

Luther E. Martin and Minnie Martin d/b/a Martin's Leasing Company and Lawrence R. Dodd.
Case 7-CA-21749

8 August 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER

On 15 February 1984 Administrative Law Judge Richard H. Beddow Jr. issued the attached decision. The General Counsel filed exceptions and a supporting brief.

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

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,¹ and conclusions² and to adopt the recommended Order.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

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

² In concluding that the Respondent's discharge of employee Dodd was not unlawful, Member Hunter disavows the judge's implication that the discussions by the Respondent's officials with employees about unions and the statement by one of its coowners to them that the Company had to grow before it could afford to pay Teamsters wages and benefits constituted animus. Member Hunter further finds that the only remaining evidence here of improper motivation is the timing of the Respondent's conduct and that such evidence, standing alone, is insufficient to establish a prima facie showing that Dodd's discharge violated the Act. Accordingly, Member Hunter joins in the dismissal of the complaint.

DECISION

STATEMENT OF THE CASE

RICHARD H. BEDDOW, JR., Administrative Law Judge. This matter was heard in Flint, Michigan, on July 13 and 14, 1983. Subsequently, briefs were filed by all parties. The proceeding is based on a charge filed February 14, 1983, by Lawrence R. Dodd, an individual. The Regional Director's complaint, issued March 14, 1983, as amended at the hearing, alleges that Respondent, Martin Leasing Company of Flint, Michigan, violated Section 8(a)(1) and (3) of the National Labor Relations Act by discharging Dodd because of his activities on behalf of union affiliation.

On a review of the entire record in this case and from my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent is a certificated interstate motor common carrier coowned by Minnie and Luther R. Martin. It admits that during 1982 its revenues derived from interstate transportation exceeded \$50,000 and that it is, and has been, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. It also is admitted that Local 332, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICE

Respondent is a small, minority-owned trucking company operated principally by Minnie Martin. It has been in business since 1979, and obtained its permanent authority from the Interstate Commerce Commission in June 1983. Since June 1982, it has employed five or six truckdrivers.

Dodd, the Charging Party, who joined the Company, at that time, was the only white employee until driver Ed Soules was hired in January 1983. In addition to her ownership role, Martin also served as terminal manager, dispatcher, and sole supervisor until early December 1982, when senior driver Altimore Harrison was made terminal manager.

During the first 6 months of his employment Dodd was regarded as a good employee. The Company was operating in a relaxed and informal manner and Dodd frequently volunteered his assistance with various aspects of the business. Martin, who testified she is a very congenial person, frequently engaged in conversations with Dodd as well as with Harrison and a friend, Al Brown, who sometimes advised her on business matters. During the fall of 1982, Dodd and Martin spoke several times about the possibility of having a terminal in Detroit. Dodd, who testified that Martin had asked him how he felt about unions when he was first hired, then suggested that he would have no union problems there, as the union had blackballed him. Martin responded that Dodd could be a good manager or dispatcher if a Detroit terminal was opened. Although Dodd had at one time been a member of a union when he was employed at an automotive plant, he never had been a member of the Teamsters and he admitted that his statement about being blackballed was a fabrication. Martin testified that Dodd sometimes brought up the subject of unions and that she expressed her belief that she did not oppose unions or negotiate with them.

Driver Don Wingard and Willie Bramlett confirmed that Martin (and Harrison) had indicated that the drivers had the right to have a union if they wanted. Bramlett also said that Martin had discussed her feeling that the Company had to grow before it could afford Teamsters wages and benefits.

Prior to becoming terminal manager, Harrison, who had been with the Company since 1979, was in charge of vehicle maintenance. He testified he had no dispute with Dodd prior to becoming manager, except that he had a few problems with Dodd's not checking things on his vehicle. At the same time Harrison was made terminal manager, Martin issued a list of work rules. At a drivers' meeting Dodd questioned Harrison about what would happen if the rules were not followed and Harrison replied he would deal with it when it happened. The subject of union organization also was discussed at this time and Harrison and Martin both indicated that the drivers were free to organize. Both Harrison and Martin denied that they ever told employees they did not want a union or that they told Dodd to screen employees about unions.

