

1970 WL 122

United States District Court, N.D. Ohio, Eastern
Division.

United States of America, Plaintiff

v.

Roadway Express, Inc., Defendant.

Civil No. C-68-321

|
September 1, 1970

Opinion

LAMBROS, D. J.

*1 Whereas, this matter was instituted by the United States of America against Roadway Express, Inc., (hereinafter called "Roadway") under Title VII of the Civil Rights Act of 1964, wherein the plaintiff alleged that Roadway has been engaged in a pattern and practice of resistance to the full enjoyment of employment rights and opportunities of Negroes as further described in the pleading; and

Whereas, Roadway has denied the allegations of the Complaint and neither the fact of its consent to the stipulation hereinafter contained nor any of the terms set forth herein shall be construed as an admission of violation of any laws or any findings of such violation; and

Whereas, the Court has jurisdiction of the subject matter of this litigation and the parties thereto; and

Whereas, the parties desire to avoid the further expense and delay which would be occasioned by continuance of the litigation and desire to formulate a plan to be embodied in a decree which will tend to enhance the opportunities of Negroes for the full enjoyment of employment rights and opportunities at Roadway and have stipulated and agreed to the entry of this Decree; and

Whereas, the plaintiff has introduced the testimony of thirty-seven witnesses by live testimony, sixty-five witnesses by deposition testimony, and fifty-nine documentary exhibits in support of its contentions, and

Roadway has not yet presented its evidence; and

Whereas, the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America has appeared by its duly authorized representatives in this case solely for the purpose of advising the Court as to matters going to relief which might be granted under any decree affecting the employment rights of present and future employees under collective bargaining agreements with affiliates of the International Brotherhood of Teamsters and has stated that the provisions of the Decree do not violate the terms of any applicable collective bargaining agreement entered into between Roadway and affiliates of the International Brotherhood of Teamsters; provided, however, that all parties understand and agree that nothing contained in such decree shall be construed to relieve Roadway of its obligations under lawful hiring hall or applicant referral provisions of collective bargaining agreements with affiliates of the International Brotherhood of Teamsters, unless compliance with those provisions does not result in effectuating the purposes of this Decree, in which event the Justice Department will notify Roadway and the Teamsters of the inadequacy, the Roadway will within fifteen (15) days cease the use of the hiring hall as an exclusive referral source as would otherwise be required by contract and will thereafter use the sources in Exhibit A [not reproduced] and the procedures set forth in the Decree as a primary source and the hiring hall as an alternative source unless within that time any person moves this Court for an order that the change should not be made.

*2 Whereas, the Court has consulted with the parties and the duly authorized representatives of the Teamsters Union and has reviewed the complaint, statements of counsel, representations made, and the record, and further, is willing to enter an order based on the stipulation made herein and upon the entire record in order to promote and effectuate the purpose and provisions of Title VII of the Civil Rights Act of 1964; Now therefore it is hereby ordered:

[Terms of Injunction]

I. The defendant Roadway Express, Inc., its agents, officers, employees and successors in interest, are hereby enjoined from:

(a) engaging in any act or practice whereby Negroes are

denied equal employment opportunities because of race or color including the right to be hired, promoted, upgraded or assigned, and continued in employment;

(b) failing or refusing to hire, promote, upgrade or reassign any individual, terminating any individual's status as an employee or applicant for employment because of his race or color.

(c) engaging in any act or practice which has the purpose or effect of discriminating against any individual because of his race or color.

Roadway is further ordered to instruct and notify all of its agents, officers, and employees exercising responsibility on behalf of the company to hire, promote, upgrade, assign and continue or terminate employment of persons for Roadway to do so without regard to race or color, and its officers are hereby enjoined individually in the exercise of their duties to diligently implement the terms of this order and, in the cases of infractions thereof, to appropriately discipline offending employees subordinate to their authority in order not to condone, adopt or affirm any acts of racial discrimination, or to appear to condone, adopt, or affirm such acts.

[Employment and Recruitment Practices]

II. In order to obtain a greater assurance that no pattern or practice of racial discrimination will occur, and that no Roadway employee or applicant for employment will be denied employment opportunity because of his race, the following specific employment and recruitment practices shall be adopted and implemented by Roadway through its officers and agents.

