

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

September 10, 1991

VIA UPS OVERNIGHT

Jackie Jenkins
8650 Greenbrook Pky.
Southaven, MS 38671

Bill Owens
Secretary-Treasurer, IBT Local 667
769 E. Brooks Ave.
Memphis, TN 38116

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

Bobby Hannah
Business Agent
IBT Local Union 891
2560 Valley Street
Jackson, MS 39204

Nolan LeBlanc
Secretary-Treasurer
IBT Local Union 270
2207 Royal St.
New Orleans, LA 70177

George Tucker
c/o IBT Local Union 991
112 South Broad Street
Mobile, AL 36602

Bobby Fitz
c/o IBT Local Union 878
6000 Patterson
Little Rock, AR 72209

United Parcel Service
105 Mt. Pleasant St.
Hernando, MS 38632

RE: Election Office Case No. P-855-LU891-SEC

Gentlemen:

A protest was filed with the Election Office pursuant to Article XI of the Rules for the IBT International Union Delegate and Officer Election, revised August 1, 1990 ("Election Rules"). In his protest, Mr. Jackie Jenkins alleges that the Election Rules were violated as a result of his employer's elimination of his run as a feeder driver resulting in his demotion to a package delivery driver. Mr. Jenkins also alleges that the Election Rules were violated as a result of the denial of his grievance challenging the his loss of the feeder driver position. The Election Officer's investigation of this protest revealed the following.

Jenkins is a UPS employee working out of the UPS center in Hernando, Mississippi and is a member of IBT Local Union 891. Prior to May, 1991, Jenkins was

a feeder driver domiciled in Hernando. Mr. Jenkins is an active supporter of Ron Carey and actively campaigned on behalf of candidates for delegate and alternate delegate to the 1991 IBT Convention who supported Carey. Mr. Jenkins is also an active member of Teamsters for a Democratic Union ("TDU").

Prior to May, 1991, there were four feeder drivers who were domiciled in Hernando. In order of their seniority, they were Jerry Gaines, Mike Brooks, Mike Roberts and Jackie Jenkins. Gaines' run began by transporting a tractor with no trailers to the UPS terminal in Memphis, Tennessee, about 20 miles from Hernando, and returning with a tractor and no trailers from Jackson, Mississippi to Hernando. Brooks, also had a run which required him to drive a tractor only from Hernando to Memphis. Mr. Brooks' run ended with his transporting a trailer with freight and an empty trailer from Jackson, Mississippi to Hernando. Mike Roberts, started his run by transporting a single trailer of freight to Memphis and ending his run by returning to Hernando with two empty trailers from Jackson. Mr. Jenkins' run started with a shipment of one trailer to Memphis and the return of two trailers to Hernando from Jackson, one with freight and one empty.

In May, 1991 UPS posted for bid in Hernando for only 2 feeder driver positions.¹ Gaines' and Jenkins' runs were eliminated. Because of his greater seniority, Gaines was able to displace Roberts on one of the two remaining runs. Mr. Brooks' new run involved transporting two trailers with freight from Hernando to Memphis and ending the day with the return of one trailer with freight and one empty from Jackson. Mr. Gaines' new run involved the transport of two empty trailers to Memphis and ended with the return of two trailers to Hernando with freight from Jackson. In explaining the change, UPS stated that the shipment of tractors without trailers to Memphis at the start of the runs and the return of tractors and empty trailers to Hernando at the end of the runs had been required because there was originally inadequate storage space in Memphis and/or Jackson, which problem was subsequently rectified.

Because Mr. Jenkins did not have sufficient seniority to secure one of the two remaining feeder positions he was forced to take a package driver position, displacing the least senior package driver. The position of package driver resulted in a loss in wages and seniority for Mr. Jenkins. The other displaced feeder driver, Roberts, was also demoted to a package driver and suffered a similar loss in pay and seniority.

When Jenkins and Gains were informed that their Hernando runs were being eliminated they requested the opportunity to bid on feeder runs out of the Memphis and/or Jackson hub on the basis of their Hernando feeder driver seniority dates, *i.e.*, to be dove-tailed into the Memphis or Jackson seniority roster. Their request was denied

¹ This posting was part of UPS's annual reposting of jobs for bid by its employees.

by UPS management. Both Jenkins and Gaines filed grievances alleging that a portion of the work that they had previously done was still being performed out of the Memphis and/or Jackson terminals and that they should be permitted to "follow their work". In their grievances they relied upon a provision of the collective bargaining agreement which gives feeder drivers the option, in certain situations, of following the available work and having their seniority dovetailed into the seniority roster of the new location of the work.²

The grievances were not resolved at the Local Union level and as a result were submitted to the Southern Conference Area Parcel Grievance Committee. Both grievances were consolidated and heard by the Committee on August 6, 1991. Bobby Hannah, a business agent for Local Union 891, presented the case on behalf of the grievants. Mr. Jenkins was present at the hearing and made a presentation on his own behalf. The Committee was composed of three UPS representatives and three union representatives. The union representatives on the Committee included Nolan LeBlanc (Local Union 270), Bobby Fitz (Local Union 878) and Gene Tucker (Local Union 991).

