

1980 WL 18620

United States District Court, W.D. Oklahoma.

United States Of America and the Equal
Employment Opportunity Commission

v.

Lee Way Motor Freight, Inc., The International
Association Of Machinists And Aerospace Workers
and The International Brotherhood Of Teamsters,
Chauffeurs, Warehousemen And Helpers Of America

No. 72-445.

|

Sep. 29, 1980.

Attorneys and Law Firms

David L. Rose, William B. Fenton, Richard J. Ritter, and
John M. Gadzichowski, U.S. Department of Justice, for
plaintiff United States.

Leroy D. Clark, General Counsel, Walter Lowney, Acting
Associate General Counsel, David W. Zugschwerdt, Assistant
General Counsel, and Debra A. Millenson, Supervisory
Attorney, for plaintiff EEOC.

Paul S. Kelly, Jr., Michael J. Gallagher, and John J. Yates
(Gage & Tucker), Kansas City, Mo., and Peter B. Bradford
(McAfee, Taft, Mark, Bond, Rucks & Woodruff), Oklahoma
City, Okla., for defendant employer.

Plato E. Papps, Washington, D.C., for defendant Machinists.

L. N. D. Wells, Jr. (Mullinax, Wells, Baab & Cloutman),
Dallas, Tex., for defendant Teamsters.

EUBANKS, District Judge: --

FINDINGS OF FACT

I.

INTRODUCTION

*1 1. On January 9, 1980 this Court entered an Order provisionally approving, subject to notice, opportunity to object and a fairness hearing, a Consent Decree between the plaintiffs in this action, the United States Department of Justice ("Justice") and the United States Equal Employment Opportunity Commission ("EEOC") and two of the defendants, Lee Way Motor Freight Inc. ("Lee Way") and the International Association of Machinists ("IAM").

2. Extensive actual individual, bulletin board and newspaper publication notice was provided by Lee Way in a timely manner, approved by this Court as to both form and substance, to those persons likely to be affected by the provisions of the proposed decree. Where available, minority oriented newspapers were used along with general circulation papers. Notice was given bilingually -- in both English and Spanish. The specific nature of the notices has been made a matter of record in this Court and is expressly approved as according basic fairness and due process to all persons actually or potentially affected by the entry of this Decree.

3. The remaining defendant in the case, the International Brotherhood of Teamsters (hereinafter "the Teamsters or IBT"), was not a signatory to the proposed Decree as provisionally approved by this Court. After hearing on the IBT's objections, and subsequent negotiations which lead to some modifications of the Consent Decree as provisionally approved by this Court, the IBT has now become a signatory to the Consent Decree as modified and finally approved by this Court.

4. The Consent Decree is agreed upon by the Justice Department and EEOC, the agencies charged with the enforcement of Executive Order 11246 and Title VII, and by defendants Lee Way, IAM and IBT.

5. The eight years of trial and appellate litigation have given this Court and the litigants a deep exposure to the facts of this case.

6. The eight years of litigation likewise dispel any notion of collusion among the parties. No claim or evidence of collusion was offered at the fairness hearing.

7. On April 23-24, 1980 this Court held an evidentiary hearing at which any person or party who wished to object to the fairness of the proposed Consent Decree and who filed a

U.S. v. Lee Way Motor Freight, Inc.

1980 WL 18620, 25 Fair Empl.Prac.Cas. (BNA) 142

timely written notice of objection could come forward and make his objections known to the Court. Evidence submitted at that hearing has been considered by the Court.

8. A total of 24 persons filed individual objections to the proposed Consent Decree. Only four of these individuals were within the class of approximately 128 persons who were eligible to present a claim for individual relief before the Special Master.

9. Each of the above persons was allowed the opportunity to be represented by counsel and to argue his/her objections to the Court at the April 23-24 fairness hearing. Those persons who chose not to appear personally at the fairness hearing have had their objections reviewed and considered by the Court based upon their written statements of objections and any pleadings and other matters furnished to the Court by any of their counsel.

*2 10. On May 30, 1980 this Court entered an Order which gave final approval to the Consent Decree as modified and consented to by all parties on May 30, 1980, including the IBT, except for certain revisions to paragraph 10(a) of the Decree, which revisions were provisionally approved subject to the hearing of any objections to such revisions in accordance with the notice provisions of the Order. Paragraph 10(a) involved a change from 50% of the first 10 hires and 30% thereafter to 30% overall in the annual hiring goals for blacks and Hispanics in road driving positions at Lee Way's terminals in Dallas, Texas and Greensboro, North Carolina.

11. In its Order of May 30, 1980 the Court set July 25, 1980 as the last day for the filing of any objections to the revisions to paragraph 10(a) of the Consent Decree. Appropriate notice was given in general circulation and minority oriented newspapers. No objections were filed to the revisions to that paragraph within the time frame set by the Court, and none has been received to date. Accordingly, the entire Consent Decree filed May 30, 1980, including the revisions to paragraph 10(a) of the Decree and the other changes proposed by the parties and approved by the Court, is hereby finally approved for the reasons more fully set forth below (said modified decree is herein referred to as the "Consent Decree").

II.

*GENERAL FINDINGS WITH RESPECT TO
THE FAIRNESS OF THE CONSENT DECREE*

12. The Consent Decree is intended to resolve all of the plaintiffs' claims of employment discrimination by Lee Way, the IAM and IBT against blacks and Hispanics under Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), and Executive Order 11246, as amended ("E.O. 11246" or the "Executive Order").

13. The Consent Decree is the product of extensive, arms length negotiations between the consenting parties and reflects an honest effort to resolve almost eight years of protracted litigation.

14. The Consent Decree was negotiated by able and experienced attorneys in the field of equal employment opportunity law and there is no evidence of collusion among any of the consenting parties or their attorneys unfairly to compromise any claim for relief in this case or the rights of any individual who may be affected by the provisions of the Consent Decree. This finding is further supported by the fact that the plaintiffs in this action are an agency and a commission of the United States Government and thus their attorneys have no pecuniary interest in the outcome of this litigation.

15. The Consent Decree is designed to bring Lee Way into compliance with the non-discrimination obligations imposed on employers generally by Title VII, as amended, and also with the affirmative action requirements imposed on Government contractors by the Executive Order.

16. With respect to Lee Way's coverage under the Executive Order, the Company admitted during the trial of this action in 1973, as found by the Court in its Findings of Fact (No. 6) entered on December 27, 1973, that since at least 1961 it has at all material times been a government contractor covered by the Executive Order and its predecessor, Executive Order 10925.

*3 17. Lee Way has demonstrated through the testimony at the fairness hearing of Lee Way's Vice President of Industrial

U.S. v. Lee Way Motor Freight, Inc.

1980 WL 18620, 25 Fair Empl.Prac.Cas. (BNA) 142

Relations, Mr. McPherson, that from 1973 up to the present Lee Way has continued to perform as a government contractor covered by the Executive Order and that its contracts have annually exceeded one million dollars during this period (Trans. 4/24/80, p. 318).

18. The Consent Decree obligates Lee Way to pay a gross total of \$2,740,000.00 to 82 individuals, plus the employer's FICA contributions to the extent due on their awards. The gross individual monetary awards range from \$3,946.32 to \$165,280.97. Included in these amounts are recovery for back pay, interest, lost pension benefits and all other monetary relief for employment discrimination by Lee Way on the basis of race, color or national origin.

19. Most of the 82 individuals awarded monetary relief are also entitled to an opportunity to fill a future vacancy at Lee Way in the job and with the remedial seniority date listed next to their respective names in paragraph 29 of the Consent Decree.

20. In general, the larger monetary awards go to the 51 individuals who were found by the Special Master and this Court after full evidentiary proceedings to have been the victims of discrimination at Lee Way. Each of the individuals found entitled to monetary relief by this Court in its Final Judgment entered on October 11, 1977 is awarded monetary relief by the Consent Decree in excess of that awarded to him or her in the Final Judgment. This is intended to reflect the ruling of the Court of Appeals that lost pension benefits and "front pay", that is, monetary relief accruing subsequent to the date of judgment, may be properly recoverable elements of monetary relief owing to the victims of unlawful employment discrimination (*United States v. Lee Way Motor Freight, Inc.*, 10th Cir., Sept. 21, 1979, 625 F.2d 918, 20 FEP Cases 1345, Slip Op., pp. 54-55, 65-66).

21. There are 31 additional persons who are awarded individual relief by the Consent Decree. Those individuals fall into four general classes:

a. The "post-complaint victims", that is, those persons who were discriminated against by Lee Way after the filing of the Government's complaint on June 22, 1972 and who the Court of Appeals ruled should be eligible for individual relief (*Id.*, Slip op., pp. 53-54);

b. Those individuals who the Special Master found were discriminated against prior to July 2, 1965, the effective date of Title VII, in jobs in Lee Way's Oklahoma City shop, which acts of discrimination were perpetuated by the seniority system contained in the local collective bargaining agreements covering that shop unit. These awards are based upon the Tenth Circuit's ruling that the Special Master should have considered the evidence of racial intent in the negotiation of the seniority system contained in those agreements (*Id.* Slip opinion pp. 61-64);

*4 c. Those individuals who after July 2, 1965 specifically applied for transfer from city or shop positions to road driving positions at Lee Way and were denied transfers because of the Company's application of its no-transfer rule. These awards are based upon the Tenth Circuit's ruling remanding for further review the issue of whether Lee Way's no-transfer rule had an adverse impact on black employees even though they were not discriminated against at the time of their initial hire into a city or shop position (*Id.*, Slip opinion, pp. 58-61);

d. Those individuals who were denied relief by the Special Master and this Court and who were not specifically covered by any of the Government's cross appeals to the Court of Appeals but whose claims in the view of counsel for the Government had merit. These individuals are entitled to monetary relief only and Lee Way, the IBT and the IAM have agreed not to contest their right to such relief.

22. The Court has reviewed the awards of individual remedial relief to the 82 individuals identified in paragraph 29 of the Consent Decree and finds those awards to be fair, reasonable and not otherwise unlawful.

23. The Consent Decree also obligates Lee Way to establish combined annual hiring goals and long range attainment levels for blacks and Hispanics in the following general job categories: road drivers, city employees (includes city drivers and dockmen), mechanics and apprentices, shop employees (includes tiremen, parts clerks and service workers), office and clericals and other entry level officials, managers, and sales employees (Consent Decree, pp. 6-10).

24. In determining the long range attainment levels for blacks and Hispanics in the various job categories referred to above, Lee Way and the Government have agreed to utilize the working age (18-64) population statistics as contained

U.S. v. Lee Way Motor Freight, Inc.

1980 WL 18620, 25 Fair Empl.Prac.Cas. (BNA) 142

in the 1970 Census (hereinafter "working age population") (Consent Decree, pp. 8-10; Pl. Ex. 3 (fairness hearing)). Such a reference point is a reasonable one under the facts and circumstances of this case.

25. For facilities with 50 or more employees the working age population figures of the Standard Metropolitan Statistical Area (SMSA) in which each facility is located are used to determine the long range attainment levels for blacks and Hispanics. A systemwide long range attainment level of 15% blacks and Hispanics is set for terminals having fewer than 50 employees. This attainment level is designed to reflect the fact that Lee Way's terminal operations span a large portion of the continental United States and are located in areas of widely diversified black and Hispanic populations, and that many of these terminals vary in size from 3 to 15 total employees (Consent Decree, pp. 8-10; Pl. Ex. 4 (fairness hearing)).

26. The hiring goals provided by the Consent Decree apply only to those job categories and terminals where the percentage of blacks and Hispanics was below the relevant working age population percentage on May 30, 1980. (Consent Decree, pp. 8-10).

*5 27. The annual hiring goals vary depending upon the job category involved and the size of the black and Hispanic working age population at a particular terminal. The annual goals generally range from 15% to 30%.

28. Each annual hiring goal is to remain in effect until Lee Way meets and continually maintains for a period of twelve consecutive months the relevant long range attainment level for blacks and Hispanics (Consent Decree, pp. 8-10).

29. The annual hiring goals do not obligate Lee Way to hire any black or Hispanic person who fails to meet any legitimate, non-discriminatory hiring standard, many of which are specifically spelled out in the Consent Decree, or otherwise to violate Title VII or E.O. 11246. The goals are contingent upon the existence of future job vacancies and the annual percentage goals are set at levels which permit the hiring of whites and other minorities as well as blacks and Hispanics. Finally, the annual goals are only temporary measures and are designed to end when Lee Way reaches and maintains for the requisite period of time the long range attainment levels for blacks and Hispanics.

