

In the Matter of HARRY G. BECK, TRADING AS ROCKS EXPRESS COMPANY, and INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN, AND HELPERS OF AMERICA, LOCAL UNION No. 355

Case No. C-161.—Decided, July 24, 1937

Motor Truck Transportation Industry—Interference, Restraint or Coercion: expressed opposition to labor organization; discrediting union and union leaders—*Discrimination:* discharge—*Reinstatement Ordered—Back Pay:* awarded.

Mr. Jacob Blum for the Board.

Mr. Harry L. Katz and *Mr. Abraham Levin*, of Baltimore, Md., for the respondent.

Mary Lemon Schleifer, of counsel to the Board.

DECISION

STATEMENT OF CASE

On November 23, 1936, International Brotherhood of Teamsters, Chauffeurs, Stablemen, and Helpers of America, Local Union No. 355, herein called Local 355, filed a charge with the Regional Director for the Fifth Region (Baltimore, Maryland), alleging that Harry G. Beck, Baltimore, Maryland, herein called the respondent, trading as Rocks Express Company, had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On December 10, 1936, the Regional Director duly issued and served upon the parties a complaint and notice of hearing. The complaint alleged that the respondent 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 by discharging and refusing to reinstate John G. Hasenei, George T. Swayne, Frank Hogarty, Clarence Bibbins, and Herbert Robinson for the reason that they joined and assisted Local 355.

Prior to the hearing, the respondent filed an answer in which he denied several of the allegations of the complaint concerning the character of his business, and also denied that the named employees were discharged for union activities but alleged they had been discharged for incompetency and for conduct detrimental to the business interests of the respondent.

Pursuant to the notice, a hearing was held in Baltimore, Maryland, on December 21, 1936, before Robert M. Gates, the Trial Examiner duly designated by the National Labor Relations Board, herein called 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 beginning of the hearing counsel for the respondent moved that the complaint be dismissed on the ground that the Act is unconstitutional. During the course of the hearing, and again at the close of the hearing, counsel for the respondent moved for dismissal for the same reason and for the additional reason that the evidence adduced failed to sustain the allegations of the complaint. The Trial Examiner denied all of these motions. During the course of the hearing counsel for the respondent requested the Trial Examiner to issue a subpoena *duces tecum* for the production of certain books, records, and correspondence of Local 355. The Trial Examiner refused to issue the subpoena. The Trial Examiner granted the motion of counsel for the Board to dismiss the complaint as to Herbert Robinson. Many objections to the introduction of evidence were made by counsel for the respondent and counsel for the Board. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On March 4, 1937, the Trial Examiner duly issued his Intermediate Report which was served upon the parties. In the Intermediate Report, the Trial Examiner found that the respondent had committed the unfair labor practices as alleged in the complaint and recommended that the men discharged be reinstated with back pay. No exceptions have been filed to the Intermediate Report nor has the respondent complied with the recommendations of the Trial Examiner.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent's business consists of the transportation of commodities by motor trucks, generally as a contract carrier. The respondent has, however, applied to the Interstate Commerce Commission for a certificate of public convenience as a common carrier.

Between five and ten per cent of the respondent's business involves the transportation of commodities between Baltimore, Maryland, and points in other States, including Wilmington, Delaware; Richmond,

Virginia; Philadelphia, York, and Harrisburg, Pennsylvania; New York, New York; the District of Columbia; and intermediate points. The remainder of the respondent's business, with a few exceptions, consists of the transportation of commodities between points wholly within the city of Baltimore, Maryland. About fifty per cent of the commodities so carried either originate outside the State of Maryland and are picked up by the respondent upon their arrival at rail, boat, or truck terminals in Baltimore, for delivery to other terminals or to warehouses in that city, or originate in Baltimore and are carried by the respondent to such terminals for further transportation to points outside the State of Maryland.

