

OFFICE OF THE ELECTION OFFICER  
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
25 Louisiana Avenue, NW  
Washington, DC 20001

Michael H. Holland  
Election Officer

(202) 624-8778  
1-800-828-6496  
Fax (202) 624-8792

May 22, 1992

**VIA UPS OVERNIGHT**

Perry Russell  
1028 Walnut Drive  
Porter, TX 77365

Merl Nelson  
Terminal Manager  
Cassens Transport Company  
145 N. Kansas Street  
Edwardsville, IL 62025

Richard A. Hammond, President  
Joe Canales, Business Agent  
IBT Local Union 988  
3100 Katy Freeway  
Houston, TX 77270

**Re: Election Office Case No. P-1145-LU988-SOU**

Gentlemen:

A protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") by Perry Russell, a member of Local Union 988. Mr. Russell contends that he was discharged by his employer, Cassens Transport Company ("Cassens"), on December 2, 1991 in retaliation for his support of Ron Carey for IBT General President and the other members of Mr. Carey's slate. He also contends that his Local Union failed to properly represent him with respect to the disciplinary action taken against him by his employer for the same retaliatory reasons. The protest was investigated by Regional Coordinator Larry Daves and Adjunct Regional Coordinator Frances Cusack.

By letter dated January 15, 1992, the Election Officer deferred his ruling on the protest pending a final decision pursuant to the collective bargaining agreement procedure on Mr. Russell's discharge grievance. In his deferral letter, the Election Officer noted that he retained jurisdiction and authority to determine the protest on its merits, and was not bound, in whole or in part, by the decision reached in the grievance procedure. Mr. Russell's grievance was decided adversely to him by the Southern Conference Automobile Transporters Joint Grievance Committee on February 18, 1992. Accordingly, the investigation of this matter was thereafter continued and completed, including -- as noted in the Election Officer's letter of January 15, 1992 -- investigation of the allegation of denial of fair representation, as well as the allegation that the discharge was retaliatorily motivated.

May 22, 1992

Page 2

Members of Local Union 988 have been active participants in the totality of the processes leading to the 1991 International Union Officer election. There has been an active group of members who supported Ron Carey as a candidate for IBT General President throughout the entirety of the process, fielding a delegate and alternate delegate slate who ran committed to his candidacy. This slate, the Rank and File Slate, was opposed by the Leadership Slate; the Leadership Slate was led by the present incumbent officers of Local Union 988 including the President of the Local, Mr. Richard Hammond, and the Business Representative with responsibilities at Mr. Russell's employer, R. J. "Joe" Canales. Subsequent to the delegate and alternate delegate election, the members of the Rank and File Slate and their supporters continued to campaign on behalf of Mr. Carey through the conclusion of the International Union Officer Election. The members of the Leadership Slate and the officers of Local Union 988 supported R. V. Durham and the Durham Unity Team for IBT International Union Officer positions.

Mr. Russell himself, however, does not appear to have actively participated prior to the period immediately preceding the December 10, 1991 date of the International Union Officer Election. Mr. Russell was not a candidate for delegate or alternate delegate. While he received and reviewed literature on behalf of Mr. Carey both during and after the delegate election process, he did not personally openly campaign for the Rank and File Slate or for Mr. Carey or his slate.

On or about November 2, 1991, during a candidates forum sponsored by Local Union 988, Mr. Russell apparently had a conversation with Mr. Hammond and/or other officers of Local Union 988 during which he indicated that he preferred Mr. Carey for IBT General President. However, there is no evidence that any of the officers of Local Union 988, including Messrs. Hammond and Canales, were aware of Mr. Russell's preference for Mr. Carey prior to November 2, 1991. There is no evidence that managerial or supervisory employees of Cassens were ever aware of Mr. Russell's political position during the 1991 IBT International Union Officer Election.

Mr. Russell was a Cassens' employer for approximately four years prior to his discharge. He was employed as a truck driver, engaged in transporting new motor vehicles from their place of manufacture to the car dealers who sold such vehicles. New vehicles, at times, arrive at the dealer's location in less than pristine condition, either as a result of manufacturing problems or damage incurred during the delivery process. The former defects are to be corrected by the dealer either under the car warranty or as part of the dealer's responsibility for new vehicle preparation; the dealer is entitled to reimbursement for the latter defects and submits a transportation claim for such items.

