



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

Stephen Nettles, Jr  
Michael Page  
Election Officer

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

May 15, 1991

**VIA UPS OVERNIGHT**

Stephen Nettles, Jr  
3645 N Whittier Place  
Indianapolis, IN 46218

John N Neal  
President  
Teamsters Local 135  
1233 Shelby St  
Indianapolis, IN 46203

ANR Freight System, Inc  
1101 Harding Court  
Indianapolis, IN 46217

**Re: Election Office Case No. P-728-LU135-SCE**

Gentlemen

A protest has been filed pursuant to Article XI, § 1 of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*"). In his protest Stephen Nettles alleges that he was discharged by his employer, ANR Freight System, because of his campaign activity on behalf of Ron Carey, candidate for IBT General President. Nettles alleges additionally that John Neal, President of Local 135, failed to fairly and fully represent him during his grievance hearing because Nettles opposed John Neal in the delegate election campaign.

The protest was investigated by Regional Coordinator Peggy A Hillman. The investigation discloses the following facts: Nettles has been employed by ANR as a driver for eleven years. On or about March 6, 1991 he was dispatched and directed to make a pick up at Haynes International in Kokomo, Indiana. Once Nettles arrived at Haynes one of the security guards requested to check under the hood of his cab. Nettles replied that he would unlock and unlatch all doors and the hood, but that he would not physically pull the hood down, because he believed that to be the job of the security guard. The guard refused to pull the hood down and told Nettles that Nettles would not

Stephen Nettles, Jr.

Page 2

be permitted to enter the property if he did not open the hood for the inspection. Nettles then drove off Haynes premises and phoned ANR, where he spoke with Terminal Manager Tony R. Ferguson and Assistant Terminal Manager Larry Wolfenberger concerning his dispute with the security guard. An hour and a half delay ensued. Haynes International called ANR to protest the delay, and Nettles finally agreed to lower the hood, although under protest.

Subsequently Mr. Nettles requested of the ANR Terminal Manager that he be given a voluntary bar from Haynes so that the problem would not recur. Nettles explained that he did not believe it to be his responsibility to perform the security check during work time. Ferguson disagreed and told Nettles that he would not bar him from delivering to Haynes.

The following day, (March 7, 1991), Nettles was again assigned to make a pick up at Haynes International. He drove to Haynes, but again had a dispute with the security guard over the responsibility for opening the hood. On this date he phoned the terminal and spoke with Assistant Terminal Manager Larry Wolfenberger. Nettles informed Wolfenberger about his problem and again stated that he would accept a voluntary bar from Haynes. Wolfenberger asked Nettles to reconsider his refusal to lower the hood, but Nettles stated again that he would comply with the dispatch and that he would unlock and unlatch but that he would not lower the hood. Wolfenberger then spoke with Nettles over a speaker phone in the presence of Guy Selke, another IBT member. Nettles again stated that he would follow the dispatch, but that he would not drop the hood. Wolfenberger then asked Nettles for his location and told Nettles that he (Wolfenberger) would arrive within the hour.

At approximately 5:30 p.m. Wolfenberger arrived with IBT member Charlie Kessler. Wolfenberger informed Nettles that Kessler would take over the dispatch since Nettles had refused three times to complete the dispatch and lower the hood. Nettles rode back to Indianapolis with Wolfenberger, and Wolfenberger terminated him at that time. Subsequently he received a letter from ANR which characterized the discharge as a voluntary quit.

A grievance was filed on Nettles' behalf by the Local Business Agent Jack Martin represented him in his grievance hearing with the employer and in the appeal of the discharge before the Indianapolis Grievance Committee.

Nettles' complaint against the Local is not with Jack Martin, the Business Agent who represented him, but with John Neal, Local 135 President, who served on the Grievance Committee as a representative of the Union. Nettles argues that his termination should have been considered under Article 46 of the National Master Freight Agreement rather than Article 43. Article 46 of the National Master Freight Agreement is a discharge provision of that contract and provides, except for certain enumerated offenses, for progressive discipline. Article 43, on the other hand, the Voluntary Quit of article of the contract, by its title and terms requires no prior notice.