After Harrison became terminal manager Dodd continued his apparent habit of checking with Martin about day-to-day operations, rather than going by the rules or dealing with Martin's secretaries or Harrison. In one particular incident, one evening in early January 1983, Dodd called Harrison from Martin's office to get his schedule for the next day and testified he was told he would be "first up" for a Brick plant pickup. Harrison testified he told Dodd at 6:30 (in any event, company rules indicate 6:30). Dodd alleged he was uncertain of the rule and spoke to Martin, asking if 7 or 7:30 a.m. was Okay and Martin answered "fine."

Martin testified that she previously had spoken to Dodd about what she and Harrison had perceived as a problem in Dodd's attitude since Harrison had become terminal manager, especially as it related to Dodd's co-operation with Harrison. She testified that because Dodd generally tried to make her an intermediary, she purposely made Dodd call Harrison for the schedule and that after the call, Dodd said he was wanted in about 8 or 9 a.m. She questioned Dodd's answer and Dodd responded by asking if 7 or 7:30 a.m. was okay and she replied, "Whatever he [Harrison] told you." Dodd came in late and another driver was given the load. Since Dodd was put last on the rotation list, he went home and he did not respond to attempts to call him at home.

Prior to the latter incident, Dodd was involved with a damaged trailer and, in connection therewith, Respondent determined that Dodd was not following routine instructions and it believed that the use of an allegedly rougher road contributed to the damage. Dodd also had a conflict with a major customer in Cleveland and a shippers agent, who then refused to load shipments if Dodd were sent to them as the driver.

Both Harrison and Martin were aware of several other incidents reflecting on Dodd's attitude and work performance. Then, during the latter part of January 1983, an independent truck mechanic told Martin that it was his belief that damage to a clutch he had just repaired had been caused by improper or negligent driving. Dodd was the driver when the breakdown occurred and, after talking to Harrison, Martin concluded that Dodd was responsible for the damages.¹

¹ The General Counsel presented an expert witness who was able to demonstrate that the damage was associated with oblong holes that indi-

Dodd testified that, although "old blue," the vehicle that broke down, was not his regular tractor, he was familiar with it and that it was hard to shift. Martin testified that Dodd was supposed to drive his own tractor that day, but told her the power was frozen. She told him to try again and when he reported it still would not turn over, she told him to use "old blue." Driver Don Wingard testified that he had driven "old blue" without incident that same day, that Dodd did not try to start his regular vehicle, and that Dodd told him Martin had said to take it, because it was warm.

Martin testified that after hearing from the mechanic, she felt like a nervous wreck whenever Dodd was scheduled to work and, as a result of one thing happening after another, she decided on Tuesday or Wednesday of the week prior to his termination to fire Dodd. Harrison testified that he spoke with Martin everyday through the week of February 6 about the incidents and Dodd's overall attitude towards the Company and that, prior to February 9, the termination decision was made. When Dodd returned from a run on Friday, February 11, Harrison took him aside and told him briefly that because of the noted incidents, it had been decided to terminate him. Harrison and Martin acknowledged that they had learned by Wednesday, February 9, from other drivers that a union meeting was planned for Saturday, February 12. However, they testified that they were not aware that Dodd was organizing the event.

