

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

1973 WL 278, 5 Fair Empl.Prac.Cas. (BNA) 492, 7 Fair Empl.Prac.Cas. (BNA) 710...

1973 WL 278

United States District Court; W.D. Oklahoma.

United States of America, Plaintiff

v.

Lee Way Motor Freight, Inc. et al., Defendants.

No. CIV-72-445

|

December 27, 1973

EUBANKS, D. J.

Findings of Fact

*1 1. This is an action brought by the Attorney General in the name of the United States, seeking relief for violations of Title VII of the Civil Rights Act of 1964, 42 U. S. C. 2000(e) *et seq.* and the contractual obligations imposed by Executive Order 11246 (30 F. R. 12319).

2. This Court has jurisdiction under 28 U. S. C. 1345 and under Section 707(b) of Title VII of the Civil Rights Act of 1964, 42 U. S. C. 2000(e)- 6(b).

3. The Defendant, Lee Way Motor Freight, Inc. (hereinafter called Lee Way) is incorporated under the laws of Oklahoma and Delaware. It has its corporate headquarters in Oklahoma City, and it is doing business in this District.

4. Lee Way is engaged in the business of transporting commercial freight, including that for the United States government under government bills of lading and United States mail, and it maintains terminal operations in approximately fifteen (15) states.

5. Defendant Lee Way is an employer within the meaning of Section 701 of Title VII of the Civil Rights Act of 1964, 42 U. S. C. 2000(e).

6. Defendant Lee Way is now and has at all material times been subject to the contractual obligations imposed on government contractors and subcontractors by Executive Order 11246 and previously by Executive Order 10925.

7. The Defendant International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereinafter called Teamsters) is an unincorporated association doing business in this District.

8. The Defendant Teamsters is a labor organization within the meaning of Section 701(d) of Title VII of the Civil Rights Act of 1964, 42 U. S. C. 2000(e)- d(1).

9. At the time of the filing of the Government's Complaint in June of 1972, Defendant Lee Way had ICC approved routes and a supporting system of terminal operations ranging from California through the southwest and mid-west, as far north as Chicago and east to Pittsburg. Since the filing of the Government's Complaint Lee Way has acquired operating rights into the south, including terminal facilities in Nashville, Atlanta and Birmingham, Alabama.

10. Defendant Lee Way has historically and up to the present maintained its major terminal operations and corporate headquarters in Oklahoma City. As of the time of the filing of the Government's Complaint approximately 1,336 of its 2,886 regular employees were employed at this facility.

11. At approximately the time the Civil Rights Act of 1964 became effective in July of 1965, Lee Way's terminal operations extended outward from Oklahoma City to include terminal operations in St. Louis, Kansas City, Chicago, Indianapolis, Akron, Cleveland and Pittsburgh to the north and east, and Tulsa, Dallas, San Antonio, Houston and Denver to the south and west.

12. Since August of 1964, Lee Way has substantially consolidated its over-the-road operations in Oklahoma City and converted its relay runs to sleeper (two man) runs.

13. Road driver domiciles were closed at the terminals listed in Finding No. 11 on the dates listed below, with the vast majority of the drivers being re-domiciled at the Oklahoma City terminal:
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*2 14. In 1965 Lee Way acquired most of the terminal facilities, operating rights and employees of Texas-Arizona Motor Freight, which resulted in a major increase in the size

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of its operations. (This acquisition was not approved by ICC until January of 1966.)

15. Lee Way admits (in its pre-trial brief) that by an agreement entered into on June 25, 1965 Lee Way agreed to purchase the assets, operating rights and fixed and contingent liabilities of Texas-Arizona affecting its routes from San Antonio, Texas, to California, and by another agreement entered into on June 30, 1967 purchased the remainder of the assets of Texas-Arizona, which included a terminal in Louisville, Kentucky.

16. Pursuant to the original purchase agreement, Lee Way acquired Texas-Arizona's employees and facilities which included terminals in Los Angeles, El Paso, Phoenix, San Antonio, and Houston. Prior to the acquisition Lee Way maintained no terminal operations in Los Angeles, El Paso and Phoenix. It maintained "end-of-the-line" terminals in San Antonio and Houston but did not employ over-the-road drivers at these terminals.

17. At the time of its acquisition by Lee Way, Texas-Arizona maintained road driver domiciles at the five terminals listed in Finding No. 16.

18. Pursuant to the original purchase agreement, Texas-Arizona employees at terminal locations where Lee Way had not previously maintained terminal facilities carried their full Texas-Arizona seniority rights with them when they became Lee Way employees. The Lee Way and Texas-Arizona facilities in Houston and San Antonio, Texas, were merged and the acquired Texas-Arizona employees were dovetailed on the basis of their Texas-Arizona seniority.

19. In 1971, pursuant to a corporate acquisition, Lee Way obtained operating rights and terminal facilities in Cincinnati, Dayton and Columbus, Ohio, and Louisville, Kentucky.

[Terminal Job Descriptions]

20. Lee Way's terminal operations consist essentially of the following job categories:

a. *Officials and Managers*, which include executive personnel, terminal managers, supervisors, dock and shop

foremen, driver supervisors, accountants, auditors and salesmen.

b. *Clerical employees*, which include file clerks, billing clerks, rate clerks, claim clerks, accounting clerks, and data processing clerks.

c. *Over-the-road drivers*. Employees in these positions operate tractor-trailers delivering freight between terminals in the Lee Way system. At the Oklahoma City terminal, Lee Way's major road driver domicile, road drivers generally operate on two man sleeper runs. All road drivers domiciled at other terminals in the Lee Way system operate only on single, relay runs. Sleeper team drivers operate on seven "wheels", which are: Chicago East, Central, Southwest, Southeast, California, Northern California and Denver. Positions on these wheels and dispatches are determined on the basis of seniority within the road driver classification. Road drivers with the least seniority in their classification operate from an extra board from which additional teams and replacement drivers are drawn as needed. Drivers on the extra board are employees of the company.

*3 d. *City drivers*. Employees in this classification operate both tractor-trailer units and straight trucks in the pick-up and delivery of freight within the metropolitan area of the home terminal. City drivers in rare instances make deliveries in a radius of up to 50 miles from the home terminal.

e. *Hostlers*. This job category includes switchers, who are primarily engaged in backing trailers into and away from the dock area; "spotters", who move the trailer units away from the dock to various marshalling areas at the terminal; and "hook-up" men, who hook and unhook trailer units to the road tractors.

f. *Dockmen and Checkers*. Employees in these classifications are primarily engaged in the loading, unloading and checking of freight from trailer units parked at the dock. At many terminals, including the main Oklahoma City terminal complex, city drivers, dockmen, checkers, and hostlers are all on a combined seniority list with the jobs being filled by bid on the basis of seniority within the combined classifications. The most senior employees are generally city drivers or hostlers.

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g. *Mechanics*. Journeymen mechanics are primarily employed in three departments: (1) The tractor department, where they work on gasoline and diesel powered engines; (2) The trailer department, where repair work upon trailer units is performed; and (3) The paint and body department, where paint work on the tractor-trailer units and repair work on the tractor bodies is performed. Lee Way also employs radiator and battery mechanics and electricians.

h. *Apprentices*. At the Oklahoma City terminal shop, Lee Way maintains an apprentice program for the tractor department, trailer department and paint and body department. The minimum wage rate for beginning apprentices is sixty percent of the journeyman rate. However, apprentices can be initially hired at higher rates, depending upon the applicant's background and experience and, as will be hereinafter shown, the color of the skin of the employee.

i. *Parts Clerk*. Employees in this shop classification are engaged primarily in the inventory and distribution of parts for tractor and trailer units.

j. *Tiremen*. Employees in this classification are engaged primarily in the checking and changing of truck tires, repairing and matching the same so as to be sure they are in a safe and road-worthy condition.

k. *Servicemen*. Employees in this classification engage in washing, greasing and fueling the tractor-trailer units, steam cleaning parts of the tractor engines, and regularly move tractor-trailer units from the service area to various places on the terminal yard. Servicemen are also occasionally required to pick-up and deliver tractor-trailer units at truck dealerships and terminals away from the Lee Way Oklahoma City terminal is Lee Way's major shop maintenance facility. As of July 22, 1972, Lee Way employed approximately eighty mechanics, apprentice mechanics and parts clerks, ten tiremen and approximately twenty-five servicemen at this facility. The next largest Lee Way shop facility is the Los Angeles terminal, where as of July 22, 1972 there were a total of nineteen employees in the shop, including eleven mechanics, six servicemen, one tireman and one parts clerk.

[Wage Rates Paid]

*4 22. Road drivers are generally paid on a mileage basis but are paid by the hour for down time and lay-over time.

23. City drivers, dockmen, checkers and hostlers are paid by the hour and, except for dockmen who get .12 cents per hour less, at the same wage rate, although city drivers, as a general rule, receive more overtime pay. At the main Oklahoma City terminal complex, city drivers, dockmen and hostlers received a \$5.80 hourly wage rate as of January 1, 1973 under the Teamster collective bargaining agreement in effect from April 1, 1970 to June 30, 1973.

24. Road drivers for Lee Way earn much more than do city drivers and dockmen. For the fiscal year 1972 road drivers, city drivers and dockmen at Lee Way's major terminals where road drivers are domiciled had the following average gross earnings: ¹

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25. From the standpoint of income alone, there is no doubt that the position of road driver is better than any other position mentioned in Finding No. 20; but, this position has its drawbacks in that those employed in this category are away from home on many occasions, during which they must sleep in an extremely small bunk with the roar of a diesel engine pulling a heavy load in close proximity thereto. Although opinions are divided, most drivers prefer to be in the "over-the-road" category.

26. In the maintenance (shop) department the mechanics are paid the highest hourly rate, with servicemen at the bottom of this wage structure. At Lee Way's main maintenance facility in Oklahoma City, mechanics, tiremen, partsmen, and servicemen received the following hourly wage rates pursuant to the joint Teamster and Machinist collective bargaining agreement existing for the period April 1, 1970 to July 1, 1973:

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27. As of January 1, 1973, clerical employees covered by Teamster collective bargaining agreements generally receive hourly wage rates in excess of \$5.00 per hour. For example, at Lee Way's Oklahoma City terminal, office and clerical employees are represented by the Teamsters with entry level file clerks receiving a \$5.50 hourly wage rate as of January 1, 1973. As of that date, cashiers, secretaries, and O-U & D (over, under and damaged) clerks received \$5.64 per hour with rate clerks receiving the highest hourly clerical rate of \$5.92 per hour.

[Union Representation]

28. All of Lee Way's road drivers, city drivers, and dockmen and the majority of its servicemen are represented by affiliates of the Teamsters.

29. The majority of Lee Way's office and clerical employees are also represented by affiliates of the Teamsters. Some terminal offices are non-union. In Oklahoma City, the terminal office employees are represented by an affiliate of the Teamsters, while the General Office employees are non-union.

*5 30. The vast majority of Lee Way's mechanics and apprentices are represented by affiliates of the Machinists. However, mechanics at the San Antonio terminal are represented by an affiliate of the Teamsters.

31. At the Oklahoma City shop, mechanics, apprentices, tiremen, partsmen, and servicemen are covered by a joint collective bargaining agreement between an affiliate of the Teamsters and an affiliate of the Machinists. Prior to the 1970 contract, servicemen at the Oklahoma City shop were separately classified as porters (which included washers and fuelers) and lubrication men (greasemen).

32. Lee Way utilizes substantial numbers of casual employees in dockman, city driver and clerical positions at most of its terminals. Lee Way also utilizes a significant number of casual employees in road driver positions at its Oklahoma City, Los Angeles, Phoenix, El Paso and San Antonio terminals.

33. Under existing Teamsters' collective bargaining agreements covering the jobs described in Finding No. 21, Lee Way is required to allow its casual employees first opportunity to fill openings as regular employees.

[No Transfer Policy]

34. Beginning in 1957 Lee Way established a corporate policy that it would not allow employees to transfer between job classifications covered by different bargaining units and that it would not rehire in a different classification employees who resigned or were terminated from the company's employment. This policy ostensibly was designed to prohibit employee transfers between shop, dockman-city driver and road driver positions so as to avoid seniority problems between two different unions, but the facts conclusively show that the policy was actually used to prohibit blacks from transferring from menial to higher paying jobs. Teamsters encouraged and endorsed this policy because it preserved the seniority rights of its dues-paying members.

35. Lee Way's no-transfer policy was found to be unlawful until Title VII of the Civil Rights Act of 1964 in the case of *Jones v. Lee Way Motor Freight, Inc.*, [2 EPD P 10,283] 431 F. 2d 245 (10th Cir. 1970), *cert. denied*, [3 EPD P 8139] 401 U. S. 954. Lee Way claims that as of March 8, 1971, when the Supreme Court denied certiorari in the *Jones* case, its no-transfer rule was no longer operative. Lee Way also claims that in July of 1971 it instructed all of its terminal managers to notify its employees by bulletin of the rescission of the no-transfer rule and to then return to the Director of the Transportation Department, Mr. Fox, all copies of bulletins posted on this matter. However, the Court finds and existing copies of such bulletins in Mr. Fox's records reflect, that these bulletins were not posted at the terminals until February of 1972.

36. From March 8, 1971 through February of 1972 Lee Way hired 273 road drivers at the Oklahoma City terminal, 272 of whom were white, the other being black.

[No Seniority Carry-over]

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37. After abandoning its no-transfer rule, Lee Way has not permitted any employee to carry-over his seniority for bidding and lay-off purposes to any job to which he may now transfer. This is partly because of Lee Way's disinclination so to do, and also because of Teamster's strenuous resistance thereto.

*6 38. Prior to the publication of its Station Manual in 1968, Lee Way maintained no formal written qualifications for any job in its system. Before the last mentioned date Lee Way's employment requirements were communicated orally from the personnel department to the terminal managers and department heads who initially interviewed and screened applicants for employment.

39. Lee Way contends that it has traditionally maintained a hiring policy applicable to all of its job classifications, which specifies that it will not hire individuals who have relatives presently working for the company, without the express approval of its President. While this policy was formally adopted by the company's Executive Committee in 1968, and it "formalized a preexistent oral understanding" several whites have since been hired by Lee Way who at the time of their initial hire had relatives employed at the company.

[Employment Qualifications]

40. Defendant Lee Way has, at various times, maintained the following employment qualifications for the jobs herein described:

a. *Over-the-Road Drivers.* Up to the mid-1950's, Lee Way did not require road driver applicants to meet any minimum experience requirement. Until this time Lee Way only considered the applicant's "general work background" and disqualified applicants who were under 25 years of age or who had been convicted of a felony. If the applicant could then pass the company's road test, which for a period of time was administered by an independent agency, he would be employed. Lee Way's minimum age and nofelony requirement for road drivers (except for veterans and, for a time, graduates of the American Truck Driving Academy) have remained in existence up to the present. However, Lee Way has hired at least six whites but no blacks as road drivers

who did not meet the company's "no felony" requirements at the time they were hired. Furthermore those white felons are still employed and the prior felony convictions were either admitted on the application for employment or disclosed in the retail credit company investigation report.

(1) Beginning in 1964 or 1965 and up to March of 1972, Lee Way outwardly required road driver applicants to have a minimum of two years of tractor-trailer experience. After March of 1972 the two year requirement was reduced reportedly to one year.

(2) For an unspecified period of time prior to the adoption of its two year experience requirement, the company had required road driver applicants to have a minimum of three years of tractor-trail experience. However, during this period Lee Way hired whites who did not meet the stated minimum experience requirements.

(3) Lee Way did not require road driver applicants to meet any traffic conviction standard until sometime in late 1967 when the company began to require road driver applicants to have not more than three convictions for moving violations or chargeable accidents or any combination thereof within three years prior to application. Prior to this time Lee Way "generally" reviewed the applicant's motor vehicle record and "looked at" prior tickets. Despite these requirements, since 1967 Lee Way has hired and continues to employ as road drivers many whites who at the time they were hired did not meet the company's minimum traffic conviction standard. Even after this suit was brought one white, Virgil Crosley, with thirteen traffic violations since 1966, including five speeding convictions in 1969, was hired and became a regular road driver despite the fact that the conviction record was revealed in the retail credit company investigative report ordered by Lee Way and assumedly read.

[Height and Weight Requirements]

*7 (4) In 1960 Lee Way instituted its current policy of requiring all road driver applicants to be at least 5'7" tall and no more than 6'2" in height, with a maximum weight limitation of 225 pounds. Although there have been departures from these standards, the Court finds that in this particular regard the deviations have not been racially

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motivated, as regards persons of Mexican descent, although these physical requisites have been used against Negroes to deprive them of employment. After hearing all the evidence relative thereto, and after having carefully inspected the cab of a representative tractor deployed by Lee Way, I find that the physical requirements demanded by Lee Way of its drivers are legitimate and business requirements make them necessary and essential. A driver shorter than 5'7" could hardly see over the dashboard so as to safely drive the vehicle; one taller than 6'2" could not comfortably sleep in the bunk, and one anywhere between those heights who weighs more than 225 pounds could hardly fit between the steering wheel and the drivers seat.

As a matter of fact, the Court finds that physical requisites for employment as adopted by Lee Way were not racially motivated, and that they have not been discriminatorily utilized to deprive Mexican-Americans of employment, although Lee Way has taken every possible advantage of these physical requirements to deny employment to blacks, while at the same time conveniently overlooking overweight and overheight on the part of whites.

b. *Dock Employees.* Applicants for this position have been required to be able to read and write, pass the company physical examination and be over eighteen years of age. In late 1972 Lee Way began to require dock applicants to meet the company's current minimum motor vehicle standard for road drivers. Prior to this time Lee Way did not check the driving records of dock applicants.

c. *City Drivers.* Applicants for this position have generally been required to meet the minimum pre-employment qualifications for dock work and, in addition, possess a valid chauffeur's license. Beginning in January of 1971, pursuant to Department of Transportation regulations, Lee Way has required all city driver applicants to pass a D. O. T. road test. This is the same road test Lee Way administers to applicants for over-the-road driver positions. Lee Way has not, however, required its incumbent city drivers hired prior to January of 1971 to take and pass the D. O. T. road test.

d. *Mechanics and Tiremen.* The evidence shows that applicants for journeyman mechanic positions in the tractor department supposedly are required to have four to five years prior experience on gasoline and diesel tractors, and journeyman mechanic applicants for other departments are

required to have two to three years prior related experience. Despite these stated requirements Lee Way has hired whites as mechanics who did not meet these minimum requirements at the time they were hired as journeymen while at the same time rejecting blacks with more than the minimum background.