30. The Court finds and concludes that, under the facts and circumstances of this case, the annual hiring goals and long range attainment levels for blacks and Hispanics provided by the Consent Decree are fair and reasonable and not unlawful.

31. The Consent Decree obligates Lee Way to adopt and follow non-discriminatory hiring standards. Specific hiring standards are set forth in the Consent Decree for truck driving positions. Excluded from such standards is the 5'7" minimum height requirement for road drivers which Lee Way had imposed for many years, but had voluntarily ceased using in 1978. The Court of Appeals ruled that this standard may have had an adverse impact on Hispanics and remanded that question to this Court for further review (United States v. Lee Way Motor Freight, Inc., supra, 625 F.2d 918, 20 FEP Cases 1345, Slip Op., pp. 44-48).

32. At the fairness hearing Mr. Sam McPherson, Lee Way's Vice President of Industrial Relations, testified, and the Court finds, that in 1978 Lee Way voluntarily ceased requiring road driver applicants to meet any minimum height standard and instead now, where appropriate, requires as part of the application process that road driver applicants sit in a Lee Way truck cab in order to demonstrate their basic ability to reach the truck peddles and see over the dashboard (Trans. 4/23/80, pp. 106-08). Mr. McPherson also indicated that Lee Way has no intention of reestablishing a minimum height requirement for truck driving positions without prior proof of job relatedness.

33. The Consent Decree further precludes Lee Way from using any physical or other selection requirements for any of its jobs which have an adverse impact on blacks and/or Hispanics unless the Company can show that such requirements are validated under the standards prescribed by Title VII and E.O. 11246 (Consent Decree, ¶¶16(c) and 23).

*6 34. The Consent Decree obligates Lee Way to engage in affirmative recruiting measures designed to attract a significant number of qualified black and Hispanic applicants, and it requires the Company to maintain various records and reports and periodically to report to the plaintiffs its progress in complying with the provisions of the Consent Decree (Consent Decree, pp. 14, 15, 31-34).

35. Finally, the Consent Decree provides for the retention of jurisdiction by this Court in order to insure the enforcement of

U.S. v. Lee Way Motor Freight, Inc.

1980 WL 18620, 25 Fair Empl.Prac.Cas. (BNA) 142

the Decree and to resolve any disputes which may arise with respect to its implementation (Consent Decree, p. 35).

III.

INDIVIDUAL OBJECTIONS TO THE CONSENT DECREE

36. The following individuals either filed timely written objections to the Consent Decree or filed objections to which the proponents of the Decree did not assert a timeliness defense:

1. Mr. Arzell Gaddis
2. Ms. Nina Springer
3. Ms. Theresa Wright
4. Mr. Milton Williams
5. Mr. Joe Lozano
6. Mr. J. W. Walter
7. Mr. Marvin Crews
8. Mr. John L. Curtis
9. Mr. Dave Williams
10. Mr. Frank Teamer
11. Mr. M. M. Holquin
12. Mr. Richard Contreras
13. Mr. Alex Avilez
14. Ms. Connie Groves
15. Mr. Sylvester Nichols
16. Mr. Cleophus Frost
17. Mr. Perry Traylor

18. Mr. Sandy Von Hill II

19. Mr. Andrew Hunt

20. Mr. Jackie Fryrear

21. Mr. Warner Allen

22. Mr. Richard White

23. Mr. James Tabata

24. Mr. Ralph Green

37. The Court overrules the objections of each of these individuals to the Consent Decree for the reasons expressed herein.

38. Each of these individuals has alleged acts of discrimination by Lee Way and/or the defendant IBT for which he or she asserts he or she should have been compensated by the Consent Decree. However, none of the persons listed above, except for Messrs. Walter, Von Hill II, Hunt, Traylor and White, were included on the list of alleged individual victims of discrimination filed by the Government pursuant to this Court's May 15, 1973 Pre-Trial Order. Only those persons who appeared on that list were later allowed to present a claim for relief to the Special Master at the Stage II individual relief hearings. Once that list was submitted, the Government was not allowed to add additional names to that list.

39. In light of the Court's Pre-Trial Order, the Consent Decree properly limits the class of persons eligible for individual remedial relief in this case to those persons whose names appeared on the 1973 list.

40. This Court does not intend by these findings to express any views with respect to the merits of any of the charges of discrimination raised by these individuals. Furthermore, the Consent Decree does not affect the right of these individuals to pursue any private remedies which they may have under any state, local or federal fair employment practice laws, including Title VII, or Lee Way's defenses thereto. (see Consent Decree, preamble, p. 3).

U.S. v. Lee Way Motor Freight, Inc.

1980 WL 18620, 25 Fair Empl.Prac.Cas. (BNA) 142

*7 41. Mr. J. W. Walter, a black employee, was included on the May 15, 1973 list of claimants. He objects to the failure of the Consent Decree to award him any relief. He claims that he was denied a job as a partsman at Lee Way for racial reasons and that he made several unsuccessful attempts to transfer to that job after he was hired by Lee Way as a porter in 1955.

42. The Government presented a claim for relief on Mr. Walter's behalf in a partsman position before the Special Master (Pl. Ex. 551 SM). However, the Special Master subsequently ruled that a release Mr. Walter had executed in the case of *J.W. Walter v. Lee Way Motor Freight, Inc., C.A. No. 72-166*, (W.D. Okl.), a private suit brought under Title VII, effectively precluded Mr. Walter from asserting a claim for relief for acts of discrimination occurring at Lee Way prior to 1974 (see Transcript of Hearing Before the Special Master, April 18, 1975, pp. 200-201 and Lee Way Exhibit 266 SM).

43. In light of the finding of the Special Master with respect to the scope of the release Mr. Walter executed in his private action against Lee Way, which this Court approved as part of its judgment entered on October 11, 1977, the Court overrules Mr. Walter's objection to the failure of the Consent Decree to award him any further relief.

44. Mr. Sandy Von Hill II is a black individual who under the Consent Decree is entitled to an offer of an opportunity to fill a future vacancy in a road driver position at Lee Way's Los Angeles, California terminal with a remedial seniority date in that job of December 26, 1968. Mr. Von Hill is also eligible for \$10,000.00 in monetary relief.

45. Mr. Von Hill is one of the individuals in that group of black Lee Way employees discussed in paragraph 21c, supra. He objects to his seniority award and back pay as not beginning as of the time he was originally hired in 1966 as a city driver by Lee Way at its Los Angeles terminal. The seniority relief provided by the Consent Decree to Mr. Von Hill is intended to reflect the approximate date that the first road driver vacancy was filled at the Los Angeles terminal after Mr. Von Hill first applied for that job. The Court finds that the seniority relief awarded to Mr. Von Hill by the Consent Decree is proper and in accord with the remedial principle of *Boyles v. Pittsville Senior Center*, 424 U.S. 747, 12 FEP Cases 549 (1976).

46. The monetary award of \$10,000.00 to Mr. Von Hill is fair and reasonable in light of the fact that he was not a successful claimant before the Special Master in this case, and his right to back pay relief stems from Lee Way's application of its no-transfer rule, an issue which the Court of Appeals ruled should be reexamined by this Court on remand.

47. Mr. Andrew Hunt objects to the Consent Decree because he does not receive specific relief thereunder. The Government presented Mr. Hunt's claim for relief with respect to a road driving position to the Special Master. Based on the evidence presented, the Master concluded that at the time Mr. Hunt applied for that job there was no evidence of any road driver vacancies which he could have filled and, further, that Mr. Hunt was not seriously interested in a road driving position at that time (Master's Report, pp. 355-56). Consequently, the Master determined that Mr. Hunt was not entitled to relief, and this Court approved that ruling.

*8 48. Mr. Hunt's claim did not raise any issues covered by the Government's cross-appeal and the Tenth Circuit's rulings on that cross-appeal. Also, in settling this case the attorneys for the Government were of the view that Mr. Hunt's claim did not have sufficient merit to warrant any individual relief. Accordingly, this Court overrules Mr. Hunt's objection to the Consent Decree.

49. Mr. Richard White objects to the failure of the Consent Decree to award him sufficient relief on his claim before the Special Master that Lee Way refused to hire him as a road driver because of his race. He also objects to the failure of the Consent Decree to award him any relief in a city driver position.

50. The Consent Decree awards Mr. White \$5,000 in back pay, but he is not eligible under the Decree for a job offer with any remedial seniority at the Company.

51. The Special Master ruled that Mr. White was not entitled to any relief based on the Company's refusal to hire him as a road driver because of his height. In denying Mr. White's claim the Master found that while Lee Way had in the past hired whites as road drivers who failed to meet the Company's stated 5'7" minimum height requirement, within a three-year period preceding Mr. White's application in March 1972 Lee Way had not hired a road driver who was as short as Mr.

U.S. v. Lee Way Motor Freight, Inc.

1980 WL 18620, 25 Fair Empl.Prac.Cas. (BNA) 142

White, i.e., five feet five and one-half inches (Master's Report, February 22, 1977, pp. 166-167).

52. Mr. White's claim was not included in the Government's cross-appeal or in any of the rulings of the Tenth Circuit on that cross-appeal. In settling this case the attorneys for the Government were of the view that Mr. White's claim had some merit in light of the evidence in the record that Lee Way had in the past hired whites as road drivers who were shorter than Mr. White, although not within the three-year time frame looked at by the Special Master. For this reason the Consent Decree provides for a monetary award of \$5,000 to Mr. White. The Court finds this award to Mr. White to be a fair and reasonable settlement of his claim for relief in this case.

53. Mr. Richard White is not awarded any relief based on a claim of discrimination in a city driver job because there is no evidence in the record that he sought such a position at Lee Way.

54. Based upon the foregoing the Court overrules Mr. White's objections to the Consent Decree.

55. Mr. Perry Traylor objects to the failure of the Consent Decree to award him any relief based upon his claim of an alleged racially discriminatory discharge from a dock position at Lee Way.

56. Mr. Traylor was included on the Government's May 15, 1973 relief list. However, after having the opportunity further to develop the facts of Mr. Traylor's claim, the Government decided not to present it to the Special Master for lack of merit.

57. In a pattern and practice action brought by the Government to enforce the provisions of Title VII and the Executive Order, the Government is not obligated to present individual claims for relief as part of its enforcement action which it views as being without merit (see Conclusions of Law). Such a decision, however, does not preclude any individual so affected, and specifically here Mr. Traylor, from further pursuing any private remedies which may be available to him under any fair employment practice laws (see Conclusions of Law).

IV.

*FINDINGS WITH RESPECT TO THE SENIORITY SYSTEM
CONTAINED IN THE DEFENDANT TEAMSTERS'
COLLECTIVE BARGAINING AGREEMENTS*

*9 58. The seniority system contained in the defendant IBT's National Master Freight Agreements which were alleged to have unlawfully perpetuated Lee Way's unlawful racial discrimination in this case is the same seniority system found to be lawful under Title VII by the Supreme Court in *International Brotherhood of Teamsters v. United States*, 431 U.S. 324, 14 FEP Cases 1514 (1977). Accordingly, that system, as it is currently applied in this case and in accordance with the provisions of the Consent Decree, is not unlawful under Title VII. This finding has no application to the seniority system in effect at Lee Way's Oklahoma City shop.

59. There is now no claim by the Government in this case that any current IBT collective bargaining provision or employment practice pursuant to such provision as it applies to employees and applicants for employment at Lee Way is unlawful under either Title VII or Executive Order 11246. Future claims of future violations may be considered under the terms of paragraph 63 of the Consent Decree.

60. The hiring goals and attainment levels provided by the Consent Decree do not affect the recall rights of employees, or the transfer rights of employees under *bona fide* changes of operations as defined by the IBT's National Master Freight Agreement.

61. There is no finding that the IBT has engaged in a pattern and practice of employment discrimination against blacks or Hispanics in this case.

62. All relief sought in this case other than any claims which may arise in the future under the operation of the Consent Decree and not otherwise provided for by the Consent Decree is denied.

V.

SUMMARY

63. The Court finds the Consent Decree to be a fair and reasonable settlement of the Government's claims for relief under Title VII and the Executive Order as raised in its complaint filed on June 22, 1972, and in the proceedings in this case subsequent thereto.

64. The Court overrules each of the objections to the Consent Decree filed by the individuals identified in Paragraph 36 above.

