooks and thereby discouraging membership in a labor organization, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (3) of the Act.

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

5. 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

Upon the basis of the above 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, Houston Cartage Company, Inc., and its officers, agents, successors, and assigns, shall:

1. Cease and desist from

(a) In any manner interfering with, restraining, or coercing their 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 purposes of collective bargaining and other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act;

(b) In any manner discouraging membership in any labor organization by discriminating in regard to hire and tenure of employment or any term or condition of employment.

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

(a) Offer to L. S. Brooks immediate and full reinstatement to his former position, without prejudice to rights and privileges previously enjoyed;

(b) Make whole L. S. Brooks for any loss he may have suffered because of his discharge, by payment to him of a sum of money equivalent to what he would have earned as wages during the period from October 23, 1936, to the date of the offer of reinstatement less whatever he may have earned elsewhere during the same period;

(c) Post notices in conspicuous places where they will be observed by respondent's employees stating (1) that the respondent will cease and desist as aforesaid; (2) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting;

(d) Notify the Regional Director for the Sixteenth Region in writing within ten (10) days from the date of this order what steps respondent has taken to comply herewith.