After Hannah read the grievances into the record, LeBlanc asked Jenkins whether the work that he claimed that he was entitled to originated in Hernando. Jenkins conceded that while the loads originated in either Memphis or Jackson he argued that the loads had been pulled by Hernando feeder drivers for a number of years and that the Hernando drivers were entitled to follow the work. The employer argued that the work had never been Hernando work but had been done by Hernando drivers because the Memphis and Jackson terminals could not accommodate the additional trailers. None of the loads on the eliminated runs "had been built" in Hernando. The Memphis and Jackson terminals had been expanded to accommodate the additional trailers and that the work could now be done out of the terminal where the loads originated.

After the presentation by the parties a statement was made to the Committee by Bill Owens, Secretary-Treasurer of IBT Local Union 667. The feeder drivers at the Memphis terminal are represented by Local Union 667. Owens stated the he recalled when the work was shifted to the Hernando terminal from Memphis and that it was his

² Article 38 "Change of Operations" provides in pertinent part that:

In a change of operations affecting feeder drivers, the following language will apply; Whenever a center is partially closed and the feeder work is transferred to or absorbed by another center, all feeder drivers in seniority order, will have the option of following the available work and have their seniority dovetailed in the new center. . .

position that the work was Memphis work and should be done by Memphis feeder drivers. Because the consolidation of the runs did not result in any new work being transferred from Hernando to Memphis, Owens argued that it was inappropriate for Hernando drivers to be dovetailed into the Memphis seniority roster.

The Southern conference Parcel Grievance Committee voted to deny both the Gains and the Jenkins grievances.

Mr. Jenkins alleges that the decision to consolidate the feeder runs in the Hernando facility was made by UPS in retaliation for his election and TDU activity. Similarly, Jenkins contends that his representation by his Local Union and the consideration of his grievance by the union members of the Southern Conference Parcel Grievance Committee violated the Election Rules because their actions were based on animus to his campaign and TDU activity. The Election Officer's investigation revealed that Jenkins actively engaged in election related activity and it was likely that UPS was aware of such activity. However, the decision by UPS to consolidate the Hernando runs, and the manner in which the consolidations were made, appear to have been motivated by business concerns³ and not hostility to Mr. Jenkins. This conclusion is supported by the fact that the consolidations affected employees who were not actively involved in campaign activities.

Mr. Jenkins' representation by his Local Union was not improperly tainted by a hostility to his campaign activity. Mr. Hannah read the detailed grievance statement prepared by Mr. Jenkins and Mr. Jenkins was given the opportunity to make an oral presentation and to respond to the employer's presentation. The Election Officer concludes that Jenkins was fairly represented by his Local Union before the committee. Similarly, the Committee's consideration of the Jenkins and Gains grievances was untainted by a hostility to Mr. Jenkins election related activity. The union members of the Committee were not aware of Mr. Jenkins' campaign activity or, if aware of campaign activity by a Mr. Jenkins, unaware that the grievant was the campaigner, until it was brought to their attention by the Election Office staff during the investigation. No allegations were made during the hearing that the actions of UPS were motivated by hostility to Jenkins' election related activity.⁴

³ The fact that UPS's decision may have been motivated by legitimate concerns does not necessarily mean that it was implemented in a manner consistent with the collective bargaining agreement. The Election Officer expresses no opinion on whether the consolidation of the Hernando runs constituted a Change in Operations under Article 38 of the UPS agreement.

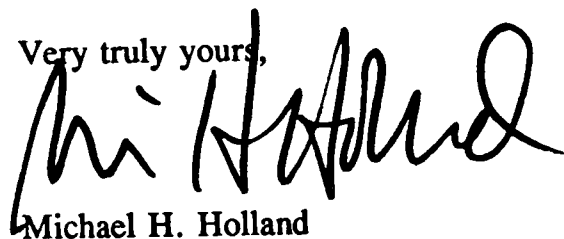
⁴ Mr. Owens' statement at the conclusion of the hearing appear to have been motivated by a desire to preserve work opportunities for the membership of his Local Union and not by a political hostility to Mr. Jenkins.

