IN THE SUPREME COURT OF THE UNITED STATES

TEAMSTERS LOCAL UNION 657, Petitioner, v. JESSE RODRIGUEZ, et al., Respondents.	No. 75-651
SOUTHERN CONFERENCE OF TEAMSTERS, Petitioner, v. JESSE RODRIBUEZ, et al., Respondents.	No. 75-715
and EAST TEXAS MOTOR FREIGHT SYSTEM, INC., Petitioner, v. JESSE RODRIGUEZ, et al., Respondents.	No. 75-718

Washington, D. C.,

Tuesday, January 11, 1977.

The above-entitled matters were resumed for argument at 10:12 o'clock, a.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice
LEWIS F. POWELL, JR., Associate Justice
WILLIAM H. REHNQUIST, Associate Justice
JOHN PAUL STEVENS, Associate Justice

APPEARANCES:

[Same as heretofore noted.]

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will resume arguments in the East Texas Motor Freight against Rodriguez. Mrs. Martinez, you have about seven minutes remaining.

ORAL ARGUMENT OF MRS. VILMA S. MARTINEZ,

ON BEHALF OF RESPONDENTS RODRIGUEZ, ET AL. - Resumed

MRS. MARTINEZ: Thank you very much, Your Honor.

Regarding our named plaintiffs, it's clear that our plaintiffs wanted to go on the road, and since the mid-1960's had made this known to the company and to the union officials.

One day after the EEOC charges were filed in 1970, plaintiffs were offered a letter of application on a take-it-or-leave-it basis. They took it, though they said they understood it entailed a loss of seniority.

In December of 1970, not knowing, as Mr. Perez pointed out, which way to go, he wrote a letter to Frank Fitzsimmons, acting president of the Teamsters, complaining about the continuing inability to get road positions, and again requesting his assistance and guidance.

Mr. Fitzsimmons' response was to refer the letter to the vice president and Area Director of the Southern Conference in Dallas. That was the sum total of the protection afforded by the Teamsters to their members, either under Article 38 or otherwise.

In their complaint and in their depositions, all

three named plaintiffs seek relief from the discriminatory impact of the no transfer and the contract seniority rules.

Further, regarding the class, the class properly consists of all black and Mexican-American city drivers, and this is proper because all of them, by virtue of being a member of a particular race or ethnic origin, were denied the opportunity to be considered for a road position through the operation of the no transfer and contract seniority rules, on the employer's racially based assignments, as we have in the record, all 180 road drivers were Anglo.

Anglos had a choice of whether they would be road or city drivers; blacks and Mexican-Americans did not.

A class finding is proper because we had a class of people subjected, as a class, to discriminatory policies. For purposes of class certification, all we need do is to identify those subjected to discriminatory policies, in this instance the black and Mexican-American city drivers.

Of course, for purposes of relief, the class will be narrowed to exclude, for example, those who cannot drive and those who are not interested in these positions.

That the district court erred in dismissing outright the class action is clear, and the Fifth Circuit so held.

Even if remand is thought necessary, to look at the scope of the class, the decision of the Fifth Circuit reversing the outright dismissal of the class was correct, and should be

upheld.

All we are seeking here is an opportunity for class members to come to the court and prove themselves on their individual merits, just like H. L. Johnson, the president of East Texas Motor Freight, who went from dock worker to city driver to road driver to supervisor and eventually company president.

Thank you.

MR. CHIEF JUSTICE BURGER: Very well, Mrs. Martinez.

Mr. Montemayor.

ORAL ARGUMENT OF RUBEN MONTEMAYOR, ESQ.,

ON BEHALF OF RESPONDENTS HERRERA, ET AL.

MR. MONTEMAYOR: Mr. Chief Justice, and members of the Court:

Mine is not a class action. I have nothing to do with East Texas. I would like to explain to Your Honors my presence in this case.

I represent six respondents who were city drivers for Lee Way and Yellow Freight System. These respondents filed lawsuits against Lee Way, Yellow Freight, Local 657, the Southern Conference, and the International Brotherhood of Teamsters.

The district court, in the Western District of Texas, San Antonio, Texas, found no discrimination against all of the respondents at that time.

The truck drivers appealed the case to the Fifth Circuit, and the Fifth Circuit reversed the decision of the district court and found that Lee Way, Yellow Freight, Local 657 and the Southern Conference had discriminated against the truck drivers, in violation of the Civil Rights Act of 1964.

QUESTION: Your clients were all employees of either one or both of those corporations, and they were city truck drivers, were they?

MR. MONTEMAYOR: Yes, sir, Your Honor.

QUESTION: In San Antonio?

MR. MONTEMAYOR: Yes, sir, Your Honor. The three -- five truck drivers were employees of Lee Way, and three were city truck drivers of Yellow Freight.