After Harrison's promotion, Dodd became increasingly dissatisfied with perceived changes in the operations of the Company. He resisted accepting Harrison's supervisory authority and it appears he consistently went behind Harrison's back and attempted to deal directly with Martin as he had in the past. He also began talking to other drivers about his complaints regarding such things as how loads were dispatched and the lack of extra pay for nondriving work around the yard. During January, he started suggesting that the drivers wanted to get together and start a union. Drivers Wingard and Willie Bramlett confirmed conversations with Dodd; however, they deny portions of statements he attributed to them. Dodd attempted to speak to Martin about his complaints. She referred him to Harrison, however, who told him that if he did not want to go by the rules he would be gone. Also, during the latter part of December, Dodd made a run with Ed Soules, who was then a prospective new driver. Soules testified that Dodd told him how lenient Martin was and also that because Dodd had unsuccessfully attempted to repair some gauges the Company would not let him work on anything else. Dodd also indicated some disagreements between Harrison and himself and the dislike for a tractor called "old blue." Dodd, however, testified he said he told Soules not to refuse to drive "old blue" because Martin liked it, that he had referred to the fact that some trucks had gauges that did not work, and that he had generally praised the Compa-

cated the damage had been developing through wear or slippage over a period of time rather than as a result of one particular event and that therefore damage should not be attributed only to the person operating the clutch when the final cracking occurred.

ny. He also testified that Martin had told him to check potential new employees on their union sympathies.

Soules began working in January 1983. Several weeks later, on a Thursday, February 10, Dodd called Soules about having a union meeting on February 12. Three other drivers were contacted by Dodd on Wednesday February 9 and, as noted, they then told management about the planned meeting. Dodd visited the Union's office on February 10 and got some authorization cards. He testified that that evening Bramlett told him the Company knew about the meeting and said that Martin's friend, Brown, had said Martin would close before a union was let in. Bramlett was not called to testify by the General Counsel but was called by Respondent. Among other things Bramlett acknowledged that he told Dodd that the Company knew of the meeting. Neither counsel asked Bramlett about Brown's alleged statement. Subsequently, Bramlett was the only other person to go to the meeting with Dodd on February 12.

Respondent called Dodd on Thursday evening, February 10, for a run the next day and, as noted, when he returned he was fired by Harrison.

III. DISCUSSION

In a case of this nature the General Counsel must meet an initial burden of presenting sufficient evidence to support an inference that the employee's union activities were the motivating factor in the Employer's decision to terminate the employee. Here, the record shows that Dodd, as well as other employees, engaged in some conversations with Respondent over the subject of union membership and that owner Martin had said that the Company had to grow before it could afford to pay Teamsters wages and benefits. The record also shows that Dodd was terminated 2 days after he had picked up union authorization cards and had arranged for a meeting of the employees. Respondent knew of the planned meeting before it fired Dodd, and I believe the timing of the discharge is sufficient to support an initial inference of improper motivation.

Accordingly, the testimony will be discussed and the record evaluated in keeping with the criteria set forth in *Wright Line*, 251 NLRB 1083 (1980). See *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983), to consider Respondent's defense and, in the light thereof, whether the General Counsel has carried his overall burden.

Respondent contends that Dodd was terminated because of a decision reached by Martin after she received information indicating Dodd was responsible for expensive clutch repairs due to his apparent improper driving. This justification was the final of four major problems and incidents of insubordinate behavior which included damage to a trailer after Dodd's failure to follow routing instructions, Dodd's failure to follow rules and Harrison's instruction regarding scheduled pickup time, and Dodd's conflicts with a major customer and a shippers' agent. Although the evidence presented by the General Counsel's expert witness shows that Dodd's driving probably was not the main cause of the clutch failure, Martin made an investigation of the matter and at the time she decided that he should be terminated, she had

reasonable cause to believe that Dodd was responsible and that he had lied to her about the condition of his regularly assigned vehicle at the time he took the vehicle that was subsequently damaged.

Respondent also presented evidence of other alleged incidents and contends that Dodd actually intentionally sabotaged certain truck gauges and the clutch on "old blue." I find these additional justifications to be far-fetched and unsubstantiated on the record. Although such an attempt to offer false reasons for an employee's termination can be considered to be indicative of pretextual justification, I believe in this instance that it is more in the nature of an unsophisticated and overzealous reaction to the charge, and I do not conclude that these unwarranted claims invalidate the other expressed reasons for Dodd's discharge.