*8 e. *Apprentices.* Lee Way traditionally maintained an apprentice program at its main Oklahoma City terminal for all classifications in the shop except serviceman. In 1970 apprentice programs in the Tire Department, Parts Department and Light-Wire Department were eliminated. Applicants for apprentice mechanic positions have been considered qualified to begin as 60 percent apprentices² so long as they demonstrated to the shop superintendent during an oral interview some "background of mechanic interest" such as taking a course in auto mechanics in high school or working at home on mechanical devices.

f. *Clerical Employees.* The company has no minimum hiring standards for clerical employees. The practice of the company has been to hire clerical employees at an entry level position such as file clerk where they undergo a specified period of training and to then upgrade them to the higher paying, more skilled clerical jobs.

Until approximately one year ago Lee Way administered a clerical aptitude test to applicants for employment in clerical positions but it was discontinued after it was determined not to be a valid measure of job performance.

g. *Office and Management Positions.* Prior to the institution of its management training program in 1969, Lee Way had no minimum educational requirements for entry into a management or supervisory position. Lee Way's traditional practice has been to fill vacancies in office and management positions by upgrading its own employees. For example, Lee Way's current Superintendent of Drivers, Mr. Quirk, was originally hired by Lee Way as a city driver and subsequently was promoted to dock foreman, terminal manager and then to his present position. Mr. Quirk has a tenth grade education.

(1) Beginning in 1969 Lee Way established in Oklahoma City a management training program. Applicants for the program are required to have a college degree.

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(2) The Court finds that Census Bureau data for 1970 for states in which Lee Way maintains terminal operations reflect that the percentage of blacks and other minorities within their communities who possess college degrees is significantly below the percentage of whites in the white community who have such degrees. The evidence shows, and the Court therefore finds, that Lee Way's requirement of a college degree for entry into its management training program has a substantial and adverse impact upon blacks. There is no believable evidence that this educational qualification is required by business necessity.

(3) Prior to August of 1972 Lee Way required all applicants for salesman, administrative and management positions to pass a battery of eleven general aptitude tests, which included the Wonderlic test, Minnesota Clerical test, a sentence completion test and a practical judgment test. On August 28, 1972, a memorandum was sent to all department heads from Lee Way's Director of Personnel, informing them that Lee Way had suspended the use of its general aptitude test battery because these tests were found by the company not to be directly related to job skills.

[Race and National Origin Bias]

*9 41. Defendant Lee Way has engaged in hiring, promotion and transfer practices based on race and national origin. The jobs of over-the-road driver, mechanic, apprentice mechanic, partsman, tireman, office and clerical, and management, official and supervisory positions have been traditionally white jobs for which blacks, regardless of qualifications or interest, have not been considered. In addition, at the Oklahoma City terminal, and at all other terminals of the company except those acquired from Texas-Arizona, the jobs of city driver, hostler and dockman have also been traditionally white jobs.

[Employment Statistics]

42. As of July 22, 1972 Lee Way employed system-wide a total of 2,886 regular employees, of whom 164 were black. The vast majority of these employees were employed in the job categories listed below:

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43. Prior to mid-1968 blacks, because of their race, were systematically and by design excluded from the traditionally white jobs at the terminal. Thereafter and up through the filing of the Government's Complaint in this case, blacks continued to be overtly denied consideration for employment in such jobs on an equal basis with whites.

44. Based upon company records maintained since 1955 the following is undisputed:

a. The first black dockman employed at the Oklahoma City terminal was hired on June 5, 1968.

b. The first black over-the-road driver employed at the Oklahoma City terminal was employed in August of 1968.

c. The first black mechanic employed at the Oklahoma City terminal started work in October of 1968.

d. The first black apprentice mechanic employed at the Oklahoma City terminal was hired in March of 1971. This black transferred from a serviceman position at the terminal.

e. The first black tireman employed at the Oklahoma City terminal was started in this position in September of 1968. This black transferred from a serviceman position at the terminal.

f. The first black ever employed as a city driver at the Oklahoma City terminal attained this classification in 1972.

g. The first black ever employed in a clerical position at the Oklahoma City terminal commenced work on October 10, 1968.

45. No black was employed at the Oklahoma City terminal of Lee Way in any position other than janitor, porter or greaseman prior to mid-1968.

46. The record indicates the first black management trainee at the Oklahoma City terminal was hired on February 21, 1972 and the first black supervisor ever employed at the Oklahoma City terminal was hired in May of 1971.

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47. In *Jones v. Lee Way Motor Freight*, supra, the Tenth Circuit cited statistics, overlooked by the District Court, that in 1964, 1966 and 1968 Lee Way employed 353, 516 and 542 over-the-road (line) drivers respectively, all of whom were white.

48. In answers to interrogatories in a private suit originally consolidated with the present action but settled prior to trial (*J. W. Walter v. Lee Way Motor Freight, et al.*, No. CIV-72-166), Lee Way admitted that during the stated years it employed the following number of whites and blacks in the following job classifications at the Oklahoma City terminal:

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*10 49. Throughout the years blacks have been denied employment at Lee Way because of their race. Some have been directly informed by Lee Way hiring officials that they could not be considered for traditionally white jobs at the company because of their race. Many blacks, despite their qualifications for better paying jobs, were assigned to the traditionally black jobs of janitor, porter or greaseman (reclassified as servicemen jobs in 1970) which have historically been the lowest paying, least desirable jobs at the terminal. Examples of such black applicants are set forth in the following findings.

[*Individual Cases of Bias*]

50. In 1946 Ben Hall, black, after seeing Lee Way ads in the newspapers for road driver, called the terminal and spoke to the superintendent of drivers. Mr. Hall indicated he wanted to apply for a road driver position and stated he had recently been discharged from the Army-Air Force in which he had been a tractor-trailer driver making runs throughout Italy during the war. He was told his experience was acceptable and was asked to come out to the terminal. The next day when Mr. Hall arrived at the terminal he was told there were no road driver jobs available; that the company would take his name and telephone number; but that he was not to continue to contact the company. Mr. Hall never received a call from Lee Way and has never been offered a road driver position by the company.

51. In 1958 Carl Watson, black, sought to obtain an application at Lee Way for a truck driving position and was informed by an official that Lee Way didn't give applications to blacks for truck driving positions but that he could apply for maintenance work.

52. L. V. Davis, black, has been employed by Lee Way as a (porter) serviceman since December of 1952. Davis applied for a tireman position at Lee Way in 1952 and was informed by the Tire Department foreman Lee Way didn't hire colored tiremen. At the time of his application Davis had approximately two years of experience as a truck tireman. Davis was then given a job filling in holes on the yard and was subsequently upgraded to a porter position.

53. George Thompson, black, has been a porter (serviceman) at Lee Way since 1957. When he originally applied for employment Thompson indicated during an interview with the Shop Superintendent that he had previously worked for eleven years at a truck dealership where he obtained experience as a painter, parts clerk, and mechanic helper. Thompson also indicated he had worked as a tireman with another Company. Mr. Thompson was then informed by the Shop Superintendent that "what the colored do out here is porter work." While interested in a position as a painter or apprentice mechanic and despite his qualifications, Mr. Thompson was assigned to a porter position.

54. J. W. Walter, black, applied for a city driver or dockman position at Lee Way in 1955. He was informed by a dock foreman that "Lee Way didn't hire Negroes on the dock" but that he could apply at the shop. Mr. Walter applied for any work available in the shop and despite his qualifications was assigned to a porter position. At the time of his Lee Way application, Mr. Walter had been working for two years as a truck driver for another company.

*11 55. In 1960 Erastus Gray, black, was referred to Lee Way for dock work along with six whites by the Oklahoma State Employment Service. When they arrived at the Oklahoma City terminal dock, the six whites were immediately put to work. However, Mr. Gray was informed by the dock foreman that he could not be employed on the dock but that he could apply at the shop.

a. Gray complained to the Teamsters Union and was informed Lee Way only hired blacks in the shop.

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b. At the time of Mr. Gray's attempt to apply for employment at Lee Way he had two years of dock work and truck driving experience in the military and over fifteen years of experience as an equipment operator and forklift driver for another company.

56. Lee Thomas, black, applied with his brother for a dockman position at the Oklahoma City terminal in 1963. Both were informed by the dock foreman that Lee Way "didn't hire colored on the dock." After seeking employment at Lee Way on numerous occasions between 1963 and 1967 and not being allowed to fill out an application, Mr. Thomas was finally hired and assigned to a porter position by Lee Way in March of 1968. At the time he was hired Mr. Thomas indicated on his application that he had prior experience as a truck driver, welder and forklift driver.

57. Billy Joe Lewis, black, applied at the Oklahoma City terminal for any work available in October of 1951. At the time of his application Mr. Lewis had a valid chauffeur's license, approximately five years of tractor-trailer experience, and immediately prior to his application at Lee Way had worked as a dockman at another company. Despite his qualifications, Mr. Lewis was assigned to a porter position where he remained until September of 1968 when he was finally allowed to transfer to the Tire Department. As referred to in Finding No. 44(e) he became the first black ever employed as a tireman at the Oklahoma City terminal.

58. Norah Walker, black, has been employed at Lee Way as a porter (serviceman) since 1952. At the time of his original application for employment Mr. Walker had approximately one year of truck driving experience in the Army, which included tractor-trailer driving. Mr. Walker applied for any work available but did not specifically ask for a job as a dockman or truck driver because he didn't believe Lee Way hired blacks for those positions. Despite his qualifications Mr. Walker was assigned to a porter position.

59. Howard Whittenberg, black, has been employed by Lee Way as a porter (serviceman) since 1960. At the time Mr. Whittenberg applied for employment he had recently worked for another company for eight years as a dockman and tractor-trailer hostler. His period of employment at this company was interrupted for two years of military service, where he was assigned to a medical supply unit as a dockman and

warehouseman. Mr. Whittenberg indicated on his application at Lee Way his prior dock and hostling experience and willing to accept any job Lee Way had available. Despite his qualifications Mr. Whittenberg was assigned to a porter position washing trucks.

*12 60. Carnell Gentry, black, applied for employment at the Oklahoma City terminal in 1963. At the time of his application Mr. Gentry had a valid chauffeur's license, approximately one year of truck driving experience for another company, and prior service in the military at Pearl Harbor as a company commander in charge of dock positions. Mr. Gentry had also completed a twenty-nine month mechanic course sponsored by the Veterans Administration.

a. Mr. Gentry went first to Lee Way's dock office building to inquire about employment as a dockman and was informed that he could only receive an application at the shop. He then went to the shop and asked the shop foreman, Mr. Mills, if he could apply for a job. Mr. Gentry was immediately informed without any discussion of his job interests and qualifications that "porters don't quit here often." He was then given an application on which he listed his mechanic course and his prior experience as a truck driver and dockman. Mr. Gentry was willing to accept any employment available but was interested in employment as a dockman, mechanic or apprentice mechanic. Soon thereafter and despite his qualifications, Mr. Gentry was assigned to a porter position in which he remained until 1970 when he was allowed to transfer to the tire shop.

61. Leon Hicks, black, applied at Lee Way in February of 1963 for any work available. At the time of his application for employment Mr. Hicks had previously worked for another truck line for one and a half years assisting a journeyman mechanic in performing mechanical and electrical repair work on truck-trailers. He had also served two years in the military where, as a truck driver, he had obtained an International Chauffeur's license.

a. After filling out his application at Lee Way, Mr. Hicks was informed by the shop foreman that he only had an opening for a porter position. Mr. Hicks accepted the job with the hope that he could subsequently advance to a higher paying, more skilled job at the company. Mr. Hicks remained a porter (serviceman) until May of 1973, when he was permitted to transfer to an apprentice mechanic position.

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62. Alonzo Anderson, black, applied at Lee Way for any available in February of 1967. He filled out a written application at the shop and was interviewed by the shop foreman. On his application Mr. Anderson indicated he had approximately twelve years of mechanical experience on gas and diesel truck engines which included paint and body work. He had previously worked at General Motors for six years as a truck mechanic. Mr. Anderson also had approximately six years of tractor-trailer driving experience which he indicated on his application.

a. After discussing Mr. Anderson's mechanical experience, the shop foreman informed him that he didn't need any mechanics but needed a serviceman. Mr. Anderson, despite his qualifications, was then assigned to a greaseman (lubrication) position, in which he is presently employed.

63. Earl Forshee, black, applied at Lee Way for any work available in 1967. Mr. Forshee filled out a written application on which he indicated he had approximately two years of mechanical experience on truck engines. At the time of his application Mr. Forshee also had approximately three years of tractor-trailer driving experience and had attended a General Motors mechanical course. Despite his qualifications Mr. Forshee was assigned to a porter position.

*13 64. Aubrey Daniels, black, sought employment as an over-the-road driver at the Oklahoma City terminal in 1960. At the time Mr. Daniels had approximately five or six years of tractor-trailer experience, most of which was as an over-the-road driver. Mr. Daniels was able to obtain an interview with the Director of Line Drivers, Mr. Smith. During the interview Mr. Smith informed Mr. Daniels that Lee Way didn't hire black road drivers.

65. John Allen, black, sought to obtain a position as a dockman at the Oklahoma City dock office in 1964. Mr. Allen was informed by the receptionist in the office that "Lee Way didn't hire Negroes on the dock." Mr. Allen then left without filling out an application. At this time Mr. Allen had been employed for approximately eight years as an over-the-road tractor-trailer driver for another company. Mr. Allen was also interested in obtaining a job as a road driver at the company at this time but did not inquire about the job because he believed Lee Way didn't hire black road drivers. He was given no information about the job of road driver even though until

October of 1970 road driver applicants were interviewed and processed at the Oklahoma City dock office building. work

66. Dertha Fair, black, first began to seek employment at the Oklahoma City terminal in 1960. At this time Mr. Fair was interested in obtaining a position as an over-the-road driver. Mr. Fair first went to the Oklahoma City dock office building where road drivers were hired, but he was referred to the shop to obtain an application. Mr. Fair was then told by the shop foreman that Lee Way was not hiring and was not offered an application.

a. Mr. Fair returned to the shop building in 1962, at which time he was allowed to fill out a written application. On his application Mr. Fair indicated that he had a valid chauffeur's license and fifteen years of truck-driving experience, including approximately seven years of tractor-trailer experience. After completing his application Mr. Fair was informed no jobs were available. He returned to Lee Way on numerous occasions to inquire about his application and was told Lee Way was not hiring. On each occasion Mr. Fair was interested in obtaining a job as an over-the-road driver, but was willing to take almost any other job which the company might offer.

b. In June of 1964 and despite his qualifications, Mr. Fair was offered a job as a greaseman (lubrication) which he accepted. Mr. Fair remained in this position until May of 1971, when he resigned and obtained a job as a road driver at another major carrier.

67. Clint Lewis, black, began to seek employment at Lee Way in approximately January of 1966. At this time Mr. Lewis had approximately six years of dock and truck driving experience and had attended a mechanic school and worked as a mechanic helper at a local Air Force base.

a. Mr. Lewis originally sought to obtain an application at the dock terminal office building but was informed he was in the wrong building and was referred to the general office building, in which Lee Way's shop facilities were located. During 1966 and 1967 Mr. Lewis repeatedly sought to obtain employment at Lee Way and was always informed that the man in charge of hiring was not in. At no time during this period was Mr. Lewis offered an application or in any way considered for employment.

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*14 b. In approximately August of 1967 Mr. Lewis was for the first time allowed to talk to a Lee Way hiring official. Mr. Lewis asked for an application, stating that he would like to apply for a position as a dockman or city driver and that he also had some prior mechanical experience. Mr. Lewis was then told that he could only be considered for porter work and there were no porter vacancies. Mr. Lewis was never hired for any job at the company.

68. James Hill, black, sought to apply for a road driver position at Lee Way in 1966 or 1967 and was informed by a company official that Lee Way was not hiring road drivers. Mr. Hill was not allowed to fill out an application and was not considered for employment. At the time Mr. Hill had approximately six years of tractortrailer experience as an over-the-road driver.

69. J. W. Gissandaner, black, repeatedly sought to obtain employment as a dockman, city driver or over-the-road driver between 1963 and 1968 at Lee Way and was never allowed to fill out an application or questioned about his employment qualifications. On one occasion Mr. Gissandaner was able to obtain an employment application from a black porter employed at the company. Mr. Gissandaner mailed the application in but never heard from Lee Way.

70. In 1967, John White, black, a former State Representative who at the time was director of the Oklahoma Equal Opportunity Association, made an unannounced tour of Lee Way's entire Oklahoma City terminal facilities. Mr. White observed that blacks were employed by the company only as porters and greasemen. Subsequent to his visit Mr. White met with Lee Way's Director of Personnel, Mr. Blood, and urged that the company hire blacks in jobs other than porter positions. Lee Way paid little attention to this request.