A. Employee Recruitment.—Roadway shall undertake to recruit applicants for employment and to give notice of job vacancies in such a manner that no individuals are effectively denied employment opportunities because of their race or color, as follows:

Within twenty days of the date of this decree, Roadway will require those exercising hiring responsibility for it at its various locations in the field to contact those agencies listed on Exhibit A [not reproduced] with instructions to establish active and regular communication with them for the purpose of procuring a source of qualified Negro

applicants for employment. Roadway may also choose, in consultation with appropriate officials of the Post Office Department to establish such arrangements with other minority group sources in addition to or in lieu of the sources listed in Exhibit A [not reproduced]. If such communication fails to develop a reasonable number of qualified applicants for each major classification of jobs available at such locations where normally such jobs are filled by local applicants, within reasonable times after the first contact, or if a reasonable number of such applicants are not continuously supplied through such communications for job opportunities as they develop from time to time, Roadway may elect to discontinue communication with particular agencies and to substitute other agencies, and/or to engage at that particular location in a regular program of advertising in a newspaper directed to and having general circulation in the Negro community in the immediate geographical area. The Akron General Office shall require reports of communications made in the field with agencies and in the event that it determines that qualified Negro applicants are not forthcoming, it shall require the particular company facility to take such steps as appear likely to improve the supply of qualified Negro applicants, including if it so elects to commence a program of newspaper advertising.

***3** Both as to communication required with agencies and newspaper advertising such communication shall be designed to inform members of the Negro community residing near Roadway business locations and to notify potential Negro applicants in timely fashion and to the extent feasible that job opportunities are or shortly will become available at the particular location so that they can make application for such openings.

It is the purpose of this provision to permit flexibility in the efforts by Roadway to notify the Negro community of job opportunities at its different locations without requiring contact with any particular agency if such contact is not productive or by newspaper advertising where such is necessary to accomplish the object of giving broad notice to the Negro community of job opportunities. However, the Akron General Office shall be under an affirmative obligation to assure that there is full and continuous contact in the field with the agencies listed on Exhibit A unless it determines that it can better accomplish the object of providing notice of job opportunity by the placement of newspaper advertisements.

In recruiting for its management training program,

Roadway shall afford equal employment opportunity to all regardless of race, including giving full and fair notice of opportunities to qualified Negro potential applicants for such program. When engaged in college recruiting, Roadway will inform or request that each college visited inform Negro college students within the geographic area of the recruitment of job opportunities including, to the extent feasible, the visiting of predominantly black colleges when college visits are made.

Roadway shall continue to recruit persons seeking management positions by advertising in the College Placement Annual, and, to the extent that it uses employment agencies for such recruiting, shall employ those agencies within the general geographic area who can offer qualified Negro applicants for management and administrative positions. Roadway shall not be required to use agencies who charge a placement fee to the employer, however.

B. Hiring Procedures.—Roadway shall establish and implement the following procedures for accepting applications and selecting new employees.

1. At each location, a central office shall be designated for the reception of applicants for the purpose of referring them to the appropriate persons to obtain applications and be interviewed with respect to all positions for which persons are employed at that location, including road driving and garage positions if there are such. At the locations having 50 or more employees, the designated office shall be one easily accessible to the general public and identified by a sign reading “employment office” or “personnel office.” All persons inquiring about employment shall be advised to make inquiry at that office.

2. At each business location each job applicant shall be handed a job seeker form (see Exhibit B [not reproduced]) and asked to record in a log book maintained for such purpose his name and address, his race, the date, and the position or positions for which he is applying. After signing the log, each applicant shall be given the opportunity to complete and submit one or more “Job Seeker” forms. The applicant shall be asked if he has any questions or desires assistance and if so, information or assistance shall be given as required. He shall then be directed to the appropriate official(s) to turn in his Job Seeker form(s).

*4 3. In the event the job applicant appears basically qualified for any position he is seeking and applications

are being accepted for such positions, he shall be given the opportunity to complete an Application for Employment form and shall be given equal consideration for employment together with other applicants. An applicant shall be considered “basically qualified” if (a) he is without an obviously disqualifying physical handicap; and (b) he meets Roadway age requirement, but only for the purpose of determining whether he should be given an application for employment form for completion.

In the event applications are not being accepted, the “Job Seeker” forms completed by the applicants for city driver, dock and/or garage positions shall be kept on file for a fifteen (15) calendar day period; for all other job classifications they shall be kept on file for a forty-two (42) calendar day period, commencing with the dates that they are completed.

In the event a vacancy develops within the specified period of time, every applicant who appears basically qualified by the above criteria, shall be notified by certified mail of such job vacancy and shall be given the opportunity to complete an Application for Employment form, an interview, and tests in order that he may be considered, together with other applicants, for such vacancy. The vacancy shall not be filled until the persons notified have a reasonable time to respond by appearing at the location. The applicant must then be available to proceed promptly with submission of application, interview, and tests required for the job.

