

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ALFRED JUST,

Complainant,

vs.

BLACKMON TRUCKING, INC.,

Respondent.

Case I
No. 24202 Ce-1812
Decision No. 16881-A

Appearances:

Mr. Alfred Just, pro se.
Shaufler, Rothrock & Kendall, Attorneys at Law, by Mr. Cecil T. Rothrock, for Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Alfred Just, herein referred to as Complainant, having filed a complaint with the Wisconsin Employment Relations Commission, alleging that Blackmon Trucking, Inc., herein referred to as Respondent, has committed unfair labor practices within the meaning of Section 111.06(1), Stats., and the Commission having appointed Stanley H. Michelstetter II, a member of its staff, as Examiner, pursuant to Section 111.07(5), Stats., and hearing having been held before the Examiner on April 25, 1979, at Kenosha, Wisconsin; and the Examiner having considered the evidence and arguments of the parties, and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. That Complainant, Alfred Just, is an individual residing at 1428 Riverview Terrace, Racine, Wisconsin.
2. That Respondent Blackmon Trucking, Inc., is an employer engaged in over-the-road trucking and maintains its main offices in Somers, Wisconsin. That at all relevant times Howard E. Blackmon was Respondent's President and its representative.
3. That at all relevant times Respondent recognized Teamsters Local Union No. 43, herein referred to as Local 43, as the representative of certain of its drivers. That at all relevant times George T. Mueller was Local 43's Secretary-Treasurer and its representative and agent.
4. That Respondent and Local 43 were party to a collective bargaining agreement which was in effect at all relevant times and read, in relevant part, as follows:

ARTICLE XVIII. DISCHARGE OR SUSPENSION

The employer shall not discharge or suspend any employees without just cause, and shall give at least one (1) warning notice of the complaint against such employee to the employee, in writing, and a copy of the same to the union affected, except that no warning notice need be given to an employee before he is discharged if the cause of such discharge is dishonesty, drunkenness, or recklessness resulting in serious accident, while on duty, or the carrying of an unauthorized

passenger. Discharge or suspension must be by proper written notice to the employee and the union affected. Any employee may request an investigation as to his discharge or suspension. Should such investigation prove that an injustice has been done an employee, he shall be reinstated and compensated at his usual rate of pay while he has been out of work. Appeal from discharge, suspension or warning notice must be taken within ten (10) days by written notice to the employer and the union, and a decision reached within fifteen (15) days from the date of discharge or suspension or warning notice.

A. The warning notice as herein provided shall not remain in effect for a period of more than nine (9) months. A copy of all warning notices and discharge letters shall be given to the steward.

B. Any claim by a driver for additional compensation or benefits must be presented in writing within thirty (30) days from the time in which the alleged claim arose. Failure to submit a claim within said thirty (30) days shall automatically bar any such claim from being presented to or against such employer either under this agreement or otherwise provided, however, that in the case of separate agreements, express or implied between employers and employees contrary to the terms of this supplement or the agreement, the thirty (30) day limitation shall not apply.

. . .

ARTICLE XXVII. ARBITRATION

In case any dispute arises concerning the interpretation of this agreement, or any grievance arises that cannot be adjusted amicably between the employer and the Union the matter in its entirety shall be submitted to a Board of Arbitration selected as follows:

One (1) member to be selected by the employer, one (1) by the union, and these two (2) shall meet within three (3) days and select a third (3rd) party to act as chairman. Their decision shall be final and binding upon both parties. During this period of arbitration there shall be no strike or lockout.

In the event the matter goes to arbitration, the losing party shall bear the full cost of the arbitrator, but not including the wages lost by witnesses. In the event the parties are unable to determine which party lost the arbitration, the arbitrator shall have the authority to make such determination, including any proration which he may decide.

. . .

5. That at all relevant times prior to February 8, 1979, Respondent employed Complainant as a truck driver and that such position was included in the bargaining unit specified in Finding of Fact 3, above. That on February 8, 1979, Respondent discharged Complainant for having been involved in two jack-knife type accidents in a two month period, the last allegedly having occurred on February 8, 1979.

6. That on or about February 12, 1979 Complainant went to Local 43's offices and talked to Mueller about filing and pursuing a grievance concerning the aforementioned discharge. That in said

discussion, Mueller expressed doubt as to the validity of such a grievance, but agreed to file such a grievance.

7. That Local 43 thereafter, but on February 12, 1979, posted a grievance addressed to Respondent concerning said discharge which grievance was received by Respondent shortly thereafter.

8. That on February 16, 1979, Mueller and Ball met with Complainant out of the presence of Respondent's representatives. That during said discussion, Ball and Mueller said they would try to get Complainant's job back in the forthcoming grievance meeting, but that they would not promise anything. That there was no discussion at this time about processing the grievance to arbitration.

