

COMMONWEALTH OF PENNSYLVANIA

PENNSYLVANIA HUMAN RELATIONS COMMISSION

SAMUEL SMITH,
Complainant

vs.

CONSOLIDATED FREIGHTWAYS
CORPORATION OF DELAWARE,
d/b/a CONSOLIDATED FREIGHTWAYS,
Respondent

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Docket No. E-3932

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FINDINGS OF FACT, CONCLUSIONS OF LAW,
COMMISSION'S DECISION AND ORDER

FINDINGS OF FACT

1. Complainant herein is Samuel Smith of 2305 North Park Avenue, Philadelphia, Pennsylvania, individually and as representative of Blacks who are members of Local No. 107 of the International Brotherhood of Teamsters, Chauffers, Warehousemen and Helpers of America and Blacks as a class who allegedly have been and are being discriminated against by the Respondent because of their race in hiring and upgrading into positions as permanent truck drivers at the Respondent's Philadelphia Terminal.
2. Respondent herein is the Consolidated Freightways Corporation of Delaware, d/b/a Consolidated Freightways, registered in Pennsylvania through the Corporation Trust System, 123 S. Broad Street, Philadelphia, Pennsylvania, and with place of business at 3716 E. Thompson Street, Philadelphia, Pennsylvania.

3. The charge was filed with the Pennsylvania Human Relations Commission (hereinafter referred to as "Commission") by Samuel Smith on or about October 21, 1970.
4. The Respondent is a nationwide trucking concern with one terminal in Philadelphia which received truck drivers and platform workers by referral from the hiring hall of the above-mentioned union as well as by non-referral from other sources. Other terminals are located all throughout Pennsylvania including Norristown, Harrisburg, Sunbury and Stroudsburg. The Philadelphia terminal maintains its own terminal seniority list which combines all permanent truck drivers and platform workers, all permanent truck drivers having to serve first on the platform and thereafter bidding competitively into positions as permanent truck drivers.
5. The Respondent also hires, from the sources as described above, casual and probationary truck drivers. These drivers do not work as full-time employees, but may work full-time on a temporary basis for specific periods of time. Length of service depends upon the Respondent's need. Length of tenure is at the discretion of the Respondent. At all times pertinent hereto the National Master Freight Agreement with the said union covering over-the-road and local cartage employees of private common, contract and local cartage carriers, of which the Respondent was a party, required the Respondent to hire as a permanent regular truck driver any casual or probationary truck driver who served thirty-three days (not necessarily consecutively) within a consecutive ninety-day period.

6. The Complainant, as well as the majority of the Respondent's casual and regular drivers, were referred to the Respondent by Local No. 107 by the above-mentioned union. The Complainant was first referred by said union and was hired as a casual employee in September of 1969. He worked approximately twenty days in 1969 and approximately seventeen days in 1970. His last day in the Respondent's employ was September 18, 1970 on which date he was terminated for improperly loading a twenty-foot trailer. Upon learning of the improperly loaded truck the Dock Supervisor, William O'Brien, who at the time was the daytime dispatcher of city trucks, wrote a letter dated September 22, 1970 to the above mentioned union, at the instruction of the Terminal Manager Robert H. Lawrence, which letter requested that the union no longer refer Samuel Smith for work. Smith had improperly loaded the said trailer in spite of express instructions as to how the trailer was to be loaded.
7. At all times pertinent hereto the Terminal Manager, Robert H. Lawrence, made all final decisions with respect to hiring and terminating personnel.
8. During the period January to November 1970 the Respondent employed 423 casual or probationary employees six of whom were hired as permanent platform workers. All six were White. During that period the Respondent employed approximately 130 regular drivers and platform workers, approximately 59 of whom were drivers. Of those 59 regular drivers one was Black.
9. Respondent has filed yearly EEO-1 reports with the Federal Equal Employment Opportunity Commission and/or Employment

Profiles with the Contract Compliance Division of the United States Postal Service, the Respondent's cognizant federal agency. These reports include a racial breakdown of all persons employed at the Philadelphia terminal by general job classification. Regular truck drivers are classified therein as operatives, semi-skilled, and platform workers are classified therein as laborers, unskilled.