QUESTION: Did either one of those companies have over-the-road drivers domiciled in San Antonio?

MR. MONTEMAYOR: At the time Lee Way Motor Freight had line drivers in San Antonio, and members -- and about twenty of them were members of Local 657.

The record in the Fifth Circuit reflects the testimony of the president of Local 657. That record is not before Your Honors. However, I personally questioned the president of Local 657, and it was his testimony that there were 20 line drivers from Lee Way, and about eight from Brown Express, which was not part of this.

Lee Way petitioned for writ of certiorari. Yellow

Freight petitioned for writ of certiorari. And both writs of certiorari were denied by this Court.

However, motion for rehearing is pending in those cases.

Local 657 and the Southern Conference made our clients, our truck driver respondents, parties to their petition for writ of certiorari, and this is the reason that we are here.

I wish to respectfully ask this Court to affirm the decision of the Fifth Circuit as to the Local 657 and Southern Conference.

The reason that the respondents in this case, six truck drivers, who are Ernest Herrera, Trini Uribi, Mario Melchor from Yellow Freight, Patrick Resendis, Tony Escobedo and Elias Gonzalez from Lee Way, respectfully presents to this honorable Court that they were discriminated against because of the no transfer policy of Lee Way and Yellow Freight, together with the seniority rosters that served to lock in the Mexican-American driver from bettering himself in life.

My clients claim that the fact that the -- that management, not allowing them to transfer to over-the-road because they would lose their job, not knowing whether they were going to be accepted over-the-road, would find themselves lost if they were to come back to try and reapply with the same company.

So they would go to the union for help, and the union would tell them that if they were to transfer over-the-road, that they would have to give up their seniority, go over-the-road, and start at the bottom of the list.

Now, if this -- and they felt that in some instances they were even discouraged from seeking employment over-the-road, for the reason that it would not do them any good. In the first place, they would lose their job; in the second place, they would lose their seniority. Some of these truck drivers had been driving for the city for 15 or 20 years.

So the truck drivers were in a dilemma.

Now, the union, if they were to remove the no transfer policy and allow the truck driver to proceed without quitting, and try to get an over-the-road driver's job, would go to the union and still lose his seniority.

So, working together, and I don't know if management and the union were holding hands in this particular instance, by locking the city truck drivers and discouraging them from going over-the-road; but it seems funny to me that -- and unusual -- that most of the city drivers were Mexican-Americans and most of the over-the-road drivers were white.

Now, Lee Way domiciled line driver terminal, at the time we filed the lawsuit, in San Antonio. The statistics showed -- which were presented to the Fifth Circuit -- that 25 to 30 Anglo line drivers were employed at the San Antonio

terminal.

Subsequently, Lee Way hired six Anglo drivers and one Mexican-American, who was subsequently discharged. Now, this Mexican-American was a member of Local 657.

Lee Way never hired a Negro line driver in San Antonio. Of 44 city drivers at Lee Way, 26 or 28 are Mexican-Americans, four are black, and the remainder are whits or Anglo.

Now, in Yellow Freight, who did not domicile line drivers in San Antonio, --

QUESTION: Lee Way did domicile line drivers in San Antonio?

MR. MONTEMAYOR: Yes, sir, Your Honor.

I understand, Justice Rehnquist, that they do not domicile line drivers at the present time. They transferred the line drivers after we filed the lawsuit.

In the Yellow Freight case, some 50 line drivers were employed at the Dallas terminal, and 46 line drivers were employed at the Amarillo terminal. This was 96 line drivers, no Mexican-American line drivers until after the filing of the complaint in this case.

QUESTION: You filed the complaint in 1970, did you say?

MR. MONTEMAYOR: Yes, Your Honor.

QUESTION: Was there any showing as to how much hiring

there had been between the effective date of the federal law and the filing of your lawsuit in 1970? In other words, if there had been no hiring whatsoever, the statistics you are mentioning wouldn't have any relevance so far as violation of federal law goes.

MR. MONTEMAYOR: This is true, Your Honor.

QUESTION: Because prior to 1965 there would have been nothing whatsoever illegal about that, under this, because the law wasn't enacted.

MR. MONTEMAYOR: This is true, Your Honor.

QUESTION: So was there any evidence as to what hiring, if any, there had been between 1965 and 1970?

MR. MONTEMAYOR: I believe that the statistics shows what the -- what management had done after we filed the lawsuit, Your Honor. I don't believe we went back -- we went back to the time of their original employment, and the facts remained the same, that there were just no Mexican-American line drivers, and there were no Mexican-American line drivers hired prior to the time that we --

QUESTION: Well, were other drivers hired? Over-the-road drivers. That's the question.

MR. MONTEMAYOR: You mean Anglo drivers?