71. Albert Scott, black, had approximately ten years of truck driving experience when he applied at Lee Way for a dockman position on four occasions between January of 1967 and the Spring of 1968. Mr. Scott was always informed that Lee Way was not hiring and he was not allowed to fill out an application. As of November of 1972 there remained employed at the company ten dockmen who were hired as regular employees during the period of time Scott applied, all of whom are white.

a. The case of Mr. Scott is typical and illustrative of the plan, scheme and design on the part of Lee Way to systematically exclude blacks from employment. In 1968 pressure was being applied on Lee Way by both state and federal officials to force Lee Way to start hiring blacks on an equal basis with whites, and during this period Lee Way was constantly and loudly assuring these officials that it was doing all it could to hire blacks in any position of employment where they were qualified. In May of 1968 Mr. Scott was driving a truck for the Oklahoma City Sanitation Department, but was not making much money and was anxious to better his position, so he periodically applied at Lee Way, but was regularly told by Mr. Blood, Lee Way's Director of Personnel, that Lee Way had no openings. About May 5 Mr. Scott talked to Mr. Blood and once again was told that Lee Way was not hiring. It is undisputed that Mr. Scott was well-qualified as a driver or as a dock worker, had a fine appearance and a good reputation. This same day Mr. Scott saw an advertisement in a newspaper which had apparently been run by the Oklahoma Human Rights Commission, which advertisement stated that truck drivers were wanted with the job paying \$3.60 an hour and that applications should be made at the Oklahoma State Capital. Scott immediately went to the statehouse and found the correct office in the basement of the building, and after being interviewed was told to go to Lee Way Motor Freight and apply. Mr. Scott advised the interviewer that there must be some mistake because he had just left Lee Way where he was told they were not hiring. At this point the interviewer wrote something on a piece of paper, gave it to Scott and told him to take it to Bill Blood of Lee Way. Scott followed instructions and immediately upon giving the note to Mr. Blood was handed an application and told to fill it out "because this is the moment of truth." When the application was filled out Mr. Blood immediately sent Scott for a physical examination and after Scott passed the physical Mr. Blood wanted to start him the very next day, but Scott told Blood that he felt that to be fair with his present employer he should give two weeks' notice, which was done and Scott became the first black to work on the Lee Way dock. His seniority date is June 5, 1968.

*15 b. Insofar as the evidence shows, Mr. Scott was the first black ever employed by Lee Way in a position other than janitor, porter or greaseman at the Oklahoma City terminal.

72. Many of the black employees at the Oklahoma City terminal shop who, despite their qualifications, were hired and assigned to porter or greaseman (lubrication) positions,

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have for many years attempted without success to advance to the higher paying, traditionally white jobs at the terminal and to bring about a change in the company's racially discriminatory hiring, assignment, transfer and promotion policies.

73. Lee Way contended at trial that its no-transfer rule did not apply to job classifications within its Oklahoma City shop because they were all within the same bargaining unit. However, blacks in porter and greaseman positions at the Oklahoma City terminal have, because of their race, been excluded from entry into higher paying jobs both within the shop and at the rest of the terminal.

74. In 1954 or 1955 Mr. L. V. Davis, black, referred to in Finding No. 52, asked the Tire Department foreman, Jim Gay, if he could transfer to the Tire Department. Mr. Gay made no comment and walked away. Six months later Lee Way hired a white tireman. In 1967 Mr. Davis asked the Director of Maintenance, Mr. Cable, if he could transfer to an apprentice mechanic position. Mr. Cable turned his back upon Davis and walked away.

75. In 1958 George Thompson, a black serviceman, referred to in Finding No. 53, requested a transfer to the paint and body department and informed the superintendent of the department of his prior experience as a painter. Thompson was then told by this official that it didn't matter what his qualifications were because "there would never be a black in his department as long as he was shop foreman." The first black to be employed in a mechanic position in the paint and body department was hired in 1971 as an apprentice. He is referred to in Finding No. 44(d) as the first black apprentice mechanic ever employed by Lee Way at its Oklahoma City shop.

76. Billy Joe Lewis, black, who is referred to in Finding No. 57, asked the road driver supervisor at Lee Way on several occasions between 1953 and 1957 if he could transfer to an over-the-road driver position and was informed the company could not get insurance for him.

a. Between 1957 and 1963 Mr. Lewis asked two Lee Way supervisors in the shop every three or four months if he could transfer to the trailer department and was always told the company wasn't hiring. Two whites remain employed by the

company who were hired into the trailer department during this period of time.

b. From 1965 to 1968 Mr. Lewis on numerous occasions sought to transfer to an over-the-road driver position and on each occasion was informed by Mr. Smith, the Director of Line Drivers, of the company's no-transfer rule. During this same time Mr. Lewis asked Mr. Smith approximately once every two or three months if he could transfer to an over-the-road driver position and was told Lee Way was not hiring road drivers.

*16 77. J. W. Walter, the black serviceman referred to in Finding No. 54, asked the Director of Line Drivers, Mr. Smith, in March of 1960 if he could transfer to a road driver position and was informed the company wasn't hiring any road drivers.

a. Later in 1960 Mr. Walter filled out an application for a road driver position and gave it to the Director of Line Drivers, Mr. Smith, who in Mr. Walter's presence tore up the application and threw it in a waste basket stating that since Walter worked in the shop he couldn't transfer to the road.

b. In 1964 or 1965 Mr. Walter asked the Superintendent of the Maintenance Department if he could transfer to a road driver position and was informed of the company's no-transfer rule.

c. In 1967 or 1968 Mr. Walter asked a dock foreman if he could transfer to a dockman position and was informed of the company's no-transfer rule.

78. In a few months I will have served as a trial judge for twenty years and, during this whole time, I can remember only four or five witnesses who were as impressive, believable and totally honest as was the witness Cleophus Frost, called by the Government in this case. He was hired by Lee Way in July of 1955 as a porter. He was looking for any kind of work he could get and knew better than to ask for anything better than a porter's job. He is an excellent worker and although he would have preferred advancement, he knew that at Lee Way blacks could not work at any job except that of porter, "so I wasn't going to say anything about anything." During his long years of employment he learned many skills, including that of truck driver and mechanic, but he remained in the classification of porter. To support his wife and eight children he had a second job as a truck driver for a contractor with the United States Post Office that delivered mail from the railroad

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stations to the distribution center at the main Post Office, and since his off-days at Lee Way were Sunday and Monday and his off-days at the post office job were Saturday and Sunday, he was able to work sixteen hours a day, five days a week, and work only eight hours on Saturday and Mondays, and be always off on Sundays. During his years at Lee Way in steam cleaning diesel engines and in watching mechanics at their work and while assisting them when they needed help, he acquired much knowledge about diesel engines and on many occasions, if an apprentice mechanic was absent, he would actually pitch in and do mechanic work. The overall excellence of the work done by Mr. Frost in his janitorial job, together with his eagerness to learn additional skills, impressed his superiors.

One day in 1966 or 1967 a white superior was bragging on Frost for being such a good worker, whereupon Frost said to this superior, "If I could work so good, why don't you let me come in the parts workroom and work where the pay is better." (Paraphrased) The superior abruptly turned away and did not say anything. Prior to this occasion Frost had requested a transfer to the position of road driver, but was told "The onlyest way I would drive a truck for Lee Way was, I pull it myself." Although still dreaming of a road driver position, Frost resigned himself to being a porter, "Because I see to the fact they wasn't going to let anyone black drive a truck, so I didn't want any trouble, so I didn't ask anymore."

*17 79. Dertha Fair, black, who is referred to in Finding of Fact No. 66, asked the Director of Line Drivers, Mr. Smith, in 1967 or 1968 if he could transfer to a road driver position and was told of the no-transfer rule. Approximately two or three months later Mr. Fair asked the Super-intendent of Maintenance if he could transfer to a road position and again was informed of the no-transfer rule and was told "he was better off where he was." At this time Mr. Fair had approximately nine to ten years of tractor-trailer experience.

80. Leon Hicks, black, who is referred to in Finding of Fact No. 61, asked the shop foreman in December of 1963 if he could transfer to a mechanic vacancy in the light-wire department. Mr. Hicks informed this Lee Way official that he had performed electrical work on trailers at another truck line. Mr. Hicks was told that the vacancy was not going to be filled until after the new year. In January of 1964 the shop foreman filled the vacancy with a new hire without consulting Mr. Hicks. The new employee, George Bender, was white.

Lee Way's Shop Superintendent, Mr. Cable, has admitted that Mr. Bender's application reflects that he was not qualified to be hired as a mechanic. His prior employment experience consisted of working as a meat cutter, partsman and marine sergeant.

a. In approximately 1964 Mr. Hicks requested that the Director of Maintenance, Mr. Cable, keep him in consideration for any future mechanic or apprentice mechanic vacancies that might arise in the Oklahoma City shop. Thereafter and on an average of three times a year Mr. Hicks would repeat his request to various shop foreman, including the Director of Maintenance. From 1965 through mid-1968 Lee Way hired mechanics and apprentice mechanics totaling twenty-eight in number at the Oklahoma City shop, all of whom were white and most were either less qualified than Mr. Hicks in terms of prior experience or had absolutely no previous mechanical experience.

b. Lee Way has admitted that prior to October of 1968 it never employed a black mechanic at the Oklahoma City shop and prior to March of 1971 it never employed a black apprentice mechanic at this facility.

c. In 1967 Mr. Hicks attempted to exercise his bidding seniority in his porter classification to obtain a Monday through Friday shift. By this time Lee Way had employed three whites as porters, all of whom were assigned to cleaning the dock area. The porter jobs in the shop remained all black. Mr. Hicks exercised his seniority and bumped one of the white porters, Mike Pritchard. Mr. Pritchard was in turn assigned to Mr. Hicks' porter position in the shop, which was in the wash pit washing tractors. Mr. Hicks, upon bumping to the dock, was informed that there had been a change in the off days and he would have to work a Tuesday through Saturday shift on the job. Mr. Pritchard, the white employee who was bumped to the shop, worked in the wash pit for two weeks and was then allowed to transfer to a partsman position in the Parts Department. As of that time Lee Way employees, especially blacks, were not allowed to transfer from a porter or greaseman (lubrication) position to any other job, either in the shop or throughout the rest of the Oklahoma City terminal.

*18 d. In 1958 Mr. Hicks became aware of a vacancy in the Parts Department and asked a shop foreman if he could transfer to another position. Mr. Hicks was informed of the

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company's no-transfer rule. The vacancy was filled by a white.

81. Louis Harrison, black, applied for a tireman position at the Oklahoma City terminal in 1964. He was informed by the shop foreman there was only a porter position available, which he accepted. At the time of his application Mr. Harrison had been employed as a truck tireman at a tire company where he changed tires on various truck models, including some Lee Way trucks which had been sent to his company for servicing.

a. In 1966 a vacancy in the Tire Department arose. Mr. Harrison on several occasions while the job remained open asked the shop superintendent if he could fill the vacancy. The shop foreman at first told Mr. Harrison he "didn't have time to talk about it." When Mr. Harrison persisted in asking for the job he was told that company policy prohibited job transfers. The vacancy was thereafter filled by a white hired off the street. This white employee had never before applied for employment at Lee Way and had become aware of the vacancy from a neighbor. He was hired for the job despite the fact that his only tire experience was obtained at a filling station at which he had not worked in over fourteen years.

82. From 1953 until the early 1960's, L. V. Davis, a black, mentioned in Findings of Fact No. 52 and No. 74, served on the negotiating committees for the joint shop contract between the Teamsters and Machinists. Attending these committee meetings were top Lee Way officials, including the company president and the presidents of the Teamsters and Machinists locals. During these contract sessions Mr. Davis asked on several occasions why Lee Way didn't hire black road drivers and received no response from any of the participants except for one occasion when the President of the company Mr. Lee, told Mr. Davis it would cost Lee Way too much money to house blacks in separate motel facilities.

a. On numerous occasions during these contract sessions Mr. Davis suggested that blacks be allowed to transfer out of the porter classifications to better paying jobs at the company, but received no response from any of the participants at the meetings. On one occasion Mr. Davis suggested that a particular black serviceman, Otto Caldwell, be allowed to upgrade to a mechanic position in the paint and body shop. Mr. Davis was informed by the shop super-intendent who was present at the negotiating session that "Caldwell is satisfied, what the hell are you worried about."

[Union Failure to Remedy Bias]

83. In late 1967 Mr. Louis Harrison asked the business agent of his Teamsters local if he could "do something" about Lee Way's no-transfer policy and was informed there was nothing his union could do about the matter. Mr. Harrison then asked the president of the Machinists local, Mr. Foster, if there was anything he or his union could do to eliminate the company's no-transfer rule, and was told there was nothing that could be done as this was a "longstanding" company policy.

*19 a. Mr. Harrison subsequently filed a charge of employment discrimination with the Oklahoma Human Rights Commission challenging Lee Way's no-transfer rule. A lengthy investigation by the Commission ensued which involved personal interviews by the Commission director with many of Lee Way's black porters and greasemen.

b. In August of 1968 the Commission issued a written decision, approved by its nine members, which found that Lee Way's no-transfer policies had the effect of locking blacks into the two lowest paying jobs at the company and precluded their entry into higher paying jobs throughout the company's work structure. The Commission recommended in its decision that Lee Way immediately end its no-transfer rule. Also among its recommendations was that Lee Way post notices of all job vacancies as they arose.

84. A meeting was subsequently held between Lee Way's Executive Vice-President, Mr. Upsher, and the Commission Director, Mr. Rose, to discuss the Commission Decision. At this meeting Mr. Upsher disagreed with the decision of the Commission and evidenced a complete unwillingness to conciliate the complaint. Lee Way had been invited to file a formal response to the Commission's findings, but none was filed.

85. Lee Way's Director of Maintenance, Mr. Cable, testified that after Mr. Harrison had filed his complaint Lee Way had decided to "open up the tire shop to the service people on a seniority basis." Thereafter and beginning in September of 1968 six of the next eight vacancies in the tire shop were filled by blacks who transferred from porter positions, including

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Louis Harrison, whose seniority entitled him to successfully bid on a tire shop vacancy in 1969.

86. The porters who transferred to the Tire Department retained their company seniority for fringe benefits and vacation rights but went to the bottom of the tire shop seniority list for bidding and lay-off purposes. This resultant loss of seniority inhibited other blacks in porter positions from accepting opportunities to transfer to this department. The Teamsters are directly responsible for this condition.

87. Lee Way hired its first black mechanic, Wilmer Hicks, in October of 1968, and as of the end of that year he was the only black among the company's eighty-one mechanics and apprentices at the Oklahoma City shop.

[All White Mechanics Hired]

88. From January 1, 1969 through December of 1971 Lee Way hired twenty-two mechanics and apprentice mechanics at the Oklahoma City shop, all of whom were white.

89. Sylvester Grayson, black, applied for a mechanic position at the Oklahoma City terminal in October of 1969. After filling out a written application he was informed Lee Way was not hiring and that if a vacancy arose he would be contacted. Mr. Grayson never heard from Lee Way concerning this application. At the time of his application Mr. Grayson had approximately twelve years of experience as both a diesel truck and trailer mechanic.

a. In November of 1969 Lee Way hired a white, Jimmy Morris, as a ninety percent journeyman diesel mechanic who never before had applied for employment at the company, who had no prior diesel experience and whose only mechanical experience consisted of working on cars for six years.

[“No Relatives” Policy]

*20 90. Ernest Caldwell, black, applied in April of 1969, for any position available at the Oklahoma City terminal. At the time of his application Mr. Caldwell had approximately six years of mechanical experience as a welder with another

company. At the time Mr. Caldwell filled out his application he indicated he had a relative employed at the company and was told he “may not” be hired because of the company's no relative policy. Mr. Caldwell never heard from Lee Way concerning his application and was never offered employment at the company.

91. In February of 1970 Lee Way hired two whites as mechanics who had relatives employed at the company.

[Transfer Difficulties]

92. In March of 1971 Booker Smith became the first black employed in a porter position to transfer to a position other than serviceman or tireman, and he was only the second black to ever be employed in a mechanic position at the Oklahoma City shop. Upon transfer he lost his serviceman seniority for bidding and lay-off purposes. He was also required by the company to begin as a sixty percent apprentice, which at the time resulted in an approximate \$60.00 per week pay loss.

93. The requirements imposed on black porters who desired to transfer to apprentice jobs in the shop, i. e., a reduction in pay and a loss of seniority, inhibited the porters from applying for transfer to these jobs.

94. Other blacks who actively sought to transfer were either discouraged or prohibited by the company from transferring. For example:

a. Otto Caldwell, black, was originally hired by Lee Way in September of 1950 as a porter. At the time he applied for employment he was interested in obtaining a position as a painter in the Paint and Body Department and he had three years of paint and body experience. After informing the shop superintendent of his experience, he was assigned to work in the Paint and Body Department but was classified and paid as a porter. At this time all of the employees in this department were white except Mr. Caldwell and all were classified and paid as either mechanics or apprentices except him.

b. Mr. Caldwell was assigned the same job duties as the painters in the department, including operating the spray paint gun. Mr. Caldwell subsequently asked the foreman in the department, Mr. Van Gelder, if he could be paid the same

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wages as the other employees in the departments. At this time Mr. Caldwell was informed he could no longer operate the spray paint gun. He continued, however, to be assigned other duties performed by employees in the Paint Department, such as operating the electric sander, but he was paid and classified only as a porter. Caldwell continued to perform such duties until 1969.

c. During negotiations in 1969 for the forthcoming 1970 Teamsters-Machinists joint shop contract, the union negotiating committee voted to include as a contract proposal that Caldwell be re-classified as a painter. The proposal was rejected by the company and Caldwell was never offered a position as a painter. Soon after the rejection of the contract proposal, Mr. Caldwell was relieved of his duties in the Paint and Body Department and assigned a janitor position in the shop office. After his transfer out of the department, two whites were hired off the street as painters.

*21 d. Mr. Caldwell retired from Lee Way in 1971 because of his inability to become a painter at the company. In his retirement Mr. Caldwell is a self-employed spray painter, working on cars and refrigerators.

