



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

October 14, 1991

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

VIA UPS OVERNIGHT

Darrell R. Walker
1912 Shooting Park Road
Peru, Illinois 61354

Consolidated Freightways
Attn. John McGrath, Dispatch Mgr.
P.O. Box 481
Peru, IL 61354

Arthur Bell
7101 N. Allen Rd.
Peoria, IL 61614

Gerald F. Reilly
President, IBT Local Union 722
344 North 30th Road
LaSalle, Illinois 61301

Al Weis
c/o IBT Local Union 279
2210 East Hickory Street
Decatur, IL 62526

Daniel Mousepte
1609 N. Illinois St.
Belleville, IL 62222

**Re: Election Office Case Nos. P-896-LU722-SCE and
P-913-LU722-SCE**

Gentlemen:

These protests was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules") by Darrell Walker. Mr. Walker was an elected delegate for Ron Carey at the 1991 IBT International Union Convention and was also an elected Union steward in his Local. Mr. Walker alleges that he was fired by his employer, Consolidated Freightways, due to his support of the Ron Carey Slate and his successful delegate election campaign. He also alleges that he was not well represented by his Business Agent in his grievance contesting his discharge due to his support for the Carey slate and his election as a delegate, over the slate on which his business agent ran. He also contents that the Joint Grievance Committee which upheld his discharge was biased due to his intra-Union political positions. Election Office Case No. P-896-LU722-SEC deals with the first two allegations; Election Office Case No. P-913-LU722-SEC deals with the third. The cases have been consolidated for decision and both were investigated by Regional Coordinator Peggy A. Hillman and the Washington, D.C. staff of the Election Officer.

On August 5, 1991, Mr. Walker was involved in a serious accident on Interstate 94 near Osseo, Wisconsin. Two eyewitnesses to the accident gave essentially the same account: Mr. Walker's truck drifted into the left lane at a declining rate of speed, then swerved right, straddled a guard rail and flipped over down an embankment on the side

of the road.¹ The truck and cargo were destroyed; environmental damage was caused by the leakage of the cargo; Consolidated estimated the cost of the accident at \$198,000.00.

Mr. Walker was not seriously injured in the accident. One of the eyewitnesses to the accident, another truck driver, asked Mr. Walker how the accident occurred immediately after helping Mr. Walker out of his cab. Mr. Walker said, "I don't know." On a statement to the Wisconsin police made that day, Walker said, "Suddenly the steering turned out of control to right, at this point truck right wheel dropped off of pavement and I could not get it back on the road." Later, in his presentation to the Joint Grievance Committee, Mr. Walker described the accident as follows: "I must have seen something in my lane ahead and I moved over to the left to miss the debris in my lane and possibly not went to the left far enough and run over something on the road that made my tire go flat when the steering wheel twisted out of my hands." During the course of the Election Officer's investigation of this incident, Mr. Walker also argued that the steering on his truck was out of alignment and that this caused his front tires to wear improperly, causing a tire blowout which made him lose control of his truck.

Based upon its investigation, Consolidated found the accident to be "preventable" and discharged Mr. Walker. Mr. Walker filed a grievance and pursued the grievance to the Joint Grievance Committee, which upheld the discharge.

Since Mr. Walker claims that his employer, his Local Business Agent and the Joint Grievance Committee all discriminated against him, it is necessary to evaluate the evidence which has been presented with respect to all three entities.

Mr. Walker's claim against Consolidated is based upon the following: (1) evidence of hostility between Tom McGrath, his Dispatch Manager, and himself based upon his internal Union activities and (2) evidence that drivers who had other preventable accidents received written warnings instead of being discharged .

Assuming arguendo the hostility of Consolidated toward Mr. Walker, the evidence indicates that he would have been discharged for this accident in any event. Reports submitted to the company prior to the time it discharged Walker demonstrated that the steering mechanism of the vehicle was unimpaired. The examination of the truck's front tire demonstrated a gash along the sidewall, consistent with straddling the guardrail but inconsistent with a blowout. The accident caused a major loss to the company.

¹ One witness to the accident was interviewed by an insurance adjuster for Consolidated soon after the accident. This interview was tape recorded and the transcript of this tape has been reviewed. Another witness was identified by Mr. Walker and was telephonically interviewed by the Regional Coordinator.

Moreover, the company had a reasonable basis to believe, based upon the testimony of an eyewitness, that Mr. Walker either fell or was falling asleep immediately prior to the accident. Walker received a ticket for a traffic violation, inattentiveness, from law enforcement authorities at the accident scene.² Walker had received many prior warnings due to accidents, including prior warnings for preventable accidents.

Finally, the evidence showed that the company had fired many drivers for major preventable accidents. The company provided records showing 11 discharges for major accidents within the last five years. While four of the discharges were later reduced to substantial suspensions, they were so reduced by the Joint Grievance Committee; further, seven of the discharges were upheld.

