

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

21 day of March, 1943
R.M. Berry
Deputy

J. D. CONLEY, STANLEY MOORE, SR.,
GEORGE L. CARTER AND B. A. WATSON,

PLAINTIFFS,

-VS-

CIVIL ACTION NO. 8443

PAT J. GIBSON, GENERAL CHAIRMAN OF
LOCALS 6051 and 28, RAYMOND DICKERSON,
DIVISION CHAIRMAN OF LOCALS 6051 and
28, BROTHERHOOD OF RAILWAY AND STEAM-
SHIP CLERKS, FREIGHT HANDLERS, EXPRESS
AND STATION EMPLOYEES, A. F. of L. AND
LOCAL 28 of the BROTHERHOOD OF RAILWAY
AND STEAMSHIP CLERKS, FREIGHT HANDLERS,
EXPRESS AND STATION EMPLOYEES,

DEFENDANTS.

COMPLAINT

I.

The jurisdiction of this court is invoked pursuant to Title 28, United States Code, Section 1331, this being a suit in equity under the Constitution and laws of the United States, viz., the Fifth Amendment of the said Constitution and - 45 United States Code, Section 151 et seq. more commonly known as the National Railway Labor Act, wherein the matters in controversy exceeds the sum or value of three thousand dollars (\$3,000.00) exclusive of interests and costs. The rights here sought to be redressed are: (1) the right to be represented by the exclusive collective bargaining representative of the class without discrimination because of race or color which is required as a duty by the National Railway Labor Act of all bargaining representatives who are the exclusive representatives of a class or craft of employees; (2) the right not to be discriminated against by the action of the Union in allowing certain jobs to be abolished, where such jobs are not in fact abolished but certain plaintiffs and those whom they represent have lost their previously accrued seniority; (3) the right to retain seniority consistent with other employees who are members of the union, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, of the Clerks Class or Craft,

who are members of the white race, whose jobs have not been abolished and who have not because of any pretended abolition of jobs lost their seniority status; (4) the right not to be discriminated against because of race or color in the exercise of seniority rights as secured by the National Railway Labor Act 45 U. S. C. A. Section 151 et seq. and the 5th Amendment to the United States Constitution; (5) the right to receive non discriminatory treatment by the Union under union security provisions of the Union Shop Agreement between the Union and the carrier, Texas and New Orleans Railroad Company, employer of plaintiffs, which last mentioned agreement became effective the 1st day of March 1953, which said agreement further requires plaintiffs to maintain membership in the Union under penalty of discharge; (6) the right to have all legitimate grievances considered by the union and the right to be treated by said union with the utmost candor, fairness, and straight forwardness.

II.

This is a complaint and a proceeding for a permanent injunction enjoining the defendants and each of them, their agents, servants, representatives, officers and members from refusing to afford to plaintiffs representation on the collective bargaining level, equal to that afforded to other employees within the class or craft who are persons of the white race; and from refusing to protect plaintiffs, and those whom they represent, from discrimination resulting from curtailment of their seniority rights; and further enjoining defendants and each of them, their agents, servants, representatives, officers and members from refusing or failing to protect plaintiffs and those whom they represent from discriminations resulting from discharge from employment by reason of any pretended abolition of jobs, when persons of the white race in the same craft have not, under identical circumstances, been discharged.

III.

This is a proceeding for a declaratory judgment pursuant to Title 28, United States Code, Section 2201, for the purpose of determining questions in actual controversy between the parties, to-wit:

- (a) Whether defendants or any of them, their agents, servants, representatives, officers or members may refuse to discharge the obli-

gation imposed upon said union by the National Railway Labor Act;

- (b) Whether defendants or any of them, their agents, servants, representatives, officers or members owe a duty to plaintiffs and those whom they represent, under the National Railway Labor Act and the 5th Amendment to the U. S. Constitution, of protection from Discriminatory discharge and curtailment of seniority standing, and from in anywise permitting any kind of job insecurity practices to be practiced toward plaintiffs and those whom they represent in this action;
- (c) Whether plaintiffs or any of them, their agents, servants, representatives, officers or members, national or local can lawfully, under the terms of the Union Shop Contract of March 1, 1952, which provides for compulsory union membership be compelled to accept membership in said union on terms different from that which is applicable to persons or employees of the white race of the same class; whether plaintiffs, under the Union Shop Agreement, aforesaid, may lawfully under the Constitution and laws of the United States be segregated into a local union of the craft in which they are cut off from and denied effective representation on a par equal to that afforded to white employees who are members of the same craft or class;
- (d) Whether defendants and each of them under the Constitution and the National Railway Labor Act can refuse to afford to plaintiffs and those whom they represent in this action representation equal to that afforded members of the white race, employees of the Texas and New Orleans Railroad Company, at its Freight House in Houston, Harris County, Texas, inasmuch as all of said employees belong to the craft or class of Steamship Clerks, Freight Handlers and Station Employees, and all employees are members of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees;
- (e) Whether the defendants and each of them may refuse because of race or color to bargain collectively on behalf of plaintiffs in an