65. In approving the Consent Decree the Court has taken cognizance of the fact that it was reached only after lengthy trial and appellate proceedings had transpired.

66. The relief provided by the Consent Decree is not unconstitutional, unlawful, against public policy or unreasonable, and is fully supported by the trial record, the record before the Special Master, and the record developed at the fairness hearing.

67. All relief sought against the IBT is denied.

CONCLUSIONS OF LAW

1. The law in general favors voluntary settlement as a preferred means of resolving disputes between litigants. Equal Employment Opportunity Commission v. American Tel. and Tel. Co., 419 F.Supp. 1022, 1038-39, 13 FEP Cases 392 (E.D. Pa. 1976), aff'd 556 F.2d 167, 14 FEP Cases 1210 (3rd Cir. 1977), cert denied sub nom CWA v. Equal Employment Opportunity Commission, 438 U.S. 915, 17 FEP Cases 1095 (1978), citing Petty v. General Accident Fire & Life Ins. Corp., 365 F.2d 419, 421 (3d Cir. 1966); Stanpec Corp. v. Jelco Inc., 464 F.2d 1184, 1187 (10th Cir. 1972); Tulsa City Lines v. Mains, 107 F.2d 377, 380 (10th Cir. 1939); EEOC v. Safeway Stores, Inc., 611 F.2d 795, 799, 24 FEP Cases 1487 (10th Cir. 1979); State of West Virginia v. Charles Pfizer & Co., 440 F.2d 1079, 1085 (2d Cir.), cert denied, 404 U.S. 871 (1971); Florida Trailer and Equipment Co. v. Deal, 284 F.2d 567, 571 (5th Cir. 1960). This is especially true in actions involving allegations of unlawful employment discrimination because Congress has

placed a high premium on the voluntary resolution of such disputes. Alexander v. Gardner-Denver Co., 415 U.S. 36, 7 FEP Cases 81 (1974); Cotton v. Hinton, 559 F.2d 1326, 1331, 15 FEP Cases 1342 (5th Cir. 1977); United States v. Allegheny-Ludlum Industries, Inc., 517 F.2d 826, 847, 11 FEP Cases 167 (5th Cir. 1975), cert denied, 425 U.S. 944, 12 FEP Cases 1090 (1976); Patterson v. Newspaper and Mail Deliverers' Union, 514 F.2d 767, 771, 10 FEP Cases 349 (2d Cir. 1975); Flinn v. FMC Corp., 528 F.2d 1169, 1174, 12 FEP Cases 1069 (4th Cir. 1975) cert. denied, 424 U.S. 967, 12 FEP Cases 1089 (1976); Airline Stewards & Stewardesses Ass'n. v. American Airlines, Inc., 573 F.2d 960, 963, 17 FEP Cases 24 (7th Cir. 1978); EEOC v. Safeway Stores, Inc., supra, 611 F.2d at 799. "The Court feels that the record before it is more than sufficient on which to evaluate carefully the fairness, adequacy and reasonableness of this agreement and to render an informed and just decision. . . ." Flinn v. FMC Corp., supra, 528 F.2d at 1173.

*10 2. As a general proposition when a Court is asked to approve a consent settlement among parties in litigation it is obligated to determine whether the settlement is fair, reasonable and equitable taking into account the status of the litigation, the amount of discovery completed and the relative strengths of the parties' claims. City of Detroit v. Grinnell Corp., 495 F.2d 448, 455 (2d Cir. 1974); State of West Virginia v. Charles Pfizer & Co., supra, 440 F.2d at 1085; Flinn v. FMC Corp., supra, 528 F.2d at 1173.

3. The Court cannot precisely calculate the value of the claims asserted. Thus, when asked to approve a settlement in lieu of trial, courts attempt to determine whether the compromise proposed is fair, adequate and falls within a reasonable range. Flinn v. FMC Corp., supra, 528 F.2d at 1173; Bryan v. Pittsburgh Plate Glass, 494 F.2d 799, 801, 7 FEP Cases 822 (3d Cir.), cert. denied, 419 U.S. 900, 8 FEP Cases 1007 (1974); City of Detroit v. Grinnell Corp., 495 F.2d 448, 455 (2d Cir. 1974), cert. denied, 419 U.S. 900, 8 FEP Cases 1007 (1974); City of Detroit v. Grinnell Corp., supra, 495 F.2d at 463; accord, City of Detroit v. Grinnell Corp., supra, 495 F.2d at 463.

(b) The experience of counsel recommending the consent decree's acceptance. Flinn v. FMC Corp., supra, 528 F.2d at 1173.

U.S. v. Lee Way Motor Freight, Inc.

1980 WL 18620, 25 Fair Empl.Prac.Cas. (BNA) 142

(c) The absence of collusion between the parties. Flinn v. FMC Corp., id.; Lo Re v. Chase Manhattan Corp., 431 F.Supp. 189, 194, 15 FEP Cases 721 (S.D. N.Y. 1977).

(d) “[T]he nation's investment in the resources consumed by the federal agencies in negotiating these decrees, as well as the chance justly to finalize a matter that would otherwise burden agencies and courts. . .” United States v. Allegheny-Ludlum, supra, 517 F.2d at 851.

(e) “[T]he certain loss to all of the immediate injunctive benefits and the unimpeded opportunity to receive some back pay today -- instead of after months or years of litigation.” United States v. Allegheny-Ludlum, id.

4. Where, as here, all of the parties to the litigation have consented to a proposed Decree, the standard of review to be imposed by the Court should properly be limited to a determination that the Decree is lawful and reasonable and not contrary to public policy. United States v. City of Alexandria, 614 F.2d 1358, 1361, 22 FEP Cases 872 (5th Cir. 1980). See also, United States v. City of Jackson, 519 F.2d 1147, 1151, 13 FEP Cases 1137 (5th Cir. 1975).

*11 5. Under the facts and circumstances of this case, the annual hiring goals and attainment levels for blacks and Hispanics contained in the Consent Decree are lawful and reasonable and are not contrary to public policy. United States v. City of Alexandria, supra, 614 F.2d at 1361; Equal Employment Opportunity Commission v. American Tel. & Tel. Co., supra, 556 F.2d at 174-178; United Steelworkers of America v. Weber, 443 U.S. 193, 20 FEP Cases 1 (1979); Regents of the University of California v. Bakke, 438 U.S. 265, 17 FEP Cases 1000 (1978).

6. In reaching a settlement on monetary relief the Government was not required to seek such relief for every individual who was allowed to present a claim to the Special Master and it had the right to compromise the monetary awards of other claims based upon the individual facts of their claims. United States v. Allegheny-Ludlum Industries, Inc., supra, 517 F.2d at 851.

7. The monetary awards provided by the Consent Decree to the 82 individuals identified in paragraph 29 of the Consent Decree reflect a fair and reasonable effort to compensate these persons for economic losses they incurred as a result

of alleged discrimination at Lee Way. Albemarle Paper Co. v. Moody, 422 U.S. 405, 10 FEP Cases 1181 (1975); United States v. Allegheny-Ludlum Industries, Inc., supra.

8. As to those individuals who filed timely written objections to the proposed Consent Decree, the Court has carefully reviewed each of those objections. The Court has also considered the oral objections which were made at the hearing held in April 1980. For the reasons set forth in this Court's findings of fact on those objections, they are each denied. This ruling is without prejudice to any private rights those individuals may have under any state, local or federal fair employment practice laws, including Title VII, or to Lee Way's defenses thereto. General Telephone Company of the Northwest, Inc. v. EEOC, 446 U.S. 318, 100 S. Ct. 1698, 22 FEP Cases 1196 (1980); Rodriguez v. East Texas Motor Freight, Inc., 505 F.2d 40, 65, 8 FEP Cases 1246 (5th Cir. 1974), vacated and remanded on other grounds, 431 U.S. 395, 14 FEP Cases 1505 (1977); United States v. Allegheny-Ludlum Industries, Inc., supra, 517 F.2d at 845; Williamson v. Bethlehem Steel Corp., 468 F.2d 1201, 1203, 5 FEP Cases 204 (2d Cir. 1972), cert denied, 411 U.S. 931, 5 FEP Cases 862 (1973).

CONSENT DECREE WITH RESPECT TO DEFENDANT
LEE WAY MOTOR FREIGHT,
INC., THE INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS
OF AMERICA, AND THE INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA

*12 This action was brought by the Attorney General on behalf of the United States (“Justice”) on June 22, 1972, alleging that defendants Lee Way Motor Freight, Inc. (hereinafter variously referred to as “Lee Way” or the “Company”), the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereinafter referred to as the “IBT”) and the International Association of Machinists and Aerospace Workers of America (hereinafter referred to as the “IAM”) were engaged in a pattern and practice of employment discrimination against blacks and Spanish-surnamed Americans, in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e,

U.S. v. Lee Way Motor Freight, Inc.

1980 WL 18620, 25 Fair Empl.Prac.Cas. (BNA) 142 et seq. (“Title VII”) and Executive Order 11246, as amended, 3 C.F.R. 173 (Jan. 1, 1973 ed.) (“E.O. 11246”). The Equal Employment Opportunity Commission (“EEOC” was added as a party-plaintiff in November 1974. Justice and EEOC hereinafter are collectively referred to as “Plaintiffs.”

The purpose of this Consent Decree is to resolve all existing claims of employment discrimination by Lee Way on the basis of race, color or national origin against Negroes, blacks (Negroes and blacks hereinafter are referred to as “blacks”) and/or persons of Hispanic origin or surname (“Hispanics”). While Lee Way denies the existence of any violations of Title VII and E.O. 11246, Lee Way recognizes that both this Court and a panel of the Court of Appeals for the Tenth Circuit have held to the contrary in certain respects.

Plaintiffs, Lee Way, the IBT and the IAM being desirous of settling this action by appropriate decree, agree to the provisions of this Consent Decree, subject to its final approval and entry by this Court, after reasonable notice to all persons affected by it and a fairness hearing. In the event of such final approval and entry by this Court, Lee Way agrees to withdraw its pending motion for rehearing before the Court of Appeals for the Tenth Circuit and not to seek further appellate review of this Court's Order and Judgment in this action. In the event of such final approval and entry, Plaintiffs agree not to seek or prosecute further proceedings against Lee Way in this action, other than proceedings to enforce the provisions of this Decree.

This Decree, being issued with the consent of Lee Way, the IBT and the IAM, shall not constitute an adjudication or finding on the merits of this action and shall in no manner be construed as an admission by Lee Way of any violation of Title VII or of E.O. 11246, or of any other executive order, law, rule or regulation relating to or concerning equal employment opportunity. Lee Way has consented to the entry of this Decree in order to avoid the burdens of further litigation and to insure the accomplishment of its commitment and obligation to fair employment in an atmosphere free of contested litigation.

*13 It is the opinion and interpretation of the EEOC within the meaning of Section 713(b) of Title VII and of Justice that the implementation of this Decree in accordance with its terms is necessary and sufficient to correct past discrimination by Lee Way against blacks and Hispanics.

This Decree is final and binding among the parties signatory hereto and their successors as to the issues resolved herein, as well as upon all persons who consent to and accept the relief provided herein. This Decree is intended to resolve all of Plaintiffs' claims of employment discrimination by Lee Way against blacks and/or Hispanics, as a class, for all events, acts, omissions, practices, policies, and procedures up to and including the date of its entry and through its life except as may arise through enforcement proceedings under this Decree. Nothing in this Decree shall be construed to prohibit or prevent the right of an individual who does not consent to or accept the relief provided herein from maintaining an action for alleged past employment discrimination, nor shall the entry into this Decree by Lee Way be construed as an admission by Lee Way that any individual has such a right, or as waiving any defenses which Lee Way may have thereto.

IT IS HEREBY ORDERED,
ADJUDGED AND DECREED THAT:

I

GENERAL PROVISIONS

1(a). Lee Way and its officers, agents, employees, successors, and all persons in active concert or participation with them, are hereby enjoined from engaging in any act or practice which has the purpose or the effect of discriminating against any black or Hispanic individual al on the basis of race, color or national origin. Lee Way shall hire, compensate, assign, train, promote, demote, transfer, dismiss and otherwise treat employees at each of its facilities without regard to race, color or national origin, except for the affirmative remedial action required hereunder. This is the only paragraph of this Decree which applies to casual employees, except that no more stringent requirements for hire shall be applied by Lee Way for casuals than are applied for regular employees under this Decree. All persons, organizations, associations or other entities, whether signatory or not to this Decree, are hereby enjoined from engaging in any act or practice which has the purpose or the effect of interfering with Lee Way's compliance with the provisions of this Decree.

