



OFFICE OF THE ELECTION OFFICER
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December 3, 1991

VIA UPS OVERNIGHT

Jack Haefling
8357 Lakeshore Terrace
Indianapolis, Indiana 46250

Gary Langston
Terminal Manager
United Parcel Service
8350 West 81st Street
Indianapolis, Indiana 46268

John L. Neal
Secretary-Treasurer
IBT Local Union 135
1233 Shelby Street
Indianapolis, Indiana 46203

Re: Election Office Case No. P-1093-LU135-SCE

Gentlemen:

A protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") by Jack Haefling, a member of Local Union 135 employed by United Parcel Service ("UPS") at its feeder terminal in Indianapolis, Indiana. Mr. Haefling alleges that UPS has issued two (2) disciplinary warning notices to him in retaliation for a prior protest which he filed against UPS in Election Office Case No. P-978-LU135-SCE. This protest was investigated by Regional Coordinator Peggy A. Hillman.

Jack Haefling is an IBT member employed by UPS at its Indianapolis, Indiana feeder terminal. On October 12, 1991 Mr. Haefling filed a protest alleging that Ken Walters, a manager at the UPS facility, destroyed campaign literature which had been left for distribution in the employee locker room at UPS.¹ On October 28, 1991, the Election Officer issued a decision finding that UPS management did not improperly

¹ By letter dated October 16, 1991, the Election Officer issued a decision finding that the issue had been resolved by agreement with UPS. Subsequent to the issuance of this decision, UPS appealed. Finding that the circumstances required him to decide the merits of the protest, on October 21, 1991 the Election Officer withdrew his earlier decision.

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destroy campaign literature. However, the Election Officer also concluded that the UPS policy which prohibits employees from leaving campaign literature and other materials unattended in the locker room, could not be enforced at the Indianapolis feeder terminal without violating the *Rules*.

UPS appealed and a hearing was held on its appeal on November 4, 1991. Participants in the hearing included Mr. Haefling as well as Ken Walters, Gary Langston, and John Higgins, all UPS managers at the Indianapolis feeder terminal. The Independent Administrator issued a decision dated November 7, 1991, affirming the determination of the Election Officer in all respects. 91-Elec. App.-221 (SA).

The warning letters at issue in this protest arise from incidents which occurred on November 4, 1991, the day of the hearing before the Independent Administrator. The first warning letter is dated November 8, 1991 and concerns Mr. Haefling's alleged failure to follow instructions concerning performing a proper pre-trip inspection. The second warning letter dated November 11, 1991 concerns his alleged failure to operate his UPS vehicle at the posted speed limit. Mr. Haefling contends that neither warning letter was justified and that both warning letters were issued in retaliation for the filing of the earlier protest.

Feeder drivers such as Mr. Haefling receive at the beginning of their work day orders -- known as dispatch orders -- delineating the work they are supposed to perform. Among other items, dispatch orders identify the trailer which the driver is required to transport. The trailer is identified by a six-digit number. The driver locates by number the assigned trailer and hooks his cab up to it. As part of his responsibility, the driver is supposed to check the dispatch orders, complete his log, and seal the trailer prior to leaving the yard. This pre-trip inspection is done in part to insure that the proper trailer is the trailer which will be transported.

On November 4, 1991 there was an error in the number of the trailer listed on Mr. Haefling's dispatch orders. Mr. Haefling hooked and sealed the trailer prior to concluding the pre-trip checks listed above and therefore prior to checking to insure that he had been assigned the proper trailer. Before leaving the yard, however, Mr. Haefling reviewed his dispatch documents. At that time he noticed for the first time that the destination on the seal control for the trailer did not correspond to the location to which he was assigned to drive.

A mismatch between the proper trailer and the proper destination is called a "misload." Any misload is to be reported to dispatch. Mr. Haefling stopped at the

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outbound gate and reported the misload to Nikki Tsakrios, a dispatch operator.² Ms. Tsakrios checked the computer and confirmed the misload. A supervisory employee was contacted and arrangements were made for Mr. Haefling to unhook the incorrect trailer and obtain the correct trailer.

On the following day, November 5, 1991, Mr. Haefling informed Dean Strange, UPS manager, that he had had a misload the previous day. Mr. Haefling advised Mr. Strange that he had not checked the trailer before sealing it. He agreed that he should have done so and would pay closer attention in the future. Based upon the above incident, UPS issued the November 8, 1991 warning letter.