effort to assure to them continued employment and continued accrual of seniority privileges in the face of the alleged and purported lease agreement between the T & NO Railroad Company, Southern Pacific Line in Texas, in such manner as they have done for the Clerks of the class or craft aforesaid;

- (f) Whether there is a valid and subsisting lease agreement between the Texas and New Orleans Railroad Company and the Southern Pacific Transport Company with regard to the leasing of a portion of the docks owned by the T & NO Railroad Company to the Southern Pacific Transport Company and what the terms of said agreement contain;
- (g) Whether some of the persons whom plaintiffs represent may, upon rehiring be required to place their union membership with the International Brotherhood of Teamsters, Local 968 since they are doing Freight Handler's work.

IV.

This is a class action pursuant to Rule 23 (a) of the Federal Rules of Civil Procedure brought by the individual plaintiffs on behalf of themselves and other persons similarly situated, i. e., Negro citizens of the United States and of the State of Texas, interested in this suit, members of the craft or class of Steamship Clerks, Freight Handlers, Express and Station Employees, and members of Local 6051 of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, who seek admission into Local 28 and the abolition of Local 6051 under 45 U. S. C. A. Sec. 152 (a) and who have been denied adequate representation by their collective bargaining agent. The said persons constitute a class too numerous to be brought individually before the court, but there are common questions of law and fact involved herein, common grievances arising out of common wrong, and common relief for the plaintiffs. The interests of the said class are fairly and adequately represented by the plaintiffs. This is a class action pursuant to Rules of Civil Procedure against the individual defendant Raymond Dickerson, and as representing all other persons similarly situated who are members of Local 28, of the Brotherhood of Railway Steamship Clerks, Freight Handlers, Express and Station Employees; this is a class action pursuant to Rule 23 (a) of the Federal Rules of Civil Procedure against the individual defendant Pat

J. Gibson, and as representing all other persons similarly situated who are members, officers, agents or representatives of the international organization of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, A. F. of L. The interests of the said class are fairly adequately represented by the plaintiffs.

V.

The named individual plaintiffs and all of whom they represent are employees of the Texas and New Orleans Railroad Company and/or the Southern Pacific Transport Company, both corporations doing business in Houston, Harris County, Texas, and they are members of the Negro Race and members of Local 6051 of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

VI.

The defendant Local 28 is a labor union, subordinate organization of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees and its membership is constituted and composed solely of persons of the white race. The defendant Local 28 is a component element of the exclusive bargaining agent of the employees of the Clerks, Freight Handlers Craft employed at the T & NO Freight House and is in fact the sole exclusive bargaining agent of the employees thereof. The defendant Local 28 has been designated exclusive bargaining agent pursuant to the terms of the National Railway Labor Act 45 U. S. C. A. 151 et seq. The named individual defendant, Pat J. Gibson is District Chairman of Locals 6051 and 28 of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

VII.

The T & NO Railroad Company and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees entered into a union shop Contract, which contract by its terms is made a part of these pleadings as if recited herein, which became effective on the 1st day of March, 1953, providing in Sec. 1 thereof as follows, to-wit:

".... all employees of the carrier now or hereafter subject to the rules and working conditions agreements between the parties hereto, shall, as a condition of their continued employment become members of the organization party to this agreement representing their craft or class..."

The said Brotherhood for various purposes of collective bargaining maintains two separate locals composed of employees who work at the Houston Freight House of the Texas and New Orleans Railroad Company. The afforesaid Local 6051 is constituted and composed solely of members of the Negro race and the afforesaid Local 28 is constituted and composed solely of members of the White race. That plaintiffs and those whom they represent have been compelled to join Local 6051 solely because they are members of the Negro race and solely for the purpose of affording to plaintiffs a representation inferior and different to that offered to members of the white race of the craft who are admitted to membership in Local 28. The Union Shop Agreement afforesaid further provides in Section 4 as follows, to-wit:

"Nothing in this agreement shall require an employee to become or to remain a member of the organization if such membership is not available to such employee upon the same terms and conditions as are generally applicable to any other member ..."