10. During the period covered by the 1969 report the Respondent employed fifty-nine (59) operatives two of whom were Black. The remainder were White. During the same period the Respondent employed sixty-seven (67) laborers, sixty-six (66) White and one Black.
11. During the period covered by the 1970 report the Respondent employed sixty-seven (67) operatives: sixty-four (64) White, two (2) Black and one (1) American Indian. During the same period the Respondent employed fifty-eight (58) laborers, fifty-six (56) White, one (1) Black and one (1) American Indian.
12. During the period October 14, 1970 to April 16, 1971, the Respondent employed sixty (60) city drivers: fifty-nine (59) White and one (1) Black. During the same period the Respondent employed sixty (60) platform workers: fifty-seven (57) White, two (2) Black and one (1) Spanish-American.
13. During the year covered by the 1971 report the Respondent employed sixty-two (62) operatives: sixty (60) White, one (1) Black and one (1) Spanish-American. During the same period the Respondent employed sixty-one (61) platform workers: fifty-nine (59) White, one (1) Black and one (1) Spanish-American.
14. During the period covered by the 1972 report the Respondent employed sixty-four (64) operatives: fifty-nine (59) White,

four (4) Black and one (1) American Indian. During the same period the Respondent employed sixty-two (62) laborers: fifty-nine White, one (1) Black and two (2) Spanish-American.

15. During the year covered by the Respondent's 1973 report the Respondent employed forty-three (43) operatives: forty (40) White, two (2) Black and one (1) American Indian. During the same period the Respondent employed forty-six (46) laborers: forty-four (44) White, one (1) Black and one (1) Spanish-American.

16. The Commission, on its own motion, takes official notice of the U.S. Bureau of the Census General Population Characteristics, Final Report (1970 Census) and thereby finds that at all times pertinent hereto the total population of the Standard Metropolitan Statistical Area (SMSA) in which the City of Philadelphia is included was in excess of four million, eight hundred thousand (4,800,000). According to the same publication the total Black population (excluding other races and nationalities) for the SMSA was in excess of eight hundred forty thousand (840,000). The exact figures as reported in said publication are as follows: total population 4,817,914; total Black 844,300.

17. The Commission, on its own motion, takes official notice of the U.S. Bureau of the Census General Population Characteristics, Final Report (1970 Census) and thereby finds that at all times pertinent hereto the total population of the City of Philadelphia was in excess of one million, nine hundred thousand (1,900,000). According to the same publication the total Black population for the City of Philadelphia was

in excess of six hundred fifty-three thousand (653,000).

The exact figures as reported in said publication are as follows: total population; 1,948,609; total Black 653,791.

18. The Commission on its own motion, takes official notice of the U.S. Bureau of the Census General Population Characteristics, Final Report (1970 Census) and thereby finds that as of the period during which the 1970 Census was taken there were five-thousand nineteen (5,019) Black persons employed as truck drivers in the City of Philadelphia and six thousand five hundred ninety-eight (6,598) Black persons employed as truck drivers in the SMSA which Philadelphia is included. The same publication indicates that in said SMSA there were six thousand two-hundred two (6,202) unemployed Black persons with prior experience as operatives, including transport operatives. Furthermore, there were four thousand seven hundred fifty-four (4,754) unemployed Black persons with prior experience as operatives, including transport operatives, in the City of Philadelphia.
19. The Respondent did not hire permanent regular drivers during the year 1972. Neither did the Respondent hire regular permanent drivers during the period January 1973 to August 29, 1973.
20. At all times pertinent hereto there were Black employees referred by the aforementioned union who worked as casual or probationary drivers but who were not employed by the Respondent in a permanent, regular status. The number of such Black employees was sufficient to provide an adequate source of Black regular drivers had the Respondent been disposed to hiring them.