This evidence, along with Mr. Walker's failure to ever definitely say what caused the accident and/or his changing story as to the accident's cause is sufficient to conclude that Consolidated has rebutted any prima facie case that its discharge was retaliatory or based on Walker's political expressions.³ See, e.g., Wright Line, 251 NLRB 1083 (1980); In Re Coleman and Advanced Transportation Company, 90-Elec. App.-18 (SA) (12/14/90); In Re Giaque, Election Office Case No. P-811-LU270-SEC.

As noted, Mr. Walker now asserts that a blowout in the right front tire caused him to lose control of his truck. He has submitted pictures which purport to show a hole in the right front tire in the tread of the tire. In opposition, the company has submits its report which states that a gash on the sidewall was found.⁴ Walker maintains that the tire described in the report was not one of the front tires on the truck; he claims that it was a spare tire taken from underneath the truck in an attempt to "frame" him.

The evidence submitted by the parties does not conclusively resolve this issue. Mr. Walker submits that his evidence shows that the inside front right tire has a gash in its tread. The photograph is at odds with the company's report, which indicates a gash in the sidewall of the tire. Mr. Walker's claim that the company switched a spare tire makes no sense because it does not explain why the spare had a hole in it.

² While the violation was later reduce to a warning, a warning does not constitute exoneration. Further, the reduction occurred long after the decision was made by the company to discharge Walker and long after the decision of the Joint Grievance Committee upholding the discharge.

³ As the Independent Administrator noted in In Re Serafinn and Consolidated Freightways Corp. and IBT Local 722, 91-Elec. App.-192, affirming Election Office Case No. P-815-LU722-SCE, post facto revisions as to cause are inherently suspect.

⁴ As noted above, such a gash could have been caused by a collision with the guardrail in the accident.

Mr. Walker has never shared his photograph with Consolidated.⁵ Further, Walker's photograph itself does not conclusively demonstrate that the tire suffered a blowout. The dark area at the top of the photo, which Walker claims is the gash, may be nothing more than a shadow. Further, it is possible that the "gash" is but a continuation of the damage caused to the side of the tire when the truck rolled over the guardrail. Thus, there is no evidence of a deliberate plan by Consolidated. Without such evidence, there is nothing to change the prior conclusion that Consolidated had a good faith basis for discharging Walker without reference to his internal Union political activities.

The allegations against Mr. Walker's Business Agent, Jack Jacobs, suffer from the same fundamental problem as outlined above: Mr. Walker has never been able to clearly explain how the accident happened and his explanations continually change. Business Agent Jacobs' testimony to the Regional Coordinator, that he thought he could make a plea for mercy if Walker admitted he was falling asleep rings true in this context.

Mr. Walker complains about a number of alleged deficiencies in Jacob's representation: that Jacobs did not return his calls, that he failed to request certain documents, that failed to meet for sufficient time to prepare the case and that Jacobs refused to investigate the front end alignment of the truck (which presumably contributed to the blowout).

The Election Officer's investigation has failed to adduce any evidence that Jacobs represented Walker differently than he represented other grievants. Moreover, Jacobs had knowledge about the facts in the case stemming from his representation of Walker at the first steps of the grievance process. Walker has set forth no arguments or evidence that should have been presented but were not.

Walker claims that Jacobs did not call a witness to the accident. The Regional Coordinator interviewed this witness; he said that Walker told him that he was not needed. Further, Walker did not request or ask for Jacobs to request a continuance for the purposes of obtaining the witness' presence or statement. Walker also claims that Jacobs should have investigated a claim that drivers refused to drive the rig involved in the accident at a Minneapolis terminal because of its faulty front end alignment. The Election Officer finds Jacobs credible when he states that while he was told of a vague allegation but that neither Walker nor his allies ever asked him to interview a specific witness.

⁵ The photograph was also not presented by Walker to the members of the Joint Grievance Committee.

Darrell R. Walker
Page 5

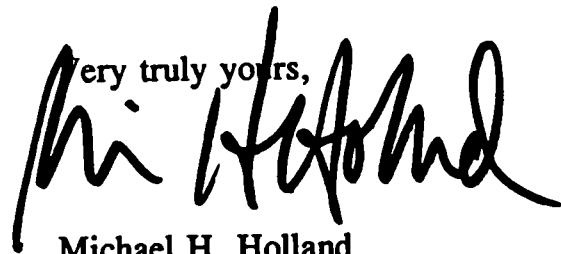
In addition to Jacobs, Walker was represented at the Joint Grievance Committee by Robert Bartlett, also a Local 722 steward and a political ally of Walker. Finally, Walker was no stranger to the grievance process. He also was a steward for the Local. When asked by the Joint Grievance Committee whether he had been fairly represented and whether he had presented all of his evidence and arguments, he responded yes. Thus, it cannot be concluded that Jacobs failed to represent Mr. Walker because of Walker's delegate campaign or his support for the Ron Carey Slate.