9. That thereafter, but still on February 16, 1979, Complainant, Ball and Mueller met with Blackmon concerning the instant grievance. That at the outset of the meeting Respondent took the position that Complainant had been discharged for cause within the meaning of the agreement and that all other requirements of the agreement with respect to discharge had been complied with. At that time, Mueller took the position that Respondent had not discharged Complainant for cause within the meaning of the agreement and sought to have Respondent reinstate Complainant. That thereafter discussion ensued about the discharge. That at the end of the meeting Mueller agreed with Respondent that Complainant had in fact been discharged for cause within the meaning of the agreement and that all other relevant provisions of the agreement with respect to discharge had been complied with when Respondent discharged Complainant. That immediately thereafter Ball and Mueller told Complainant they could do nothing further for him with respect to the discharge.

10. That Local 43 did not arbitrarily, discriminatorily, in bad faith or even negligently refuse to process Complainant's grievance concerning the instant discharge to arbitration.

Upon the basis of the above and foregoing Findings of Fact, the Examiner enters the following

CONCLUSION OF LAW

That since Complainant has failed to establish by a clear and satisfactory preponderance of the evidence that Local 43 violated its duty of fair representation owed to him in the processing of his grievance concerning his discharge, the Examiner refuses to assert the jurisdiction of the Wisconsin Employment Relations Commission to determine the allegations of the instant complaint.

Upon the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Examiner makes and files the following

ORDER

That the complaint filed in the instant matter be, and the same hereby is, dismissed.

Dated at Milwaukee, Wisconsin this 23rd day of May, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stanley H. Michelstetter II
Stanley H. Michelstetter II, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF
FACT, CONCLUSION OF LAW AND ORDER

On February 20, 1979, Complainant Alfred Just filed a complaint with the Wisconsin Employment Relations Commission in which he alleged Respondent Blackmon Trucking, Inc., violated its collective bargaining agreement with Teamsters Local 43 when it discharged him. I provided a copy of the notice of hearing and complaint to Local 43. Local 43 filed an answer March 28, 1979, but withdrew same when I informed it by letter dated April 4, 1979 that I did not construe the Complaint to name it as a party and I did not intend to join it as a party. A copy of my correspondence was sent to both parties.

On March 28, 1979 Respondent filed its answer in which it alleged Complainant failed to exhaust applicable arbitration provisions and "administrative remedies provided by said" collective bargaining agreement.

Hearing was conducted April 25, 1979 at which only Complainant and Respondent appeared. Complainant alleged that Respondent had discharged him in violation of the applicable collective bargaining agreement and that Local 43 had processed his grievance at the first and only step of the grievance procedure, but refused to process it to arbitration. He specifically stated that he did not believe that this refusal was arbitrary, discriminatory, in bad faith or even negligent. Respondent denied any knowledge as to whether Complainant had sought to have Local 43 process the instant grievance to arbitration and the nature of the refusal, if any. The facts are stated in the Findings of Fact.

DISCUSSION:

Before the Examiner will assert the jurisdiction of the Commission to determine the merits of Complainant's complaint for violation of the applicable collective bargaining agreement he must first establish that he was prevented from exhausting the applicable arbitration provision by Local 43's refusal to arbitrate and that such refusal resulted from its violation of its duty to fair representation.

It is undisputed that Complainant exhausted the one-step grievance procedure. At the end of the meeting Mueller agreed with Respondent that the discharge had been proper. Immediately thereafter, he privately told Complainant there was nothing further he could do for him. Because, as a practical matter, the only thing left to do was arbitrate and since the context otherwise suggests it, I conclude Mueller was effectively telling Complainant that Local 43 would not arbitrate the instant grievance. On the basis of the foregoing, I conclude Complainant was prevented from having the matter arbitrated by Local 43's anticipatory refusal to arbitrate the matter.

Although Local 43 did prevent Complainant from taking the matter to arbitration, Complainant does not allege it violated its duty of fair representation in doing so. Indeed, the record demonstrates that Mueller never believed the grievance to have merit, but, in any case, undertook to advocate Complainant's position at the first step. Only after he was unsuccessful did he agree with the employer and refuse to process it further. Complainant has failed to demonstrate by a

clear and satisfactory preponderance of the evidence that this refusal resulted from a breach of Local 43's duty of fair representation. On the basis of the above and foregoing, I have refused to assert the jurisdiction of the Wisconsin Employment Relations Commission to determine the merits of Complainant's complaint for violation of the collective bargaining agreement.

Dated at Milwaukee, Wisconsin this 23rd day of May, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stanley H. Michelstetter II
Stanley H. Michelstetter II, Examiner