UPS's position is that due to Mr. Haefling's admitted failure to follow the pre-trip procedures, a misload occurred, and a warning letter was justified even though the misload did not result in a service failure, i.e., the misload did not leave the yard. In support of its position, UPS submitted copies of recent warning letters issued to three (3) other drivers which it contends support its position that the warning letter was justified and consistent with UPS disciplinary practice. A review of the incidents submitted by UPS concerning other drivers shows that in each case the misload was not discovered until after the driver had left the yard. In two of the three cases, a service failure occurred, that is, a trailer was actually delivered to an improper destination. In the third instance the misload was discovered after the driver had left the yard, but a service failure did not occur because UPS was able to switch the loads en route.

It is undisputed that Mr. Haefling did not leave the yard with a misload. Investigation revealed that misloads are not uncommon. No other employee has received a formal disciplinary warning letter for a misload when the misload was discovered prior to the driver leaving the yard. Indeed, UPS has in place a system of checks to attempt to ensure that such problems are discovered before a driver leaves the yard -- the outbound check-out procedure, i.e. requiring drivers to call at the gate before leaving the yard. UPS itself states "UPS supervisors . . . are unaware of any incident [discipline] in which an error was discovered prior to leaving the premises." Letter dated November 27, 1991 from Nicholas Price. The uniqueness of this discipline weighs heavily in the Election Officer's analysis.

Mr. Haefling received the second warning after he received a speeding ticket on November 4, 1991. Mr. Haefling was late in departing because of the misload and was in a hurry. His speedometer was broken. On the following day, he reported to UPS Manager Dean Strange that he had received a speeding ticket. Mr. Haefling stated that he intended to fight the ticket. UPS issued a disciplinary warning on November 11,

² All departing drivers are required to check-out at the phone located at the gate of the facility's yard.

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1991, for operating his vehicle in excess of the posted speed limit. On November 19, 1991, UPS rescinded this second warning after concluding that the speedometer on Haefling's vehicle was not in proper working order.

Mr. Haefling has been employed by UPS as a feeder drover since 1972, for nearly 20 years. He has not received any warnings for the past several years and only a few in total. Immediately following the appeal hearing in his earlier protest and the issuance of the Independent Administrator's decision affirming the Election Officer's finding against UPS, Mr. Haefling received two warnings, one unique for UPS (since it has never before issued a warning for a misload which was caught before leaving the yard) and the second for an infraction which UPS later concluded was not Haefling's fault. Both protests were signed by Mr. Langston, after disciplinary meetings held by Mr. Walters, both of whom represented UPS in the November 4th appeal hearing. The Election Officer concludes that Mr. Haefling has been singled out by UPS for disproportionate discipline timed directly to coincide with the prosecution of Mr. Haefling's previous protest. Neither warning can be sustained on its merits. The Election Officer concludes that, in meting out this discipline, UPS intended to retaliate against Mr. Haefling for having exercised his rights to campaign and to file protests with the Election Officer. This constitutes a clear violation of the Rules.

For these reasons, this protest is GRANTED. Since it has previously rescinded the November 11, 1991, warning, UPS is directed to rescind the November 8, 1991, warning within two (2) business days of the date of this decision and notify, by written document, both Mr. Haefling and the Election Officer of its rescision.

If any interested party is not satisfied with this determination, they may request a hearing before the Independent Administrator within twenty-four (24) hours of their receipt of this letter. The parties are reminded that, absent extraordinary circumstances, no party may rely upon evidence that was not presented to the Office of the Election Officer in any such appeal. Requests for a hearing shall be made in writing, and shall be served on Independent Administrator Frederick B. Lacey at LeBoeuf, Lamb, Leiby & MacRae, One Gateway Center, Newark, New Jersey 07102-5311, Facsimile (201) 622-6693. Copies of the request for hearing must be served on the parties listed above, as well as upon the Election Officer, IBT, 25 Louisiana Avenue, N.W., Washington, D.C. 20001, Facsimile (202) 624-8792. A copy of the protest must accompany the request for a hearing.

Very truly yours,


Michael H. Holland
UPS

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MHH/cb

cc: Frederick B. Lacey, Independent Administrator

Peggy A. Hillman, Regional Coordinator

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