In the event no vacancy develops during the above specified period of time, the applicant may renew his job request by returning to the business location and by signing the log and executing that portion of the “Job Seeker” form which provides for renewal. In the alternative he may renew his request by mailing to the Roadway office where he applied a written statement that he still wishes to be considered for employment. In those instances in which the applicant complies with either renewal procedure, the process outlined above will be repeated. Applicants may renew their requests an indefinite number of times by again complying with the above procedures.

Where an applicant has been considered for a vacancy but not hired, his “Job Seeker” form and application shall be kept on file for the applicable time period (above) and considered should other vacancies for which he qualifies arise during that period.

4. In each instance in which a Negro applicant is

disqualified from further consideration upon review of the "Job Seeker" form, the reason for such disqualification shall be clearly stated on that form. In each instance in which a Negro applicant is not the successful candidate for a job opening, his screening file, including Application for Employment form, interviewer's comments, test results, and background screening shall be retained and a summary statement shall be included in that file setting forth with specificity the reason or reasons that the Negro was not the successful candidate. The "Job Seeker" form of disqualified Negro applicants and the screening file of unsuccessful Negro applicants shall be forwarded to the General Office for review, along with the new hire kits of persons hired, to insure that all Negro applicants have been treated fairly and equally.

*5 Similarly, when a Negro casual who has sought to become a regular is terminated for any reason, his employment file, including statement with specific reasons for termination, shall be forwarded to the Akron General Office for review and appropriate action.

Whenever Roadway informs an applicant that he is not eligible for the type of job for which he is making application, it shall indicate he is not disqualified for other types of jobs at the same location unless such be the fact.

5. If an applicant is disqualified on the basis of the practical or written test administered to him, he shall be advised that he may be retested if he so chooses. If the applicant so desires, the general nature of his failure on any test shall be explained to him. With respect to the practical driving test, he shall be given the opportunity to familiarize himself with the equipment but only to the extent that the interviewer determines in good faith to be reasonably necessary to enable an experienced person to handle equipment which is new to him and not for the purpose of providing actual training opportunity.

The interviewer shall note the fact that he had advised the applicant of his right to be retested if he is disqualified or, if he is retested, shall include specific details on the second examination given to him to be included in the application papers to be sent to the Akron General Office for review.

6. No applicants shall be disqualified on the basis of any requirement that is not functionally related to the job for which the applicant is being considered, or is more stringent than necessary to perform that job, provided, however, that Roadway may require an applicant for a particular job classification to meet the objective mental,

physical, or educational requirements of a classification requiring higher skills if by reason of its own practices at that locality hirees for that particular classification customarily bid for and/or transfer to the next higher classification. The provision shall not be interpreted to allow mere lack of experience for the classification requiring higher skill to disqualify an applicant otherwise meeting the criteria of the particular classification.

7. Roadway shall apply the standards for hiring set forth in its manual as amended on August 20, 1970, to all applicants without regard to race or color. Roadway may alter those standards as it deems appropriate in a manner consistent with this decree and the purpose of affording equal employment opportunities without regard to race or color; but not less than thirty (30) days before the effective date of any change shall give the plaintiff a copy thereof if it relates to classifications of dock worker, switcher, city driver, line haul driver, garage man and entry level clerical positions. The effective date of change may be sooner, however, where so required by law or regulations having the force of law.

C. Selection and Utilization of Casuals.—Roadway shall establish an equitable system at each location for the selection of persons to become casuals; the assignment of work opportunities to casuals and the selection of casuals for regular employment. When initially interviewing applicants for casual work, Roadway shall explain the aspects of casual work to each applicant, together with the fact that he may or may not be selected for regular employment, depending upon performance and vacancies for regular work as they develop. Each person employed as a casual shall be given an opportunity to indicate in writing that he wishes to become a regular employee. If he does so indicate, he shall be given equal consideration and opportunity to be considered for regular employment.

[*Transfer Privileges*]

*6 III. A. During the thirty (30) calendar day period October 1 through October 31, 1970, all city drivers at Baltimore/Washington and Dallas, regardless of race, may request, in writing, consideration for transfer to a road driver position. All such requests are to be prepared in duplicate with one copy being signed by a Company representative as evidence of its having been received. Those city drivers who request and who meet Company qualifications for the over-the-road job classification, in

order of their city driver terminal seniority dates, will be considered for road driver vacancies at that domicile as they develop. Those who are considered, meet Company standards, and qualify for the vacancy at that domicile point, shall be transferred to the road driver classification and shall establish a road driver seniority date for bidding and layoff purposes as of the date of first dispatch as a road driver but will hold their Company seniority date for vacations, holidays and pension benefits and service awards. The first thirty (30) days from the date of his first dispatch as a road driver shall be a probationary period for such a driver in his new position as a road driver. If he fails to demonstrate that he is qualified as a road driver during his probationary period, the Company may reassign him to his former position as a city driver with the same seniority as attained before the transfer. If he satisfactorily completes his probationary period, the individual will be considered a road driver but without right to return to his former position as a city driver.