U.S. v. Lee Way Motor Freight, Inc.

1980 WL 18620, 25 Fair Empl.Prac.Cas. (BNA) 142

1(b). Nothing in this Decree regarding hiring goals and attainment levels shall affect the recall rights of employees, or the transfer rights of employees under *bona fide* changes of operations, all as provided in the National Master Freight Agreement and its supplements.

2. Lee Way shall designate one official ("Corporate Compliance Official") who shall be responsible for coordinating and overseeing Lee Way's systemwide compliance with this Decree, and one official for each of the Company's facilities ("Facility Compliance Official") who shall be responsible for executing the Corporate Compliance Official's directives regarding compliance with this Decree. Lee Way shall provide Plaintiffs with the name, title and address of such Corporate Compliance Official and the name of each Facility Compliance Official within thirty (30) days after the date of the entry of this Decree. If Lee Way subsequently changes its Corporate Compliance Official or any of its Facility Compliance Officials, the Company shall promptly notify Plaintiffs as to the name of that Official's successor.

*14 3. Plaintiffs hereby designate Richard J. Ritter, Senior Trial Attorney, Federal Enforcement Section, Civil Rights Division, Department of Justice, as their Compliance Officer for the administration and enforcement of this Decree. If Plaintiffs subsequently change their Compliance Officer, Plaintiffs shall promptly notify Lee Way as to the name of that Officer's successor.

II

HIRING PROCEDURES

4. Lee Way shall accept applications from all black and Hispanic applicants who inquire about employment with the Company regardless of whether vacancies exist in the job or jobs in which such applicants seek employment. The Lee Way employees who accept such applications shall promptly review them for completeness and shall ask the applicant to provide any missing information. Failure or refusal by an applicant to do so within thirty (30) days from the request shall authorize Lee Way to act upon the basis of the data supplied. Lee Way shall keep such applications in a current file for at least three (3) months (or as long as such

applications are kept current for other candidates, whichever is longer) and shall permit the renewal of such applications in person or by letter. The period of retention and mechanics of reapplication shall be stated on the application. Any black or Hispanic applicant so requesting shall be furnished with a copy of his ¹ application marked as and when "received."

5. For each job classification at each facility for which a goal under this Decree is then operative, the application of each black or Hispanic applicant for employment with Lee Way at that facility shall be reviewed by an appropriate company employee to determine whether such applicant meets the Company's minimum qualifications for the job(s) sought. If a potentially curable deficiency is noted in such an application for such a job classification in which a vacancy exists or is anticipated in the near future, the applicant shall be promptly informed of the nature of the deficiency and given thirty (30) days from the date of receipt of such notice in which to provide adequate evidence to Lee Way that the perceived deficiency does not exist or has been corrected. If such evidence is not received within the specified thirty (30) day period, the application shall be deemed inactive.

III

HIRING GOALS AND LONG RANGE ATTAINMENT LEVELS

6. Lee Way shall adopt and seek to achieve annual hiring goals for the filling of future vacancies by black and Hispanic persons, as a group, and longrange attainment levels for black and Hispanic persons, as a group, in accordance with the provisions of Part III of this Decree. In lieu of using the working age population according to the 1970 Census as the long range attainment levels for mechanics and/or apprentice mechanics, as set forth in paragraphs 11, 13 and 15, below, at facilities which although not now operational for mechanics become operational for mechanics during the life of this Decree, and, further, which do not have the job of apprentice mechanic, Lee Way may use the percentage of black and Hispanic persons in the applicable geographic labor market possessing the knowledges, skills and abilities reasonably required for the job of mechanic at Lee Way if Lee Way can demonstrate: (a) what percentage of black and Hispanic persons in the applicable geographic labor market possess

U.S. v. Lee Way Motor Freight, Inc.

1980 WL 18620, 25 Fair Empl. Prac. Cas. (BNA) 142

such knowledges, skills and abilities; (b) that requiring such knowledges, skills and abilities either does not have an adverse impact on black and Hispanic persons or meets the requirements of Title VII and E.O. 11246; and (c) Lee Way has complied with the recruitment provisions of Part V of this Decree, and is unable to meet the annual hiring goals using the working age population according to the 1970 Census. Lee Way may follow a like approach for secretarial jobs at or above the District Manager Secretary level at current and future facilities. All annual hiring goals and attainment levels set forth herein shall be subject to the availability of qualified black and Hispanic persons and, further, shall not pertain to the use by Lee Way of "casual" employees. Qualifications shall be determined in accordance with Part IV of this Decree and the requirements of Title VII.

*15 7. In seeking to achieve both the annual hiring goals and the long-range attainment levels for each job category at facilities with fifty (50) or more employees set forth herein, Lee Way shall make a reasonable effort so as not to vary substantially disproportionately from the respective proportions of black and Hispanic persons in the relevant labor market. With respect to facilities with less than fifty (50) employees, Lee Way shall make a particular effort to insure that black and/or Hispanic persons are employed at each of these facilities, without regard to the number of employees at each facility.

A.

DEFINITIONS

8. For the purposes of this Decree, the parties adopt the following definitions:

a. "*Apprentice Mechanics*" (or a functionally equivalent job classification with a different job title) include employees working in a job classification, the primary purpose of which is to train the employees therein for normal progression to the mechanic classification, provided that nothing herein shall require Lee Way to hire persons in the Apprentice Mechanic classification (as defined above) at a facility where Lee Way does not presently have and does not hire during the life of this Decree for such a classification, or the like, as defined herein.

b. "*Availability*" as used in this Decree for annual hiring goal purposes shall mean those applicants for employment with Lee Way who are willing and able to fill vacancies at Lee Way.

c. "*City Employees*" include those persons assigned to work as city drivers, switchers, hostlers, dockmen, checkers, combination men and forklift operators. Employees working in job classifications having a different job title, but performing these hereinabove set forth, shall be included in the City Employee classification. At those facilities where persons assigned to work as city drivers are covered by separate collective bargaining agreements or supplements to the Master collective bargaining agreement from other city employees and/or are members of a separate local union than other city employees, such driver positions shall be considered a separate job classification for purposes of this decree.

d. "*Facility*" includes each location where Lee Way assigns its employees to perform their duties on a regular basis, whether a terminal, sales office, repair shop or any location of any other kind.

e. "*Mechanics*" (or a functionally equivalent job classification with a different job title) includes those employees working as mechanics under applicable collective bargaining agreements between Lee Way and the IAM or locals of the IAM.

f. "*Office/Clerical*" includes those employees assigned to work in classifications associated with general office and clerical work and, more particularly, in those current job titles and codes set forth in Appendix A hereto.

*16 g. "*Officials/Managers*" includes those employees assigned to work in classifications associated with supervisory work and, more particularly, in those job titles set forth in Appendix B hereto.

h. "*Road Driver*" includes those employees assigned to work as line drivers or over-the-road drivers, and all other drivers who are covered by over-the-road collective bargaining agreements between Lee Way and the IBT and locals of that Union. Drivers for fleet owners and owner/operators shall not be included in the road driver classification for purposes of

U.S. v. Lee Way Motor Freight, Inc.

1980 WL 18620, 25 Fair Empl.Prac.Cas. (BNA) 142

the annual hiring goals and long-range attainment levels set forth herein.

i. "Sales" includes those employees assigned to work in classifications associated with sales work and, more particularly, in those job titles set forth in Appendix C hereto.

j. "Shop Employees" includes those employees assigned to work in job titles associated with vehicle maintenance and, more particularly, in those job titles set forth in Appendix D hereto. Shop employees shall not include, for purposes of this Decree, mechanics or apprentice mechanics as defined in paragraph 8(a) and (e) above.

B.

OFFICIALS/MANAGERS AND SALES

9. Subject to the availability of qualified black and Hispanic applicants, Lee Way shall adopt and seek to achieve an annual systemwide goal of hiring at least fifteen percent (15%) black and Hispanic persons, combined, for entrylevel vacancies in the combined entrylevel job classifications in Official/Managers and Sales, until such time as a long range attainment level of at least eight percent (8%) black and Hispanic persons systemwide in the combined entry-level job classifications in Officials/Managers and Sales, and at least five percent (5%) black and Hispanic persons systemwide in the entrylevel job classification of Sales, has been achieved and maintained for a period of twelve (12) months or until the expiration of this Decree, whichever first occurs. Such entry-level jobs are set forth in Appendix E hereto.

C.

FACILITIES HAVING FIFTY (50) OR MORE EMPLOYEES

10. Subject to the availability of qualified black and Hispanic persons, at each facility at which Lee Way now or during the life of this Decree employs fifty (50) or more persons and, further, which is located in a county (or in a Standard Metropolitan Statistical Area ("SMSA") if the county or that part of the county in which the facility is located is within

an SMSA) having a working age population according to the 1970 Census of at least ten percent (10%) black and Hispanic persons, Lee Way shall adopt and seek to achieve annual facility goals of hiring black and Hispanic persons, combined, for vacancies in each of the job classifications listed below of at least:

a. Thirty percent (30%) for road drivers, city employees,² and shop employees;

*17 b. Twenty-five percent (25%) for office/clerical; and

c. Twenty percent (20%) for mechanics and apprentice mechanics.³

11. The annual facility hiring goals set forth in paragraph 10, above, shall remain in effect for each job classification and at each facility until such time as the percentage of black and Hispanic persons, combined, in such job classification and at such facility is equal to the percentage of black and Hispanic persons in the working age population of the county (or the SMSA if the county or that part of the county in which the facility is located is within an SMSA) according to the 1970 Census. If such percentage is not maintained for a period of twelve (12) consecutive months thereafter, then said goals shall be reinstated for such job classification at such facility until the attainment percentage is reached and maintained for a period of twelve (12) consecutive months thereafter, or until the expiration of this Decree, whichever first occurs.

12. Subject to the availability of qualified black and Hispanic persons, at each facility at which Lee Way now or during the life of this Decree employs fifty (50) or more persons and, further, which facility is located in a county (or in an SMSA if the county or that part of the county in which the facility is located is within an SMSA) having a working age population of less than ten percent (10%) black and Hispanic persons according to the 1970 Census, Lee Way shall adopt and seek to achieve annual facility goals of hiring black and Hispanic persons, combined, for vacancies in each of the job classifications listed below of at least:

a. Twenty percent (20%) for city employees,⁴ and shop employees; and

U.S. v. Lee Way Motor Freight, Inc.

1980 WL 18620, 25 Fair Empl.Prac.Cas. (BNA) 142

b. Fifteen percent (15%) for road drivers, office/clerical, and mechanics and apprentice mechanics,⁵ provided that road driver vacancies filled by individuals pursuant to paragraph 29 of this Decree shall not count toward such an annual hiring goal. However, employees added thereby shall count toward the long-range attainment level for that job.

13. The annual hiring goals set forth in paragraph 12, above, shall remain in effect for each job classification and at each facility until such time as the percentage of black and Hispanic persons, combined, in such job classification and at such facility is equal to the percentage of black and Hispanic persons in the working age population of the county (or the SMSA if the county or that part of the county in which the facility is located is within an SMSA) according to the 1970 Census. If such percentage is not maintained for a period of twelve (12) consecutive months thereafter, then said goals shall be reinstated for such job classification at such facility until the attainment percentage is reached and maintained for a period of twelve (12) consecutive months or until the expiration of this Decree, whichever first occurs.

D.

*FACILITIES HAVING LESS
THAN FIFTY (50) EMPLOYEES*

*18 14. Subject to the availability of qualified black and Hispanic persons, Lee Way shall adopt and seek to achieve the following annual systemwide hiring goals for black and Hispanic persons, combined, for vacancies in the following job classifications at all facilities at which Lee Way now or during the life of this Decree employs less than fifty (50) persons:

- a. Twenty-five percent (25%) for road drivers, city employees⁶ and shop employees;
- b. Twenty-five percent (25%) for office/clerical; and
- c. Twenty percent (20%) for mechanics and apprentice mechanics;⁷

15. The annual hiring goals set forth in paragraph 14, above, shall remain in effect for each job classification until such time as a long-range attainment level of at least fifteen percent (15%) black and Hispanic persons systemwide in such job classification at these facilities has been achieved. If such fifteen percent (15%) attainment level is not maintained in such job classification for a period of twelve (12) consecutive months thereafter, then said goals shall be reinstated until the attainment level for that job classification is reached and maintained for a period of twelve (12) consecutive months or until the expiration of this Decree, whichever first occurs.