In addition, Respondent has presented testimony tending to refute, in part, the testimony by Dodd which tended to indicate that Respondent held feelings of union animus. Thus, while it appears to be true that Respondent did participate in conversations with Dodd and other employees about unions, the subject sometimes was bought up by Dodd. Further, although it appears that Respondent did express a concern that it could not afford Teamsters wages and benefits while it was just starting to grow, it otherwise indicated it was not inherently opposed to having its employees organized. Accordingly, while I find that some economic motivation existed to create a reluctance for possible Teamsters organization, it does not appear that this feeling was so overriding that it would motivate Respondent to terminate Dodd only because it learned he was planning a union organization meeting.

Despite Harrison's denial, it appears that Dodd's termination really was the result of the series of incidents which accumulated over the 2-month period after Harrison was promoted to a supervisory position. It is also apparent that Dodd did not accept Harrison as his supervisor and he generally tried to bypass Harrison in order to attempt to ingratiate himself with Martin and gain his own way. Whether or not he realized it, Dodd's testimony demonstrates that he was manipulative and deceptive in order to place himself in a favorable light, as especially indicated by his admittedly used falsehood regarding being blackballed by the Teamsters. It also appears that conversations regarding mention of unions generally were initiated by Dodd, first to curry Martin's favor and, after Harrison's promotion, to seek support from other drivers for his personal complaints about alleged changes in working conditions.

In the light of Dodd's overall demeanor, I find that his testimony and recall of events tends to put words in the mouth of others and to twist the meaning of conversations beyond that which actually occurred. For example, with regard to Martin's alleged instructions to check on union affiliation of potential new drivers, I infer that Dodd probably volunteered to ask the drivers about certain subjects and whether the driver had been in the Teamsters and that Martin then replied with a general affirmative answer. I therefore do not credit Dodd's testi-

mony that he was asked by Martin to find out about the union affiliations of prospective drivers.

Although the testimony of Respondent's witnesses was at times confusing as to how and when events occurred, it appears that Respondent's operations had been conducted in an informal manner, with unsophisticated personnel, and the testimony merely reflects that fact. Driver Soules, who was more articulate than other drivers who testified, was not examined by the General Counsel and, overall, I believe that the overall description of events given by Respondent's witnesses is more credible than that given by Dodd.

I have not considered and do not credit Dodd's assertion that driver Bramlett told him Brown had said Martin would close before she let in a union, inasmuch as the statement is hearsay by a person not shown to be an agent or supervisor of Respondent and, otherwise, no attempt was made to corroborate Bramlett's alleged statement when he was on the stand.

Finally, it is noted that Dodd first denied that Respondent had indicated in company meetings that it would be receptive to organization by the drivers, but he then acknowledged that such representations had been made in the office in the presence of other drivers, subsequently testified to by such drivers. In view of these observations, I cannot find that Dodd's recollection of events is more credible than those of Respondent's witnesses and, accordingly, I am not persuaded that the General Counsel has carried his overall burden of proof.

In conclusion, I find the evidence of antiunion motivation to be unpersuasive in view of Respondent's demonstration that it had a valid reason for Dodd's discharge based on his continued and serious insubordinate behavior. I also find that the decision to terminate Dodd was

made prior to the time Respondent became aware of his specific union activities and that Dodd would have been terminated on Friday, February 11, even if he had not planned a union organization meeting. Under these circumstances, I conclude that the overall record fails to substantiate the allegation of the complaint that Respondent violated Section 8(a)(1) and (3) of the Act and, accordingly, I must recommend dismissal of the complaint.

CONCLUSIONS OF LAW

1. Respondent Luther E. Martin and Minnie Martin doing business as Martin's Leasing Company is an employer within the meaning of Section 2(6) and (7) of the Act.

2. Local 332, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent has not engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act, as alleged in the complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommendation²

ORDER

It is ordered that the complaint be dismissed in its entirety.

² 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.