This provision shall not, and may not, be enforced at locations other than Laurel, Maryland, and Dallas-Fort Worth, Texas.

B. (1) A list of city drivers who unsuccessfully sought to bid for, or apply for over-the-road driving positions at Memphis in January 1968, is attached as Exhibit C [not reproduced] to this decree. Effective from the date of this decree, defendant shall offer, in order of their city driving seniority, to each of those persons named in Exhibit C [not reproduced] an over-the-road driving position if they qualify therefor. Defendant shall make such offers to those persons as vacancies occur.

Seniority and other perquisites shall be based on the date that over-the-road drivers were first dispatched from Memphis, January 18, 1968, and persons listed on Exhibit C [not reproduced] shall take precedence for all purposes, including recall, over road drivers presently in a layoff status who have road driver seniority dates subsequent to January 18, 1968. Having been offered, qualified for and accepted an over-the-road driving position, persons named on Exhibit C [not reproduced] shall have their names and seniority date of January 18, 1968 entered on the road driving seniority list above the names and seniority dates of all other Memphis road drivers hired on, or subsequent to January 18, 1968.

The first thirty (30) days from the date of his first dispatch as a road driver shall be a probationary period for such a driver in his new position as a road driver. If he fails to demonstrate that he is qualified as a road driver during his

probationary period, the Company shall reassign him to his former position as a city driver with the same seniority as attained before the transfer. If he satisfactorily completes his probationary period, the individual will be considered a road driver but without right to return to his former position as a city driver.

*7 (2) A list of some of the persons who applied for employment at Roadway since July 2, 1965, is attached as Exhibit D [not reproduced]. Persons listed on Exhibit D [not reproduced] shall be notified by certified mail of the opportunity to be considered for employment by Roadway, and the rights and benefits they will have if they obtain such employment. Such persons named on Exhibit D [not reproduced] as desire to, shall be considered for employment, and if they meet the qualifications for that job as set out in Roadway's Manual as amended on August 20, 1970, or any later date, they shall be offered employment as vacancies occur on the following terms:

Group I shall be offered employment with benefits attached to length of service as if hired on the dates of their original application for employment.

Group II shall be offered employment with seniority for all purposes to be based upon the date of their original application for employment.

Group III shall be offered employment with seniority to be based upon the date of hire under this provision.

(3) A list of some casual employees who did not become regular employees is attached as Exhibit E [not reproduced]. These persons shall be offered the opportunity to work as casuals, and, if they qualify, they will be given regular employment status when openings or vacancies for regular employment are available pursuant to the local practice under the local collective bargaining agreement. Seniority is to be awarded pursuant to local practice under the local collective bargaining agreement based upon the date of their re-employment.

(4) A list of persons once employed at Roadway or West Brothers, Inc., is attached hereto as Exhibit F [not reproduced]. Such persons shall be offered employment at Roadway for the position shown on that Exhibit but without seniority. They will be offered the opportunity to work as casuals, and, if they qualify, they will be offered regular employment when openings or vacancies for regular employment are available pursuant to the local practice under the local collective bargaining agreement.

Persons at whose names an asterisk appears on that list will be offered the opportunity for employment in the job classification shown on that Exhibit at any location of the Company where such work exists either as casuals or, if vacancies for regular work exist, as regulars. Further, such persons shall also be informed of other job opportunities at such locations bearing a reasonable relationship to the job classification shown opposite their names, if they express an interest in locating there.

C. For purposes of implementing employment opportunity as outlined in this Provision III, Roadway shall correspond by certified mail with each individual named on any exhibit attached hereto at the mailing address to be furnished by the Justice Department; such letter shall require evidence of interest by written reply or by appearance at the appropriate Roadway location, to be received no later than fifteen (15) days following the receipt of the Company's certified letter, except for those in military service who shall be given a reasonable time to respond considering their particular circumstances. In those instances in which no reply is received, the Company will be considered to have discharged its responsibility and will have no further obligation to such individuals. In those instances, in which written reply is received indicating interest, such individuals will be contacted, interviewed, tested and screened, and those persons who meet Company standards will be offered employment opportunity and rights in accordance with the provisions set forth above.