IV.

JOB STANDARDS AND TESTING

16. All applicants for initial employment or re-employment, except those individuals whose names are set forth in paragraph 29, below, may be required to meet the following requirements:

- a. No record of conviction(s) which indicates that the applicant cannot reasonably be expected properly to fulfill the duties of the job in question;
- b. No unsatisfactory past work record. In cases where there is a disagreement as to whether this standard has been met, Lee Way's past practices since January 1, 1978 shall control;
- c. Be physically qualified for the job and pass Lee Way's physical examination, provided that the physical examination is not shown by Plaintiffs to have an adverse impact on black and Hispanic persons. In such event, Lee Way may continue the physical examination if it can establish that the examination is job-related or otherwise required by business necessity; and
- d. Any other requirement which either does not have adverse impact on black and Hispanic persons or is demonstrated by Lee Way to be in accordance with Title VII and E.O. 11246.

17. In addition to paragraph 16, above, all applicants for initial employment or re-employment for the position of over-the-road driver, except those individuals whose names are set

U.S. v. Lee Way Motor Freight, Inc.

1980 WL 18620, 25 Fair Empl.Prac.Cas. (BNA) 142

forth in paragraph 29, below, may be required to meet the following qualifications:

- a. No less than one year's tractortrailer driving experience;
- b. Shall have the required current and valid chauffeur's license;
- c. Shall be qualified under applicable regulations of the United States Department of Transportation (hereinafter referred to as the "DOT");
- *19** d. No more than three (3) convictions for moving violations or chargeable accidents, or any combination thereof, within three (3) years preceding either the date of application or employment decision by Lee Way;
- e. Take and pass a driving test on company equipment in order to demonstrate their driving skills; and
- f. Lee Way, if it has consistently since January 1, 1978 followed maximum height and weight qualifications, or minimum age qualifications, may continue to do so, provided that a minimum age shall not be greater than 25 years. If in a given year Lee Way does not substantially achieve the hiring goal for the road driver classification, the minimum age shall be reduced to 23 years (with a minimum of two (2) years tractor-trailer driving experience) until Lee Way meets its hiring goal.

18. In addition to paragraph 16, above, applicants for employment or reemployment for driving positions other than over-the-road driver, except those individuals whose names are set forth in paragraph 29, below, may be required to meet the following qualifications:

- a. Shall have the required current and valid chauffeur's license;
- b. No more than three (3) convictions for moving violations or chargeable accidents, or any combination thereof, within three (3) years preceding either the date of application or employment decision by Lee Way; and
- c. Be required to take and pass a driving test on company equipment in order to demonstrate their driving skills.

19. In selecting from among qualified applicants in a manner consistent with the hiring goals and attainment levels set forth in this Decree, Lee Way may consider such factors as education, driving record, experience, training and past work record.

20. The following shall not be deemed sufficient grounds for rejecting applicants for employment:

- a. For the job classifications covered by the hiring goal and attainment level provisions of this Decree, a failure to have any prior experience in the trucking industry.
- b. Having an arrest record, unless such record discloses facts which indicate that the applicant is not suited for hire in the job in question.
- c. Failure to have a high school diploma or its equivalent or a college degree unless the job reasonably requires a high school diploma or a college degree. The job classifications of road driver, city employee, shop employee, entrylevel office/clerical employees (other than cashier) and apprentice mechanics and mechanics shall not be deemed to require a high school diploma. Nothing contained in this subparagraph shall prevent or prohibit Lee Way from requiring applicants to possess those cognitive and other skills necessary to perform in these job classifications as long as such requirement either does not have an adverse impact on black and Hispanic persons or is demonstrated by Lee Way to be in accordance with Title VII and E.O. 11246.

21. Applications of black and Hispanic persons for employment shall be deemed active as set forth in paragraph 4, above unless withdrawn by the applicant or unless an offer of regular employment in the classification(s) applied for is declined prior to the end of the three-month period.

***20** 22. Lee Way shall not utilize, for purposes of hiring, assignment, promotion or transfer, any general intelligence or aptitude test which has not first been validated in accordance with Title VII and E.O. 11246, but such tests may be administered for the purpose of investigating their validity.

23. Applicants for employment with Lee Way may be required to pass practical tests which measure knowledges, skills and abilities needed for the job sought, so long as these tests are designed and administered in an objective

U.S. v. Lee Way Motor Freight, Inc.

1980 WL 18620, 25 Fair Empl.Prac.Cas. (BNA) 142

manner and either do not have an adverse impact on blacks or Hispanics or are demonstrated by Lee Way to be in accordance with Title VII and E.O. 11246. Such tests are exemplified by typing, shorthand and office machine tests for office and clerical candidates. Nothing contained in this paragraph shall prevent or prohibit Lee Way from using a performance test of actual job content for applicants for driving positions, nor shall anything in this paragraph prohibit the giving of physical examinations prior to or after the hiring of applicants for employment.

V.

RECRUITMENT

24. To the extent necessary to meet the hiring goals and long-range attainment levels set forth in Part III of this Decree, Lee Way shall implement a program for the dissemination of information among members of the black and Hispanic communities where Lee Way has facilities concerning the employment opportunities and procedures for making application for employment with Lee Way. The objective of such a program shall be to supply enough qualified black and Hispanic applicants for employment to meet the hiring goals and attainment levels set forth in this Decree. As part of such program for the dissemination of employment information for facilities where goals under this Decree are in effect, the services of available newspapers of predominantly black and/or Hispanic circulation in the area and radio stations serving primarily the black and Hispanic population of the area shall be utilized when vacancies occur.

25. Lee Way shall engage in affirmative recruiting of black and Hispanic persons for anticipated vacancies in entry-level management positions, including sales and supervisory jobs.

VI.

TRAINING

26. If Lee Way is unable to offer employment to a sufficient number of qualified black and Hispanic applicants to meet

its annual road driver hiring goals, Lee Way shall seek to increase the number of qualified applicants for employment by undertaking one of the alternatives listed below no later than three (3) months after the end of that particular annual hiring goal period:

- a. Establishing its own road driver training program; or
- b. Participating in the training program of other companies; or
- c. Supporting training schools (private or public) by providing the opportunity for employment to qualified black and Hispanic graduates who meet the company's employment standards.

*21 27. It is the express intention of the parties to provide great flexibility to Lee Way in determining the methods and type of training to be utilized and to maintain in effect employment standards permitted by this Decree. Training programs, other than private or public road driver training schools referred to in subparagraphs 26(a) and (b), above, shall not exceed eight (8) weeks without a program of trainee payment.

28. Upon satisfactory completion of a truck driver training program contemplated by paragraph 26, above, qualified black and Hispanic trainees shall, subject to the employment needs of Lee Way, be offered employment by Lee Way in accordance with the hiring goals and attainment levels for filling vacancies in road jobs as defined in Part III, above.

VII.

RELIEF FOR INDIVIDUALS

29. Hereinafter set forth are the names, terminal locations, jobs to be offered by Lee Way, remedial seniority dates in those jobs, and gross monetary amounts, if any, for those persons who were claimants in this case who are entitled to individual relief under this Decree. Those portions of the gross monetary amount for each of those persons attributable to principal and to interest, respectively, are set forth in Appendix F attached hereto.

Name	Terminal Location	Job to be Offered by Lee Way	Remedial Seniority Date	Gross Monetary Amount
-------------	--------------------------	-------------------------------------	--------------------------------	------------------------------

U.S. v. Lee Way Motor Freight, Inc.

1980 WL 18620, 25 Fair Empl.Prac.Cas. (BNA) 142

Adams, Tommy Lee	San Antonio	City Driver	Nov. 1, 1970	\$42,557.26
Allen, John H.	Oklahoma City	Road Driver	Oct. 8, 1969	60,927.26
Anderson, Alonzo	Oklahoma City	Journeyman Mechanic (Tractor Dept.)	June 2, 1974	17,180.98
Black, James	Oklahoma City	Road Driver	March 18, 1970	21,028.25
Caldwell, Otto	Oklahoma City	None	None	36,406.97
Campbell, Douglas	Los Angeles	Road Driver	Sept. 8, 1965	10,000.00
Cannon, Clifford	Oklahoma City	Road Driver	Aug.2, 1971	37,893.20
Chandler, Charles	San Antonio	None	None	10,000.00
Collins, Juanita	Oklahoma City	Clerical	Oct. 10, 1968	34,391.98
Combs, Thomas	Oklahoma City	None	None	15,000.00
Crouch, John Curry,	Los Angeles	Apprentice Mechanic	Oct. 1, 1967	57,928.42
Paul Daniels,	Los Angeles	None	None	12,844.38
Audrey Davenport,	Oklahoma City	Road Driver	Nov. 1, 1966	123,658.64
John Davis, L.V.	Oklahoma City	City Driver-Dock	Feb. 18, 1966	14,528.92
Doss, Rudolph	Oklahoma City	Tireman	May 20, 1954	20,000.00
Downey, Clifford	Oklahoma City	Road Driver	June 20, 1972	57,102.66
Earl, Willie Edwards,	Oklahoma City	Road Driver	June 14, 1974	36,090.34
H.J. Fair, Bertha	Oklahoma City	Road Driver	Aug.1 5, 1968	15,000.00
Forman, Gwendolyn	Houston	None	None	33,482.08
Forshee, Earl	Oklahoma City	Road Driver	June 1, 1968	10,000.00
Fortune, Lloyd	Oklahoma City	Clerical	Aug. 28, 1972	15,800.18
Frost, Cleophus	Oklahoma City	Apprentice Mechanic (Tractor Dept.)	Feb. 22, 1969	34,616.12
	Oklahoma City	Apprentice Mechanic (Tractor Dept.)	April 17, 1970	4,203.80
	Oklahoma City	Apprentice in the classification of the claimant's choice, or Road Driver, at the claimant's choice.	Aug. 1, 1955	34,005.79

U.S. v. Lee Way Motor Freight, Inc.

1980 WL 18620, 25 Fair Empl.Prac.Cas. (BNA) 142

Gentry, Carnell	Oklahoma City	Dock	Jan. 19, 1966	4,000.00
Grayson, Sylvester	Oklahoma City	Journeyman Mechanic (Trailer Dept.)	March 1, 1970	12,370.24
Green, Alvia	Los Angeles	Road Driver	Oct. 2, 1965	10,000.00
Hall, Shirley Harper,	Oklahoma City	Road Driver	Sept. 18, 1972	10,406.50
James Harrison,	Los Angeles	None	None	10,000.00
Louis Harrison,	Oklahoma City	Tireman	June 1, 1966	53,194.42
Wendell Hawkins,	Oklahoma City	Road Driver	May 10, 1973	\$82,450.19
William Henderson,	Houston	None	None	5,000.00
Arthur Henderson,	Oklahoma City	Road Driver	June 30, 1968	113,808.14
Willie Hicks, Leon	Oklahoma City	None	None	10,000.00
Higgs, Claude	Oklahoma City	Journeyman Electrician	Jan.21, 1964	52,377.25
Hill, James Jeffries,	Oklahom City	None	None	5,000.00
Lee Johnson,	Oklahoma City	Road Driver	Nov. 4, 1970	38,286.16
Johnnie L. Johnson,	Oklahoma City	Road Driver	Aug. 29, 1972	21,606.25
William Jones, Willis	Oklahoma City	Road Driver	Oct. 1, 1968	63,175.78
Jordan, Caldee	Oklahoma City	Road Driver	Nov. 5, 1966	83,208.80
Kelly, Levi	Oklahoma City	None	None	10,000.00
King, Bishop	Oklahoma City	Road Driver	April 8, 1968	55,763.80
Landrum, Houston	Oklahoma City	Dock	Oct. 1, 1972	3,946.32
Lee Marion Boyd	Oklahoma City	Road Driver	Nov. 15, 1972	10,945.07
Lewis, Billy Joe	Oklahoma City	Road Driver	Aug. 10, 1970	89,506.81
	Los Angeles	Road Driver	July 23, 1970	47,620.39
	Oklahoma City	Road Driver, or Journeyman Mechanic (Trailer Dept.) at the claimant's choice.	July 6, 1965	115,295.11
Lewis, Clint			Sept. 9, 1961	
	Oklahoma City	City Driver-Dock	Aug. 15, 1967	5,000.00

U.S. v. Lee Way Motor Freight, Inc.

