



OFFICE OF THE ELECTION OFFICER  
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
25 Louisiana Avenue, NW  
Washington, DC 20001  
(202) 624 8778  
1 800 828 6496  
Fax (202) 624 8792

Michael H Holland  
Election Officer

Chicago Office  
% Cornfield and Feldman  
343 South Dearborn Street  
Chicago, IL 60604  
(312) 922 2800

March 6, 1991

**VIA UPS OVERNIGHT**

Daniel A Tuffs, Jr  
7235 W 109th St  
Worth, IL 60544

William Joyce  
Secretary-Treasurer  
IBT Local Union 710  
4217 S Halsted St  
Chicago, IL 60609

Richard Blake  
City Dispatch Manager  
Advance Transportation Co  
6767 W 75th St  
Bedford Park, IL 60638

John Molenda  
Union Steward  
Local Union 710  
4217 S Halsted St  
Chicago, IL 60609

Bill Close  
Labor Relations Manager  
Advance Transportation Co  
6767 West 75th Street  
Bedford Park, IL 60638

**Re: Election Office Case No. P-446-LU710-CHI**

Gentlemen:

A pre-election protest was timely filed pursuant to Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") In his protest, Daniel Tuffs, a candidate for delegate on the "New Eagles for Ron Carey Slate" alleges that he was disciplined by his employer, Advanced Transportation Company (ATC) in retaliation for his activities as a candidate for delegate to the IBT International Convention, including his prior filing of a pre-election protest against Advance

The investigation shows the following On January 25, 1991, Tuffs attended a safety meeting held by ATC, and raised a question involving driver liability for violations of Illinois Department of Transportation regulations

When he did not receive what he considered a satisfactory answer to his question from ATC management, he asked for assistance from John Molenda, the Local 710 Union steward. Molenda did not have an answer to the question, and, according to Tuffs, became defensive under continued questioning. A heated discussion ensued. After the meeting, Molenda confronted Tuffs and another candidate on the "New Eagles for Ron Carey" slate, Al Brown, in the hall outside the meeting area. An argument began which degenerated into a shouting match. The altercation was witnessed by all of the 9 00 a m shift drivers and by Richard Blake, the City Dispatch Manager of ATC.

Agitated after the altercation, Tuffs received his daily assignment, but misread the number of the trailer on his delivery manifest, No 6462, and hooked his cab to trailer No 6442. He maintains that, as is his custom, he made a general check of the contents of the trailer to compare the cargo against his delivery manifest and closed the overhead door of the trailer prior to removing the trailer from the dock. Prior to leaving the terminal, he discovered that he had erred and returned the trailer, exchanging it for No 6462.

On February 4, 1991, Tuffs received two letters of warning, both dated February 1, 1991, from ATC. The first letter cited his involvement in the argument with Molenda, referring to it as a "loud disturbance." The second letter of warning concerned his error in hooking to the wrong trailer and specifically cited him for failing to lower the overhead dock door prior to removal of the trailer, alleged to be a violation of ATC policy. The letter of warning characterizes his action as "negligence in the performance of duties."

The employer states that, with respect to the first letter of warning, an identical letter of warning was issued to all three participants in the argument, Al Brown, shop steward Molenda, and Tuffs. The employer's position is that it is entitled to maintain order in the work place, the "discussion" among the three members who received the warnings was tending toward disorder. All three members, regardless of their campaign and protest activities, or lack thereof, were treated identically.

The employer stated that the second warning letter was based upon two violations of company policy. First, Tuffs did not identify the proper trailer to which to hook his cab. Tuffs does not deny that he was negligent in this regard but argues that he rectified his error before leaving the terminal.

Secondly, the employer stated that management of ATC was advised that the loading dock door was not closed when Tuffs removed the trailer. Therefore, the employer maintains that he removed the trailer from its loading dock berth without taking precautions against injury to dockmen who may have been loading the trailer at the time it was removed. The warning letter states that "it is ATC's position that after a driver has checked his load, his responsibility is to close the loading dock door thereby effectively shutting off further loading or unloading activity by dock workers and warehousemen." By so closing the loading dock door, the possibility that a trailer

would be moved while other workers are in the process of loading or unloading it is eliminated

Mr Tuffs maintains, however, that closure of the overhead door of the truck trailer after inspecting the contents of the trailer accomplishes the same result. He therefore contends that he has committed no safety violations and the warning letter is unjustified.<sup>1</sup>

There is, in this case, a legitimate difference of opinion between Tuffs and ATC with regard to the facts involving the second warning letter. Management advises that, having been informed that a trailer had been removed from the loading dock without closure of the loading dock door, it informed the driver that he had committed a breach of safety policy. Mr Tuffs, the driver, agrees that he was negligent in removing the wrong trailer but believes that the steps taken by him in checking the load and closing the overhead door of the vehicle were sufficient to have protected other workmen in the warehouse.