*8 Any individual among those listed in Groups I and II of Exhibit D [not reproduced] and Exhibit C [not reproduced] who accepts employment, promotion, or transfer by Roadway pursuant to the terms hereof with seniority rights dating from dates before the date of this order shall be deemed to have waived any claims of damages or other rights against Roadway with respect to any alleged denial of equal employment opportunity occurring prior to the date of this decree and arising out of any rejection of their application or request for employment in the case of individuals listed in Groups I and II of Exhibit D [not reproduced] and any application or request for transfer or promotion, and any denial or loss of bidding rights in the case of individuals listed on Exhibit C [not reproduced]. Such waiver shall relate to any claim of loss of income or any other beneficial incident of the employment opportunity which any such individual claims he would have obtained or would obtain hereafter but for the alleged denial.

[Compliance Officer]

IV. In order to obtain greater assurance of compliance by all Roadway employees with the terms of this order, Roadway will designate an official to assume expressly the duties of compliance and, specifically, to review or supervise effectively the review of employment forms and applications and the files of unsuccessful Negro applicants thereby to more effectively avert or avoid the effects of discriminatory practices.

[Reports Required]

V. A. Within a reasonable time after the end of each quarter commencing with the fourth calendar quarter of 1970, Roadway shall serve upon plaintiff reports showing data classified in each instance where applicable by job classification, location, and race as follows:

1. The total number of employees as of the end of the quarter;
2. The number of persons hired and the number of persons terminated;
3. The number of casual employees who were used at any time during the quarter who have pending requests to become regular and who have not been given notice of termination at the following locations: Winston-Salem, North Carolina; Atlanta, Georgia; Memphis, Tennessee; Birmingham, Alabama; Harrisburg, Pennsylvania; Akron, Ohio, Cincinnati, Ohio; Cleveland, Ohio; Louisville Kentucky; and Nashville, Tennessee.
4. The number of casuals who became regular at any time during the quarter and the number of casuals who had pending requests to become regular but were nonetheless terminated at any time during the quarter at those locations named above;
5. The number of job seekers and applicants for employment whose applications were not accepted and were not pending as of the end of the quarter at the locations named above.
6. The total number of casuals for dock and city driving jobs who worked during the quarter at the locations named above.

The job classifications required under this provision shall be only dock, city driver, over-the-road, clerical, and garage (further classified between mechanics and others) and no others. Such data shall not include numbers of casuals except as expressly required above.

*9 Further, Roadway shall provide any other information relevant to the manner of its compliance with the provisions of this order upon requests by the Justice Department or its designee, but such request shall not be made so frequently or in such detail as to impose an unreasonable burden or expense on Roadway.

B. Roadway will make all records, applications, log books, and all other documents relevant to the provisions of this order available to the Justice Department or its designee at the situs where such items are kept, or, if so requested, shall make copies thereof available to the Justice Department or its designee, but in either case not so frequently as to impose a burden or expense on Roadway greater than reasonably necessary to inform plaintiff of the manner of its compliance with the terms of this decree. Further, the Justice Department or its designee shall have the right to inspect particular facilities of Roadway upon notice, but not in such manner as to interrupt the routine of its operations, and not without being accompanied by a designated employee of Roadway.

C. During the effective term of this order, except for the filing of the EEO-1 form and such reports and production of records as are required hereunder, Roadway shall not be required to file reports with any federal agency whose primary purpose involves the field of equal employment opportunity. However, this decree shall not be construed as limiting or restricting the obligations and duties

imposed upon Roadway by virtue of Executive Order 11246 and implementing regulations and orders pursuant thereto.

[Responsibility for Implementation]

VI. Roadway will be responsible for the adoption and implementation of the employment practices and procedures required under the decree and for the full and faithful discharge of the duties enjoined upon its officers so as to prevent the development of any pattern or practice of discrimination against Roadway employees or applicants for employment because of race or color. Notwithstanding the remedies provided by law in the event of violations of the terms of this decree, no individual will be deprived of any other lawful remedy which he may have against the Company or any employee, agent, or officer thereof on account of individual instances of discrimination but Roadway shall not be deemed to be in contempt of Court unless any such violation relates to a duty to be imposed upon or to be carried out by an officer of the Company under some one of the provisions hereinabove contained.

The Court retains jurisdiction of this action until further order.

All Citations

Not Reported in F.Supp., 1970 WL 122, 2 Empl. Prac. Dec. P 10,295