QUESTION: Yes. Between -- after 1965.

MR. MONTEMAYOR: Yes, sir, there were.

QUESTION: The record shows that?

MR. MONTEMAYOR: Yes, sir.

There was a Mexican-American hired after 1965, by the name of Art Rodriguez, and he was dismissed because of his driving record.

QUESTION: I see.

MR. MONTEMAYOR: And, in fact, this was the -- in fact, he went through a grievance through Local 657 as a line driver, and won the first grievance and lost the second grievance. The president of Local 657 represented him in that case.

What I am trying to put across, Your Honor, is that Local 657 did have line drivers within their jurisdiction.

As far as remedy is concerned, the Fifth Circuit remanded the case to the district court for proper remedy. And, if I may, Your Honor, as far as the loss of seniority, if a city driver who wants to better himself seeks a promotion by going over-the-road, and at the same time that he seeks that promotion he has to give something or lose something, and not be equal to the line driver who has been there about the same time, then I feel that the two seniority systems definitely discourage and partly locks in the minority group.

Now, the no transfer policy of management --

MR. CHIEF JUSTICE BURGER: You may finish your thought.

MR. MONTEMAYOR: Thank you, sir.

The no transfer policy of management, together with

the two separate seniority systems, definitely discriminate, because it definitely locks in.

Now, the seniority system, by itself, definitely discourages.

Thank you very much.

MR. CHIEF JUSTICE BURGER: Very well.

Mr. Hotvedt, do you have anything further?

REBUTTAL ARGUMENT OF RICHARD C. HOTVEDT, ESQ.,
ON BEHALF OF PETITIONER IN 75-718

MR. HOTVEDT: In rebuttal, we would return to the case of East Texas Motor Freight and its differences with Mrs. Martinez's clients.

We think the arguments have been clarifying for the Court in at least four respects.

First, we think that the statistical inferences that plaintiffs would use to let minority plaintiffs or classes fulfill the prima facie case is precisely the most extreme and indefensible standard that we fear. We have briefed that. We briefed how the Court should refrain from endorsing this extreme standard, that if an employer has a statistical imbalance as to a racial type some place, that it is presumptively liable to anybody of that same racial type any place, despite different industrial relations facts.

We hope that there is no endorsement in this case of so loose a standard on the prima facie test.

Second, what should be done if remand occurs? Surely, if a remand occurs, it should be on all the class questions, and not limited to the question of liability, to the arbitrary class set by the Court of Appeals.

If a class is thereafter certified, the Court will hear evidence on the question of whether the class, or a component of it, were realistically within the labor market, where road driver opportunities occurred. Careful attention in evidence could be paid to the boundaries of relevant labor markets and the difficult questions of labor mobility of the plaintiff class.

Third, the questions about the scope of the class, which were turned up in the colloquy between counsel and the Court, show the marshy ground that we are all on when we try to define classes, or adjust them at the appellate level.

It all shows the need for the plaintiffs to take the initiative before trial to crystallize the class issue, and obtain a resolution of it.

Yesterday we thought we heard an oral modification of the class scope sought by respondents, but today, again, we hear it stated at one of its broadest limits.

What is needed, if the class is heard on remand, is for a district court to determine if, in the light of the consent decree's remedies to minorities throughout Texas and this company's system, any class at all should be certified; or,

if one is certified, at what scope that will not provide some collision or conflict with the detailed remedies wrought in the 707 decree under the Justice Department's, the company's and Judge Hughes' auspices.

And, finally, we stress that the case here, for abandonment of the class altogether by these plaintiffs, is a rather strong one. Therefore, it would be possible to restore Judge Wood's decision altogether and do no injustice to punitive class members, for they would retain, with appropriate jurisdictional requirements and their own standing, the opportunity to assert their own claims, well represented by themselves or persons of their choosing.

QUESTION: The statute of limitations might run, might it not?

MR. HOTVEDT: I am not so sure -- I couldn't respond to that correctly, Your Honor. Because I don't know the particular instances in the individual cases.

QUESTION: You might have an impact of that opinion in Utah Pipe -- well, that's --

MR. HOTVEDT: Okay. I can't talk with you on that.

And, of course, they would remain free. If they have not already done so, such as scores have, to assert their claims under the consent decree.

Thank you.

QUESTION: Was there any argument in the Court of

Appeals as to whether the statute of limitations had been tolled or not? By reason of a pendency of a class claim, or at least arguably so?

MR. HOTVEDT: No, I don't believe there was.

No, Your Honor.

Thank you.

MR. CHIEF JUSTICE BURGER: Thank you, Mrs. Martinez and gentlemen.

The case is submitted.

[Whereupon, at 10:32 o'clock, a.m., the case in the above-entitled matters was submitted.]

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