1980 WL 18620, 25 Fair Empl.Prac.Cas. (BNA) 142				
Looney, Daniel	Oklahoma City	Apprentice Mechanic (Tractor Dept.)	July 4, 1960	5,000.00
McCormick, Lecha T.	Oklahoma City	Clerical	April 17, 1972	47,736.32
McDonald, Rushion	Oklahoma City	Road Driver	March 14, 1974	20,731.78
McNeely, Johnny	Oklahoma City	Road Driver	April 12, 1972	50,113.16
Madison, Lonzo	Oklahoma City	Road Driver	July 23, 1970	89,699.10
Marks, Fulton	Los Angeles	Road Driver	Aug. 31, 1966	10,000.00
Medlock, Bill S.	Oklahoma City	Road Driver	May 13, 1971	32,601.00
Mitchell, Howard	Oklahoma City	City Driver-Dock	Aug. 20, 1969	9,174.34
Nicholas, Henry	Oklahoma City	Road Driver	Feb. 26, 1972	44,993.39
Pendleton, Wilma	Oklahoma City	None	None	4,039.90
Roberts, Alvin Scott, Albert	Oklahoma City	Dock-Supervisor	Nov. 8, 1971	19,603.30
Scott, Jack, Jr.	Los Angeles	None	None	22,828.21
Simpson, Wendell	Oklahoma City	Road Driver	Sept. 1, 1966	102,241.89
Smith, Lethel	Oklahoma City	Road Driver	May 31, 1972	5,972.18
Solomon, Chastene	Oklahoma City	Road Driver	Oct. 1, 1971	15,000.00
Spells, James	Oklahoma City	Road Driver	June 14, 1974	42,522.25
Strong, Albert Taylor,	Los Angeles	Road Driver	June 22, 1971	7,839.42
Winfred Thomas, Jeff	Oklahoma City	Road Driver	July 2, 1965	5,000.00
Thomas, Justin	Los Angeles	None	None	10,000.00
Thomas, Lealus	Oklahoma City	Road Driver	Aug. 16, 1972	36,617.36
Thompson, George	Oklahoma City	Apprentice Mechanic	Sept. 30, 1969	6,869.08
Timmons, Joe F.	Oklahoma City	None	None	17,148.96
Toney, Brady Turner,	Oklahoma City	Road Driver	April 16, 1969	70,627.70
Leroy	Los Angeles	Road Driver	Oct. 14, 1969	93,772.92
Von Hill, Sandy	Los Angeles	Road Driver	May 1, 1967	10,000.00
	Los Angeles	Road Driver	Dec. 26, 1968	10,000.00

U.S. v. Lee Way Motor Freight, Inc

1980 WL 18620, 25 Fair Empl.Prac.Cas. (BNA) 142				
Walker, Norah	Oklahoma City	Apprentice Mechanic (Trailer Dept.)	Jan. 19, 1953	14,000.00
Walter, Howard	Oklahoma City	City Driver-Dock	June 1, 1968	\$25,393.34
Ware, George	Oklahoma City	Clerical	Feb. 6, 1972	47,816.23
Watson, Carl	Oklahoma City	None	None	10,000.00
White, Richard	Oklahoma City	None	None	5,000.00
Wiley, Charles	Oklahoma City	Road Driver	March 20, 1974	12,583.94
Wood, Orville	Oklahoma City	Road Driver	April 2, 1969	165,780.97

*22 30. Lee Way agrees to furnish the gross sum of two million seven hundred and forty thousand dollars (\$2,740,000.00) in full and final settlement of all claims for monetary relief of any kind whatsoever against the Company for persons alleged to have experienced the occurrence of an alleged continuing pattern and practice of employment discrimination by Lee Way against blacks and Hispanics. This sum shall be used to satisfy the gross monetary amounts for the individuals set forth in Paragraph 29, above. This sum shall include all claims for fringe benefits, including health/welfare and pension benefits, alleged to have been lost by those persons alleged to have experienced the occurrence of an alleged continuing pattern and practice of employment discrimination by Lee Way against blacks and Hispanics.

31. Subject to paragraph 34(b), below, that portion of the gross monetary amount for each of those individuals which is attributable to principal (as opposed to interest), as reflected in Appendix F attached hereto, is subject to FICA and income tax withholding. Lee Way further agrees to pay, in addition to the sum of \$2,740,000.00, all employer contributions to the social security fund due on monetary amounts to be paid to individuals under this Decree, as well as the sum of \$42,000.00 in full settlement of the costs incurred by Plaintiffs in this action.

VIII.

IMPLEMENTATION OF INDIVIDUAL RELIEF

A.

MONETARY RELIEF

32. Lee Way shall make all payments required by this Decree of Lee Way directly to the Clerk of this Court. These payments to the Clerk shall be accompanied by specific instructions agreed upon by Lee Way and Plaintiffs regarding to whom, in what amount and when the sums are to be disbursed, and the Clerk shall then disburse the sums according to those directions. The instructions shall include the amount of each of the deductions to be made for all taxes and the employee's share of social security, the amount, if any, to be paid to any pension fund as well as the names and addresses of the governmental authorities and pension fund, if any, to which these deductions are to be sent. Lee Way may pay the sums to the Clerk of the Court in up to three different installments, the first installment to be paid within thirty (30) days after this Decree is approved and entered by the Court, unless an appeal has been filed and a stay of the monetary provisions of this Decree has been entered by the Court upon the posting of appropriate security by the appellant(s). Included in the first installment shall be the first one-third of the monetary amounts security fund due on those one-third principal amounts, and the \$42,000.00 to be paid to Plaintiffs in full settlement of all costs. The second and third installments shall be paid to the Clerk of the Court by Lee Way not later than 365 days and 731 days, respectively, thereafter. These installments shall each consist of one-third of the monetary amounts due to the individuals for the occurrence of the alleged continuing pattern and practice employment discrimination by Lee Way affecting

U.S. v. Lee Way Motor Freight, Inc.

1980 WL 18620, 25 Fair Empl. Prac. Cas. (BNA) 142

these individuals, interest at the rate of ten percent (10%) compounded annually on those amounts then yet unpaid, to run from the date this Decree is entered until the payment is made to the Clerk by Lee Way (such interest to be in addition to the sum of \$2,740,000.00 set forth in Paragraph 30, above), and any employer contributions to the social security fund due on those one-third principal amounts.

***23** 33. Lee Way shall provide security in a form and manner satisfactory to Plaintiffs for all unpaid monetary amounts due to be paid by Lee Way under this Decree until those amounts are in fact paid. This Court shall resolve any disputes between Lee Way and Plaintiffs with respect to the form of such security and the manner in which it is provided to Plaintiffs.

34(a). The monetary amounts to be paid to the individuals listed in paragraph 29, above, shall be paid to them by the Clerk of the Court in the manner elected by Lee Way pursuant to paragraph 32, above. Except with respect to those individuals referred to in Paragraph 34(b), the first installment is to be paid to each individual within fifteen (15) days after the Clerk receives from that individual the release provided for in paragraphs 50, below, and the next two installments to be paid within fifteen (15) days after receipt of the relevant funds from Lee Way. Interest shall be paid on the second and third installments as described in paragraph 32, above.

34(b). Any beneficiary named in paragraph 9 who wishes to have a portion of his monetary award paid up to the amount required for appropriate pension coverage from the seniority date provided that person in paragraph 9 to the date of Lee Way's offer of employment as herein required, shall so advise the Government Compliance Officer in writing prior to disbursement of the funds due that individual under this

Decree. ⁸ The Clerk pursuant to the Government Compliance Officer's written directions shall pay the amount required to the pension fund or account according to the procedures set forth herein. However the Clerk shall delay any monetary payment to such individual for a period not to exceed 120 days or until the amounts to be paid to the appropriate pension fund or account have been finally determined to the satisfaction of the claims, whichever occurs first. If this amount has not been determined within the 120 day period prescribed herein, then the Clerk shall make the full monetary payments directly to the claimant. Any payment to a pension fund or account pursuant to such directions shall be set off against

the gross monetary award to that individual described in paragraph 29 above. In no event shall the Clerk be directed or Lee Way required to pay a sum greater than that set forth for the relevant individual in paragraph 29, above. Any sums contributed to such a pension fund or account shall not be subject to employer or employee FICA and income tax withholding.

35. Any person entitled to a monetary award under paragraph 29, above, is required only to sign and transmit the written acceptance and the release provided for in paragraphs 50 and 52, below, in order to receive that award. Such person is not required to do anything else (such as, for example, accept a job offer from Lee Way or complete a probationary period in that job) in order to receive his monetary award as set forth in paragraph 32, above.

***24** 36. Any monetary amount for which an individual is eligible under paragraph 29, above, but which is not accepted by such individual by means of a signed notarized release as provided for in paragraph 50, below, shall be held by the Clerk of the Court and invested in interest-bearing Federal Government securities at the best available rate. If such individual does not accept the monetary amount provided for in this Decree and within 180 days from the date of entry of this Decree files a complaint against Lee Way for relief on the basis of employment discrimination, such monetary amount shall be applied to Lee Way's costs of defending against and/or paying such claim. If, however, such individual does not accept the monetary amount provided for in this Decree but also does not within 180 days from the date of entry of this Decree file a complaint against Lee Way, such monetary amount shall then be distributed as Plaintiffs and Lee Way may agree and the Court approve, or, failing such agreement, the Court may order. In this regard, the existence of claims arising out of or relating to an employment relationship (whether actual or putative) with Lee Way be any person entitled to monetary relief under paragraph 29, above, and not otherwise covered by this Decree, shall authorize but not require Lee Way to apply to the Court for a suspension of the payment of the monetary award for any such person, if:

a. Lee Way can reasonably demonstrate that any such claims which were not resolved as of the date the individual's claim for relief in this action was heard by or submitted to the Master, and involve or will likely involve a request for recovery of lost wages and/or fringe benefits for any period

U.S. v. Lee Way Motor Freight, Inc.

1980 WL 18620, 25 Fair Empl.Prac.Cas. (BNA) 142 covered by the monetary awards offered that person under this Decree as further defined below; and

b. That successful recovery of any lost wages and/or fringe benefits as a result of such claim(s), in addition to the recovery of his monetary award under this Decree, would constitute a “windfall” or double recovery for that individual. In computing the period of monetary recovery for any person under this Decree for purposes of this paragraph, such a period will be deemed to begin as of the date of the claimant's remedial seniority date as set forth in paragraph 29, above, and end on the date of the entry of this Decree. For any person entitled to monetary relief under paragraph 29, above, but who is not awarded a remedial seniority date by that paragraph, the period of such person's monetary recovery under this Decree, should it become an issue under this paragraph, shall be as subsequently agreed upon by Plaintiffs and Lee Way, or, failing such agreement, as determined by the Court.

If, pursuant to this paragraph and upon proper application by Lee Way, the Court determines that the payment of all or a portion of a person's monetary award under this Decree should be suspended pending a final resolution of any other claim(s) or pending determination of the effect of an employment-related claim that person may have or have had against Lee Way, the Clerk of the Court shall invest the suspended portions of that person's monetary award in interest-bearing Federal Government securities at the best available rate. Upon a final determination of any such claim(s), Plaintiffs, Lee Way and the claimant shall confer in an attempt to determine whether any monetary sums owed as of that date by Lee Way to the claimant as a result of such claim(s) should be reduced in whole or in part from the monetary amount owed to that person under this Decree. If Plaintiffs, Lee Way and the claimant are unable mutually to agree upon such a reduction, if any, Plaintiffs, Lee Way or the claimant may apply to the Court for a resolution of this issue. Any sum thus found by the Court or agreed upon by Plaintiffs, Lee Way and the claimant to constitute a “windfall” or double recovery shall be returned to Lee Way with accrued interest.

B.

JOB OFFERS AND REMEDIAL SENIORITY RELIEF

*25 37. The right to a job offer with remedial seniority as specified for those individuals identified in paragraph 29, shall vest immediately upon the entry of this Decree.

38. No challenge to the job classification and seniority awards specified in paragraph 29 of this Decree shall be heard or determined by any grievance tribunal. Subject to this limitation, once any individual accepts or refuses (within the meaning of this Decree) the opportunity to fill a future vacancy in the job(s) listed next to his name in paragraph 29 with his remedial seniority, that person shall be subject to the non-discriminatory application of the appropriate collective bargaining agreement.