It is also provided in the National Railway Labor Act, 45 U. S. C. A. Section 152 (a), as follows, to-wit:

the union and the carrier shall be permitted "(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective dates of such agreements, which ever is the later, all employees shall become members of the labor organization representing their craft or class. Provided, that no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other members ..."

Notwithstanding the above contract and statutory provision plaintiffs and all of those whom they represent, exclusive of those who have been compelled to join the International Brotherhood of Teamsters, Local 968, have been compelled to accept membership in Local 6051 which is a condition of membership not generally applicable to other members, and have been segregated into Local 6051, an inferior unit, solely on the basis of race alone, which act of segregation constitutes a discriminatory denial to said plaintiffs of due process of law guaranteed by the 5th Amendment to the constitution of the United States of America.

VIII.

Prior to on or about the 1st day of May 1954, plaintiffs and all persons whom they represent by this action were employed by the Texas and New Orleans

Railroad Co. as freight handlers (Stevedors) at the Houston Freight House of the said T & NO Railroad Company. Prior to said aforementioned date the exclusive bargaining agent representing plaintiffs, and others interested in this action as plaintiffs was the defendant Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees. As such bargaining agent the Brotherhood had entered into a collective bargaining agreement with the T & NO Railroad Co. effective November 1st, 1939 under which agreement plaintiffs have worked since such effective date, and which agreement is made a part of these pleadings as if recited therein. On or about the 1st day of May 1954 there was pasted on the bulletin board at the Houston Freight House of the T & NO Railroad Company, in a conspicuous place, a notice stating that a certain number of jobs were being abolished, approximately forty-five, of which abolition of jobs plaintiffs and those whom they represent had no notice as required under collective bargaining agreement between the T & NO Railroad Company and the Brotherhood aforesaid. That said union defendants, nor any of them, did not attempt to notify plaintiffs or appraise them of the conditions under which these discharges had occurred, but suffered them to transpire without in any manner coming to the aid of plaintiffs and those whom they represent; and did decline to hear plaintiffs on this question of discharging repeatedly and without reason. Defendants did state on some occasion that the said abolition of jobs and discharging was due to the leasing of certain portions of the docks at the Houston Freight House by the T & NO Railroad Company to the Southern Pacific Transport Company and that there was nothing that could be done. Plaintiffs state on information and belief that no other jobs were abolished except those held by Negroes.

IX.

Plaintiffs further allege, on information and belief that the said Southern Pacific Transport Company is but an extension of the T & NO Railroad Company, a subsidiary of said T & NO, owned, controlled by it to carry on the business of T & NO as the agent of said T & NO and that the two are in truth but one corporation.

X.

Plaintiffs further allege that in fact the aforementioned jobs, which were all freight handlers jobs, were not abolished, for persons were immediate-

ly hired to perform said jobs, doing the same type and class of work that plaintiffs and those whom they represent had done prior to their discharge. That many persons of the white race were hired on these jobs and subsequently some of those who had been previously fired, who are Negroes and who are interested as plaintiffs in this action were rehired, with no seniority, and junior to all the white persons who had been previously hired but who had never before performed this work. That some of the other plaintiffs and those whom they represent have been displaced from their permanent jobs and placed in Break Out, none of the white employees represented by the Brotherhood have been so discharged or displaced from permanent jobs. Plaintiffs further allege on information and belief that none of the employees, members of the white race, classified as clerks have been displaced from their permanent jobs, had their jobs abolished nor compelled to join the International Brotherhood of Teamsters Local 968, though a portion of the Freight House where such clerks perform their duties was the subject matter of the purported lease between the T & NO Railroad Company and the Southern Pacific Transport Company.

XI.

Plaintiffs and those whom they represent further allege that said acts constitute a planned course of conduct designed to discriminate against them because of their race or color. That by reason of the said acts their threatened continuation and the refusal of defendant or any of them to give to plaintiffs protection or any protection from said discrimination equal to that afforded to members of the white race of the craft represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, defendants and each of them have breached the statutory duty imposed by 45 U. S. C. A. 151 (a) Fourth which duty is to protect plaintiffs from any discriminations on the basis of race or color. Plaintiffs have further been deprived of their rights and property without due process of law as condemned by the Fifth Amendment of the United States Constitution. In consequence of said breach of duty on the part of defendants and lack of them, the denial of plaintiffs constitutional rights, in refusing to protect plaintiffs and those whom they represent against the aforementioned course of discrimination on account of race and color, plaintiffs have been damaged in the amount of Seventy Five

Thousand Dollars (\$75,000.00).