21. At all times pertinent hereto, including the years 1972 and January to August of 1973 the Respondent employed probationary or casual employees on a regular basis, usually on a daily basis.
22. During the year 1972 and January to August 1973 no casual employee worked thirty days within a continuous ninety day period.

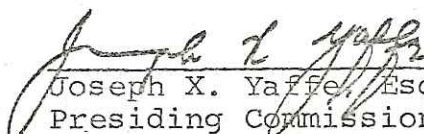
CONCLUSIONS OF LAW

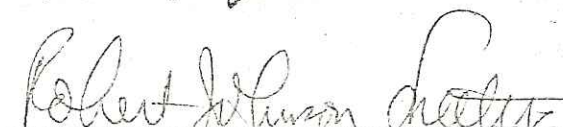
Upon all the evidence presented at the public hearing of this matter on August 29 and August 30, 1973 and in consideration of the foregoing Findings of Fact adduced therefrom, the Pennsylvania Human Relations Commission makes the following Conclusions of Law:


1. The Pennsylvania Human Relations Commission has jurisdiction over the parties and subject matter of this dispute.
2. The Complainant's charge that Respondent denied him, as an individual, the opportunity of becoming a regular truck driver because of his race, Black, in violation of Section 5(a) of the Pennsylvania Human Relations Act, is not supported by the evidence. The Respondent had a reasonable basis for discharging the Complainant as a casual driver because of his failure to comply with express instructions on how to load a twenty-foot trailer.
3. The Complainant's charge on behalf of the class that the Respondent denied and continues to deny numerous members of Local No. 107 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as well as other persons in the City of Philadelphia and the Standard Metropolitan Statistical Area in which the City of Philadelphia is located, the opportunity of becoming permanent truck drivers on account of their race, Black, in violation of Section 5(a) of the Pennsylvania Human Relations Act, is supported by the evidence. The Respondent was and still is in violation of said section.

4. The Respondent's primary relevant labor market is the City of Philadelphia. The Respondent's secondary relevant labor market is the Standard Metropolitan Statistical Area in which the City of Philadelphia is included.
5. Black persons are, and have been since at least 1969, underrepresented at the Respondent's Philadelphia terminal in relation to the availability of Blacks in the relevant labor markets. The job classification in which Black persons are underrepresented include the positions of regular driver and regular dockman (platform worker).
6. The Respondent has a legal obligation to ensure that the number of Black persons it employees in each job category, respectively, adequately reflects the number of available qualified or qualifiable Black persons in the relevant labor markets.
7. The Respondent's use of casual or probationary drivers on a continuous and repeated basis and its failure to hire them as regular drivers leads to the abuse of not hiring Black regular drivers in sufficient numbers to achieve a proper percentage of Black persons in the category of regular driver. This use of casual drivers also leads to the Respondent's failure to employ Black persons in the category of dockmen in sufficient numbers to properly and fairly reflect, proportionately, the number of Black persons available for such work in the relevant labor markets.
8. The Respondent's continuing failure to adopt and implement a plan and timetable by which it would begin forth-

with to undertake steps that would rapidly increase the number of Black regular dockmen and drivers and maintain sufficient numbers to adequately reflect the availability of Black workers, is an unlawful discriminatory practice in violation of Section 5(a) of the Pennsylvania Human Relations Act.