At the time of delivery, the dealer is to inspect the vehicle and fill out a form provided by Cassens noting -- by code -- the alleged defects in the vehicle. The form -- which also has a place for remarks by both the dealer and the driver -- is then signed by both the dealer and driver. By memorandum dated June 28, 1991, Cassens notified all its drivers that commencing July 15, 1991 drivers were to call their home terminal whenever the dealer noted damage for which the carrier, i.e., Cassens, could be liable. On two occasions in September 1991, Mr. Russell was orally reprimanded for failing to make such calls and instead merely noting on the Cassens's form that he disagreed with the dealer's determination of the cause of damages.

On October 29, 1991 Mr. Russell delivered a load of new vehicles to the Crown Dodge Chrysler Dealership. The vehicles were inspected upon delivery by William Patterson, an employee of Crown Dodge. During the inspection, Mr. Patterson called Mr. Russell's attention to scratches on two of the vehicles. Mr. Russell stated that he told Mr. Patterson -- whose name he did not know at the time -- that the scratches should be repaired as part of the dealer's responsibility for new vehicle preparation and not noted as a claim exception, i.e., potential liability of Cassens, on the form.<sup>1</sup> Mr. Russell states that Mr. Patterson said he would speak to his supervisor. After Mr. Russell finished the unloading process, he picked up the forms, which had been left for him and signed them. He claims that at such time the damage notation remarks and the coding suggesting Cassens liability had been scratched from the forms. Mr. Russell states that at no time did he alter the forms in any manner.

Mr. Patterson claims that he made no changes on the forms after calling Mr. Russell's attention to the scratches and noting the existence of such scratches both by code and his written remarks on the form for each damaged vehicle. He states that he provided the forms to Mr. Russell for signature and discovered for the first time when he recovered his copies of the form from under the windshield wipers of the respective vehicles -- where Mr. Russell had left them for him -- that the forms had been changed. The code had been altered to one noting a dealer preparation item, rather than the code suggesting carrier liability, on both forms. Additionally, the entry under remarks, where Mr. Patterson had noted that the vehicle was scratched, was crossed out.

Mr. Patterson contacted Cassens on October 29, 1991 -- the date the vehicles were delivered -- informing them that Mr. Russell had altered the damage

---

<sup>1</sup> Indeed, Mr. Russell claims that Mr. Patterson himself scratched the vehicles as he was cleaning them prior to his inspection.

May 22, 1992

Page 4

forms. Subsequently, Mr. Patterson provided an affidavit dated October 31, 1991 to Cassens. Mr. Patterson has not contended that he saw Mr. Russell alter the forms only that the forms were altered and that he had not done so.

Cassens notified Mr. Russell of the allegations on November 1, 1991. Cassens informed him that the matter was under investigation but that he would be allowed to remain at work while the investigation proceeded. On November 6, 1991 Mr. Russell was suspended from employment by Cassens pursuant to Article 40, the discharge provisions, of the collective bargaining agreement, Cassens claiming that Mr. Russell was guilty of dishonesty in altering the forms with respect to the new vehicles.

A pre-disciplinary was held between Cassens, Mr. Russell and his IBT representatives concerning the allegations made by the company against him. The parties ultimately negotiated a 30 day suspension in lieu of discharge. Mr. Russell concurred with the agreement reached. Subsequently, however, Mr. Russell -- after conferring with some of his fellow Local Union 988 members who were pro-Carey activists during all phases of the delegate and International Union Officer election process -- notified Cassens that he would not accept the 30 day suspension.

On December 2, 1991, Cassens notified Mr. Russell that he was being discharged for his act of dishonesty in altering the damage forms reporting damage on the two cars he delivered to Crown Dodge on October 29, 1991. Mr. Russell thereafter filed the instant protest the Election Officer. Local Union 988 responded to the protest by letter to the Election Officer, with accompanying statements, all of which affected adversely on Mr. Russell's credibility. Thereafter, as noted above, the protest was deferred by the Election Officer pending the outcome of Mr. Russell's grievance.