Jackie Jenkins
September 10, 1991
Page 5

While the Election Officer makes no determination that the actions of UPS were in conformity with the collective bargaining agreement or whether the grievances were properly decided by the Southern Conference Area Parcel Grievance Committee, the Election Officer does conclude that these actions were not motivated by a hostility to Mr. Jenkins' election related activity in violation of the Election Rules. For the forgoing reasons, the instant 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

cc: Frederick B. Lacey, Independent Administrator
Donald H. Williams, Regional Coordinator

IN RE:

JACKIE JENKINS

and

UNITED PARCEL SERVICES, INC.

and

IBT LOCAL UNION NO. 891

and

SOUTHERN CONFERENCE AREA
PARCEL GRIEVANCE COMMITTEE

91 - Elec. App. - 190 (SA)

DECISION OF THE
INDEPENDENT
ADMINISTRATOR

This matter arises as an appeal from the Election Officer's decision in Case No. P-855-LU891-SEC. A hearing was held before me by way of telephone conference at which the following persons were heard: the complainant, Jackie Jenkins; Susan Jennik, on behalf of Jackie Jenkins; Martin Wald, attorney for United Parcel Service, Inc. ("UPS"); Nolan LeBlanc, Secretary-Treasurer of IBT Local 270 and member of the Southern Conference Area Parcel Grievance Committee ("PGC"); Bill Owens, Secretary-Treasurer of IBT Local 667; and John J. Sullivan, on behalf of the Election Officer. The Election Officer also submitted a written summary in accordance with Article XI, 1.a.(7) of Rules For the IBT International Union Delegate and Officer Election ("Election Rules"). Donald Williams, the Regional Coordinator, audited the hearing.

BACKGROUND

Jackie Jenkins is a member of the IBT Local Union No. 891 and is employed by UPS in Hernando, Mississippi. He is also an active supporter of Teamsters for a Democratic Union ("TDU") and of Ron Carey's candidacy for IBT General President. Until May 1991, Mr. Jenkins was the most junior of four UPS "feeder-drivers" who drove "runs" between Hernando and either Jackson, Mississippi or Memphis, Tennessee. Beginning in May 1991, UPS consolidated the four runs into two, transferring the balance of the work to Memphis and Jackson. Because Mr. Jenkins lacked seniority, he could not obtain one of the remaining feeder-driver positions in Hernando. He was forced to take a package driver position, suffering a loss of wages and seniority.

Mr. Jenkins and the other displaced feeder-driver subsequently requested an opportunity to bid on feeder runs out of Memphis or Jackson based on their Hernando feeder-driver seniority dates. UPS management denied this request and both Mr. Jenkins and the other displaced feeder-driver filed grievances, arguing that their collective bargaining agreement permitted them to "follow their work" to Memphis and Jackson. The grievances were eventually submitted to the PGC. The PGC, consisting of three UPS representatives and three Union representatives, conducted a hearing on August 6, 1991, and denied the grievances.

Mr. Jenkins then filed a protest with the Election Officer, alleging that UPS's elimination of his run and the PGC's denial of

his grievance were motivated by opposition to his political activity and thus violated the Election Rules.¹ See Election Rules, Article VIII, Section 10. ("Freedom to Exercise Political Rights"). Upon investigation, the Election Officer found no violation. I affirm that decision.

MERITS OF THE PROTEST

At the hearing before me Jenkins urged application of the "Wright Line standard" which provides a "mixed motive" analysis that has previously been relied upon in evaluating whether a discharge or discipline is motivated, at least in part, by an employee's protected campaign activity. See In Re: Coleman, 91-Elec App.-18 (SA) (December 14, 1990). As noted in Coleman:

The National Labor Relations Board has adopted a rule for resolving cases involving a "mixed motive." This rule, adopted by the Board in Wright Line, 251 NLRB 10182, 105 LRRM 1169 (1980), aff'd, 662 F.2d 899 (1st Cir. 1981), cert denied 455 U.S. 989 (1982), requires:

[T]hat the [complaining party] make a prima facie showing sufficient to support an inference that protected conduct was a "motivating factor" in the employer's decision. Once this is established, the burden will shift to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct.

105 LRRM 1175. The Board's Wright Line test for resolving mixed motive cases was drawn from the Supreme Court's decision in Mt Healthy City School District Board of Education v. Doyle, 429 U.S. 274 (1979). The Supreme

¹ The other displaced feeder-driver did not file a protest with the Election Officer.