Joseph X. Yaffe, Esq.
Presiding Commissioner


Robert Johnson Smith
Hearing Commissioner

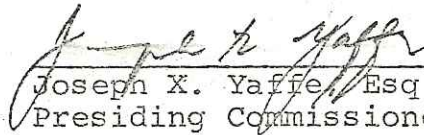

Emily W. Sunstein
Hearing Commissioner

COMMISSION'S DECISION

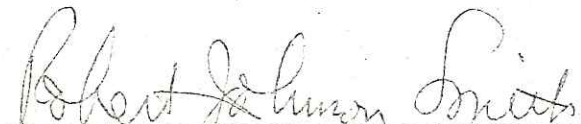
AND NOW, this 26th day of November , 1973, upon the recommendation of the Hearing Commissioners, and upon all the evidence at the public hearing of this case, and in consideration of the Findings of Fact and Conclusions of Law, the Pennsylvania Human Relations Commission finds and determines that Respondent, The Consolidated Freightways Corporation of Delaware, d/b/a Consolidated Freightways, at its Philadelphia branch terminal, has committed and is engaged in an unlawful discriminatory practice in violation of Section 5(a) of the Pennsylvania Human Relations Act, Act of October 27, 1955, as amended, 43 P.S. §955(a), in that persons of the Black race are and have been underrepresented at said terminal in regular truck driver positions.

RECOMMENDATIONS OF HEARING COMMISSIONERS


AND NOW, this 26th day of November, 1973,
upon consideration of all the evidence presented at the hearing in the above-captioned matter, the foregoing Findings of Fact and Conclusions of Law, the Hearing Commissioners recommend to the entire Commission that an Order be issued dismissing the complaint of Samuel Smith in his individual capacity and assessing against the Respondent the appropriate relief on behalf of the classes represented by Samuel Smith, in that the Respondent has committed and continues to so commit unlawful discriminatory acts and practices with respect to said classes.



Joseph X. Yaffe, Esq.
Presiding Commissioner



Robert Johnson Smith
Hearing Commissioner



Emily W. Sunstein
Hearing Commissioner

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION

SAMUEL SMITH,
Complainant

vs.

CONSOLIDATED FREIGHTWAYS
CORPORATION OF DELAWARE,
d/b/a CONSOLIDATED FREIGHTWAYS,
Respondent

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Docket No. E-3932

NOW, November 29, 1973, upon consideration of the foregoing Findings of Fact and Conclusions of Law, pursuant to Section 9 of the Pennsylvania Human Relations Act, Act of October 27, 1955, P.L. 744, as amended, (43 P.S. §959), herein after referred to as "Act", the Pennsylvania Human Relations Commission, herein called "Commission", hereby enters the following

ORDER

1. The claim filed by Samuel Smith, a Black truck driver, in his individual capacity, that Respondent terminated his employment because of his race, is hereby dismissed.
2. The claim filed by Samuel Smith on behalf of Blacks who were members of Local No. 107 of the International Brotherhood of Teamster, Chauffers, Warehousemen and Helpers of America, and Blacks as a class, is hereby sustained.
3. Respondent shall forthwith cease and desist from committing any unlawful discriminatory practices described in Section 5(a) of the Act, 43 P.S. §955(a), regarding hiring permanent

truck drivers and platform employees at its terminal in Philadelphia, Pennsylvania. Furthermore, the Respondent, its officers, agents, employees, successors and all persons in active concert or participation with them or with any of them shall not engage in any act or practice at any terminal or facility of the Respondent presently or in the future located in the Commonwealth of Pennsylvania which has the purpose or effect of creating or maintaining a percentage of Black truck drivers and/or platform workers of the total drivers or platform workers which does not adequately reflect the percentage of the total population that Blacks represent in the respective Standard Metropolitan Statistical Areas in which each such terminal or facility is located.

4. Respondent shall recruit, hire, assign, transfer, promote and dismiss employees without prejudicing the rights of Black employees to move into and hold positions as regular truck drivers at its truck terminal in Philadelphia, Pennsylvania. The term "regular" as used herein shall refer to Respondent's employees other than casual, temporary or probationary employees or employees who have not gained permanent seniority status.
5. Respondent shall forthwith submit to the Commission a list of all currently employed casual or probationary truck drivers and platform workers and a list of all currently employed regular truck drivers and platform workers, identifying said personnel by name, address, telephone number, social security number and race.
6. Respondent shall continuously for a term of at least two years from the effective date of this Order maintain a unified

registry of the names, addresses, telephone numbers, social security numbers and races of all persons hired as casual or probationary truck drivers or platform workers.

a. Respondent shall, with respect to each new casual or probationary driver or platform worker, add the information aforesaid to the registry immediately upon hiring said employee.

b. During such two year term, the Respondent shall, by regular mail, submit a current copy of the said registry to the Commission at least once a month.