39. Juanita Collins, Louis Harrison and Alvin Roberts shall be afforded the opportunity immediately to fill the job to be offered each of them by Lee Way under paragraph 29, above, or one of at least comparable status, duties and pay until the next vacancy occurs in the specified job. A refusal to accept an offer to fill a vacancy in a comparable job shall not constitute a waiver to an offer of the first vacancy in the specified job. All other individuals given job opportunity relief by this Decree shall be given the opportunity to fill a future vacancy in that job. For purposes of determining the existence of a future vacancy, the full exercise of existing recall rights shall prevail for one year after the entry of this Decree, provided, however, that such a period may be modified, for good cause shown, upon motion by one of the parties requesting such modification. After that date, or such other date as may subsequently be determined, all individuals given job opportunity relief by this Decree who have not yet occupied a future vacancy shall be entitled to use the remedial seniority date to which they are entitled under paragraph 29, above, to compete with laid-off employees who have been on lay-off more than thirty (30) days for all recalls and other vacancies in the relevant positions. The three-year contractual recall rights of a laid-off employee will not include any periods of time he may have to wait to be recalled because of an individual having exercised his remedial seniority pursuant to this paragraph.

40. When vacancies occur in jobs which the individuals are entitled to fill under paragraph 29, above, Lee Way shall

U.S. v. Lee Way Motor Freight, Inc.

1980 WL 18620, 25 Fair Empl.Prac.Cas. (BNA) 142 contact those individuals who have given written notice of their intention to accept the job opportunity relief given them by this Decree, in the sequence in which these individuals are entitled to relief. If two or more individuals are eligible for the same vacancy, the individual with the earliest remedial seniority date will be offered the first opportunity to qualify for the vacancy.

41. Each individual incumbent employee of Lee Way identified in paragraph 29, above, who is now entitled to an offer of an opportunity to transfer to a future vacancy in another job at Lee Way with remedial seniority as specified in paragraph 29, above, shall have a period of thirty (30) days from the date of transfer to decide whether or not he wishes to remain in that job. If during the thirty (30) day period any such individual elects to return to his former job at Lee Way, he may do so without loss of seniority in his former job. Any individual who is entitled to an offer of an opportunity to fill an apprentice mechanic position at Lee Way shall have an additional retreat right to and without loss of seniority in his former job if he fails to attain journeyman status.

*26 42. Notwithstanding any of the provisions of Part IV of this Decree, each individual entitled to fill a vacancy in a job under paragraph 29, above, shall be deemed qualified for such job unless:

a. He fails to pass a physical examination required for the job according to the procedures set forth in paragraphs 47 and 48, below; or

b. If the job is that of road driver:

(1) He does not have or cannot presently obtain the required current and valid chauffeur's license, or

(2) He is not qualified under applicable regulations of the DOT; or

(3) He fails to take and pass a practical road driving test according to the provisions set forth in paragraph 46, below; or

c. If the job is for driving but not that of road driver:

(1) He does not have or cannot presently obtain the required current and valid chauffeur's license; or

(2) He fails to take and pass a practical driving test; or

d. Lee Way can demonstrate by convincing evidence that such individual's work record since the date his claim was presented to the Special Master in this action clearly indicates that such individual cannot reasonably be expected properly to fulfill the duties of the job in question.

43. When an individual is offered an opportunity to fill a job vacancy pursuant to paragraph 29, above, he must inform Lee Way within ten (10) days of receipt of that offer as to whether he will take the offer. If the individual does not accept the opportunity to fill a job offer within ten (10) days of receipt of that offer, he shall be deemed to have waived his right to that job under this Decree unless he can show good cause for the failure to make a timely acceptance. A second failure to make a timely acceptance shall exhaust Lee Way's obligations under paragraphs 29 and 40 of this Decree, unless the good cause is a continuing but non-permanent one. When an individual accepts an offer of an opportunity to fill a job vacancy, he must then fill that vacancy, if his remedial seniority permits him to occupy the vacancy: (a) immediately after accepting such offer, if the individual is a current employee of Lee Way and the job vacancy is at a Lee Way facility in the area in which the individual resides; (b) within fifteen (15) days after accepting such offer, if the individual is not a current employee of Lee Way and the job vacancy is at a Lee Way facility in the area in which the individual resides; or (c) twenty-five (25) days after accepting such offer, regardless of whether the individual is or is not a current Lee Way employee, if the job vacancy is at a Lee Way facility in an area other than that in which the individual resides.

44. Any of the individuals given job opportunity and remedial seniority relief, who already have moved to a job to which they are given an opportunity to move by this Decree shall immediately be given their remedial seniority in that job.

45. With respect to those individuals who, under paragraph 29 of this Decree, are to be offered an opportunity to fill a future vacancy in an apprentice mechanic job in the shop, as well as those individuals entitled to an apprentice mechanic job opportunity who are presently in such job, they shall be credited during their period of apprenticeship with their remedial seniority date, which is the seniority date they are

U.S. v. Lee Way Motor Freight, Inc.

1980 WL 18620, 25 Fair Empl. Prac. Cas. (BNA) 142 entitled to use as a journeyman if they successfully complete their apprenticeship.

*27 46. Where an individual is entitled under paragraph 29 of this Decree to be offered an opportunity to fill a future vacancy in a road driver job and where the individual accepts such a future vacancy but is subsequently failed by Lee Way on its practical road driving test, the individual shall be entitled to be retested within thirty (30) days (within the observation, but not the presence in the cab, of a Lee Way representative, if desired by Lee Way) by a qualified over-the-road driving examiner selected by Plaintiffs and the results promptly shall be transmitted in writing to Lee Way. If the individual passes the second test and Lee Way refuses to accept the results of that test, the individual shall then be retested by a driving examiner appointed by the Court and the results of this examination shall be final. If the individual passes the third test, Lee Way promptly shall pay for the cost of such third test; however, if the individual fails such test, Lee Way shall not be liable for the cost of such test.

47. Where an individual is entitled under paragraph 29 of this Decree to be offered an opportunity to fill a future vacancy in a job for which a physical examination is required and where the individual accepts such an opportunity but is subsequently failed on the physical by the doctor appointed by Lee Way, the individual shall promptly be offered a copy of the results of such physical and shall be entitled to take another physical examination within thirty (30) days by a doctor of the individual's own choosing. If the individual passes the second physical, the individual promptly shall provide a copy of the results of that physical to Lee Way. If Lee Way refuses to accept the results, the individual shall be given a third physical examination by a doctor appointed by the Court and the results of this examination shall be final. If the individual passes the third physical examination, Lee Way promptly shall pay for the cost of such third physical; however, if the individual fails such physical, Lee Way shall not be liable for the cost of such physical.

48. Where an individual is entitled under paragraph 29 of this Decree to be offered an opportunity to fill a future vacancy in a job for which a blood pressure test is required and where the individual accepts such an opportunity but is found by the doctor appointed by Lee Way to have blood pressure which is too high to qualify the individual, and if, after treatment and retesting the examining doctor still finds the blood pressure

too high to satisfy the DOT Regulations, the individual shall be entitled to receive a copy of the results of such test and to take another blood pressure test within thirty (30) days by a doctor of the individual's own choosing. If this doctor finds the individual's blood pressure to be within acceptable limits under the DOT Regulations, the individual shall promptly provide a copy of the results of that test to Lee Way. If Lee Way refuses to accept the results thereof, the individual shall then be given a third blood pressure test by a doctor appointed by the Court. The decision of the third doctor as to whether the individual's blood pressure is within acceptable limits under the DOT Regulations shall be final. If the third doctor decides that the individual's blood pressure is within acceptable limits under the DOT Regulations, Lee Way promptly shall pay for the cost of such third test; however, if the third doctor decides that the individual's blood pressure is not within acceptable limits, Lee Way shall not be liable for the cost of such test.

*28 49. All individuals who are to be given an opportunity to fill a future vacancy in a road driving job or a city driving job under paragraph 29 of this Decree shall be entitled to demonstrate their driving skill to qualify for such a job when the job becomes available. They shall be allowed a reasonable opportunity, if they desire, to familiarize themselves with Company equipment prior to demonstrating their driving skills.

C.

NOTIFICATION OF INDIVIDUAL
RELIEF AND RELEASES

50. Any person entitled to individual relief under this Decree, in order to obtain that relief, must sign a notarized release stating that the relief is accepted in full settlement of any and all claims against Lee Way, the IAM, and the IBT and their respective officers, directors, agents, employees, successors or assigns, based on or arising out of the occurrence of a continuing pattern and practice of any alleged discrimination because of race, color or national origin in violation of any Federal, state or local equal employment opportunity laws, ordinances, regulations or orders, including but not limited to Title VII, the Civil Rights Act of 1866, 42 U.S.C. Sec. 1981 et seq., the United States Constitution, Executive Order 10925, and Executive Order 11246, as amended, occurring prior to

U.S. v. Lee Way Motor Freight, Inc.

1980 WL 18620, 25 Fair Empl. Prac. Cas. (BNA) 142

the date the release is signed. All signed releases shall be returned to the Clerk of the Court and the Clerk shall furnish copies of all signed release to each of the parties. The release shall be in the form exemplified by Appendix G hereto or such other form as Lee Way, the Plaintiffs, IBT and IAM may agree upon.

51. Lee Way shall mail a notice by certified mail, return receipt requested, to each individual identified in paragraph 29, above. Such notification shall be in the form as set forth in Appendix H hereto and deposited in the mail within sixty (60) days from the date of the entry of this Decree, and shall be mailed to each individual's last known address. Plaintiffs will supply Lee Way with the most current address of each individual known to Plaintiffs. With respect to any individual to whom delivery cannot be effected by this means, Plaintiffs will assume responsibility for delivering the notice to such individual.

52. With respect to each of the claimants identified in paragraph 29, each such individual shall be notified of the relief to which he is entitled under this Decree, and each individual shall further be advised that he must accept in writing the relief offered, and sign, have notarized and return the enclosed release, within sixty (60) days after he receives the notice and release. The written acceptance and signed notarized release shall be returnable to the Clerk of the Court, who shall retain the original of each and furnish a copy to the parties. A postage-paid, pre-addressed enveloped addressed to the Clerk of the Court shall be included with the notice of relief and release sent to each individual by Lee Way. All notices of relief and releases to be sent by Lee Way pursuant to this paragraph shall be submitted by Lee Way to Plaintiffs for approval at least fifteen (15) days before they are due to be mailed. Failure of any individual to accept the relief given him in this Decree, by means of the delivered written acceptance and signed notarized release, shall relieve Lee Way of any further obligation to give such relief to that individual under the terms of this Decree. In such event, this Decree is not intended by the parties or this Court to be admissible in evidence either for or against Lee Way in any subsequent individual proceeding by or against Lee Way.

IX.

RECORDS AND REPORTS

*29 53. Lee Way shall maintain records concerning all hires by job classification, transfers, disqualifications and dismissals during the life of this Decree. Lee Way shall retain all applications, recording on the application of each black and Hispanic applicant for employment who was found not to be qualified or otherwise was not offered employment the reason therefor, until six (6) months after the long-range attainment level in the job classification(s) and at the facility for which the application was made has been reached and thereafter maintained for twelve (12) consecutive months. Lee Way shall maintain all records on which each report required below is based. For purposes of compliance with this Decree, applications may require the racial and national origin (if Hispanic) identification of the applicant. Where the applicant refuses to provide such information, visual identification shall suffice.

54. Within ninety (90) days after final approval and entry of this Decree, Lee Way shall submit to Plaintiffs a report showing the number of employees in each of the job classifications as of the date of entry of this Decree by facility, race and national origin (if Hispanic), as well as the name, job classification, initial hire date, and job classification seniority date of each black and Hispanic person.

55. Within ninety (90) days after final approval and entry of this Decree, Lee Way shall submit to Plaintiffs a report showing that Lee Way has notified, by certified mail, return receipt requested, each person eligible for individual relief pursuant to this Decree of that specific relief for which he is eligible and the terms and conditions for obtaining that relief; whether each person eligible for individual relief has acknowledged in writing receipt of such notification; which persons have accepted in writing the relief offered them; which persons have rejected in writing the relief offered them; which persons (a) have been offered and (b) have accepted job and seniority relief; which persons have been tendered and have accepted monetary relief.

56. Lee Way shall submit supplemental reports to Plaintiffs at thirty (30) day intervals, the first such report to be filed thirty (30) days after submission of the report called for by paragraph 55, above, providing all information on events

U.S. v. Lee Way Motor Freight, Inc.