95. In 1970, Leon Hicks, black, was asked by the shop foreman if he was interested in transferring to the tire shop. Mr. Hicks indicated he did not want to become a tireman but inquired whether he could transfer to a position in one of the mechanical departments. Mr. Hicks' request was ignored and he was told "you just want an easy way out".

a. During that same year Mr. Hicks asked a shop foreman if he could transfer to the Trailer Department. Mr. Hicks was informed he would have to know how to weld before he would be considered for transfer despite the fact that welding is a part of Lee Way's apprentice program. Mr. Hicks told this foreman he was willing at his own expense to take a course in welding but was told not to "waste his money". In 1970, Lee Way hired two apprentices in the Trailer Department, both of whom were white.

b. Lee Way claims that Mr. Hicks was not considered for transfer to a mechanic or mechanic apprentice position during this period of time because of a poor attendance record. Mr. Hicks' personnel file indicates that during an eight month period from January, 1969 through August, 1969, he was late or absent a total of seven hours, for which he received

an oral warning from the Shop Superintendent. No formal disciplinary action was taken. There is no record in Mr. Hicks' file of his having experienced any previous attendance difficulties in his ten years of employment at the company and the Shop Superintendent admitted that his attendance record improved after the oral reprimand.

c. At approximately the same time that Mr. Hicks was warned about his attendance record, Lee Way retained in its employment a white mechanic who, during only a six month period between September, 1969 and February, 1970, was absent or late a total of one hundred hours.

d. In May of 1971 the Shop Superintendent, Mr. Shaffstall, allowed a white hired as a mechanic to complete his thirty-day probationary period, despite the fact that the Personnel Department recommended twenty-two days before the expiration of his probationary employment that he not be hired because of his police record and for falsifying his application. The Retail Credit report on the applicant indicated that since 1970 he had received separate convictions for loitering, littering the streets with beer cans, carrying a concealed weapon and reckless driving, none of which were declared by the applicant on his application.

[Entry Level Wage Bias]

96. Blacks who have been hired into mechanic positions at the Oklahoma City shop have been assigned lower entry level wage rates than similarly or less qualified whites.

97. The bottom wage rate for apprentice mechanics at the Oklahoma City shop is sixty percent of the current journeyman rate. This rate is generally assigned to applicants hired with no prior experience [Finding of Fact No. 20(h)]. Apprentices may enter at higher percentages, based upon the amount of their prior experience. The determination of the entry rate for apprentices is left to the sole discretion of the Shop Superintendent.

*22 98. Booker Smith, black, who is referred to in Finding of Fact No. 92, and who was Lee Way's first black apprentice mechanic, transferred to that job from a serviceman position in March of 1971. At the time he transferred he was required by the Shop Superintendent to begin as a sixty percent

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apprentice despite the fact that for approximately two years immediately prior to his initial hire by Lee Way in 1969 he had been employed as a diesel truck mechanic helper at another company. As a helper Mr. Smith assisted in the overhaul and transmission rebuild of diesel engines, including work on Lee Way trucks sent to his company for servicing.

99. Sylvester Grayson, black, who is referred to in Finding of Fact No. 89, filed a second application for a journeyman mechanic position in April of 1972. Despite the fact that Mr. Grayson had approximately twelve years of experience as a diesel and trailer mechanic, he was offered a position as a sixty percent apprentice by the Shop Superintendent. Mr. Grayson persisted in seeking a journeyman rate and was then told by the Shop Superintendent that if he insisted he would be allowed to enter as a journeyman but was warned that he would be dismissed during his thirty day probationary period if he did not perform up to expectations. At this point Mr. Grayson asked if he could be hired as an eighty-five percent apprentice and was refused. Mr. Grayson was finally offered and accepted a position as a seventy-five percent apprentice.

100. Leon Hicks was allowed to transfer from his serviceman position to an apprentice mechanic position in May of 1973. At this time he was informed by the Shop Superintendent that although he had been a good worker for the company and had two years of truck mechanic experience before he was hired by Lee Way, he would nevertheless have to begin as a sixty percent apprentice. Mr. Hicks accepted the transfer offer, taking a \$77.00 per week pay cut to do so.

a. In March of 1965 Lee Way hired a white, Bennie Prittner, as a sixty-five percent apprentice mechanic. He had no prior mechanical experience on either cars or trucks.

b. In October of 1969 Lee Way hired a white, Jimmy Morris, as a ninety percent journeyman diesel mechanic despite the fact that he had no prior experience of any kind working on diesel engines. Four months later Mr. Morris became a journeyman diesel mechanic. Mr. Morris admitted at trial that while journeyman mechanics at Lee Way are expected to be able to singly assemble and disassemble a diesel engine, he himself could not presently perform such an assignment without assistance.

c. In April of 1966 Lee Way hired a white, Larry Stofford, as a sixty-five percent apprentice. His only prior employment

experience consisted of working as a laborer at a grain company and as a grocery store clerk.

d. In September of 1966 Lee Way hired a white diesel mechanic, David Johnson, at journeyman scale. Lee Way's Shop Superintendent admitted that Johnson had no prior diesel experience.

*23 e. In March of 1968 Lee Way hired a white as a sixty-five percent apprentice who had no prior mechanical experience.

101. On January 17, 1968 the Complaint in the case of *Jones v. Lee Way Motor Freight, Inc.*, was filed in this District Court, in which the Plaintiffs contended that Lee Way's no-transfer policies were racially discriminatory and in violation of Title VII of the Civil Rights Act of 1964. The Complaint was not a class action. The Plaintiffs were five black Lee Way employees at the company's Houston, Texas terminal who were denied an opportunity to transfer to over-the-road driving positions in Oklahoma City.

[White Union Member Attitudes]

102. Lee Way, in 1966 or 1967, instituted a series of meetings with groups of its white road drivers in order to ascertain how they would react to the company's hiring a black road driver. Present at these meetings from the company were Lee Way's Executive Vice President, Mr. Upsher, and the Director of Line Drivers, Mr. Smith. Lee Way's Executive Vice President testified that before the meetings were held he had anticipated meeting considerable "social resistance" from white drivers. During some of the meetings white drivers walked out of the room in protest but none of them were fired or in any way disciplined for such actions because, according to Mr. Upsher, Lee Way did not feel "this was an area it would push at the time." Mr. Upsher admitted that, faced with the resistance of its white drivers, Lee Way decided "to move gradually . . . by attempting to find two exceptionally well-qualified blacks who would ride together as a team" and not be integrated with the white road drivers. It was finally but grudgingly admitted that Lee Way had a right, under the bargaining agreements with the Union, to fire any white who refused to work alongside a black, but the Union equivocated as to whether it would defend a Union member discharged

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for refusing to ride with a black by stating that the discharge could be based upon the uncleanliness of the fellow driver rather than the pigmentation of his skin.

103. Curtis Dowling, white, was hired by Lee Way as a road driver on April 10, 1968. At the time of his application a black from Dowling's home town whom he personally knew was also seeking employment at Lee Way as a road driver. At the time Mr. Dowling was hired by Lee Way he was instructed by the Superintendent of Drivers not to inform this black that Lee Way was hiring road drivers.

104. In the Spring of 1968 Earl Forshee, a black porter referred to in Finding No. 63, after hearing that Lee Way had just employed its first black on the dock, asked the Superintendent of Drivers, Mr. Smith, if Lee Way was going to hire any black road drivers, and was told Lee Way "wasn't ready to trust them."

105. William Johnson, black, was hired by Lee Way as a casual switcher at its Cleveland, Ohio terminal in 1966. At the time he was hired Mr. Johnson had approximately fifteen years of experience as an over-the-road tractor-trailer driver and he had never had a chargeable accident in a truck. After working one day as a casual Mr. Johnson asked the Cleveland terminal manager if he could apply for an over-the-road driver position in Oklahoma City. At this time there were no road drivers domiciled at the Cleveland terminal. Within a few days thereafter the terminal manager, in Mr. Johnson's presence, called the Oklahoma City terminal and indicated that Mr. Johnson wanted to apply for a road driver position. During the conversation the Cleveland terminal manager stated that Mr. Johnson was "colored"; at the conclusion of the conversation the terminal manager informed Mr. Johnson that Lee Way was not hiring.

*24 a. Within the next two or three weeks and while still a casual employee, Mr. Johnson twice personally called the Oklahoma City terminal. After being connected with the Personnel Department and identifying himself, he was told on one occasion that Lee Way was not hiring road drivers and on the other occasion was told of the no transfer rule. However, Lee Way had at other opportune times admitted that its no-transfer rule did not apply to the casual employees.

b. In 1967 or 1968 Mr. Johnson asked a new terminal manager at Cleveland if there was any way he could become a road

driver for Lee Way. He was told that Lee Way didn't have black drivers and that company policy prohibited transfers. Mr. Johnson resigned from Lee Way in early 1969 and became a road driver for another company.

106. Earnest Johnson, black, applied for a road driver position at the Oklahoma City terminal in May of 1968, in response to a newspaper advertisement Lee Way had placed, stating that it was hiring road drivers. When Mr. Johnson arrived at the terminal he asked the line driver supervisor for an application and was told Lee Way was not giving out applications for road drivers and would not be hiring drivers "for a long, long time." He was told he could receive an application at the shop. At this time Mr. Johnson had approximately three to four years of diesel tractor-trailer experience.

[Black Drivers Not Integrated]

107. In August of 1968 Lee Way hired its first two black road drivers. At the time they were hired they were told by Lee Way's Executive Vice President, Mr. Upsher, that they were to be "the Jackie Robinsons of Lee Way Motor Freight." They were asked how they got along with whites and were then told that they would ride together as a team because Lee Way didn't believe it was an appropriate time to integrate its truck cabs. From the time they were hired they always rode together except for a short period of time when one of the drivers, Mr. Bates, was hospitalized. During this time the other black driver, Mr. Williams, was not dispatched according to his seniority but was constantly assigned to ride with whites who had just been hired by the company and had not completed their thirty-day probationary period.

108. Willie Earl, hereinbefore mentioned, was originally hired at the Lee Way Houston, Texas terminal as a city driver in 1966. In August of 1968 he observed Lee Way's first two black road drivers make a delivery to the Houston terminal. At this time Mr. Earl asked a Lee Way official if he could transfer to a road driving position in Oklahoma City and was informed of the no-transfer rule. In 1969 Mr. Earl, in the presence of a number of other black city drivers, asked the Houston Operations Manager if he could transfer to a road driving position in Oklahoma City and was ignored.

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109. From January 1, 1969 through June, 1972, Lee Way hired the following numbers of white and black Americans as regular road drivers:

TABULAR OR GRAPHIC MATERIAL SET AT THIS POINT IS NOT DISPLAYABLE

*25 110. From March 12, 1970 until March of 1972 Lee Way hired three other black road drivers, none of whom completed their thirty-day probationary period. During this same period of time Lee Way hired, subject to completion of their probationary period, 353 white road drivers.

111. Willis Lee Jones, black, applied for a road driver position at the Oklahoma City terminal in the summer of 1969. At the time Mr. Jones had approximately six years of experience in over-the-road tractor driving, had never had an accident in a truck and had not received a motor vehicle violation conviction in over five years.

a. After filling out a written application Mr. Jones was told by the driver supervisor that they would consider him for employment if he could find a "driving partner." Mr. Jones returned to the terminal thirty days later to inquire about his application and was asked by the driver supervisor if he had "found a partner." Jones indicated he had not and was then told Lee Way was not hiring road drivers. Mr. Jones has never been offered a road driver position at Lee Way. From May of 1969 through August of 1969 Lee Way hired eighty-six road drivers, all of whom were white.

112. Orville Wood, black, applied for a road driver position at Lee Way in March of 1969 and after filling out a written application was informed Lee Way was not hiring road drivers. At this time Mr. Wood had approximately five years of tractor-trailer experience, and had never had an accident in a car or truck. During March of 1969 Lee Way hired fifty-seven road drivers, all of whom were white. Mr. Wood was never contacted by Lee Way concerning his application.

113. Tom Combs, black, sought to apply at Lee Way for a road driver position in April 1969. At the time Mr. Combs had approximately fourteen years of tractor-trailer experience, most of which involved over-the-road driving. Mr. Combs was informed by a company official that Lee Way was not hiring road drivers or taking applications, and he was not

considered for employment. In April of 1969 Lee Way hired forty over-the-road drivers, all of whom were white.

114. John Allen, black, who is referred to in Finding of Fact No. 65, returned in October of 1969 to seek employment at the Oklahoma City dock office and was referred to the shop to obtain an application. (Prior to late 1970 road driver applicants were processed for employment at this office.) There Mr. Allen filled out a written application on which he indicated his prior truck driving experience. Mr. Allen did not specifically ask for a position as a road driver because of his belief that Lee Way didn't hire black road drivers. Mr. Allen, after completing his application and despite his qualifications, was informed the only job available was a porter position which he accepted. During 1969 Lee Way hired 220 white road drivers and one black. Ten road drivers were hired during the month of October, 1969 when Mr. Allen applied.

115. Billy Medlock, black, sought to apply for a road driver position at the Oklahoma City terminal in May of 1971, after reading a newspaper advertisement that Lee Way needed drivers. Mr. Medlock, after giving his name to a receptionist, waited in the reception room at the terminal for approximately an hour and a half in order to obtain an interview with the line driver supervisor. During this time three whites were interviewed by the driver supervisor. At around 2:00 p.m. the driver supervisor, upon receiving Mr. Medlock's name from the receptionist, looked at Mr. Medlock and announced that he was not going to interview any more drivers. Mr. Medlock left and was hired a week later by another carrier as a road driver. In May of 1971 Lee Way hired thirty-six road drivers, all of whom were white. At the time Mr. Medlock sought to apply for employment he had approximately seventeen years of tractor-trailer experience. Lee Way has stipulated that Mr. Medlock was qualified for employment at the company.

[Truck Driving School]

*26 116. In 1969 Lee Way assisted in establishing in Oklahoma City a truck driver training program, the American Truck Driving Academy. Lee Way helped establish the program because, according to its Director of Personnel, Mr. Blood, and its Executive Vice President, Mr. Upsher, Lee Way for the past five or six years had experienced difficulty in obtaining sufficient numbers of experienced truck driver

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applicants to fill its labor needs. Students with no prior truck driving experience were accepted into the school and sent through a four-week curriculum which consisted of eighty hours of class room instruction and eighty hours of on-the-job training on a tractor-trailer rig. Each class was comprised of approximately twenty-four students.

117. Lee Way thereafter began to hire substantial numbers of the Academy's graduates as road drivers at its Oklahoma City terminal and for a period of time reduced its minimum age requirement from twenty-five to twenty-three for graduates of the school. As of May, 1970, approximately one-third of Lee Way's road drivers hired in Oklahoma City were graduates of the school. Lee Way's Director of Personnel testified that he knew of only two or three blacks who graduated from the school prior to mid-1971.

118. Houston Landrum, black, graduated from the American Truck Driving Academy in May of 1970 with a good performance rating. Prior to his enrollment Mr. Landrum had approximately seven years of truck driving experience, including two years of tractor-trailer driving in the military. In August of 1970 Mr. Landrum was informed by the Academy that Lee Way was hiring road drivers. On August 6, 1970 he filled out a written application at the company for an over-the-road position; he was informed that Lee Way was not hiring at the time but that Lee Way would call. Two weeks later after not hearing from Lee Way Mr. Landrum called the company and, after introducing himself, was told Lee Way was not hiring and had road drivers on lay-off.

a. In August of 1970 Lee Way hired four road drivers, all of whom were white, including a graduate of the American Truck Driving Academy. Mr. Landrum has never been offered an over-the-road driver position at the company.

119. In mid-June of 1971 the American Truck Driving Academy, working with the Federal Office of Economic Opportunity and the State Governor's Office, established a minority truck driver training program. Candidates for the program, most of whom were black, were screened by various community action agencies in the State, who were instructed to exclude applicants with poor driving records. If accepted by the Academy the OEO trainee was assigned to classes with and received the same course of instruction as the Academy's regular students. His tuition, however, was paid out of state and federal funds.

120. With the enrollment of the first group of OEO trainees in June of 1971, the Academy's class became approximately one-third black. Prior to this time, according to the Academy's Director, the school had averaged approximately only one black student per class.

[Disavowal of Minority Program]

*27 121. The first OEO class graduated during the third week of July, 1971, at which time a news article appeared in a local Oklahoma City newspaper about the Academy's minority training program. On July 27, 1971 Lee Way's Director of Personnel sent a letter to the Academy in which, after referring to this news article, he indicated that Lee Way would no longer accept its graduates.

122. After Lee Way's decision to cease recognizing the school, other truck lines continued to hire Academy graduates, including a major carrier outside the State of Oklahoma, which had indicated to the Academy a desire to hire many of its black graduates.

123. Subsequent to Lee Way's ending its recognition of the Academy, numerous black graduates from the school applied at Lee Way for road driving positions and were informed they could not be hired for "lack of experience."

124. Audrey Daniels, black, who is referred to in Finding of Fact No. 64, was able to fill out a written application for a road driver position at the Oklahoma City terminal on November 18, 1971. At this time Mr. Daniels had approximately fifteen years of tractor-trailer experience, nine of which involved road driving, and he had a clean traffic record. After filling out his written application he was informed by the driver supervisor that Lee Way was not hiring. Mr. Daniels called back concerning his application on two occasions between November, 1971 and February, 1972, and was told Lee Way was not hiring. Mr. Daniels has never been offered a road driving position at the company, despite the fact that in February of 1972 Lee Way hired five regular road drivers, all of whom were white.

125. Clifford Downey, black, sought to apply for an over-the-road position at Lee Way in April of 1972. He was informed

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by a Lee Way official that the company was not hiring road drivers and he was not allowed to fill out a written application. At this time Mr. Downey had approximately four years of tractor-trailer experience as an over-the-road driver. In April of 1972 Lee Way hired thirty-five road drivers, none of whom were black.

126. Johnny McNeeley, black, sought to apply for a road driver position in April or May of 1972 after seeing an advertisement in the newspaper that Lee Way was hiring road drivers. When he arrived at the terminal Mr. McNeeley was informed by a Lee Way official that Lee Way was not hiring any truck drivers and not taking applications. At this time Mr. McNeeley had approximately ten years of tractor-trailer experience and he had never had an accident in a truck.

127. Lethel Smith, black, applied for a road position at Lee Way in May of 1972 in response to a Lee Way newspaper ad for road drivers. Mr. Smith spoke to the line driver supervisor who told him Lee Way was not hiring road drivers. At this time Mr. Smith had approximately five years of tractor-trailer experience as an over-the-road driver. After the Government filed its Complaint in June of 1972 Mr. Smith re-applied for a road driver position at the company and was eventually hired.