Court upheld the Board's Wright Line analysis in NLRB v. Transportation Management Corp., 462 U.S.393 (1983).

Without deciding that the Wright Line test is appropriate in a non-disciplinary case, I find that applying that standard would not produce a different result than that reached by the Election Officer.

Assuming Mr. Jenkins has made a prima facie showing that his campaign activity was a "motivating factor" in his employer's decision to consolidate the feeder-driver runs, the burden would shift to UPS to demonstrate that it would have consolidated the runs and not permitted Mr. Jenkins to follow the work to Memphis or Jackson even in the absence of his campaign activity. The Election Officer found that UPS had a legitimate business motivation for consolidating the Hernando runs and would have taken the action irrespective of Mr. Jenkins' political activities. I concur with this finding. As UPS explained at the hearing, once the problem of space limitations in Memphis and Jackson had been cured, there was no longer a need to have four runs out of Hernando. Mr. Jenkins himself conceded that there was no reason to continue many of the feeder runs out of Hernando. See, "Grievance Report" by complainant dated May 22, 1991. Furthermore, as UPS explained, the decision to consolidate the feeder-driver runs was made by higher level management officials, not the supervisors who work at the Hernando facility.

The gist of the Wright Line analysis is that inferences of improper motivation that arise when an adverse action is taken

against an employee involved in a protected activity may be refuted by appropriate evidence of the employer's legitimate motive. This is what has been done here. Accordingly, under either a strict application of the Wright Line test or simple consideration of the totality of the circumstances, it is clear that the Election Officer reached the proper conclusion.

Focusing on the issue of the refusal of UPS to let Mr. Jenkins follow his work -- as distinct from the issue of consolidating the feeder-driver runs -- does not alter the result reached here. Whether Mr. Jenkins had the right to follow the work to Memphis or Jackson is, in the first instance, a matter determined by the labor management contract. UPS determined, and the PGC agreed, that the contract did not provide such a right under these circumstances. Mr. Jenkins, however, attacks the PGC's result, arguing that the PGC acted out of hostility to his political activity.

Addressing this issue, the Election Officer found, inter alia, that although one member of the PGC recognized Jenkins' name from some political literature, there was no suggestion that the PGC's decision was tainted by political considerations. The Election Officer also cited to the identical treatment accorded to the other feeder-driver in support of the conclusion that the refusal to allow Jenkins to follow his work was not peculiar. Given the record before me, I can find no basis for disturbing the Election Officer's decision.

In the alternative, Mr. Jenkins argues that the case should be remanded for further factual investigation if it is not otherwise reversed. The record developed supports the Election Officer's conclusions. Accordingly, I find no reason to remand the case.

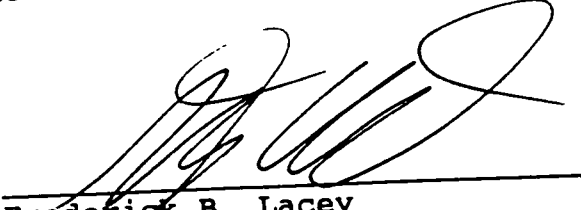
Before concluding, I note that at the hearing UPS objected² to the fact that Mr. Jenkins had not previously raised his allegations of political retaliation during his grievance and that, therefore, he should not now be permitted to do so.

Whether Mr. Jenkins asked the PGC to consider the issues that he raised in his protest with the Election Officer is not relevant. The PGC decision was based entirely on its understanding of the labor management contract provision governing transfer of operations and partial closures. The authority of the Election Officer to decide this dispute flows from the Consent Decree that was entered on March 14, 1989, between the Government and the then leadership of the International Brotherhood of Teamsters. The protest and appeal process set forth in the Election Rules is not a further appeal from the grievance process but rather is a separate mechanism designed to ensure a fair, honest and open election. It is therefore irrelevant that Mr. Jenkins raised the

² UPS also raised objections to the jurisdiction of the Election Officer and of the Independent Administrator to exercise authority over UPS in this protest. It is now well settled that the Election Officer and the Independent Administrator have jurisdiction over employers to enforce the provisions of the Election Rules. See In Re: McGinnis, 91 - Elec. App. - 43 (January 23, 1991), aff'd, United States v. IBT, 88 Civ 4486, slip. op., pp. 3-7 (S.D.N.Y. April 3, 1991).

political retaliation issues for the first time after his grievance had failed. - There is no basis for claiming that proper enforcement of the Election Rules may be avoided where the putative victim of the violation fails to raise the issue in an earlier and collateral grievance proceeding.

Accordingly, the decision of the Election Officer is affirmed in all respects.



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

Dated: September 23, 1991