Stephen Nettles, Jr.  
Page 3

The IBT and the employers' signatory to the National Master Freight Agreement signed in November 1985, a Memorandum of Understanding implementing and interpreting the terms of the National Master Freight Agreement. That Memorandum of Understanding provides in relevant part as follows: "Article 43-Voluntary Quit -

"The parties recognize that where it can be proven an employee arbitrarily and for no justifiable reason refuses to perform a reasonable work assignment after being given ample opportunity by the Employer to make a clear-minded decision to perform such assignment, may be considered as having voluntarily quit his job pursuant to Article 43, Section 1."

At the hearing before the Indianapolis Grievance Committee, Business Agent Martin argued on Nettle's behalf that his removal from employment by ANR should be considered a discharge pursuant to Article 46 of the National Master Freight Agreement and not a Voluntary Quit pursuant to Article 43 of that contract. Neal disagreed and instead stated that Article 43's "Voluntary Quit" was an appropriate Article under which the employer could take action against Nettles. This is the only evidence Nettles advances as to the alleged discrimination by the Local at the grievance hearing.

Nettles argues that ANR and John Neal, President of IBT Local 135, are prejudiced against him because of his campaign activity on behalf of Ron Carey and/or his support for the slate of delegate and alternate delegates from IBT Local 135 supportative of Carey's campaign and running in opposition to the slate headed by Neal. Nettles was not a candidate for delegate or alternate delegate in IBT Local 135's election. He claims that he had planned to be a candidate but due to health reasons determined not to run.

To demonstrate ANR and Neal's knowledge of his campaign activities and their animus against him based on those activities, Nettles alleges that Harry Lyons, a candidate on the John Neal Slate and a steward at ANR, told a group of ANR employees that Nettles had put up some money for Carey and that Nettles came to Lyons begging for Lyons' help in getting his money back. Nettles was not present when this incident is alleged to have occurred, Lyons denies that it occurred.

The incident, even if it occurred, is insufficient to demonstrate either knowledge or animus on the part of ANR or Neal with respect to Nettle's campaign activities. Lyons was not involved with representing Nettle's in his grievance. Lyons was not a member of the Indianapolis Grievance Committee. While Lyon's statements, if true, may demonstrate knowledge on Lyon's part of Nettle's campaign activity, the evidence does not demonstrate that Lyon's communicated such knowledge either to Neal or to ANR. Even if one were to infer that Lyon's knowledge was somehow communicated to both ANR and Neal, the evidence is sufficient to demonstrate that that was the basis for ANR's action against Nettles or Neal's actions as a member of the Indianapolis Grievance Committee.

Stephen Nettles, Jr.  
Page 4

The evidence shows that Nettles refused three (3) direct orders to lower the hood of his cab for inspection. The evidence shows further that ANR management gave him opportunities to reconsider his decision to refuse the work assignment. Particularly given the Memorandum of Understanding, the evidence established that the employer's use of the Voluntary Quit Article is a reasonable interpretation of the labor agreement.

Further, the evidence in this case does not establish that the Local improperly represented or failed to properly represent Nettles. Nettles agrees that Business Agent Martin properly represented him. Further, Neal's position on the propriety of the use of Article 43 to analyze the grievance is consistent with the collective bargaining history between the parties. The union representative who sits on a grievance panel is not acting discriminatorily merely by agreeing with management on the contractual basis for discipline, particularly where, as here, the employer has a rational basis for its position. There is insufficient evidence to support the Nettles' claim.

Accordingly the protest is **DENIED** in its entirety.