1980 WL 18620, 25 Fair Empl.Prac.Cas. (BNA) 142

asked for in paragraph 55 which were not completed at the time of the previous report, until each person eligible for individual relief has been offered and has been given an opportunity to accept all of the relief for which he is eligible pursuant to his Decree including, where applicable, payment of the monetary amount due that person and an opportunity to fill a job at Lee Way with remedial seniority.

57. Within forty-five (45) days after the date of the end of each reporting period set forth in paragraph 59, below, Lee Way shall submit to Plaintiffs a report showing by facility, job classification, and race and national origin (if Hispanic):

*30 a. the total number of employees at the end of the reporting period;

b. the number of persons transferring to road driver positions during the reporting period;

c. the number of persons hired and terminated during the period;

d. the number of applications pending at the end of the period;

e. the number of persons in training at the end of the period, the number of persons who have successfully completed such training during the period, and the number of such persons hired.

The reporting obligations of Lee Way under subparagraphs (b), (d) and (e) of this paragraph with respect to specific job classifications at specific facilities shall cease for such job classifications at such facilities six (6) months after the long-range attainment level has been reached and thereafter maintained for twelve (12) consecutive months.

58. Lee Way shall maintain records showing its employment advertising and recruiting efforts for jobs and facilities having goals under this Decree for not less than six (6) months after the long-range attainment level for the job and facility has been reached and thereafter maintained for twelve (12) consecutive months.

59. A reporting period under this Decree shall be six (6) months in duration; the reports shall be due forty-five (45) days after the end of the six-month period. The first reporting period shall commence on July 1, 1980 or thirty (30) days

after final approval and entry of this Decree, whichever is later. One copy of all reports shall be sent to each of the Plaintiffs at their respective following addresses:

Richard J. Ritter, Attorney

U.S. Department of Justice

Washington, DC 20530

Debra A. Millenson, Attorney

Office of Systemic Programs

Equal Employment Opportunity Commission

Washington, DC 20506

Reports shall be deemed acceptable as to form if no specific objection is made in writing by Plaintiffs to Lee Way within thirty (30) days of their receipt thereof. Compliance with the hiring goals shall be measured on an annual anniversary basis.

60. Lee Way shall make all records relevant to the provisions of this Decree available to either Plaintiff at the site(s) where such items are kept or, if so requested, shall make copies thereof available to either Plaintiff at its (Plaintiff's) expense, but in either case not so frequently or to such extent as to impose a burden on Lee Way greater than reasonably necessary to ascertain the extent of compliance with the provisions of this Decree. Further, Lee Way shall provide any other information relevant to the manner of compliance with this Decree upon request by either Plaintiff, but such requests shall not be made so frequently or in such manner as to impose an unreasonable burden on Lee Way, and Plaintiffs shall make joint, coordinated requests.

61. During the life of this Decree, except for the filling of EEO-1 or 2 forms, and such reports and production of records as are required in this Decree, Lee Way shall not be required to file reports pertaining to the specific matters covered by this Decree with any Federal agency, whose primary purpose involves the field of equal employment opportunity including, but not limited to, Plaintiffs and the OFCCP. Lee Way may otherwise resume a normal record retention policy and destroy the records kept and maintained for this action which are not required in the ordinary course of business and

U.S. v. Lee Way Motor Freight, Inc.

1980 WL 18620, 25 Fair Empl.Prac.Cas. (BNA) 142

which are not required to be kept either under this Decree or under applicable Federal equal employment opportunity guidelines and regulations.

X.

ADJUSTMENT OF DEFICIENCIES

***31** 62. Plaintiffs shall give Lee Way's Corporate Compliance Official prompt written notice of any alleged violation of this Decree which comes to the attention of Plaintiffs, and Lee Way shall have not more than forty-five (45) days after receipt of such written notice within which to investigate and correct or refute such alleged violation before Plaintiffs may apply to the Court for an order with respect to such alleged violation. The promptness with which Plaintiffs bring any alleged violation of this Decree to the attention of Lee Way shall be taken into account, along with all other relevant factors, in determining the amount of monetary liability against Lee Way, if any, caused by such alleged violation.

63. Plaintiffs do not claim that any current collective bargaining provision or employment practice pursuant to such provision is unlawful under either Title VII or Executive Order 11246. Should the Government Compliance Officer hereafter claim that the application or enforcement of any such current Teamsters custom, practice or collective bargaining provision then constitutes a violation of this Decree, no claim to that effect shall be made to this Court until:

(a) Specification in writing has been made to the IBT and each affected affiliate detailing the specific manner in which contract enforcement practices are alleged to violate this Decree;

(b) Copies of all statements or other evidence upon which the Government Compliance Officer relies to establish the claim of violation of this Decree have been provided to IBT and each affected affiliate, and adequate opportunity of 45 days thereafter has been provided for investigation and attempts at voluntary adjustment;

(c) Informational copies of documents furnished to IBT under this paragraph shall be simultaneously sent by the Government Compliance Officer to Lee Way's Corporate Compliance Official.

64. Plaintiffs shall give Lee Way's Corporate Compliance Official prompt written notice of any instance of any black or Hispanic person's rights under this Decree alleged to have been overlooked or improperly applied by Lee Way, and Lee Way shall have not more than forty-five (45) days after receipt of such written notice within which to investigate and correct or refute the alleged oversight or improper application before Plaintiffs may apply to the Court for an order with respect to them. The promptness with which Plaintiffs bring any alleged oversight or improper application of any black or Hispanic person's rights under this Decree to the attention of Lee Way shall be taken into account, along with all other relevant factors, in determining the amount of monetary liability against Lee Way, if any, caused by such oversight or improper application.

65. Any black or Hispanic person who has knowledge of any alleged error in the administration of this Decree shall give prompt written notice of such alleged error either to Plaintiffs or to Lee Way. If such notice is given to Plaintiffs, Plaintiffs shall give prompt written notice of such alleged error to Lee Way. Lee Way shall have not more than forty-five (45) days after receipt of such written notice within which to investigate and correct or refute such alleged error in the administration of this Decree before Plaintiffs may apply to the Court for an order with respect to such alleged error. The promptness with which alleged error in the administration of this Decree is brought to the attention of Lee Way shall be taken into account, along with all other relevant factors, in determining the amount of monetary liability against Lee Way, if any, caused by such alleged error.

***32** 66. Only parties to this Decree are entitled to seek to enforce this Decree, but any person directly affected by it may seek intervention, pursuant to Rule 24(b), F.R.Civ.P., in order to obtain such enforcement. This Decree shall not be deemed to expand the time limits otherwise applicable for the filing of claims and complaints under Title VII, E.O. 11246 or 42 U.S.C. Sec. 1981. In interpreting this Decree, the content of prior drafts exchanged by Lee Way, the IAM, the IBT and Plaintiffs shall be irrelevant.

U.S. v. Lee Way Motor Freight, Inc.

1980 WL 18620, 25 Fair Empl. Prac. Cas. (BNA) 142
67. All relief sought against the IBT is denied.

XI.

*RETENTION OF JURISDICTION
AND TERM OF DECREE*

68. This Court shall retain jurisdiction of this action. Upon compliance with the terms and long-range attainment level objectives of this Decree, or at any time after five (5) years subsequent to the date of entry of this Decree, whichever first occurs, Lee Way may move the Court, upon sixty (60) days notice to the Plaintiffs, for dissolution of this Decree. Lee Way shall be entitled to such dissolution if it has met the long-range attainment levels for road drivers, officials/managers and sales, office/clericals, city employees, shop employees and mechanics and apprentice mechanics at its Oklahoma City facilities and has complied with the provisions of this Decree in all other respects.

APPENDIX G

STATE OF _____

COUNTY OF _____

FULL AND FINAL RELEASE OF CLAIMS

1. For and in consideration of the sum of [sum spelled out] Dollars (\$), the sufficiency of which is hereby acknowledged, and the offer by Lee Way Motor Freight, Inc., of a job as [job specified] with a seniority date of [month and day], 19 __, [FULL NAME OF CLAIMANT] (hereinafter referred to as "Claimant") for himself/herself, his/her attorneys, heirs, executors, administrators and assigns, does hereby fully, finally and forever release and discharge Lee Way Motor Freight, Inc., all related companies, successors, assigns, officers, directors, agents, attorneys and employees (hereinafter referred to as "Lee Way"), the International Association of Machinists and Aerospace Workers of America (hereinafter the "IAM") and the International Brotherhood of Teamsters, Chauffeurs,

Warehousemen and Helpers of America (hereinafter the "IBT") of and from all legal and equitable claims, demands, actions, causes of action, suits, damages, losses and expenses of any and every nature whatsoever, including but not limited to lost pension payments which arise out of having, prior to the date of notarized execution of this Release, experienced the occurrence of the continuing pattern and practice (or an individual instance) of employment discrimination by Lee Way, the IAM or the IBT against blacks, Negroes and/or Hispanics because of race, color and/or national origin. This release specifically includes all claims of whatsoever nature based upon or arising out of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, et seq., the Civil Rights Act of 1866, 42 U.S.C. 1981, et seq., the United States Constitution, Executive Order 10925, and Executive Order 11246, as amended, occurring prior to the date of Claimant's notarized signature of this Release.

*33 2. Claimant represents and warrants that no other claims of any nature whatsoever are asserted by Claimant or, to Claimant's knowledge, information and belief, by any other person or organization acting in Claimant's behalf against Lee Way for any event, act or omission occurring through the date of Claimant's notarized signature of this Release except for the following claims (if none, so state):

Date and Nature of Claims and Occurrences: _____

Current Status: _____

Person Handling For Claimant: [name][address];

Claimant further represents and warrants that no person or organization other than Claimant is entitled to assert the claims released by Claimant in paragraph 1, above.

3. The job offer, remedial seniority and monetary payment to Claimant set forth in paragraph 1, above, will be paid as set forth in paragraphs 29-39 of the "Consent Decree with respect to Defendants Lee Way Motor Freight, Inc., et al.," filed on May 30, 1980, in Civil Action No. 72-445, styled "United States of America and the Equal Employment Opportunity Commission, Plaintiffs, vs. Lee Way Motor Freight, Inc., et al., Defendants," in the U.S. District Court for the Western District of Oklahoma.

4. Claimant states that the only consideration for Claimant's signing this "Full and Final Release of Claims" are the terms stated above; and that no other promise or agreement of any kind has been made to or with Claimant

U.S. v. Lee Way Motor Freight, Inc.

1980 WL 18620, 25 Fair Empl.Prac.Cas. (BNA) 142

by any person or entity whomsoever to cause Claimant to execute this Release. Claimant further states that Claimant has carefully read this Release and the accompanying Notice, that Claimant has asked the responsible attorneys for the U.S. Justice Department and/or the U.S. Equal Employment Opportunity Commission ("EEOC") any questions Claimant may have had and that they were satisfactorily answered, that CLAIMANT KNOWS AND FULLY UNDERSTANDS THE CONTENTS THEREOF AND THAT CLAIMANT EXECUTES IT AS HIS/HER OWN FREE ACT AND DEED, BEING FULLY AWARE OF ITS FINAL AND BINDING EFFECT.

IN WITNESS WHEREOF, the undersigned Claimant has hereunto set his hand and seal, this ____ day of _____, 1980.

CLAIMANT'S SIGNATURE

CLAIMANT'S TYPED OR PRINTED FULL NAME

CLAIMANT'S SOCIAL SECURITY NUMBER

NOTARY PUBLIC

APPROVED:

ATTORNEY FOR THE JUSTICE DEPARTMENT

ATTORNEY FOR THE EEOC

All Citations

Not Reported in F.Supp., 1980 WL 18620, 25 Fair Empl.Prac.Cas. (BNA) 142

Footnotes

- 1 The male pronoun is used throughout for convenience only and has no connotation as to the sex of the person referenced.
- * [Ed. note: -- All appendices except Appendix G omitted.]
- 2 At any facility at which city drivers form a separate job classification as set forth in paragraph 8(c), above, the goals enunciated in subparagraph 10(a) and in paragraph 11, below, shall apply separately to that classification as well.
- 3 The apprentice mechanic and mechanic classifications shall be combined for purposes of ascertaining the attainment level in the combined classification.
- 4 See fn. 1, supra.
- 5 See fn. 2, supra.
- 6 See fn. 1, supra.
- 7 See fn. 2, supra.
- 8 The Government Compliance Officer shall forward copies of any such directions to counsel for all parties.

End of Document