*28 128. Rudolph Doss, black, applied for a road driver position at Lee Way in early June of 1972 and was informed by a receptionist in the personnel office that Lee Way was neither hiring nor taking applications for road drivers. Mr. Doss at this time had approximately ten years of tractor-trailer experience.

[Misinformation to Black Applicants]

129. Black applicants for employment at the Oklahoma City terminal have in many instances been given misinformation concerning the company's stated minimum qualification requirements for road driver. For example:

a. Aubrey Daniels, black, who is referred to in Finding of Fact No. 64, was informed by Lee Way's Director of Line Drivers when he applied for a road driver position in 1960 that he did not meet Lee Way's minimum experience requirement, despite the fact that at the time he had approximately five or six years of tractor-trailer experience, most of which involved

over-the-road driving. Lee Way's stated minimum experience requirement at this time was three years of tractor-trailer experience.

b. Hubert Stevens, black, applied for a road driver position at Lee Way in the Fall of 1968. After filling out a written application and talking to the line driver supervisor, he was informed he did not have enough experience. At that time Lee Way's stated minimum experience requirement was two years of tractor-trailer experience. At the time of his application Mr. Stevens had approximately five years of tractor-trailer experience, all as an over-the-road driver.

c. McKinley Craft, black, applied for a road driver position at Lee Way in late 1967. After filling out a written application he was told by the line driver supervisor that he did not have enough experience. At that time Mr. Craft had approximately twelve years of tractor-trailer experience. Lee Way's stated minimum experience requirement at the time was two years of tractor-trailer experience. Mr. Craft again sought employment as a road driver at Lee Way in April of 1970. Mr. Craft informed the driver supervisor that he had previously filled out a written application and had not been hired. Mr. Craft was then told that if he had previously applied at the company and had not been hired, he could no longer be considered for employment. Lee Way has never maintained such an employment standard. Three months later Mr. Craft was hired as a road driver for another major carrier, T. I. M. E.-D.C., where he has since been employed continuously and has received numerous safe driving awards.

d. Rudolph Jones, black, applied for a road driver position at Lee Way in 1970 after being referred to the company by the Urban League. At that time Mr. Jones had approximately six years of tractor-trailer experience, much of which involved over-the-road driving. After filling out a written application Mr. Jones was informed by the driver supervisor that while he had a sufficient amount of experience driving tractor-trailers, he was disqualified because he did not have experience hauling "heavy loads." Lee Way has never maintained such an experience requirement.

*29 e. Wendell Simpson, black, applied for a road driver position at Lee Way in the spring or summer of 1968. At the time of his application Mr. Simpson was informed he did not have enough tractor-trailer experience, although at that time he had over two years of such experience. In addition to being

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informed he did not have enough tractor-trailer experience, Mr. Simpson was informed that Lee Way was not hiring road drivers. At this time Lee Way's minimum experience requirement was two years of tractor-trailer experience. As of July, 1972 Lee Way still had in its employ approximately 57 road drivers who were hired during the spring and summer of 1968.

f. Robert Griffin, black, applied for a road driver position at Lee Way in October of 1972. After filling out a written application Mr. Griffin was informed by the line driver supervisor that he was not qualified for lack of experience. At the time of his application Mr. Griffin had approximately two years of tractor-trailer experience and he had also graduated from the American Truck Driving Academy. Lee Way's stated minimum experience requirement at that time was one year of tractor-trailer experience. Mr. Griffin was recruited by a black recruiter and employed by Lee Way after the Government filed its complaint. The recruiter noted on his application that Griffin was a "good prospect."

g. Roger Williams, black, who is referred to in Finding of Fact No. 107 as Lee Way's first black road driver, originally applied for employment at Lee Way in July of 1968 and was informed by a road driver supervisor that he did not have enough experience. Mr. Williams reapplied a month later and was hired.

h. Cal Dee Jordan, black, applied for a road driving position at Lee Way in early 1968. At that time Mr. Jordan had approximately twenty years of over-the-road driving experience for one company, where he received twelve safe driving awards. After filling out a written application and submitting a copy of his motor vehicle record, Mr. Jordan was informed by Lee Way that he was disqualified because of his "record." Mr. Jordan's traffic record, which is a Defendant's exhibit, reflects that within three years of his application at Lee Way he had only one chargeable accident and one moving violation conviction and therefore met the company's traffic record standard existing at the time.

i. Lonzo Madison, black, was employed by Lee Way as a road driver in July of 1970. He was only the sixth black road driver ever to be employed by Lee Way. Mr. Madison was disqualified during his thirty-day probationary period because of his traffic record. Mr. Madison had only two chargeable accidents and one speeding ticket conviction within five years

of his application at Lee Way. Mr. Madison's traffic record met Lee Way's minimum employment standards. Mr. Madison did receive a number of traffic convictions during the early 1950's and 1960's, which Lee Way contended at trial was the reason for Mr. Madison's disqualification. However, Lee Way's Director of Personnel admitted that the company does not consider traffic convictions over five years old when it receives motor vehicle records similar to Mr. Madison's record.

[Strict on Blacks; Easier on Whites]

*30 130. Black road driver applicants have virtually without exception been required to meet all of Lee Way's minimum employment qualifications for the job, while numerous exceptions have been made for whites.

131. James Hill, black, who is referred to in Finding of Fact No. 68, first applied for a road position at Lee Way in 1963. Mr. Hill indicated on his application that he had a relative employed at the company as a porter in the shop. Lee Way's customary procedure in such situations is to accept the application and forward it to the President of the company, who decides whether to waive the company's no-relatives rule. However, Mr. Hill's application was, in his presence, torn in half by the driver supervisor and thrown in a waste basket. In 1969 Mr. Hill again sought to obtain a road driver position at the company. He was again informed, without being permitted to fill out an application, that Lee Way did not hire relatives and he was not considered for employment.

132. No black has ever been hired by Lee Way as a road driver who had a relative employed at the company. However, numerous whites have been hired as road drivers who at the time they were hired had relatives employed by the company, including two white road drivers hired in 1969.

133. Lee Way has presently employed at the Oklahoma City terminal as road drivers approximately forty whites who at the time they were hired as road drivers did not meet one or more of the company's stated height-weight requirements referred to in Finding of Fact No. 40(a)(4). Approximately thirty of these white road drivers have been hired since 1968, and the application filed by several of these reflected that they did not meet all of the company requirements in this area.

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[Height and Weight Requirements]

134. Lee Way has never hired a black road driver at the Oklahoma City terminal who did not meet the company's stated height and weight requirements and it has consistently disqualified black applicants for not meeting these requirements. Examples are set forth as follows:

a. Willie Henderson, black, applied for a road driver position at Lee Way in April of 1970 and in June of 1972. Each time he was informed he was disqualified because he was under 5'7" in height. Mr. Henderson is 5'5 ½". At the time of his second application he asked the Superintendent of Drivers, Mr. Quirk, if he would consider waiving the height requirement for him as he had over ten years of tractor-trailer experience. Mr. Henderson was informed by Mr. Quirk that "a rule is a rule" and he was not considered further for employment.

b. Numerous whites have been hired at the Oklahoma City terminal who have been under 5'7" at the time they were hired including a white hired in 1969 who, like Mr. Henderson, was 5'5 ½". In April of 1972 Lee Way hired another white who, like Mr. Henderson, was under 5'7" in height.

c. Carl Watson, black, who is referred to in Finding of Fact No. 51, had approximately ten years of over-the-road experience when he applied for a road driver position at Lee Way in March of 1972. After he filled out a written application Mr. Watson was disqualified because he was under 5'7". Mr. Watson is 5'5" in height. In April of 1972 Lee Way hired a white who, like Mr. Watson, did not meet Lee Way's minimum height requirement. Lee Way has in the past employed road drivers as short as 5'4 ½". Also, two days before and eight days after Mr. Watson was rejected, Lee Way hired two whites as road drivers who did not meet Lee Way's maximum weight requirements.

*31 d. Arthur Henderson, black, applied for a road driver position at the Oklahoma City terminal in June, 1968; November, 1970 and February, 1973, respectively. Each time Mr. Henderson was disqualified from employment because he was under 5'7". Mr. Henderson is 5'6 ¾". Mr. Henderson was also disqualified from employment as a dockman in February

of 1973 because he was under 5'10" and despite the fact that Lee Way has admitted not consistently following such a requirement on the dock.

e. In July of 1968 Lee Way hired a white road driver, B. J. Sharber, who, like Mr. Henderson, was 5'6 ¾" in height. In October of 1970 Lee Way hired a white road driver, T. S. Williford, who was 5'6 ½" in height. Also in June of 1968 Lee Way hired two white road drivers who did not meet the company's maximum weight requirement.

f. Lee Jeffries, black, had approximately five years of tractor-trailer experience as an over-the-road driver when he applied at Lee Way in August of 1972 for a road driver position. In filling out his application Mr. Jeffries used his chauffeur's license to supply information requested on the application and entered as his height that listed on his license, 5'4". After completing his application Mr. Jeffries was informed by the Superintendent of Drivers, Mr. Quirk, that he was disqualified for being under 5'7". Mr. Jeffries then attempted to explain that the height was inaccurate as it was based upon his chauffeur's license which he obtained when he was seventeen years old. Mr. Quirk admitted at trial that applicants, uncertain about their height or weight, have been permitted to take the company's physical. Mr. Jeffries, however, was informed that Lee Way would only consider what he put on his application and he was not allowed to take the company's physical.

g. Lethel Smith, black, who is referred to in Finding of Fact No. 127, re-applied for a road driver position at Lee Way in August of 1972. After filling out a written application and taking a physical from the company doctor, Mr. Smith was disqualified from employment by Lee Way's Director of Line Drivers because he was ten pounds over Lee Way's maximum 225 pound weight limit, despite the fact the company doctor had indicated on his physical that he was employable. Six months earlier, in March of 1972, Lee Way hired a white road driver, Burt Hendricks, who, like Mr. Smith, was ten pounds overweight.

h. Daniel Bell, black, applied for a road driver position at Lee Way in October of 1972. After filling out a written application he was interviewed by a black recruiter Lee Way had retained after the Government had filed this suit. Mr. Bell had approximately ten years of tractor-trailer over-the-road experience, two years of college and was rated as a "good prospect" by the recruiter. During Mr. Bell's interview with

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Lee Way's Director of Line Drivers, he was informed that he was disqualified for being over the maximum weight limit. Mr. Bell indicated on his application that he was 250 pounds. Lee Way's black recruiter inquired if the weight restriction might be waived for Mr. Bell and was informed that Lee Way did not make exceptions to this requirement. Mr. Bell was subsequently hired as a road driver for another company where he made tractor-trailer sleeper runs from the mid-west to California.

*32 i. Numerous other black road driver applicants have been rejected by Lee Way for failing to meet the company's stated height-weight requirements.

j. Lee Way has presently in its employment numerous whites who at the time they were hired as road drivers did not meet Lee Way's maximum weight requirements, including a white road driver, Charles Bates, who weighed 270 pounds at the time he was employed by the company.

[Traffic Conviction Policy]

135. Numerous black road driver applicants at the Oklahoma City terminal have also been rejected for having more than Lee Way's stated maximum number of allowable traffic convictions. Lee Way has never permitted a black hired as a road driver to complete his thirty-day probationary period (the period when the company checks the motor vehicle records of its applicants) who had more than the maximum number of allowable traffic convictions.

136. Lee Way's Director of Line Drivers admitted at trial that white road drivers have been retained (and thereby permanently hired) by the company who at the completion of their thirty-day probationary period, had more than the maximum number of allowable traffic convictions.

137. Numerous black road driver applicants at the Oklahoma City terminal have been rejected for not meeting the company's stated minimum driving experience requirement. Lee Way has never permitted a black hired as a road driver at the Oklahoma City terminal to complete his thirty-day probationary period (the period when prior experience is verified through a Retail Credit check) who did not meet the company's stated minimum driving experience requirement.

138. Numerous whites have been hired in the past who have not met Lee Way's stated minimum driving experience requirement.

139. White road drivers hired by Lee Way have been allowed, even after being hired as probationary employees, to explain to the Superintendent of Drivers the circumstances of various motor vehicle violations which appear on their traffic records obtained by the company which would bar employment unless waived. If considered excusable by Lee Way, these are not used against the applicant. For example, George Askey, white, was hired by Lee Way as a regular road driver in 1973. During his thirty-day probationary period he was asked by the Personnel Department to explain to the Superintendent of Drivers whether an accident which he did not declare on his application but which appeared on a Texas motor vehicle record obtained by the company was chargeable or nonchargeable. Texas traffic records do not indicate accident liability. Lee Way does not require applicants to declare non-chargeable accidents, nor does it consider such accidents in determining whether an applicant meets its maximum traffic conviction standard.

Black applicants for road driver positions at the company have consistently been denied the same opportunity. Clifford Cannon, black, was rejected for employment as a road driver in July of 1971, allegedly for not meeting the company's maximum traffic conviction standard. As in the case of Mr. Askey Lee Way was in receipt of a Texas motor vehicle record on Mr. Cannon which indicated two speeding convictions and three "accidents" within three years of his application. Mr. Cannon testified at trial that the three accidents were non-chargeable and therefore he met Lee Way's maximum traffic conviction standard. However, unlike Mr. Askey, Mr. Cannon was informed by the Superintendent of Drivers, before he was even considered for employment as a probationary employee, that Lee Way "could not use him" and he was given neither an explanation for his non-employment nor an opportunity to explain the circumstances of his accidents. Two weeks later Mr. Cannon made a second attempt to obtain an explanation for his not being hired and was given misinformation that Lee Way was not hiring road drivers. In July and August, 1971, Lee Way hired 93 road drivers, 92 of whom were white; one was black. Mr. Cannon at this time had approximately twenty years of tractor-trailer experience.

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*33 140. Black road driver applicants have also been subjected to more vigorous traffic conviction record checks than have similarly situated white applicants.

141. Lee Way's Assistant Director of Personnel, Mr. Lundeen, testified that Lee Way only checks and considers the motor vehicle record of the state in which the applicant is licensed to drive. For example, Virgil Crosley, white, was hired as a road driver by Lee Way in October of 1972. He indicated an Oklahoma chauffeur's license on his application. His Oklahoma motor vehicle record indicated he met Lee Way's traffic conviction standard. However, the Retail Credit Bureau in its report on Crosley noted as background information that he had a poor traffic record in Texas, a state in which he had been previously employed. His Texas motor vehicle records indicated he had received approximately twenty-three traffic convictions since 1966. Nevertheless, the report was disregarded and the company only considered Crosley's Oklahoma motor vehicle record.

142. Lethel Smith, black, applied for a road driver position at the Oklahoma City terminal in November of 1972. At this time Mr. Smith indicated to the Superintendent of Drivers that he had lost weight and now met Lee Way's maximum weight requirement. Mr. Smith had indicated on his employment application as his only driver registration an Oklahoma chauffeur's license and he was instructed by the Superintendent of Drivers to obtain a copy of his Oklahoma motor vehicle record. Smith obtained the record and returned it to the company the same day, asking to be put to work as a probationary employee. However, Mr. Smith was then informed he could not go to work until Lee Way had checked his Arizona motor vehicle record, a state in which his employment application reflected he had also previously been employed.

143. Mr. Smith thereafter contacted Lee Way on numerous occasions to inquire if Lee Way had received his Arizona motor vehicle record and was informed Lee Way had yet to send for it. Mr. Smith, at his own expense, then ordered a telefax copy of his Arizona record, which indicated two traffic convictions. Lee Way officials, however, would not accept this record, insisting the company had to obtain his motor vehicle record through the Retail Credit Agency. On February 9, 1973 Lee Way finally sent its order to the Retail Credit Agency requesting Smith's Arizona motor vehicle report. The

report the company received likewise indicated two traffic convictions and Mr. Smith was then hired as a road driver.

144. Clifford Cannon, black, who is referred to in Finding of Fact No. 139, reapplied for a road driver position at Lee Way in August of 1972. At this time he filled out a written application and indicated an Oklahoma Chauffeur's license as his only driver registration. Mr. Cannon was hired as a road driver, subject to the completion of his thirty-day probationary period. Lee Way obtained his Oklahoma motor vehicle record through Retail Credit, which indicated he had no traffic conviction record. However, a separate Retail Credit request was sent to the State of Texas, a state in which he had previously been employed. A copy of his Texas motor vehicle record was obtained which indicated two speeding tickets and three accidents. Mr. Cannon was at this time terminated from the company because he failed to list all of these traffic tickets on his application.

*34 145. In March of 1972 a white road driver was permitted to complete his thirty-day probationary period for Lee Way despite the fact that he did not declare three motor vehicle violations, two of which were within three years of his application and all of which were recorded in the state in which he was licensed to drive, Texas.

146. Lee Way has administered its road test in a racially discriminatory manner.

[D. O. T. Driver Test]

147. All road driver applicants are required, pursuant to Department of Transportation regulations, to pass a practical road test prior to employment, with their performance recorded on a standard DOT test sheet.

148. Applicants are examined in three basic areas:

- a. Pre-trip inspection of the equipment.
- b. Ability to handle the transmission.
- c. Regard for traffic regulations.

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149. A full road test lasts approximately forty to forty-five minutes; however, the determination of whether the applicant will be allowed to complete the full test cycle normally is left to the discretion of the road test supervisor.

150. The determination of whether an applicant passes or fails the road test is made by the driver supervisor.

151. The determination of whether to record the applicant's deficiencies on his road test rests in the sole discretion of the driver supervisor.

152. All of the driver supervisors are white; there is no evidence that Lee Way has ever employed a black road driver supervisor.

[Black Examinees' Defective Equipment]

153. In 1970 a road driver supervisor, behind the back of a black road test applicant, turned off a valve which resulted in locking the brakes on the tractor-trailer unit about to be driven by the black applicant for his test, thereby causing the engine to be killed when the clutch was released. This was done deliberately so as to be able to "flunk" the black.