Ninety per cent of the commodities transported by the respondent are carried pursuant to a written contract with the Victor Lynn Transportation Company, Baltimore, Maryland, the respondent being but one of many trucking companies and individuals having contracts for transportation with that concern. The bulk of the commodities carried by the respondent for the Victor Lynn Transportation Company are carried to or from the Baltimore terminal of that concern, at Pier No. 4, Pratt Street. The respondent also transports commodities for Stevens Brothers, Robinson & Jackson Company, and L. Hollaway & Brothers, all of Baltimore, Maryland, pursuant to agreements with these companies. In 1936 the respondent operated approximately 12 trucks or trailers and employed approximately 12 drivers and 6 or 7 helpers.

We find that the respondent in the operations above described is engaged in traffic, transportation, and commerce among the several States, and that the drivers and helpers employed by the respondent are directly engaged in such traffic, transportation, and commerce.

II. THE UNION

Local 355 is a local union of the International Brotherhood of Teamsters, Chauffeurs, Stablemen, and Helpers of America, affiliated with the American Federation of Labor. Local 355 is a labor organization whose membership includes other employees in the State of Maryland in addition to some of the employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

John G. Hasenei had been constantly employed as a driver by the respondent for two and a half years, except for a period of three months in the summer of 1935. In addition to making deliveries in Baltimore, Maryland, he frequently drove a truck to Wilmington, Delaware; Philadelphia, Pennsylvania; New York, New York; and Richmond, Virginia. At the time of his discharge he was earning \$18 a week for daytime work and receiving additional compensation

when he made trips at night. He joined Local 355 on November 4, 1936. He was discharged on November 21, 1936.

George T. Swayne began working for the respondent as a driver in 1932 and had been regularly employed from June 1936 to the time of his discharge. His route was between Baltimore, Maryland, and Wilmington, Delaware, and return. At the time of his discharge Swayne was earning \$20 a week. He joined Local 355 on November 7, 1936, and was discharged on November 21, 1936.

Frank Hogarty at the time of his discharge had been employed by the respondent for about six weeks. He drove a truck used for city delivery. In addition, he helped load the truck for Wilmington, Delaware every night. He was earning \$18 a week at the time of his discharge. He joined Local 355 on November 4, 1935, and was discharged on November 19, 1936.

Clarence Bibbins had worked more or less regularly for the respondent as a helper for approximately six years. His duties consisted of loading trucks and accompanying drivers on their trips. He frequently made trips to the States of Delaware, Pennsylvania, and New York, and to the District of Columbia. He was paid daily, receiving \$2.00 or \$2.25 for each day he worked. He joined Local 355 on November 6, 1936, and was refused employment on November 21, 1936.

Ten or eleven of the drivers and some of the helpers employed by the respondent had joined Local 355 about November 4, 1936. Apparently there had been no organization of the respondent's employees before that time. The record shows that Beck was aware of the union activities of his employees. Because of ill health, Beck is unable to be present at his place of business at all times. When he is absent his father-in-law, Rock Spine, and his brother-in-law, Stephen Spine, supervise the business. When not acting in a supervisory capacity, Stephen Spine acts as a truck driver, and as a driver is eligible for membership in Local 355, Beck admits that Stephen Spine knew which of the employees had joined Local 355. On November 18, 1936, an employee working for another transfer company in Baltimore told Stephen Spine that unless he hurried up and joined the union, "we are going to take you off the truck". Stephen reported this to Beck who became very angry, called in the drivers and helpers who were in the office, and told them that he would protect them against any "strong-arm methods." There is testimony in the record that, in addition, Beck stated he approved of unions but that he did not approve of Local 355 on account of its leaders, one of whom he said had previously absconded with union funds; asked whether his men wanted to join this union; and stated that he would start a union of his own and make the absconding official pay him.

Beck denies that he discharged Hasenei, Swayne, Hogarty, or Bibbins because of union activities and enumerates various infractions of company rules and acts of negligence which he assigns as the reasons for their discharge. Beck testified that Hasenei failed to follow a rule of the company which required all drivers delayed more than 15 minutes to call and report the delay, and that because Hasenei failed to call and report delays, a carton of cigarettes worth \$54 had been lost on one occasion, and on another occasion Beck had been deprived of the use of a truck for half a day. Beck also claimed that Hasenei had damaged a truck by careless driving; that he was constantly late reporting for work; and that Hasenei could not get along with his brother-in-law and father-in-law, who had threatened to leave unless Beck discharged Hasenei.

