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February 19 1991

VIA UPS OVERNIGHT

Roy D Douglas Sr
215 Cobblestone Dr
Madison MS 39110

Murphy E Wicker
President
IBT Local Union 891
2560 Valley St
Jackson MS 39204

Re Election Office Case No P 503 LU891-SEC

Gentlemen

A pre-election protest was filed pursuant to Article XI of the *Rules for the IBT International Union Delegate and Officer Election* revised August 1 1990 (*Rules*) This protest was filed following a decision issued by Frederick B Lacey Independent Administrator dated January 30 1991 upholding the complainant Roy D Douglas s eligibility to run as a delegate from Local Union 891 The Complainant s protest concerns his request for additional relief in the form of a thirty (30) day delay in the election in order to allow him an additional period of time to campaign Complainant s protest was originally filed with the Office of the Independent Administrator which referred it to the Election Officer for investigation and decision The Election Officer s investigation revealed the following The Complainant s name was placed in nomination at a meeting held on January 5 1991 The results of the nomination meeting were posted on all Local Union bulletin boards on January 9 1991 Complainant s name along with the other members of his slate were listed on the posting The Election Officer s Advisory on Posting Nomination Results provides as follows

Posted list is to contain the names slate affiliation if any of all candidates nominated including those candidates whose eligibility to run is being challenged or protested There should be no notations or markings on the posted list suggesting or indicating in any way that the eligibility of any candidate has been challenged protested or questioned

Inspection of the posting reveals it was posted in compliance with the Election Officer's Advisory both as to time and form. The election posting afforded prior notice to all members of the Local Union as to Complainant's candidacy for delegate.

Although protests concerning his eligibility were pending, Complainant was free to engage in any campaign activities he determined to be appropriate during the pendency of his protests. The Rules and the Election Officer Advisory clearly afford all candidates for delegate the opportunity to campaign during the period when challenges to their eligibility are being determined. It is only after all appeal rights concerning any eligibility challenge or protest have been resolved that the Rules permit elimination of a nominated candidate's name from the posting of nomination results. Only at that time is notice provided to the Local Union membership indicating that the nominated candidate will not be on the election ballot. In the Complainant's case, since the Independent Administrator ultimately sustained his eligibility as a candidate for delegate, the original list posted on January 9, 1991, remained unaltered.

Complainant has made no allegation nor has he offered evidence that he was prevented from engaging in campaign activities during any period of time, even prior to the Independent Administrator's decision. Moreover, the Election Officer's investigation has determined that Complainant and his slate, Teamsters Making a Difference, have engaged in campaign activities during the pre-election period, including the distribution of three different pieces of literature and a sample ballot. One distribution occurred during the week of January 19, 1991, a short campaign leaflet was distributed on and after February 1, 1991, and a third leaflet and a sample ballot on and after February 8, 1991.

The ballots were mailed out on February 4, 1991, and are scheduled to be counted on February 22, 1991. Complainant has made no showing that would justify disrupting this process in order to grant him an additional thirty (30) days in which to campaign. Accordingly, Complainant's protest must be 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.

Roy D. Douglas, Sr.
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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**
Donald H Williams, Regional Coordinator

have lost his job and he would not have suffered a decrease in salary.

Mr. Douglas explains, however, that as a result of the change of operation the best "runs", i.e. those that pay the most money, were transferred to Local 891, and unless he transferred to Local 891 he could not avail himself of those runs as he had done in the past while a member of Local 728. Mr. Douglas also emphasizes that, but for the fact that he was adversely affected by the change in operation, he would not have been presented with the need to choose to change Locals. As explained by Mr. Douglas, as a result of the change in operation, the Atlanta terminal lost a number of jobs, which resulted in a decrease in the amount of freight that needed to be hauled from that terminal.