7. Respondent shall, continuously for a period of two years from the effective date of this Order submit to the Commission every successive four months a report containing the names, races and total time worked within a continuous ninety day period (stating total time worked in terms of days and hours) of all casual or probationary truck drivers or platform workers separated from the Respondent's employee, whether voluntarily or involuntarily (by termination or otherwise) within each such prior four month term. The report shall include:

a. A brief reason for the separation;

b. Whether or not there is any reason why the Respondent could not rehire such person in the same capacity at some future time.

8. Respondent shall promptly notify the Commission whenever a person on the seniority list, classified as and performing the duties of a regular truck driver, ceases to be engaged

by the Respondent in that capacity, whether or not that person thereafter engages in some other line of duties for the Respondent or whether the employment relationship is completely terminated. Furthermore:

- a. Respondent shall include in such notice whether or not the regular truck driver position previously occupied by such person is considered by the Respondent to be a "vacancy" in the sense that it may be filled by another truck driver immediately;
 - b. If the aforesaid position is not considered by the Respondent to be a "vacancy" as defined above, the Respondent shall include in such notice an explanation of its inability to consider said previously occupied position a "vacancy". If the explanation is not approved and accepted by the Commission the position will be deemed a "vacancy" for the purposes of this Order and any subsequent Order.
9. Respondent shall upon notice from the Commission appear and present its witnesses and evidence at a public hearing, which hearing shall be convened for the sole purpose of determining:
- a. The relevant labor market and relevant target areas for purposes of recruiting for the Respondent's Philadelphia terminal;
 - b. The proper percentage of the total number of regular drivers and regular platform workers that Black persons should represent at the Respondent's Philadelphia terminal;

- c. The amount of time required to meet the percentage goal described in paragraph 9 b;
- d. The ratio of Black employees to employees of any other races that shall be hired in those aforementioned vacancies as so described in order to meet the stated percentage goal of Black employees within the time period that is determined;
- e. The number of hours compiled by casual or probationary drivers during any four month period which, if combined, is the equivalent of the number of hours that would be compiled during that same period by a regular, full-time driver;
- f. Whether it is proper to require the hiring of at least one full-time regular driver for each combined total number of hours compiled by casual or probationary drivers as computed pursuant to paragraph 9 e;
- g. The ratio of Black employees to employees of any other races that shall be hired to fill those regular driver positions that are created pursuant to paragraphs 9 e and 9 f in order to meet the stated percentage goal of Black employees within the time period that is determined;
- h. The sources and relative priority thereof to be used for the purpose of filling those vacancies and other positions that are created by virtue of the definitions and provisions of paragraphs 8 & 9 of this Order;
- i. Such other remedies that the Commission may deem appropriate.

10. To assist it in achieving the goals that shall be determined pursuant to paragraph 9 b the Respondent shall forthwith undertake the following affirmative action steps and shall continue same until said goal is reached. The Respondent shall:
- a. Include in all printed advertisements or solicitations for probationary, casual or regular truck drivers or platform positions the logo "Equal Opportunity Employer".
 - b. Inform in writing all referral sources, including union local hiring halls, of the provisions and requirements of this Order and deliver copies of all such correspondence to the Commission;
 - c. Maintain a unified registry of the names, addresses, telephone numbers, social security numbers and races of all rejected applicants for probationary, temporary or regular work as truck drivers or platform workers at its Philadelphia terminal;
 - d. Notify the Commission promptly of the rejection of any Black applicant for probationary, casual or permanent driving or platform work within seven (7) working days thereof, which notice shall include the reason for rejection;
 - e. Consider all oral inquiries or applications to any supervisory personnel concerning employment as formal applications;
 - f. Establish an Affirmative Action File, available for inspection by the Commission during regular business hours,

of all Black applicants who are not rejected yet are not hired immediately, as well as former Black probationary or casual employees eligible for re-employment, and notify each such person in writing that he or she will be under consideration for all future vacancies within the class of positions for which such person applied;