154. Orville Wood, black, who is referred to in Finding of Fact No. 112, reapplied for a road driver position in late 1972. At this time he was administered a Lee Way road test on two separate occasions in October of 1972. On each occasion Mr. Wood was asked to take this test on defective equipment that included a malfunctioning transmission. One of the tractors also had a broken tachometer. The condition of the equipment on both occasions resulted in the tractor jumping out of gear. The driver supervisors who tested Mr. Wood experienced the same difficulty with the transmission when they, after asking Mr. Wood to relinquish control of the vehicle, drove it back to the terminal. Mr. Wood was on both occasions disqualified for "getting lost in the transmission."

Mr. Wood had approximately twelve years of tractor-trailer experience at the time of his road test and had been continuously driving diesel tractor-trailers over-the-road since 1967, including 10-speed road rangers, the transmission model on which he was tested at Lee Way. Mr. Wood had

previously passed road tests for other companies and he had never before failed a road test.

*35 After Mr. Wood was disqualified on his first road test at Lee Way, he was on the same night assigned by his employer to make an over-the-road delivery on a 10-speed road ranger, the same tractor model on which he was tested at Lee Way.

155. Shirley Hall, black, and Bishop King, black, have been employed by Lee Way as city drivers at the Houston, Texas terminal since 1966. Both sought to transfer to road driver positions at the Oklahoma City terminal in September, 1972. Mr. Hall was informed by the driver supervisor that while he handled the equipment well he was disqualified because he had "scratched one gear." Mr. King recalls scratching the gears of the transmission on two occasions during his road test. At the end of the test he was informed by the driver supervisor that he was disqualified because he could not shift the transmission. Mr. King asked the driver supervisor to indicate what he had done wrong and was ignored.

Both Mr. Hall and Mr. King were administered their road tests on the same type of equipment they regularly operate as Lee Way city drivers. Neither has ever experienced any difficulty shifting the transmission on these trucks in their duties as city drivers. The day after they were disqualified on their road tests in Oklahoma City they made city deliveries on the same transmission model tractors on which they were road tested.

Both Mr. Hall and Mr. King had passed road tests for other truck lines before their employment at Lee Way.

156. Justin Thomas, black, was administered a company road test on August 18, 1972 and November 9, 1972 and was on each occasion disqualified for being "rough" on the transmission. Mr. Thomas testified that during his road tests he "scratched" some of the gears during the shift cycles.

During each of his road tests Mr. Thomas was not allowed to operate the tractor-trailer unit for more than ten minutes. Mr. Thomas requested more time to become accustomed to the transmission but was refused. Mr. Thomas had, at the time, approximately five to six years of tractor-trailer experience, most of which was obtained in the military. During 1970 and 1971 Mr. Thomas was a diesel tractor-trailer instructor in the military. Mr. Thomas had taken over ten road tests during his career as a truck driver and had never been disqualified on

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such a test prior to his application at Lee Way. In April, 1972 and before his application at Lee Way, Mr. Thomas passed a Department of Transportation road test at another company on the same transmission and tractor model on which he was tested at Lee Way. Mr. Thomas was hired by this company as an over-the-road driver.

Subsequent to his disqualification at Lee Way, Mr. Thomas passed a road test at another major carrier in Oklahoma City, Transcon, where he is presently employed as an over-the-road sleeper cab driver. Mr. Thomas did not drive a tractor-trailer between the time he was disqualified at Lee Way and hired at Transcon. During his road test at Transcon Mr. Thomas scratched some of the gears during the early stages of his road test and was informed by the testing official that most applicants experience this problem during the early stages of a road test. During his road test at Transcon Mr. Thomas was allowed to operate the tractor-trailer unit for approximately thirty to forty minutes, at the end of which time he experienced no roughness or gear scratching during shift patterns.

*36 According to Lee Way's Director of Personnel, the employment standards of Lee Way and Transcon are closely similar.

Subsequent to his employment at Transcon Mr. Thomas, at the request of the Justice Department, passed a road test on diesel tractor-trailer equipment administered by the United States Postal Service.

[White Examinees' Road Tests]

157. Lee Way, within the past two years, has hired numerous whites who both during and at the end of their road tests were found by the driver supervisor to have been rough on the transmission. For example, Dennis Thomas, white, had only five years of tractor-trailer experience (all as a local driver on gasoline engines) when he was administered a Lee Way road test in August of 1971. Mr. Thomas was given his test on a diesel tractor which included a transmission that he had never driven before. During the test Mr. Thomas admitted he experienced a substantial amount of "gear scraping" and that the driver supervisor had remarked in his presence that a co-driver would have difficulty sleeping behind him. However,

Mr. Thomas was approved for employment by the driver supervisor and is presently driving on the road for Lee Way.

158. Lee Way has presently in its employment a white road driver who during his thirty-day probationary period received complaint from his co-driver addressed to a driver supervisor that he "could not handle the equipment, was extremely rough on the transmission forcing it in gear and nearly jumping the front-end off the ground." The report was apparently ignored by Lee Way, as he was allowed to complete his probationary period.

[Practice Time Denied Blacks]

159. Lee Way has traditionally followed a practice of allowing dock employees at the Oklahoma City terminal on their own time to practice driving Lee Way's tractor-trailers on the company's premises. In this manner dock employees with no prior truck driving experience learn how to drive, and if they can then pass a company road test they may, based upon their seniority, successfully bid on a city driver position. According to Lee Way's terminal manager, Mr. Bingham, this learning opportunity is to be granted any dock employee who asks. However, numerous black dock employees have requested and been denied the opportunity.

Albert Scott, a black dock employee, asked on one occasion if he could practice driving on his own time and was informed by the operations manager, Mr. Cooper, that he would have to go to a truck driving school.

Leroy Hill, a black dock employee, asked Lee Way's Operations Manager, Mr. Cooper, in July of 1972 if he could practice driving on his own time and was also told he would have to go to truck driving school.

Windell Prim, a black dock employee, asked the Operations Manager, Mr. Cooper, in late 1972 if he could practice driving and was refused. At this time Mr. Prim observed whites being allowed to practice driving on the yard.

160. Benjamin Marshall, black, was informed he could not obtain a hostler's position at the company because he had not taken a Department of Transportation road test. Albert Scott, a black shop steward, spoke to the Operations Manager, Mr.

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Cooper, on behalf of Mr. Marshall, requesting that he be given the same opportunity as whites to practice on his own time. His request was denied.

*37 The company claims that after Mr. Marshall complained to the Terminal Manager, Mr. Bingham, the whites who had not taken the Department of Transportation test were relieved of their hostling duties.

[Treatment of Dockmen]

161. The former Operations Manager for Lee Way, Mr. Cooper, regularly assigned blacks more difficult, less desirable jobs than whites.

Black dockmen have on numerous occasions complained to their shop steward that they were being subjected to racially discriminatory treatment by the Operations Manager, Mr. Cooper.

Albert Scott, a black dockman, on one occasion was engaged in a conversation with three white dockmen when they were confronted by the Operations Manager, Mr. Cooper. Scott was reprimanded for "standing around" and ordered to get back to work, but none of the whites were reprimanded.

Alvin Roberts, a former black Lee Way dock foreman, was criticized by the Operations Manager, Mr. Cooper, whenever blacks under his supervision were observed not working, despite the fact that on these occasions there were as many whites as blacks who were idle.

162. In early 1968 Lee Way employed throughout its system of terminals 271 office and clerical employees, none of whom were black, but eight of whom were Spanish surnamed Americans.

163. As of July 22, 1972 Lee Way employed approximately 117 clerical employees at the Oklahoma City terminal and general office, of whom two were black and one was Spanish surnamed American. These figures do not include two black janitors also employed at the Oklahoma City terminal office.

[Clerical Employees]

164. Lee Way admits that prior to June of 1972 it had hired only two blacks as regular clerical employees at its Oklahoma City terminal and general office. This includes the first black clerical employee hired in October of 1968, who is referred to in Finding of Fact No. 44(g). The other black clerical employee was hired November 23, 1971.

165. Willard Davis, black, a former job development director for a minority referral agency in Oklahoma City, referred numerous qualified black clerical applicants to Lee Way between 1969 and early 1972, none of whom were hired.

166. This Court has no difficulty in finding that blacks have not been provided the same employment opportunity for office and clerical jobs as whites at the Oklahoma City office of Lee Way. For example:

a. Velma Collins, black, sought to apply for a clerical position at the Oklahoma City terminal in 1967 or 1968 and was informed the company was not hiring. She was not allowed to fill out an application and was not considered for employment.

b. From January 1, 1968 to June 30, 1968 Lee Way hired nineteen regular clerical employees and ten casual clerical employees at the Oklahoma City terminal, all of whom were white.

c. Wilma Pendleton, black, applied for any clerical work available in December of 1971. After filling out a written application she was informed by a receptionist that there were no openings and that if any vacancies arose Lee Way would call her. She was not asked about her qualifications and never heard from Lee Way concerning her application. At the time of her application Miss Pendleton was twenty-three years old, had graduated from high school and had attended one year of business college where she took courses in accounting, business machines, typing and bookkeeping. Miss Pendleton also had approximately seven years of clerical experience at one company where she operated business machines.

*38 d. Leeha Tucker, black, applied for any clerical work available in October of 1971. At the time of her application

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Miss Tucker had graduated from high school, where she had taken courses in business math, typing, shorthand, key punch operation and data processing. Miss Tucker indicated all of this experience on a written application she filed at the company. During an interview with a man in the personnel office she was informed there were no openings at the time and that Lee Way would call if a vacancy arose. Lee Way never called her.

e. Gwendolyn Stephens, black, applied for casual employment in any clerical position at the Oklahoma City terminal in September of 1971. Miss Stephens filled out a written application on which she indicated that she was a senior in high school and had taken courses in typing, bookkeeping and accounting. She also had approximately three months of clerical experience. Miss Stephens was interviewed by Lee Way's Assistant Director of Personnel, Mr. Lundeen. During most of the interview, she was questioned about her views on a civil rights matter. Miss Stephens was given a work schedule by Mr. Lundeen who informed her that after he contacted the Lee Way official for whom she was to work she would be notified when to begin her employment. Miss Stephens never heard from Lee Way and has never been offered employment at the company. Miss Stephens also sought to obtain a regular clerical position at Lee Way in June of 1972 after graduating from high school. At this time she filled out another written application and was informed by a receptionist there were no vacancies. She was also informed by the receptionist that Lee Way did not usually hire relatives. Miss Stephens has had a relative employed at the company since 1968.

In July of 1972 Miss Stephens inquired about the status of her application and was informed by the receptionist that Lee Way was hiring clerical employees and would call her. Lee Way never called. She returned to inquire about her application in August of 1972 and was informed by the receptionist that all of the vacancies had been filled.

f. George Ware, black, filled out a written application for an accounting, bookkeeping or any clerical position in May or June of 1971 and indicated a preference for accounting. Mr. Ware had recently graduated from Langston University where he had majored in business administration. Mr. Ware also had previous office and clerical experience at another truck line as a casual employee. Mr. Ware was interviewed briefly by Lee Way's Assistant Director of Personnel, Mr. Lundeen,

who instructed him to call and set up an appointment for the following Monday. Mr. Ware called on Monday but was informed by Mr. Lundeen that the vacancy for which he was being considered at the time had been filled. Despite the fact that Mr. Ware had a college degree, at no time did Mr. Lundeen mention to Mr. Ware that the company had a management training program. Mr. Ware would have been interested in such a program had it been known to him.

*39 From June, 1971 through October, 1971, Lee Way hired six trainees in its management training program, all of whom were white.

Mr. Ware applied again for employment at the Oklahoma City terminal in July of 1972. At this time Mr. Ware filed another application and was interviewed by Mr. Lundeen. Mr. Ware was again interested in accounting, bookkeeping or any clerical work; he also indicated he would need a starting salary of between \$650.00 and \$750.00 per month.

Mr. Ware was subsequently contacted by Mr. Lundeen and informed that the only clerical position available paid \$550.00 per month. Mr. Ware indicated he did not wish to start at that salary as it would not represent any significant increase over the salary of the job he presently held. Again, no mention was made to Mr. Ware of the company's management training program. Mr. Ware has never heard further from Lee Way about either of his applications.

g. As of July 22, 1972 there remained employed at the Oklahoma City terminal office and general office approximately eighteen office and clerical employees who were hired in regular positions between July of 1971 and May of 1972, of whom only one was black. During the year 1971 Lee Way hired 21 casual clerical employees, all of whom were white.

h. During the approximate period of time in which the black applicants referred to in Findings 166(c) to 166(f) were seeking employment at the company, and also subsequent to the filing of their applications, whites of comparable or lesser qualifications were hired to fill both casual and regular office and clerical positions.

167. In September of 1971 Lee Way hired a white as a regular revenue accounting clerk who was eighteen years old, with one year of college and no prior work experience.

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This employee also admitted on his application that he had a relative employed at the company.

168. In August of 1971 Lee Way hired a white as a regular billing clerk at an hourly wage scale of \$4.48 per hour (\$775.00 per month) who had only two years of college. While this employee indicated on his application he had worked as a dock worker and billing clerk at another freight line, his retail credit report indicates only that he worked on the dock at that company and was terminated due to a "poor attitude."

169. In December of 1971 Lee Way hired a white as a casual data processing clerk who had no prior clerical experience, and had attended four years of high school and one year of nursing school. In December of 1972 this employee was allowed to fill a regular clerical position at the terminal.

170. In June of 1971 Lee Way hired a white as casual general accounting clerk who was seventeen years old, had attended four years of high school, had no prior business school experience and whose only prior work experience was as a maintenance man and a clerk at an auto parts store. In October of 1972 this employee was allowed to fill a regular clerical position at the terminal.

171. In April of 1971 Lee Way hired a white to a regular clerical position as business machine operator who had four years of high school, no prior business school experience, and whose entire job experience consisted of working as a plumber, a helper at a furniture plant, a support worker at an alloy plant and warehouseman.

*40 172. In July of 1971 a white was approved for employment as a regular transportation clerk at an hourly wage rate of \$4.00 an hour who had four years of high school and had attended a computer training course, but who had no prior clerical experience and did not indicate on his application that he possessed any clerical skills such as typing or bookkeeping.

173. In February of 1972 a white applied for employment at Lee Way and indicated no particular position desired on his application. The applicant indicated he had four years of high school, had been previously employed as an air craft mechanic and for five months was a manager of a food store.

In March of 1972 this applicant was hired as a business machine operator.

174. Until the instant suit was filed Lee Way had a reputation in Oklahoma City for not employing blacks on an equal basis with whites, particularly for road driver positions.

[*"Walk-in" Job Referrals*]

175. Lee Way's Director of Personnel admitted in an inter-office communication dated July 23, 1968 that as of that date Lee Way had traditionally relied throughout its system on "walk-in" applicants and union referrals as recruitment sources and had made no affirmative effort to recruit minority employees.

176. In a letter dated June 26, 1970 from a Postal Service Contracts Compliance Examiner, Mr. Molina, to Lee Way's Director of Personnel, this Postal Examiner found that the primary source of applicants for all jobs at the Oklahoma City terminal continued to be walk-ins and employee referrals. Mr. Molina found after making compliance reviews at the Oklahoma City shop in June, 1971 and the Transportation Department in November, 1971, that with respect to the shop Lee Way continued to rely primarily on "walk-ins" and employee referrals and no contact had been made with any minority referral sources for road drivers.

177. Lee Way's Transportation Department Director, Mr. For, admitted that prior to March of 1972 he had never sent a letter to the Urban League or O. I. C. in Oklahoma City requesting referrals for road driver positions.

178. When contacts with minority referral sources have been made by the company, the agencies were in some instances given misinformation concerning minimum employment standards for the job. In other instances the applicants referred by these referral sources were not hired. For example, Lee Way's established minimum experience requirement for trailer mechanics has been two or three years of related experience with no minimum experience requirement for sixty percent apprentices.

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[Deceptive Hiring Practices]

I am persuaded beyond any purview of a doubt that Lee Way continued in many, many ways to discriminate against blacks who sought employment there even up until the day this suit was filed. As would be expected there has been no discrimination since the commencement of this action. I find that during the very years that the Post Office Department was endeavoring to require Lee Way to comply with Executive Order No. 12246 the blacks were still being denied employment on an equal basis with whites and those already employed in menial jobs were not afforded advancement on an equal basis with whites. During these years Lee Way ran ads in newspapers and on radio and otherwise was making it known far and wide that it was seeking qualified blacks for road drivers, but at the very same time was looking for every excuse it could find for refusing to hire qualified blacks. These advertisements and other methods outwardly employed by Lee Way to recruit blacks were intended to lull enforcement officials into believing that Lee Way was trying to comply with the law when in fact Lee Way was utilizing every method it could to refuse to comply with the law as regards equal employment opportunities.

*41 179. In May of 1972 Lee Way sent a letter to minority referral sources in Oklahoma City requesting referrals for both sixty percent apprentice and journeyman trailer mechanic positions. These agencies were informed that sixty percent apprentice referrals were required to have a minimum of two to four years of prior experience and journeyman referrals were required to have a minimum of four to six years of experience.

180. The Opportunities Industrialization Center (OIC), a major minority referral source in the Oklahoma City area, has since early 1969 and at the repeated request of the United States Postal Service referred numerous blacks and other minorities for such traditionally white jobs at Lee Way's Oklahoma City terminal as dockmen, road drivers, clericals and mechanics. The agency's success in placing referrals at Lee Way was accurately described by a former OIC official as poor.

181. From April of 1969 through the spring of 1972, OIC referred approximately twelve to fourteen minority dock

applicants to Lee Way, only one of whom was hired. During this same period of time OIC referred to Lee Way approximately ten to twelve minority road driver applicants, mostly black, only one of whom was hired, and approximately eight to twelve clerical applicants, all black, none of whom were hired. All of the referrals were screened by the agency to meet Lee Way's minimum qualifications for the job as stated to the agency by company officials.

182. In 1969 OIC on one occasion referred four blacks for dock employment who were not allowed to fill out applications.

In 1970 OIC referred four minority applicants for casual dock work who were erroneously informed that Lee Way was not hiring.

OIC maintains a training program for mechanics. A former OIC official, Mr. Davis, testified that while he was associated with the agency from early 1969 through the spring of 1972, to his recollection Lee Way never placed a referral request for a mechanic or an apprentice mechanic. On one occasion OIC referred a black to Lee Way for a mechanic position who was not hired. He was subsequently placed by OIC at another truck line as a mechanic.