As to Swayne, Beck testified he had received numerous complaints from the representative of the Victor Lynn Transportation Company in Wilmington, Delaware, that Swayne was refusing to carry merchandise that he should have carried; that Swayne was a careless driver, and had damaged the transmission on a truck and had several accidents resulting in property damage; that on one occasion several hams were missing from his truck; and that because he had failed to have his driver's license renewed, Beck had to hire an extra driver for one trip.

Beck testified that Hogarty was not a skillful truck driver, and that he was often late reporting for work. As to Bibbins, Beck testified that since he was paid off every night he was not a regular employee but an extra; that in failing to use Bibbins during the period in which Bibbins claimed he was refused work, he did not discharge him; and that Bibbins was constantly late reporting for work in the mornings.

The evidence on the alleged acts of commission and omission of the discharged employees is flatly contradictory. It is impossible for us on the testimony in the record to resolve all of these contradictions and to determine whether or not these employees were at fault in all instances. As to the respondent's complaints against Hasenei, Hasenei testified that on the day when the carton of cigarettes was lost, Beck had told Hasenei's helper to call but the helper had neither called in nor told Hasenei that Beck had requested him to call; that on the day when Beck claims he was deprived of the use of his truck because Hasenei had gotten in too late the night before for the truck to be unloaded, he had not taken any longer to secure the load than was necessary or customary, that he arrived at the consignee's place of business 20 minutes before the time it closed but that the consignee's employees refused to unload the truck. Hasenei also pointed out that if a driver had to call in every time

there was a delay of 15 minutes, he would be delayed 30 minutes. Beck himself admitted that a delay of an hour was "nothing."

Swayne testified that the only trouble he ever had with the Victor Lynn representative at Wilmington, Delaware was that the representative constantly requested him to take packages to Rising Sun, Maryland, a point 12 miles off Swayne's route and on the route of another driver, and that Beck had instructed him not to go to Rising Sun. Beck denied that the complaints pertained to deliveries for Rising Sun, but stated that they concerned deliveries which Swayne had failed to make at Chesapeake City, Maryland, on his route. Beck admits that he told the Victor Lynn representative that the packages had been returned marked "No one to receive", "No money", "Refused", "Did not order", or similar markings. Beck also admits he did not investigate to determine whether these markings were correct statements of the facts or whether the packages had been returned while a relief driver was driving the route. The evidence shows that the truck on which the transmission was damaged was a second-hand truck, that Swayne reported the transmission was in bad condition the day before the damage, but that Beck allowed Swayne to drive it the next day without having it inspected. Swayne testified that Beck never blamed him for the damage, but that Beck's brother-in-law "said a whole lot." Apparently, Swayne is charged with two accidents involving property damage. Beck admits that he did not learn of one of the accidents until after Swayne's dismissal. Swayne denies that he was involved in this accident but admits that at another time he backed into a door and knocked "a little bark off of it".

Beck's charges against Hogarty are too intangible to refute. Hogarty testified he was never reprimanded, had had no accidents, and had never been arrested for any traffic violations. It is significant that on discharging Hogarty, Beck in effect told him that the reason for the discharge was that he was going to take the truck out of operation because business was slack. The evidence shows another driver was put on the truck the next working day.

Bibbins testified that for about half a week prior to November 21, 1936, he appeared every morning for work, that Beck's father-in-law would not let him work, but that Beck kept telling him to come back the next day. He also testified that on the night of November 20, he came back to talk to Beck, pursuant to Beck's request, and that Beck stated he understood Bibbins had been complaining about his wages, which fact Bibbins denied, that Beck's brother-in-law came in and Beck discontinued the conversation but that when he reported for work the following morning, November 21, he was told by Beck's father-in-law that he had been discharged. At the hearing

Beck relied on the defense that Bibbins could not be counted on since he was always late. But Beck admits that Bibbins had been late ever since he had worked for him, that when he was present he put him to work even when he was late and that he even sent a truck for him occasionally when he failed to show up for work.