- g. In addition to the reporting requirements of other sections of this Order, submit a written report at least annually to the Commission summarizing the progress towards meeting the goal specified in paragraph 9 b. The first reporting year shall commence on the effective date of this Order; and
 - h. Set interim, annual timetables and goals to serve as aids and measurable means of monitoring progress towards the goal specified in paragraph 9 b, which timetables and goals shall be set forth in the annual reports referred to in paragraph 10 g.
11. Respondent shall not construe or apply its terminal seniority list so as to conflict or impede compliance with any provision of this Order or any amendment thereof. All employees covered by the Philadelphia National Master Freight Agreement and the Local Cartage and Applicable Over-The-Road Supplemental Agreements, as they may be modified or amended, shall use their terminal seniority for all purposes for which it has previously been used, except for the purpose of bidding from platform positions into positions as permanent, regular drivers. To the extent that terminal or company seniority lists impede progress toward the goal set forth in paragraph 9 b of this

Order, requests for extensions of any time periods or dates set forth in this Order or any amendment thereof shall not be considered.

- a. Respondent shall promptly notify the Commission of its intention to lay off any Black or other racial minority employee who is on the terminal or company seniority list. Layoffs of such employees shall not be conducted on a strict seniority basis prior to the achievement of the goal set forth in paragraph 9 b of this Order.
12. Respondent shall promptly notify the Commission of any obstruction or attempts to obstruct any plans it devises to implement the provisions of this Order, or any amendment or supplement thereof, caused by any third party to such Order and shall notify any such third party that said party may be in violation of section 5(e) of the Act (43 P.S. §955 (e)).
13. Respondent shall promptly investigate all complaints it receives from Black or other racial minority applicants or employees of discriminatory behavior by Respondent, its agents, servants or employees, and take the necessary disciplinary action where warranted.
14. Respondent shall forthwith issue written instructions to all employees in supervisory positions and responsible for hiring and/or terminating employees, which instructions shall cite or summarize the provisions of this Order and require compliance.
15. Respondent shall post copies of this Order in prominent locations at its Philadelphia terminal.
16. Should the Commission determine that there has been a violation of any term or provision of this Order, the Commission

will notify the Respondent in writing of the alleged violation and request corrective action. Respondent shall have thirty (30) days after receipt of such notice to submit to the Commission for its approval a plan and timetable for the implementation thereof to correct any such violation. Said plan shall not be deemed satisfactory if it may prevent the Respondent from meeting the time limit established pursuant to section 9 of this Order, or as said time limit may subsequently be adjusted by an Amended Final Order.

17. The Commission shall retain jurisdiction of this cause for the purpose of issuing any and all additional orders as may become necessary to insure that all effects of past racial discrimination with respect to all driver and platform positions probationary, casual or permanent, are eliminated at the Respondent's Philadelphia terminal facility. The Respondent may file appropriate motions with the Commission for modification or amendment of this Order or any part thereof upon proper showing. The Commission reserves the right to convene evidentiary hearings relative to implementation of this Order as it may be amended from time to time.
18. All notices and reports required by this Order shall be mailed to the Regional Supervisor, Pennsylvania Human Relations Commission, 101 State Office Building, 1400 Spring Garden Street, Philadelphia, Pennsylvania.

Pennsylvania Human Relations
Commission



E. E. Smith
Chairman



Dr. Robert Johnson Smith
Secretary

