

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

1973 WL 199, 6 Fair Empl.Prac.Cas. (BNA) 463, 6 Empl. Prac. Dec. P 8812

1973 WL 199

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 |

August 27, 1973

EUBANKS, D. J.

[*Order Denying Union Motion*]

\*1 At the time Plaintiff rested its case in chief the Defendant International Brotherhood of Teamsters orally moved that it be dismissed herein for the reason that it is not a party to any collective bargaining and that Plaintiff had failed to prove a cause of action against it. This oral motion was later reduced to writing and was briefed and the Government has filed an answer brief thereto.

After having studied the briefs the Court orders that the Motion of Teamsters be denied. This ruling is based primarily on the holding in the case of *United States v. Pilot Freight Carriers, Inc.*, [4 EPD P 7709] 54 F. R. D. 519 and other cases cited in the third paragraph of page 3 of the answer brief filed herein.

[*Order Denying Freight Company Motions*]

At the time Plaintiff rested its case herein the Defendant Lee Way Motor Freight, Inc. made an oral motion for partial summary judgment, and on July 18, 1973 reduced the Motion to writing and accompanied same with a brief. Thereafter and on July 23, 1973 the Plaintiff responded in writing to said Motion, and on August 1, 1973 the moving Defendant filed its reply. The issue raised by the Motion has been thoroughly briefed.

The moving Defendant claims by its Motion that the Government should be precluded from recovering any back pay claims for any of the alleged discriminatees for the reason that Plaintiff has failed to present any competent evidence by which these back pay claims may be measured. I disagree and overrule the Motion.

It is certainly true that my pre-trial statements were not as clear as they might have been, but it is my plan that should the Court find in favor of the Plaintiff on the main question of whether or not Lee Way has been guilty of a pattern and practice of discrimination then and in that event additional hearings will be conducted whereby the claim of each separate discriminatee can be heard. On page 2 of the reply brief of Lee Way a portion of the pre-trial hearings is quoted. Among other things the Court said:

Well, I don't intend to say that no one whose name is not furnished as a witness is going to be permitted to recover in this case. They may not be witnesses but they've got to have their name furnished to you.

This seems to make clear that an alleged discriminatee may be awarded back pay even though he did not testify at the trial, and I know of no way that such can be permitted without additional hearings. The Court did at one time believe that it would personally hear the back pay claims at a later date if the first hearing resulted in a victory for the Plaintiff, but it is now my view that a Special Master should be appointed should Lee Way be found guilty of a pattern and practice of discrimination as alleged herein.

Accordingly, the Motion of the Defendant Lee Way Motor Freight, Inc. for Partial Summary Judgment is in all things denied.

**All Citations**

Not Reported in F.Supp., 1973 WL 199, 6 Fair Empl.Prac.Cas. (BNA) 463, 6 Empl. Prac. Dec. P 8812

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