It is undoubtedly true that these discharged employees were guilty of some of the offenses charged against them. However, as was said in *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*,¹

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, 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.

This is particularly pertinent in the instant case. It is significant to note that the division of authority, exercised entirely by Beck when present but delegated to his brother-in-law and father-in-law when he is not present, has created uncertainty and dissatisfaction among the respondent's employees. This appears clearly from the testimony of practically every witness, including Beck himself. It is also significant that, in the main, Beck's accusations against the discharged employees are not supported by competent proof that the acts complained of were attributable to faults of the persons accused. In addition, most of the acts which Beck established were done by the discharged employees, had occurred some time prior to the discharge, or were, as the matter of lateness or damage to property, constantly recurring faults of the employees discharged as well as of all other employees, to all of which the respondent was apparently resigned.² Such circumstances cast grave doubt on the respondent's sincerity in assigning these numerous infractions of company rules

¹ Case No. C-153, decision issued June 12, 1937, 2 N. L. R. B. 1000

² Beck testified: "Nobody ever worked for me was what I call satisfactory . . ."

as the causes for the discharges, particularly when he discharged four employees within three days after the threat against Stephen Spine for failure to join the union. We are convinced under all the circumstances that Beck discharged these employees in an effort to stem the tide of organizational activities among his employees.

We find that the respondent by discharging John G. Hasenei, George T. Swayne, Frank Hogarty, and Clarence Bibbins has discriminated in regard to hire and tenure of employment to discourage membership in a labor organization.

The respondent by the discharges of John G. Hasenei, George T. Swayne, Frank Hogarty, and Clarence Bibbins has interfered with, restrained, and coerced his employees in the exercise of the rights of 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 and protection.

We find that John G. Hasenei, George T. Swayne, Frank Hogarty, and Clarence Bibbins were employees of the respondent at the time of their discharge and ceased work because of the unfair labor practices of the respondent.

We find that the respondent's conduct burdens and obstructs commerce and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

IV. THE REMEDY

We will order the respondent to reinstate the discharged employees with back pay. Hasenei testified that he received extra compensation for night driving but the record does not show the rate of compensation nor the frequency of night trips. Bibbins had no fixed rate of payment and the record indicates he may not have worked every working day. We will, therefore, order that the sums to be paid Hasenei and Bibbins will be based on their average weekly compensation for the eight weeks period prior to their discharge. The period of eight weeks is chosen because the record indicates that Bibbins had been receiving a higher rate in the two months prior to his discharge than he had previously received.

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. International Brotherhood of Teamsters, Chauffeurs, Stablemen, and Helpers of America, Local Union No. 355, is a labor organization, within the meaning of Section 2, subdivision (5) of the Act.

2. John G. Hasenei, George T. Swayne, Frank Hogarty, and Clarence Bibbins were employees of the respondent at the time of their discharges, 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 John G. Hasenei, George T. Swayne, Frank Hogarty, and Clarence Bibbins 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 Harry G. Beck, trading as Rocks Express Company, and his officers, agents, successors, and assigns, shall:

1. Cease and desist from:

a. In any manner interfering with, restraining, or coercing his 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 Local 355 or in any other labor organization of his employees, by discriminating in regard to hire or 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 John G. Hasenei, George T. Swayne, Frank Hogarty, and Clarence Bibbins, and each of them, immediate and full reinstatement to their former position, without prejudice to their seniority and other rights and privileges;

b. Make whole George T. Swayne and Frank Hogarty for any loss they may have suffered because of their discharge, by payment to each of them of a sum of money equivalent to the amount each

would normally have earned as wages during the period from the date of discharge to the date of the offer of reinstatement, less whatever each may have earned elsewhere during the same period;

c. Make whole John G. Hasenei and Clarence Bibbins for any loss they may have suffered because of their discharge, by payment to each of them of a sum of money equivalent to the amount each would have earned during the period from the date of discharge to the date of offer of reinstatement, based on the average weekly compensation each received in the eight-weeks-period prior to his discharge, less whatever each may have earned elsewhere during the same period;

d. Post notices in conspicuous places where they will be observed by the 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;

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