There is no evidence independent of the warning letters of employer hostility toward Tuffs based upon his campaign activities or his prior filing of protests against ATC. Tuffs has filed at least three pre-election protests against ATC. All involved the issue of utilization of bulletin boards for posting of campaign literature. Although the last such protest was filed in late January, 1991, the prior protests were filed in July and November of 1990. All protests resulted in ATC's agreement, consistent with the Election Officer's as well as Tuffs' position, to permit the posting of campaign literature on general purpose bulletin boards at ATC. The January, 1991 protest was so resolved, quickly and with no acrimony being demonstrated by the employer or its representatives. Thus, while the discipline issued to Mr Tuffs was issued at or about the time of his last protest against the employer, the lack of any discipline after the earlier protests supports the proposition that the timing was coincidental, the discipline was not the result of the filing of the protest.

Based on the foregoing, the Election Officer concludes that there is insufficient evidence to demonstrate that ATC was motivated by animus toward Mr. Tuffs' campaign or protest activities in issuing either letter of warning to him. With respect to the first letter of warning, Tuffs admits his participation in the verbal altercation with Local 710 steward Molenda. All three members involved received identical letters of warning. There is no showing that the discipline was motivated by employer animus based on Tuffs' campaign or protest activities, as opposed to his participation in the heated and loud argument.

The Election Officer also concludes that there is insufficient evidence to show that the second letter of warning was motivated by anti-campaign animus toward Mr Tuffs, rather than a concern that equipment had been operated improperly or unsafely. The employer's position that the loading dock door is to be closed before a trailer is moved

---

<sup>1</sup>A Union grievance is pending on this letter of warning

Daniel A Tuffs, Jr  
Page 4

from the loading dock, as opposed to Tuffs' position that the same result is accomplished by closing the overhead door of the trailer, is not so lacking in merit as to indicate that the letter of warning is pretextual

Based on the foregoing, the Election Officer concludes that the *Rules* have not been violated The protest is DENIED

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

MHH/mca

cc Frederick B Lacey, Independent Administrator  
Julie E Hamos, Regional Coordinator

IN RE:

DANIEL A. TUFFS, JR.

Complainant,

and

ADVANCE TRANSPORTATION CO.

and

WILLIAM JOYCE,  
JOHN MOLENDIA,  
IBT LOCAL UNION NO. 710

Respondents.

91 - Elec. App. - 96 (SA)

DECISION OF THE  
INDEPENDENT  
ADMINISTRATOR

*KM*  
*Copies of all attached to  
the usual  
distributes*

This matter arises out of an appeal from a March 6, 1991, decision of the Election Officer in Case No. ~~95446-10713-CHI~~. A hearing was held before me by way of telephone conference on March 13, 1991, at which the following person were heard: Daniel Tuffs, Jr., the complainant; John J. Sullivan, on behalf of the Election Officer; Julie Hamos, the Regional Coordinator; and Dennis Sarsany, an Adjunct Regional Coordinator.

Mr. Tuffs, a member of Local Union 710 and a candidate for delegate to the 1991 IBT International Convention on the "New Eagles for Ron Carey Slate," alleges that he received two letters of warning dated February 1, 1991, from his employer, Advance Transportation Co. ("Advance"), in retaliation for filing a prior pre-election protest against Advance and for his campaign for delegate to the 1991 IBT International Convention on behalf of Local 710 as a member of the New Eagles Slate.

THE-10-74

The relevant facts are uncomplicated. On January 25, 1991, at about 9:00 a.m., Mr. Tuffs, attended a safety meeting held by Advance. During that meeting Mr. Tuffs raised a question regarding State safety regulations and their impact upon the drivers working for Advance. Eventually, a Local 710 shop steward, John Molenda was drawn into the discussion and the exchange between Mr. Tuffs and Mr. Molenda developed into the two men shouting at each other in the hall outside of the meeting room. Al Brown, a fellow New Eagles Slate member, was also drawn into the argument.

After the argument broke up Mr. Tuffs reported for his daily assignment but misread the number of the trailer to which his delivery manifesto directed him. Consequently, instead of hooking his cab to trailer No. 6462, he hooked up to trailer No. 6442. Prior to leaving the terminal, however, Mr. Tuffs discovered his error, returned trailer No. 6442 and retrieved trailer No. 6462.

A few days later, on January 29, Mr. Tuffs and Mr. Brown filed a pre-election protest concerning the use of the bulletin boards at Advance for posting of campaign material. Mr. Tuffs' protest was resolved in favor of use of the general purpose bulletin board for the posting of campaign material.

On February 4, Mr. Tuffs received two letters of warning, both dated February 1, 1991, from a manager with Advance, Mr. Blake. In the first letter, Mr. Tuffs was warned about his part in the "rather loud disturbance" after the safety meeting on January 25. In his letter Mr. Blake noted that safety meetings "are becoming an opportunity for certain individuals to present their political

platforms which have nothing whatever to do with this Company's business." Mr. Blake further "reserve[d] the right to advise our employees of pertinent matters without concern or interruption of the proceedings by a few who are trying to promote and thrust upon others, their own political endeavors."