This adversely affected Mr. Douglas in two ways. First, as already noted, the best "runs" no longer originate out of the Atlanta terminal, having been transferred to Local 891's jurisdiction. Mr. Douglas, given his seniority with Local 728 had successfully "bid" on those "runs" in the past. Second, even if Mr. Douglas continued driving, the "run" he had been on before he transferred (the Atlanta to Jackson run), that run would have been subject to delay and possible cancellation due to the lack of freight originating out of the Atlanta terminal at Local 728.

Mr. Douglas also indicated that after the change of operation the Atlanta to Jackson run became the best run available at Local 728. Although Mr. Douglas' seniority would have improved if he stayed with Local 728, it would have been a hollow prize, since the only real tangible benefit to seniority is the ability to bid on better "runs," and as already explained, the better "runs" had been taken from Local 728 and transferred to Local 891.

In order to be eligible to run for delegate and alternate delegate to the 1991 IBT International Convention, a member must be in continuous good standing with the Local Union, with dues paid to the Local Union for a period of twenty-four consecutive months prior to the month of nomination with no interruptions in active membership due to suspensions, expulsions, withdrawals, transfers, or failure to pay fines or assessments. Article VI, Section 1(a)(1) of the Rules for the IBT International Union Delegate and Officer Election, (the "Election Rules"). The Election Rules also provide that in the case of a member who has been involuntarily transferred from one Local to another, such a member must have worked at the craft under the jurisdiction of the original Local and must have been so employed in continuous good standing on a cumulative basis in both Locals for a total of twenty-four consecutive months prior to the month of nomination. Election Rules, Article VI, Section 2.f.

In the matter known as In Re: John Falls, Case No. 90 - Elec. App. - 27 (SA), the Independent Administrator, in upholding the Election Officer's decision, determined that an involuntary transfer is a transfer wherein the member would have been affected economically, that is suffered an economic injury or loss of job, had the member not accepted the transfer.

The Election Officer concluded that Mr. Douglas would not have suffered any such economic loss had he remained at the Atlanta terminal under the jurisdiction of Local 728. Thus, the Election Officer found Mr. Douglas' transfer a voluntary one and in turn ruled him ineligible. I disagree with the Election Officer's ruling.

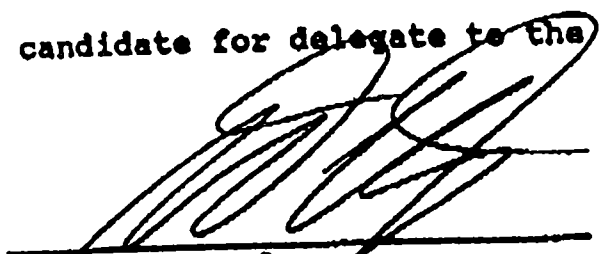
It is clear to me that had Mr. Douglas stayed at the Atlanta terminal under Local 728's jurisdiction, he would have suffered economic loss. The opportunity to bid on the better "runs" that were taken away from Local 728's jurisdiction is an economic benefit that Mr. Douglas would have lost had he not transferred. Moreover, the decrease in freight at the Local 728 Atlanta terminal would have resulted in delays and cancellations to the run that Mr. Douglas was already successfully bidding on. Since Mr. Douglas is paid based on the miles he drives, he would have not been paid for the time waiting during the delays and he would not be paid for the cancellations. This too, is an economic injury.

Finding that Mr. Douglas would have suffered economic injury had he not transferred, his transfer must be considered an involuntary one.

Mr. Douglas was nominated in January of 1991. Since he was in continuous good standing on a consecutive basis in both Local 728 and 891 for a total twenty-four (24) of consecutive months prior to the month of his nomination, he is eligible to run for the position of delegate. Election Rules, Article VI, Section 2.f. See Also IBT Constitution Art. II, Section 4(e).

It must be emphasized that these matters involving questions of whether a transfer is voluntary or involuntary are factually sensitive and each case must be considered on its own merits.

In conclusion, the ruling of the Election Order is reversed and Mr. Douglas is eligible to be a candidate for delegate to the 1991 IBT International Convention.



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

Dated: January 30, 1991.