[Special Black Recruiter]

183. After the Government filed its Complaint in June of 1972 Lee Way retained the services of a black recruiter for its Oklahoma City terminal, Mr. Charles Russell, who owns a private employment agency in Oklahoma City. Beginning in August of 1972 Lee Way instructed its receptionist at the Oklahoma City terminal to refer all minority applicants for employment to Mr. Russell's employment agency where they are initially "screened" for employment. Mr. Russell's employment agency is located across town from the Lee Way terminal in Oklahoma City. Mr. Russell personally interviews minority applicants at the Lee Way terminal between 8:30 a. m. and 10:30 a. m. Thereafter such interviews are conducted at his employment agency. The results of the interview are noted on the application form, which is then placed on file at the company by Mr. Russell. When vacancies in the job(s) applied for arise these applicants are contacted by the company and again interviewed for employment, after

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which the responsible Lee Way hiring official makes a final determination as to the applicant's employability.

*42 White applicants for employment at Lee Way are not referred to Mr. Russell or any other outside employment agency, and are processed for employment at the company.

Whites have been hired on the spot for casual dock work at the company while black dock applicants have been referred to the black employment agency.

In instances where Mr. Russell has been out of town, black applicants for employment at Lee Way have on occasion had to wait up to four or five days for their applications to be returned by Mr. Russell to the company.

184. I have heretofore observed that the physical requirements established by Lee Way for certain employees were dictated by business necessity and that same have not been utilized by Lee Way in a discriminatory manner with regard to Spanish surnamed Americans. I reiterate that finding here. I further find that Lee Way has never discriminated against Mexican-Americans in other ways.

[No Spanish-Surnamed Bias]

In 1965 Lee Way purchased Texas-Arizona Freight and took over as its own the employees and assets of that company in San Antonio, Texas, El Paso, Texas, Los Angeles, California and other locations. Many of those employees are still with Lee Way and if it could be said that racial discrimination caused a disproportionate number of blacks and Spanish-surnamed Americans to be employed at the aforesaid locations, this Court would have the power to rectify past discrimination by the acquired company (See *Golden State Bottling Company v. N. L. R. B.*, decided December 5, 1973 by the United States Supreme Court) [72 LC P 14,124]. Since this acquisition Lee Way has been fair with Spanish-surnamed Americans, both with regard to employment and promotion. Although the Government argues otherwise, the Court simply finds that it has not sustained its burden of proof with regard to those allegations that Lee Way has discriminated against Spanish-surnamed Americans because of race.

185. The foregoing finding is not intended in any way to find Lee Way blameless at the locations acquired from Texas-Arizona Freight. On the contrary, I find that the employment practices of Lee Way and its promotion practices discriminated against blacks system-wide, including the points added through the acquisition of Texas-Arizona Freight. In order to conserve time, I say here that the conditions fully detailed herein regarding the Oklahoma City operations of Lee Way generally prevailed at all locations and blacks have been systematically excluded from employment and from promotion at all places where Lee Way did business, up until the filing of this suit. With this general finding the Court declines to go into further detail concerning the conditions at outlying terminals.

[International Union Involvement]

186. All of Lee Way's road drivers and a majority of its city employees³ and servicemen work under the National Master Freight Agreement, which is negotiated on a nationwide basis by Trucking Employers, Inc. on behalf of employers and the National Over-the-Road and City Cartage Policy and Negotiating Committee, a national negotiating committee of the International Brotherhood of Teamsters. International President Frank E. Fitzsimmons is chairman of the national negotiating committee. All of Lee Way's road drivers and the majority of its city employees and servicemen also work under regional supplements to the National Master Freight Agreement which are negotiated by regional negotiating committees and trucking employer associations.⁴ For example, there is a Southern Conference of Teamsters negotiating committee which negotiates the Southern Conference Area Supplemental Agreement to the National Master Freight Agreement. The Chairman of the Southern Conference negotiating committee at the time the agreement was negotiated was Murray W. Miller, presently Secretary-Treasurer and formerly a Vice-President of the International. The area supplemental agreements are negotiated at the same time as is the National Master Freight Agreement, and at the same location.

*43 187. The employees covered by the National Master Freight Agreement and its area supplemental agreements pertaining to them vote on whether or not to accept the agreements after they are negotiated; however, if a minority

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of the employees vote against the agreements they still must accept them if a majority vote to approve them.

Thus, while each Teamsters local formally signs the agreements with the company covering the employees whom that local represents after they are approved, the locals themselves do not negotiate these agreements.

188. The local unions, and all other subordinate affiliated bodies of the Teamsters, are chartered by the International. All subordinate affiliated bodies of the Teamsters, including the locals, joint conferences, state conferences, area conferences and national conferences, are provided for by the Constitution of the International. All conferences of the Teamsters are subject to the unqualified supervision, direction and control of the International; President. All members of local unions of the Teamsters are also members of the International.

189. In addition to its paramount role in the collective bargaining process, the International Brotherhood of Teamsters actively engages in representing the seniority and other interests of its membership.

[Terms of Union Contracts]

190. If a regularly employed employee of Lee Way not on lay-off moves from a job covered by one collective bargaining agreement to a job covered by another collective bargaining agreement at one of Lee Way's terminals, it is the uniform policy and practice, in every known instance, that such employee goes to the bottom of the seniority roster for purposes of bidding and lay-off in the job he transfers to and, except for a thirty-day retreat right where applicable, also gives up all seniority for purposes of bidding and lay-off in his old job as of that date. He maintains his company seniority for purposes of fringe benefits only. Servicemen and city operation jobs, the jobs to which the large majority of blacks have been assigned, are covered by different collective bargaining agreements (or different area supplemental agreements to the National Master Freight Agreement) than are road drivers. Consequently, if qualified black employees, formerly assigned almost exclusively to serviceman and city operation jobs, now aspire to move from these jobs to vacancies in the job of road driver, they are required to relinquish their accumulated seniority

for purposes of job bidding and protection against lay off. Although I cannot find any deviations from this policy, as the Court of Appeals from the Tenth Circuit observed in *Jones v. Lee Way*, [2 EPD P 10,283] 431 F. 2d 245, the policy per se has the effect of freezing the blacks in their lower paying jobs.

191. Additionally, at some terminals, an employee must give up his seniority for bidding and lay off purposes when he moves from one job classification to another even though both classifications are covered by the same collective bargaining agreement. For example, at the Los Angeles terminal, if a dockman transfers to city driver he must give up his dock seniority for purposes of bidding and lay off even though both dockmen and city drivers work under the same Western States Area Pick-up and Delivery Local Cartage and Dock Workers Supplemental Agreement.

*44 192. Also at the Oklahoma City terminal, blacks formerly assigned exclusively to the job of serviceman in the shop cannot keep their seniority for bidding and lay off purposes if they now transfer to other classifications in the shop such as mechanic, apprentice mechanic and tireman, even though all of the jobs in the shop are covered by the same collective bargaining agreement. A serviceman who transfers to another classification within the shop retains the right to exercise his accrued seniority to bump back into his old serviceman classification in the event of lay off, but he cannot exercise it for protection against lay off in his new classification. A serviceman who transfers to an apprentice mechanic position and is subsequently upgraded to journeyman status establishes his seniority for bidding and lay off purposes in his journeyman classification only as of the date he becomes a journeyman. Blacks formerly assigned exclusively to the job of serviceman must also give up their seniority for bidding and lay off purposes if they transfer to vacancies in dockman, city driver or road driver jobs.

[Union Stand on Seniority Carry-over]

193. The International Brotherhood of Teamsters has in the past actively opposed seniority carry-over for members of an affected class. In November, 1971, the Teamsters indicated to the Justice Department that it was opposed to such seniority carry-over for an affected class of Lee Way minority employees.

194. The International Union has steadfastly insisted upon the seniority system that requires blacks and all others, if any, who transfer from their lower paying jobs to a more desirable position to thereby give up all of their seniority for bidding purposes. Although Teamsters has had many opportunities to suggest a change in this policy, even after the decisions in *Jones v. Lee Way*, supra, Teamsters has done absolutely nothing to get the policy changed, and has negotiated new contracts which actually fly into the face of the holding in *Jones*. Teamsters has done little, if anything at all, to punish its white members who refuse to work alongside blacks.

Teamsters defends its “seniority” position by pointing out that it is one of long standing, is “color-blind” and is supported by a substantial majority of the union members. Teamsters points to the fact that some of its locals in the south, with a majority of the membership being black, have voted for the seniority policy as exists at Lee Way. I could very easily say that generally speaking, a policy such as existed at Lee Way and which is fully endorsed by Teamsters, is a good policy, *provided* that past employment and promotion practices were equitable, *which is not our case*. Even though I find that since the filing of this suit Lee Way has been equitable in its hiring and promotion policies, in my considered opinion it will be years and years before the “seniority” policy, struck down by the Circuit Court in *Jones*, can be reimplemented without injury to blacks.

*45 195. I conclude these findings with a quote that I trust will someday become the watchword of everyone, employer and employee alike:

“To every man his chance; to every man, regardless of his birth, his shining golden opportunity. To every man the right to live, *to work*, to be himself, and to become whatever his vision and manhood can combine to make him. This, seeker, is the Promise of America.”

–Thomas Wolfe

Conclusions of Law

1. The Court has jurisdiction of this action under 28 U. S. C. § 1345 and Section 707(b) of the Civil Rights Act of 1964, 42 U. S. C. § 2000(e)- 6(b).
2. The Attorney General of the United States is authorized to institute this action on behalf of the United States under Section 707(b) of the Civil Rights Act of 1964, 42 U. S. C. § 2000(e)- 6(b) to obtain relief against a pattern or practice of resistance by Defendants against the full enjoyment of the rights of equal employment opportunity secured by Title VII of the Civil Rights Act of 1964, 42 U. S. C. § 2000(e), *et seq.* He also has authority to seek enforcement of the obligations imposed on Government contractors and subcontractors by Executive Order 11246. See 28 U. S. C. 1345; *United States v. Local 189, United Papermakers*, [1 EPD P 9862] 282 F. Supp. 39 (E. D. La. 1968), affirmed [2 EPD P 10,092] 416 F. 2d 980 (5th Cir. 1969), cert. denied, [2 EPD P 10,177] 397 U. S. 980.
3. The Defendant Lee Way is an employer within the meaning of 42 U. S. C. § 2000(e)(b) and is engaged in an industry affecting commerce within the meaning of 42 U. S. C. § 2000(e)(h).
4. The Defendants International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and International Association of Machinists and Aerospace Workers are labor organizations within the meaning of 42 U. S. C. § 2000(e)-(d) and are engaged in an industry affecting commerce within the meaning of 42 U. S. C. § 2000(e)(e).

[Time Frame for Bias]

5. The relevant time frame for determining liability and entitlement to relief under Title VII of the Civil Rights Act of 1964 is Defendant's employment practices at and before the time the lawsuit was filed. While a defendant's more recent practices may have bearing upon the nature of appropriate relief, they do not affect the determination of whether the Defendant previously violated Title VII. *United States v. Central Motor Lines, Inc.*, [4 EPD P 7624] 338 F. Supp. 532, 556 (W. D. N. C. 1971); *United States v. International Brotherhood of Electrical Workers, Local No. 38*, [2 EPD P

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10,24 2] 428 F. 2d 144, 151 (6th Cir. 1970), cert. denied [3 EPD P 8049] 400 U. S. 943; *United States v. Chesapeake & Ohio Rwy. Co.*, [5 EPD P 8090] 471 F. 2d 582 (4th Cir. 1972), cert. denied, 411 U. S. 439.

[Statistics]

6. Statistics carry much weight in cases brought under Title VII of the Civil Rights Act of 1964. *Jones v. Lee Way Motor Freight, Inc.*, [2 EPD P 10,283] 431 F. 2d 245 (10th Cir., 1970) cert. denied [3 EPD P 8139] 401 U. S. 954. The statistics in the present action, which reflect an almost total exclusion of black employees from the job of road driver, establish a prima facie showing that Lee Way has discriminated on the grounds of race in filling that job on a system-wide basis. *Jones v. Lee Way Motor Freight, Inc.*, supra; *United States v. Pilot Freight Carriers, Inc.*, [6 EPD P 8766] 6 FEP Cases 280 (M. D. N. C. 1973); *United States v. Navajo Freight Lines, Inc.*, [6 EPD P 8762] 6 FEP Cases 274 (C. D. Calif. 1973); *Bing v. Roadway Express, Inc.*, [3 EPD P 8265] 444 F. 2d 687, 689 (5th Cir. 1971); *Witherspoon v. Mercury Freight Lines, Inc.*, [4 EPD P 7720] 457 F. 2d 496, 498 (5th Cir. 1972); *United States v. Hayes International Corporation*, [4 EPD P 7690] 456 F. 2d 112, 120 (5th Cir. 1972); *United States v. Central Motor Lines, Inc.*, supra, 338 F. Supp. at 556.

*46 7. The statistics and other undisputed evidence further establish that at the company's corporate headquarters and main terminal complex at Oklahoma City blacks were, as recently as June of 1968, totally excluded from all jobs at the terminal except the lowest paying, least desirable job of serviceman (janitor, porter and greaseman). After 1968 and up until the time of the filing of the Government's Complaint on June 22, 1972, the statistics reflect that blacks have been virtually excluded from entry into road driver, mechanic, apprentice mechanic, clerical, office and supervisory positions at this terminal. The statistics also reflect that at most other terminals in Lee Way's system blacks have in the past been excluded from all jobs other than the job of serviceman (janitor, porter, greaseman).

[Particular Bias Practices]

8. The prima facie case of discrimination in violation of Section 706(a), 42 U. S. C. § 2000(e)- 2(a), established by the statistics, is confirmed by evidence that Lee Way has engaged in the following unlawful practices:

a. Numerous qualified black applicants have sought over the years to obtain road driving jobs and other traditionally white jobs such as city driver, dockman, mechanic and apprentice mechanic and have either been directly informed that because of their race they could not be considered for such jobs; have had their requests ignored; have been given false or misleading information about requirements, opportunities and application procedures; or have not been considered and hired on the same basis that whites have been considered and hired.

b. Numerous qualified black employees who have sought to transfer to road driving jobs and other traditionally white jobs at the company have either been directly informed that because of their race or national origin they would not be considered for such jobs or have had their requests to transfer ignored by the company.

c. Numerous qualified black employees who have sought to transfer to road driving or other traditionally white jobs were denied the opportunity to do so because of Lee Way's no-transfer rule, in effect from 1957 until formally rescinded in 1972.

[Physical Stature Standard]

d. Lee Way has engaged in a number of other discriminatory employment practices, such as administering its practical road test and physical stature requirements in a racially discriminatory manner.

[Past Bias Perpetuated]

9. Title VII of the Civil Rights Act of 1964 was designed "to achieve equality of employment opportunities and remove barriers that have operated in the past to favor an identifiable group of white employees over other employees. Under the Act practices, procedures or tests neutral on their face, and even neutral in terms of intent, cannot be maintained if

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they operate to 'freeze' the status quo of prior discriminatory practices." *Griggs v. Duke Power Co.*, [3 EPD P 8137] 401 U. S. 424, 429-430 (1971); *Jones v. Lee Way*, supra.

10. Where, as here, a company has in the past operated a racially segregated system of employment in which assignments to particular job classifications were restricted on the basis of race or national origin, the continued reliance on a seniority system which requires an employee to give up his seniority for all purposes except company fringe benefits if he transfers to a traditionally white job classification covered by another collective bargaining agreement (or another such job classification covered by the same agreement), perpetuates the effects of past discrimination and constitutes a present pattern or practice of discrimination against black employees, depriving them of employment opportunities and adversely affecting their status as employees because of their race or national origin within the meaning of 42 U. S. C. § 2000(e)-2(a)(2). In this particular instance Teamsters is as guilty as Lee Way. *Local 189, United Papermakers v. United States*, [2 EPD P 10,047] 416 F. 2d 980 (5th Cir. 1969), cert. denied, [2 EPD P 10,177] 397 U. S. 919; *United States v. Jacksonville Terminal Co.*, [3 EPD P 8324] 451 F. 2d 418 (5th Cir. 1971), cert. denied, [4 EPD P 7774] 406 U. S. 906; *United States v. Bethlehem Steel Corp.*, [3 EPD P 8257] 446 F. 2d 652 (2nd Cir. 1971); *Robinson v. Lorillard Corp.*, [3 EPD P 8267] 444 F. 2d 791 (4th Cir. 1971); *United States v. Central Motor Lines, Inc.*, supra; *United States v. Pilot Freight Carriers, Inc.*, supra; *United States v. Navajo Freight Lines, Inc.*, supra.

*47 11. The current collective bargaining agreements do not make provision for incumbent black employees, assigned to their jobs on the basis of race or national origin, to transfer to the traditionally white job of road driver and other traditionally white jobs, with seniority retention for bidding and lay off purposes. To the extent that the company's interpretations of the agreements, or the agreements themselves, prohibit such seniority retention by incumbent black employees, they constitute deterrents to transfer in violation of Title VII. The Court has the authority to order the company to discontinue the policy or practice of refusing to permit black employees from transferring to the job of road driver and other traditionally white jobs, and taking with them their seniority for all purposes including bidding and lay off, notwithstanding the protestations of defendants. *United States v. Sheet Metal Workers, International Association, Local Union 36*, [2 EPD

P 10,083] 416 F. 2d 123, 132 n. 16 (8th Cir. 1969); *United States v. Pilot Freight Carriers, Inc.*, [4 EPD P 7709] 54 F. R. D. 519 (M. D. N. C. 1972); *United States v. Bethlehem Steel Corp.*, [5 EPD P 7988] 4 FEP Cases 1280 (W. D. N. Y. 1972).