Apparently Mr. Blake's statement that the meeting was becoming an opportunity for individuals to present their political platforms was a reference to the fact that the issue of the safety regulations was one that the New Eagles Slate was pursuing as part of their campaign platform.

The other two participants in the argument of January 25, Mr. Brown and Mr. Molenda, were also given letters of warning for their part in the incident. Mr. Molenda is a supporter of an opposing slate.

The second letter of warning concerned Mr. Tuffs' actions in removing the wrong trailer from the dock. In this letter Mr. Blake noted that Mr. Tuffs' actions "created a very serious safety hazard for anyone working the trailer." The issue was Mr. Tuffs' failure to check to see if the loading dock door was down before he removed the trailer. Mr. Tuffs admits that he did not insure that the loading dock door was down before he removed the trailer, but disputes that he caused a safety hazard.

The Election Officer rejected Mr. Tuffs' allegation that the disciplinary letters of February 1, were retaliatory. In support of his determination the Election Officer pointed to the following facts:



First, although the timing of the letters is noteworthy in that they fall on the heels of Mr. Tuffs' January 29 protest concerning use of bulletin boards, two previous protests on the same subject were resolved previously without any retaliation by Advance Transportation.<sup>1</sup> The January 29 protest was resolved quickly and with the cooperation of Advance Transportation, which did not display any perceptible hostility, resentment or other animus toward Mr. Tuffs during the process.

Second, Mr. Tuffs admitted that he participated in a verbal altercation at work on January 25 that by all accounts was loud and disruptive. There is no doubt as to an employer's right to maintain order and discipline in its workplace and to administer proportionate discipline for that purpose. In this case, all three participants in that incident were disciplined in a manner that does not appear disproportionate to the offense.

Moreover, Mr. Molenda, who does not share Mr. Tuffs' Union political positions, received the same discipline as the two "New Eagles" members. By treating all three disputants similarly, Advance belies the allegation that its action against Mr. Tuffs was taken on the basis of his political affiliation. The Election Officer therefore interprets the warning letters as a "time, place and manner" warning concerning political disagreements, not as a content-based warning against any particular view held.

Third, as to the letter concerning Mr. Tuffs' actions at the loading dock, there is no question that Mr. Tuffs was wrong in removing trailer No. 6442. Although Mr. Tuffs realized his error before leaving the terminal, he did not rectify it until after he had, at least hooked his cab to the wrong trailer. He therefore lost time and potentially caused some measure of confusion.

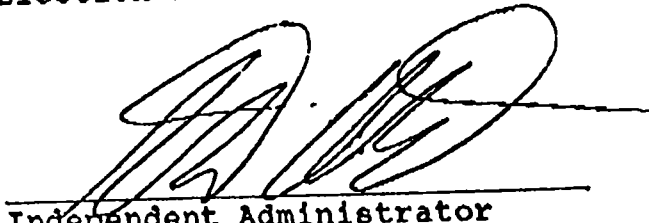
---

<sup>1</sup> Mr. Tuffs denies that he filed a second protest regarding the use of the bulletin boards. Mr. Tuffs acknowledges, however, that he has filed a total of 5 protests: one dated June 29, 1990 was filed against Local 710; one dated November 14, 1990, was filed against Advance; one dated January 17, 1991, was filed against Local 710; one dated January 29, 1991 was filed against Advance; and lastly Mr. Tuffs filed the protest which is the subject of this dispute.

NR-15-91  
Moreover, it is not disputed that Mr. Tuffs did not ensure that the loading dock door was closed before he removed the trailer. The purpose of such a requirement is to alert workers on the loading dock that a trailer that has been berthed has been moved, and thus to provide for the safety of the workers in that area. Mr. Tuffs contends that by closing the overhead of the trailer, he accomplished that objective.

In short the Election Officer concluded that Advance's letters of warning were not motivated by conduct protected by the Rules For The IBT International Union Delegate And Officer Election (the "Election Rules"). See, e.g., Article III, Section 10.a. (guaranteeing all union member the right to openly support or oppose any candidates). The Election Officer's conclusion that the letters of warning were entirely performance-based without overtones of retaliation, is well supported by the record.

Accordingly, the ruling of the Election Officer is affirmed in all respects.<sup>2</sup>



Independent Administrator  
Frederick B. Lacey  
By: Stuart Alderoty, Designee

Dated: March 15, 1991.

---

<sup>2</sup> The Election Officer noted that Mr. Tuffs had filed a grievance under the parties' collective bargaining agreement and has raised the matters subject to this protest in that grievance. In his grievance, Mr. Tuffs seeks to have the letters of warning rescinded. It is clearly not within the Election Officer's province, nor the Independent Administrator's province to determine the outcome of that grievance or to resolve the question of whether the incident involving the closing of the loading dock door constituted a safety hazard.