The Southern Conference Automobile Transporters Joint Grievance Committee met on February 18, 1992, at which time Mr. Russell's grievance was heard and decided. Cassens presented the statements it received from Mr. Patterson, copies of the forms allegedly altered by Mr. Russell as well as the forms which led to Mr. Russell's prior verbal warning. Evidence was presented by Cassens regarding how it learned of the incident as well as a review of the grievance meetings which occurred prior to the Joint Grievance Committee session -- including evidence about the prior settlement and the reason such settlement was not consummated. On behalf of Mr. Russell evidence was presented concerning his refutation of the allegations against him which included both oral and written statements denying any alteration by him of the vehicle forms. In addition Local Union 988 provided the Joint Grievance Committee a copy of Mr. Russell's prior protest to the Election Officer as well as Local 988's response thereto.

The Joint Grievance Committee denied the grievance deciding as follows:

Based upon the facts and evidence presented, it is undisputed that alterations were made on the delivery receipts for 2 units delivered to Crown Dodge on 11/29/91. The ultimate issue before the Committee was whether those alterations were made by Perry Russell, thus constituting an act of dishonesty justifying the discharge action taken by the Company. During the hearing of the case, the grievant took the position that he did not make the alterations and did not know who they were made by. It was not until after the close of the hearing when the parties were called back into the room by the Committee to be asked questions for purposes of clarification that Mr. Russell offered a detailed explanation as to how a dealer representative had allegedly made the alterations in question. However, there was inconsistency in the explanation which he offered at that time. In addition, the Committee notes that the grievant stated in his grievance that he felt that the 30-day suspension which he originally agreed to in connection with the incident was "sufficient" penalty concerning that incident. All of these factors lead the Committee to conclude that the grievant's explanation given at the hearing is not credible. Further, while there was reference during the hearing to a contention by Mr. Russell that he was discharged for discriminatory reasons, no evidence of discrimination was given, and in fact when he was specifically asked whether he had any evidence of discrimination by the Company he responded "no". Based upon all of the facts and evidence presented, Perry Russell's discharge under Article 40 of the contract is therefore upheld.

For the Election Officer to find a discharge occurred in retaliation for an IBT member's election related activity, there must be evidence that the entity imposing the discipline had knowledge of the activity for which the alleged retaliation occurred. In this case, there is no evidence whatsoever that Cassens was aware of Mr. Russell's partisan position during the 1991 IBT International Union Officer Election. Indeed, there is no evidence that the officers of Local Union 988 or Mr. Canales, the Business Agent responsible for representing Mr. Russell and the other IBT members employed at Cassens, had any knowledge of Mr. Russell's political position before November 2, 1991. The incident in question occurred prior to November 2, 1991, i.e., on October 29, 1991. Cassens was notified of the allegations against Mr. Russell on October 29, 1991. Cassens notified Mr. Russell of the allegations against him and Cassens investigations of such allegations on November 1, 1991.

The foregoing sequence of events, all occurring prior to the date Mr. Russell made anyone aware of his pro-Carey sympathies, rebuts any inference

that Cassens acted from retaliatory motives and undermines any contention that Local Union 988 conspired with Cassens because of Mr. Russell's partisan political position. While the ultimate discipline imposed upon Mr. Russell by Cassens was not imposed until after Local Union 988's officers were aware that Mr. Russell did not support their favored candidates for IBT International Union Office, there is no evidence showing that Local Union 988 in any way directed the degree of punishment that Cassens determined to impose. Further, and after its officers were aware that Mr. Russell supported Mr. Carey for IBT General President, Local Union 988 negotiated a suspension in lieu of discharge. Neither Cassens nor Local Union 988 can be faulted for Mr. Russell's ultimate determination to reject such compromise.

While no Cassens employee has ever been discharged or even subjected to a lengthy disciplinary suspension as a result of damage to vehicles such employee was transporting -- including damage for which a transportation claim was filed -- Mr. Russell was accused not merely of negligence in the transportation but of altering the damage forms. Accordingly, even if one were to assume, contrary to the evidence presented, that Cassens had knowledge of Mr. Russell's political preferences or that Cassens conspired with Local Union 988 to discharge him because of the Local Union's political animus against him, the evidence does not support a conclusion that the degree of punishment was sufficiently disproportionate to suggest retaliation.