[International Union]

12. In light of the fact that the terms of the National Master Freight Agreement and its area supplements are negotiated on a national basis by representatives of the Teamsters, and that ratification of such agreements is by vote of the Teamster members by classification and area, rather than by local (see Findings 186-188), the International is an appropriate party to represent its members for *seniority purposes only* in this litigation; and it shares responsibility with Lee Way for the seniority provisions of those agreements. See the earlier ruling of this Court, *United States v. Lee Way Motor Freight, Inc.*, Civ. No. 72-445 (W. D. Okla., August 27, 1973) [6 EPD P 8812]. Accord: *United States v. Pilot Freight Carriers, Inc.*, [4 EPD P 7709] 54 F. R. D. 519 (M. D. N. C. 1972); *United States v. Navajo Freight Lines, Inc.*, [4 EPD P 7903] 4 FEP Cases 1044 (C. D. Cal. 1972) (decision on motion), [6 EPD P 8762] 6 FEP Cases 274 (C. D. Cal. 1973) (decision on the merits); *United States v. T. I. M. E.-D. C., Inc.*, [4 EPD P 7831] 4 FEP Cases 875 (N. D. Tex. 1972). Injunctive relief only will be granted against Teamsters at this time but the Court reserves the right to order Teamsters to pay costs or fines or both for any future noncompliance herein.

[Wage Rate Retention]

13. The current collective bargaining agreement covering all employees at the Oklahoma City shop provides for entry level wage rates for apprentice mechanics based on a graduated scale ranging from sixty percent to ninety-five percent of the current journeyman rate. The determination of the entry wage rate an apprentice applicant will be assigned on this scale is at the sole discretion of the company. Blacks until recently assigned exclusively to serviceman jobs in the shop will suffer a loss of wages if they transfer to apprentice positions below the ninety percent journeyman rate. Title VII requires that persons of a minority race who transfer to apprentice positions be permitted to retain the wage rates of their old job until the wage rate in the apprentice or journeyman position to which

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they transfer equals or supprasses their former rate. *United States v. Bethlehem Steel Corp.*, [3 EPD P 8257] 446 F. 2d 652, 660-661 (2nd Cir. 1971); *Robinson v. Lorillard Corp.*, [2 EPD P 10,194] 319 F. Supp. 835, 843 (M. D. N. C. 1970), affirmed [3 EPD P 8267] 444 F. 2d 791 (4th Cir. 1971); *Clark v. American Marine Corp.*, [2 EPD P 10,084] 304 F. Supp. 603, 608 (E. D. La. 1969); *United States v. Local 189, United Papermakers*, [2 EPD P 10,032] 301 F. Supp. 906, 923 (E. D. La. 1969).

[College Degree Requirement]

*48 14. It is likewise a violation of Title VII, absent a showing of business necessity, to require blacks, as a condition of being accepted into the company's management training program, to possess a college degree when such educational requirement, while neutral on its face, tends to result in the disproportionate rejection or disqualification of otherwise qualified black applicants for this program. *Griggs v. Duke Power Co.*, supra; *Gregory v. Litton Systems, Inc.*, supra; *Johnson v. Pike Corp. of America*, supra.

[Traffic Conviction Standards]

15. It is a violation of Title VII to impose more stringent requirements, such as the company's minimum traffic conviction standard and minimum height and maximum weight requirements on blacks aspiring to road driver jobs than were imposed on white persons who were hired, assigned or transferred to those jobs. *United States v. Jacksonville Terminal Co.*, supra; *Griggs v. Duke Power Co.*, [2 EPD P 10,143] 420 F. 2d 1225, 1231 (4th Cir. 1970), rev'd on another issue, [3 EPD P 8137] 401 U. S. 424; *Hicks v. Crown Zellerbach Corp.*, [3 EPD P 8037] 319 F. Supp. 314, 321 (E. D. La. 1970).

[White Supervisory Staff]

16. It is an unlawful employment practice for an employer who has in the past excluded blacks from its traditionally white jobs to now require black applicants for these jobs to have critical judgments and determinations as to their employment qualifications and entry wage rates vested

primarily or exclusively upon the discretionary evaluations of an all white supervisory staff. *Rowe v. General Motors Corp.*, [4 EPD P 7689] 457 F. 2d 348 (5th Cir. 1972). See also, *United States v. Sheet Metal Workers International Association, Local Union 36*, supra. Such a system of employee selection contains a ready mechanism for discrimination against blacks, much of which can be covertly concealed and, for that matter, not really known to higher level management. *Rowe v. General Motors Corp.*, supra.

The record in this case shows many examples of such discrimination, including the following:

[Fixing of Apprentice Wage Rate]

a. The determination of the entry wage rate for apprentice mechanics at the Oklahoma City shop rests exclusively within the discretion of the Shop Superintendent, who is white, and is based upon his personal evaluation of the applicant's general mechanical background. Apprentice mechanic and mechanic have been traditionally white jobs at the company. Blacks who have recently applied for these jobs have been required to begin at apprentice rates below those which similarly or less qualified whites have in the past been assigned.

[Judging Road Driver Test]

b. Lee Way's practical road test is administered by an all white group of driver supervisors. The determination of whether an applicant passes or fails the test is at the sole discretion of the driver supervisor, and is based largely upon his subjective evaluation of the applicant's driving abilities. In many instances, qualified black truck drivers have been administered the road test in an arbitrary manner and have been disqualified for reasons not ordinarily applied to whites.

[Treatment According to Race]

*49 17. It is a violation of Title VII for an employer to discriminate against any individual with respect to his terms, conditions or privileges of employment because of such individual's race or national origin. Section 703(a), 42 U. S. C. § 2000(e)- 2(a). It is a prima facie violation of Title VII,

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therefore, for an employer to require its black employees, because of their race or national origin, to perform more difficult or less desirable work assignments; to reprimand or otherwise discipline such black employees in a manner not uniformly applied to its white employees; and to allow its hiring or supervisory personnel to refer to them in a manner derogatory to their race or national origin. *Morrow v. Crisler*, 3 FEP Cases 1162 (S. D. Miss. 1971).

upon defendants an obligation to undertake affirmative action to vitiate effects of a discriminatory reputation in the minority community. *United States v. Sheet Metal Workers, International Association, Local Union 36*, supra; *Lea v. Cone Mills Corp.*, supra; *United States v. Ironworkers, Local 86*, supra; *Morrow v. Crisler*, supra, [3 EPD P 8119] 3 FEP Cases 1162 (S. D. Miss. 1971).

[Word-of-Mouth Recruiting]

18. Where, as here, a company has maintained traditionally white job classifications, it is unlawful for it to rely primarily upon a word-of-mouth recruitment system, for such a system provides notice of employment opportunities only to friends and relatives of the substantially all white present work force. *Local 53, Asbestos Workers v. Vogler*, [1 EPD P 9952] 407 F. 2d 1047, 1053 (5th Cir. 1969); *United States v. Georgia Power Co.*, [5 EPD P 8460] 474 F. 2d 906, 925-926 (5th Cir. 1973); *United States v. Chesapeake & Ohio Rwy. Co.*[5 EPD P 8090] 471 F. 2d 582 (4th Cir. 1972); cert. denied 411 U. S. 937; *Lea v. Cone Mills Corp.*, [2 EPD P 10,052] 301 F. Supp. 97 (M. D. N. C. 1969); aff'd in part, vacated in part on another issue, [3 EPD P 8102] 438 F. 2d 86 (4th Cir. 1972). Likewise, it is unlawful for a company to give false, misleading or incomplete information to blacks or to fail or refuse to inform blacks of the procedures and opportunities for obtaining employment. *United States v. Sheet Metal Workers International Association, Local Union 36*, [2 EPD P 10,083] 416 F. 2d 123 (8th Cir. 1969); *United States v. Ironworkers, Local 86*, [3 EPD P 8213] 443 F. 2d 544 (9th Cir. 1971), cert. denied, [4 EPD P 7583] 404 U. S. 984.

[Employer's Bias Reputation]

19. In proving a pattern or practice of racial discrimination, evidence of the discriminatory reputation of an employer is relevant and admissible. Such evidence is admissible to show how and why blacks may have been discouraged from applying for traditionally white jobs and how and why some of those who did apply may have been discouraged from pursuing their applications. It is also admissible because it has a direct bearing on the nature and extent of the appropriate relief to which the Government is entitled. Title VII imposes

[Scope of Relief Awardable]

*50 20. Where an employer defendant has engaged in a pattern or practice of discrimination on account of race and national origin, affirmative and mandatory relief is required in order to insure the full enjoyment of the right to equal employment opportunities. In ordering such relief, a court should not parrot the Act's prohibitions, but should order all affirmative relief which is appropriate to insure the full enjoyment of employment rights. *United States v. Jacksonville Terminal Co.*, supra, 451 F. 2d at 458; *United States v. Dillon Supply Co.*, [2 EPD P 10,256] 429 F. 2d 800 (4th Cir. 1971); *Local 53, Asbestos Workers v. Vogler*, [1 EPD P 9952] 407 F. 2d 1052-53; *United States v. International Brotherhood of Electrical Workers, Local No. 38*, supra.

21. In such cases, "The court has not merely the power but the duty to render a decree which will as far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future." *Louisiana v. United States*, 360 U. S. 154; *United States v. Local 169, Carpenters*, [4 EPD P 7610] 457 F. 2d 210, 216 (7th Cir. 1972), [5 EPD P 8030] cert. denied, 409 U. S. 851; *United States v. Ironworkers Local 86*, supra, [3 EPD P 8213] 443 F. 2d at 553 (9th Cir. 1971); *Carter v. Gallagher*, [4 EPD P 7616] 452 F. 2d 315, 328-31 (8th Cir. en banc 1972), cert. denied, [4 EPD P 7818] 406 U. S. 950.

22. The Court in ordering relief is seeking equitably to correct the current and future effects of past discrimination and to restore the real victims to their rightful status. It therefore is not limited by the prohibition in section 703(j), 42 U. S. C. 2000(e)- 2(j) against preferential treatment. *United States v. International Brotherhood of Electrical Workers, Local No. 38*, supra; *United States v. Sheet Metal Workers, International Association, Local Union 36*, supra; *Jones v.*

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Lee Way Motor Freight, Inc., supra, 431 F. 2d at 250; *United States v. Ironworkers, Local 86*, supra.

[Class Action Relief]

23. The identity of those in the class of blacks who have suffered from discrimination on the grounds of race or national origin in hire, assignment, transfer and promotional opportunity will be determined later. Members of such class will be entitled to transfer to employment in any other job from which they have, because of their color, been excluded in the past and, in the case of applicants and former employees, to proper seniority credit. Minority incumbents will be entitled to seniority carryover and qualified but racially rejected applicants and former employees will be entitled to seniority credit for all purposes, including bidding, lay off and fringe benefits. *United States v. Central Motor Lines, Inc.*, supra, 338 F. Supp. at 560; *United States v. Navajo Freight Lines, Inc.*, supra, 6 EPD P 8762, 6 FEP Cases 274; *United States v. Pilot Freight Carriers, Inc.*, supra, 6 EPD P 8766, 6 FEP Cases 280; *United States v. Jacksonville Terminal Co.*, supra, 451 F. 2d at 459; *Local 189, United Papermakers v. United States*, supra, 416 F. 2d at 933.

*51 24. In fashioning relief, the Court will order remedial acts such as affirmative hiring goals which will provide for participation by qualified blacks in traditionally white job classifications as is appropriate in order to overcome the present effects of past discrimination. *United States v. Local 86, Ironworkers*, supra; *United States v. Electrical Workers, Local 212*, 472 F. 2d 634 (6th Cir. 1973); *Carter v. Gallagher*, supra, 452 F. 2d at 328-31 (8th Cir. en banc); *Castro v. Beecher*, 459 F. 2d 725, 736-37 (1st Cir. 1972). Such goals are also appropriate as part of affirmative action plans for Government contractors and subcontractors. See *Contractors Association of Eastern Pennsylvania v. Secretary of Labor*, 442 F. 2d 159 (3rd Cir. 1971), cert. denied, 404 U. S. 854. Such goals are an initial part of the corrective action programs ordered by the courts as a part of their duty to correct the effects of past discriminatory practices and may well be the most feasible mechanism for defining with clarity the obligations to move employment practices in the direction of true neutrality. *Southern Builders Association v. Ogilvie*, 471 F. 2d 680, 686 (7th Cir. 1972).

25. Where, as in the present case, defendants' employment practices have been found to violate Title VII and have resulted in economic loss, the awarding of back pay for the victims of those discriminatory practices is appropriate relief. Defendants' specific intent to discriminate or cause economic loss is not relevant in making such a determination. Back pay is not a penalty imposed as a sanction for the commission of an act involving moral turpitude; it is equitable in nature and intended to restore those who have suffered from the unlawful practices to their rightful economic status absent the effects of the unlawful discrimination. *Robinson v. Lorillard Corp.*, supra, 444 F. 2d 791, 804; *Bowe v. Colgate-Palmolive Co.*, 416 F. 2d 711, 720 (7th Cir. 1969); *Rosen v. Public Service Electric & Gas Co.*, 477 F. 2d 90, 95-96 (3rd Cir. 1973); *United States v. Georgia Power Co.*, supra, 474 F. 2d at 906.

[Back Pay Awardable]

26. The awarding of monetary relief is appropriate in a suit brought involving classes of discriminatees. The defendants' liability for back pay is rooted on grounds applicable to all members of the class. To allow injunctive relief from unlawful practices but deny compensation to the class for the tangible economic loss resulting from such unlawful practices would frustrate the implementation of the strong Congressional purposes expressed in the Civil Rights Act of 1964. *United States v. Georgia Power Co.*, supra; *United States v. Hayes International Corp.*, supra; *Robinson v. Lorillard Corp.*, supra; *Bowe v. Colgate-Palmolive Co.*, supra.

27. In suits in which the Attorney General is authorized to seek injunctive and other relief "as he deems necessary to insure the full enjoyment of the rights herein described," proper equitable relief includes the restitution of the pay or other moneys lost by individuals because of racial discrimination. It is within the Attorney General's authority to seek and within the Court's equitable jurisdiction to restore the recipients to their rightful economic status absent the effects of the unlawful discrimination, 42 U. S. C. 2000(e)-6(e); *United States v. Georgia Power Co.*, supra, 474 F. 2d at 920-21; *United States v. Hayes International Corporation*, supra, 456 F. 2d at 121.

*52 28. In cases of this kind, where blacks have been shown to be victims of discriminatory practices and to have suffered

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economic harm and in the absence of unusual circumstances, back pay should ordinarily be awarded to those who have suffered economic loss as a result of the unlawful practices. *Head v. Timken Roller Bearing Co.*, [6 EPD P 8876] 486 F. 2d 870, (6th Cir. No. 72-1994, Oct. 12, 1973, Slip Op. pp. 7-9); *Moody v. Albemarle Paper Co.*, [5 EPD P 8470] 474 F. 2d 134, 141 (4th Cir. 1973) pending on rehearing en banc. In such circumstances, it is appropriate for the court to determine the amounts of back pay to individual persons in an ancillary proceeding after liability has been determined. *Robinson v. Lorillard Corp.*, supra; *Bowe v. Colgate-Palmolive Co.*, supra; *United States v. Local 46, Lathers*, [3 EPD P 8249] 328 F. Supp. 429 (S. D. N. Y. 1971); *United States v. Bricklayers, Local 1*, 5 EPD P 8480 (W. D. Tenn. 1973).

[*Union Liability*]

29. Where, as here, seniority provisions have tended to lock blacks into the lower paying jobs to which they were originally discriminatorily assigned, the Union shares in the responsibility for the provisions and therefore is liable to account to this court with respect to incumbent members of the affected class who would otherwise have been permitted to transfer to the better paying, traditionally white jobs absent discriminatory practices. *Robinson v. Lorillard Corp.*, [2 EPD P 10,294] 2 FEP Cases 916 (M. D. N. C. 1970), affirmed [3 EPD P 8267] 444 F. 2d 791 (4th Cir. 1971); Title VII of Civil Rights Act of 1964, Section 706(g), 42 U. S. C. § 2000(e)-5(g).

[*Recruitment Bias*]

30. This Court concludes that Lee Way has not recruited any employees in a manner calculated to inform applicants of job vacancies, and, as a matter of fact, has camouflaged openings so as to discourage blacks. This practice is in direct violation of the Civil Rights Act and the many cases hereinbefore cited.

[*Special Master Appointment*]

Regretfully, this Court must conclude and order that it retain jurisdiction herein. An Order will be later entered appointing some suitable person to serve as a Special Master, to hear evidence and thereafter report to this Court on a person-to-person basis relative to those blacks listed as discriminatees who claim to have suffered discrimination and to have suffered loss because of having been discriminated against by Lee Way. Those who have already testified herein under oath that they have not been discriminated against are hereby eliminated from the list of alleged discriminatees. Most, if not all, of the people falling within this last mentioned category are mentioned in a separate Order this date entered which separate Order deals with the question of sanctions. Additionally the Government witness Jimmie Leatheridge is hereby eliminated from the list of alleged discriminatees because the Court finds that he has not been wronged in any way.

The request of counsel for Teamsters for an opportunity for oral argument is denied, but in the event the parties are unable to agree upon the form of judgment to be entered herein this Court reserves the right to reconsider the aforesaid request of Teamsters.

*53 Counsel for the Government will prepare in appropriate Judgment, [and] submit it to defense counsel for approval as to form, thereafter same to be signed by the Court.

All Citations

Not Reported in F.Supp., 1973 WL 278, 5 Fair Empl.Prac.Cas. (BNA) 492, 7 Fair Empl.Prac.Cas. (BNA) 710, 7 Empl. Prac. Dec. P 9066

Footnotes

1 These figures exclude employees in these jobs who made less than \$4,000.00 during the fiscal year.

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- 2 A 60 percent apprentice is one who enters at a wage rate equal to 60 percent of the wage rate of a journeyman mechanic.
 - 3 City employees include dockmen (checkers) and city drivers.
 - 4 Area Supplemental agreements to the National Master Freight Agreement include: Southern, Western, Central and Eastern. There are several area supplements within the Eastern region rather than a single Eastern supplement. Road drivers, city employees and servicemen are covered by separate supplemental agreements and they accumulate seniority on separate seniority rosters.
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