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/pjm

cc Frederick B. Lacey, Independent Administrator  
Peggy A. Hillman, Regional Coordinator  
445 N. Pennsylvania  
Suite 91  
Indianapolis, IN 46204  
Tel 317-635-4059  
Fax 317-635-4105

IN RE:

STEPHEN NETTLES, JR.

and

ANR FREIGHT SYSTEM, INC.

and

JOHN N. NEAL  
IBT LOCAL UNION NO. 135

91 - Elec. App. - 163 (SA)

DECISION OF THE  
INDEPENDENT  
ADMINISTRATOR

This matter arises out of an appeal from a decision of the Election Officer in Case No. P-728-LU135-SCE. A hearing was held before me on June 13, 1991, at which the following persons were heard via telephone conference: Edward Fillenwarth, an attorney with Local 135 and Stephen Nettles, Jr., the complainant. John J. Sullivan of the Election Office and Peggy Hillman, a Regional Coordinator, appeared in person.

The facts of this matter are uncomplicated and, for the most part, uncontested. Mr. Nettles was discharged from ANR Freight System, Inc., after fourteen years of service. Mr. Nettles' discharge was characterized as a "voluntary quit." The National Master Freight Agreement, which controls here, was modified by a November 1985 letter of understanding which provided in part that:

where it can be proven an employee arbitrarily and for no justifiable reason refuses to perform a reasonable work assignment after being given ample opportunity by the Employer to make a clear-minded decision to perform such assignment, [that employee] may be considered as having voluntarily quit his job pursuant to Article 43, Section 1.

No prior notice is required for a "voluntary quit."

Mr. Nettles filed a grievance regarding his discharge and that grievance was heard by a ten-person Grievance Committee. On the Committee there were five representatives of the Union and five representatives of the employer. In addition, Jack Martin, a Union representative, appeared on Mr. Nettles' behalf at the grievance hearing. Mr. Nettles had no quarrel with Mr. Martin's representation of him and, in fact, indicated that Mr. Martin argued quite well on his behalf. The Committee voted unanimously to deny Mr. Nettles' grievance.

John N. Neal, President of Local 135, served on the ten-person Grievance Committee as a Union representative. Mr. Nettles' protest focuses in on Mr. Neal. As explained in Mr. Nettles' May 30, 1991 letter to the Election Officer:

I didn't accuse ANR Freight System for my discharge, because of my campaign activity on behalf of Ron Carey, but I did accuse John Neal, President of Local 135, for failure to thoroughly and fully represent me in my Grievance Hearing because I opposed Mr. John Neal in the delegate election campaign.

While Mr. Nettles was not a candidate in the election for delegates and alternates, it is not disputed that he supports Ron Carey's candidacy for International General President. Apparently Mr. Neal is aligned with a political faction that opposes Mr. Carey.

Even accepting, for purposes of argument, that Mr. Neal was motivated by political factors when he voted to deny Mr. Nettles'

grievance, the result here would be the same. As noted, Mr. Nettles' grievance was rejected by a unanimous vote of the ten-person Grievance Committee. All that is needed to deny a grievance is a majority vote of the Committee. Thus, even canceling Mr. Neal's vote, there would still be nine votes to deny Mr. Nettles' grievance. See In Re: Braxton, 91 - Elec. App. - 147 (SA), Decision Of The Independent Administrator (June 13, 1991) (Where there was evidence that one member of a Grievance Committee breached his duty as a Committee member by relying on political factors, the Committee "ruling need not be displaced because there is simply no evidence that the other panel members acted improperly").

Accordingly, for the reasons expressed herein, the Election Officer's decision is affirmed.'

Stuart Alderoty 15R/  
Frederick B. Lacey  
Independent Administrator  
By: Stuart Alderoty, Designee

Dated: June 14, 1991

---

'There was some question regarding the timeliness of Mr. Nettles' appeal. Given the initial confusion regarding Mr. Nettles' first attempt to appeal the Election Officer's ruling, the short delay in filing an appeal in a proper form, will be excused.