The evidence also does not support the conclusion that Local Union 988 refused to represent Mr. Russell due to Mr. Russell's political preference with respect to the 1991 IBT International Union Officer candidates. Subsequent to the date its officers were made aware of Mr. Russell's political preferences, Local Union 988 negotiated a settlement with Cassens whereby Mr. Russell would have been suspended but not discharged. Mr. Russell agreed to the settlement at the time it was negotiated; that Mr. Russell subsequently changed his position does not demonstrate that the Local Union acted in bad faith.<sup>2</sup>

---

<sup>2</sup> Mr. Russell contends that his allegation that Local 988 was refusing to properly represent him in retaliation for his political position during the 1991 International Union Officer election is established by the fact that Mr. Canales told him -- at the time Mr. Russell informed Mr. Canales that he has changed his mind about the settlement but prior to the date that he received the company's discharge notice -- that he would be discharged if he did not agree to the settlement. However, Mr. Russell had been indefinitely suspended under the discharge provisions, of the collective bargaining agreement prior to that date. Further, given that the parties had negotiated a 30-day settlement which Mr. Russell later repudiated, it does not require a labor law expert to expect that notice of discharge

May 22, 1992

Page 7

Moreover, Local Union 988 attempted to bind Cassens to the settlement agreement even after Mr. Russell notified Cassens that he would not sign the settlement document. That Cassens did not accede to the Local Union's demand does not demonstrate that the Local Union was not fairly representing Mr. Russell. Without Mr. Russell's acceptance of the settlement, Cassens would continue to have potential liability to Mr. Russell under federal labor and employment statutes, justifying its insistence that it would not settle Mr. Russell's grievance without his acquiescence.

The only troubling aspect with respect to the Local Union's obligation to fairly represent Mr. Russell involves its presentation to the Joint Grievance Committee of the protest filed by Mr. Russell with the Election Officer and the Local Union's response to that protest. However, given that Mr. Russell had alleged that the discharge was discriminatorily motivated, it was appropriate for the Local Union to make that argument on behalf of Mr. Russell before the Joint Grievance Committee. Under the terms of the collective bargaining agreement discharge based upon union activity -- and participation in an internal union election is union activity -- is prohibited. Thus, Local Union 988 by presenting Mr. Russell's protest was in effect only arguing a further basis for the Joint Grievance Committee to set aside the discharge.

Despite the foregoing, however, there appears to have been no need for Local Union 988 to present to the Joint Grievance Committee its response to the Election Officer of Mr. Russell's protest. As noted above, that response questioned Mr. Russell's credibility and his credibility was the issue to be decided by the Joint Grievance Committee.

The Election Officer concludes, nonetheless, that there is insufficient evidence to support a determination that the Local Union failed to properly represent Mr. Russell and that this failure was based on the Local's animus against Mr. Russell because of his participation in 1991 IBT International Union Officer election process. As noted above many members of Local Union 988 were active participants in the election process, openly campaigning in support of Mr. Carey and the Ron Carey slate for many months. Mr. Russell's participation with respect to Mr. Carey was, on the other hand, minimal. At most he voiced his support for Mr. Carey -- but did not actively campaign on his behalf -- and was friendly with some of the members of the Local Union who were among Mr. Carey's more active supporters. It was not until November 2, 1991 that any officer of Local Union 988 was even aware that Mr. Russell planned to vote for Mr. Carey and the members of the Ron Carey Slate. For Mr. Russell to have been singled out by the

---

would be forthcoming.

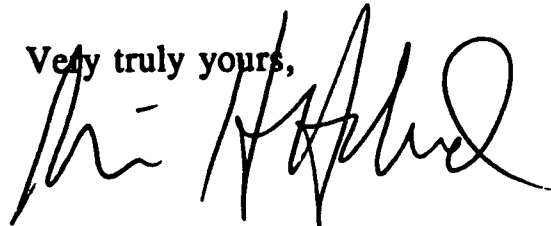


officers of Local Union 988 for retaliatory treatment when other far more active supporters of Mr. Carey and the Ron Carey slate were not so subject does not constitute a credible scenario.

For the reasons set forth above this protest is DENIED in its entirety.

If any interest 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

MHH/kan

cc: Frederick B. Lacey, Independent Administrator  
Larry Daves, Election Office Regional Coordinator