XII.

Each of the defendant's is under a duty to discharge his duties in conformity with the Constitution, laws and public policy of the United States.

XIII.

The plaintiffs and each of them are suffering irreparable injury for which there is no adequate remedy at law by the acts of defendants here complained of and will continue to suffer such injury unless a permanent injunction is granted by this court.

WHEREFORE, Plaintiffs respectfully pray this court that upon the filing of this complaint, as may appear proper and convenient to the court, the court advance this cause on the docket and order a speedy hearing of this action according to law and that this court upon said hearing:

1. Adjudge, decree and declare the rights and other legal relations of the parties to the subject matter here in controversy in order that the said declaration shall have the force and effect of a final judgment.
2. That this court discover the manner in which any purported lease between the T & NO Railroad Company and the Southern Pacific Transport Company affects the rights of plaintiffs herein and those whom they represent; a discovery of the manner in which the Collective Bargaining Agreement of November 1, 1939 between the T & NO Railroad Company and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees has been applied.
3. Enter a final judgment and decree (a) declaring that the segregation of Negro employees of the craft represented by the Brotherhood into a separate local is illegal under the National Labor Relations Act, and is contrary to the Union Shop Agreement of March 1, 1953, and permanently and perpetually enjoin the Brotherhood, its agents, officers, representatives or any of them from requiring plaintiffs to maintain membership in the Union by joining Local 6051 the segregated local (b) that the defendants, and each of them, their servants, agents, members and officers are permanently and perpetually restrained and enjoined from refusing to bargain for plaintiffs and those whom they repre-

sent on a basis equal to that afforded to white employees, clerks, who are also represented by the Brotherhood of Railway and Steamship Clerks (c) that the defendants, and each of them, their servants, agents, members and officers are permanently and perpetually restrained from refusing to protect plaintiffs and those whom they represent from discriminatory action because of race or color from whatever quarter emanating.

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4. That this Court issue a permanent injunction forever restraining the defendants, and each of them, their agents, servants, officers and members from permitting, or engaging in any discrimination toward plaintiffs and those whom they represent, from allowing plaintiffs jobs to be abolished summarily, and from allowing the discharge of plaintiffs and those whom they represent, the termination of their seniority on account of race or color when employees of the white race, clerks, are not so affected; and that the defendants be restrained from being or purporting to act as exclusive collective bargaining agent with the T & NO Railroad Company concerning grievances, labor disputes, wages, rates of pay, and hours of employment so long as any acts of discrimination continue, and unless and until the defendant Labor Union, its agents, servants, officers and members, give these plaintiffs and all of the other Negro employees whom they represent, equality of representation on any phase of labor negotiations.

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5. Plaintiffs further pray that this Court award them judgment for damages in the amount of Seventy Five Thousand Dollars (\$75,000.00).

6. Plaintiffs further pray that this Court allow them their costs herein and grant such other, further or additional relief as may appear to the Court to be equitable and just.

J. D. Conley
Stanley Moore Sr.
George L. Carter
B. A. Watson
Plaintiffs

DENT, FORD, KING & WICKLIFF

BY Roberson L. King
Roberson L. King
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618 Prairie
Houston 2, Texas

THE STATE OF TEXAS,)
)
COUNTY OF HARRIS.)

We, J. D. CONLEY, STANLEY MOORE, SR., GEORGE L. CARTER and B. A. WATSON, each being duly sworn according to law, on oath, depose and say that we have each read the foregoing complaint by us subscribed; that we know the matters and things therein contained, that the matters and things stated by us as true are true, and those stated upon belief and information we verily believe to be true.

J. D. Conley
J. D. CONLEY

Stanley Moore Sr.
STANLEY MOORE, SR.

George L. Carter
GEORGE L. CARTER

B. A. Watson
B. A. WATSON

Subscribed and sworn to before me this
21st day of August, 1954.

Pharnice Marie Harris
Pharnice Marie Harris
Notary Public in and for Harris County,
Texas.
My Commission expires June 1, 1955.