Finally, Mr. Walker has provided no evidence that any members of the Joint Grievance Committee had any personal animosity toward him for any reason, let alone his election as a Convention delegate or support of Ron Carey. The Regional Coordinator interviewed each Union member of the Committee and each stated that they had no knowledge of Mr. Walker's internal Union political activities. No evidence to the contrary was uncovered during the Election Officer's investigation. Two of the Union Committee members stated that they had problems with Mr. Walker's credibility, a reasonable assessment given Mr. Walker's inability to explain how the accident occurred and his changing rationale for the accident. They also found that it difficult to believe that Mr. Walker never heard the blowout which he believed occurred. There is no basis to conclude that the Joint Grievance Committee acted in violation of the *Rules*. See In Re Braxton, 91-Elec. App.-147 (SA).

For all of the foregoing reasons, 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/mjv

Darrell R. Walker
Page 6

cc: Frederick B. Lacey, Independent Administrator

Peggy A. Hillman, Regional Coordinator

Arthur Hackworth, General Counsel
Consolidated Freightways, Inc.
3240 Hillview Avenue
Palo Alto, CA 94304

Ⓢ

722/SCE

OCT 22 1991

IN RE: :

DARRELL R. WALKER :

and :

CONSOLIDATED FREIGHTWAYS CORP. :

and :

IBT LOCAL UNION 722 :

91 - Elec. App. - 204 (SA)

DECISION OF THE
INDEPENDENT ADMINISTRATOR

XMH
BJH
JJS

This matter arises as an appeal from the Election Officer's decision in Case Nos. P-896-LU722-SCE and P-913-LU722-SCE. A hearing was held before me by way of teleconference at which the following persons were heard: John Sullivan and Barbara Hillman for the Election Officer; Peggy Hillman, the Regional Coordinator; Susan Jennik for Darrell R. Walker, the complainant; Walker himself; Jeffrey Madoff for Consolidated Freightways Corp. ("Consolidated"); Allan Weiss, Chairman of the Joint Grievance Committee ("JGC"); Jack Jacobs, Business Agent for IBT Local Union 722; Charles Schmalz, George Moura and John McGrath, managers from Consolidated; and Mark Serafinn and Daniel Hanners, Shop Stewards from Consolidated. In addition, the Election Officer submitted a written summary in accordance with Article XI, section 1.a.(7) of Rules for the IBT International Union Delegate and Officer Elections ("Election Rules").

Walker is a truck driver for Consolidated and member of IBT Local Union 722. He won election as an IBT Convention delegate on

a slate supporting Ron Carey. Walker is also a Local 722 steward and he supports candidates and slates that are opposed by the incumbent leadership of his local. In the delegate election, Walker and his slate defeated the slate headed by Gerald Reilly, the Local's President, which included Business Agent Jacobs.

Walker was fired by Consolidated after a driving accident. Jacobs represented Walker in the grievance proceedings before the JGC. The JGC sustained Consolidated's action.

Walker contends that he was fired in retaliation for his political activity. Consolidated asserts that it fired him for cause after he had an accident it considered preventable.¹ Walker also contends that Jacobs failed to represent him properly in the grievance proceedings because Walker had opposed him in the delegate election. Finally, Walker alleges that the JGC that heard his grievance decided against him in retaliation for his political views.

In analyzing Walker's discharge, the Election Officer employed the "Wright Line standard". This standard provides a mixed motive analysis that has been consistently relied upon to evaluate whether or not a discharge is motivated, at least in part, by an employee's

¹ As a preliminary matter, Consolidated objects to the jurisdiction of the Court-appointed officers to enforce the Election Rules promulgated under the Consent Decree against a non-consenting employer. It is now well settled that the Election Officer and Independent Administrator have jurisdiction over employers to enforce the provisions of the Election Rules against non-consenting employers. See In Re: McGinnis, 91 - Elec. App. 43 (January 23, 1991), aff'd, United States v. IBT, 88 Civ. 4486 (DNE), slip op. at pp. 3-7 (S.D.N.Y. April 3, 1991).

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

The Election Officer's analysis assumes that Walker has made out a prima facie case and that Consolidated bears the burden of proving it would have fired him even absent his political activity. In evaluating Consolidated's reasons, the Election Officer reviewed accident reports, photographs, company records and the testimony of witnesses. Based on this, the Election Officer agreed with Consolidated's conclusion that Walker was falling asleep or was otherwise inattentive as his truck drifted left, swerved right and went off the road, flipping over a guard rail and sliding down an embankment.

791 TUE 19:00 INDEPENDENT ADMIN 1201690007

While Walker's injuries were minor, damage to the truck, cargo and environment were stated to be almost \$200,000. The Election Officer found that Walker had previously received a number of warnings for prior accidents. The Election Officer also found that Walker's explanations were unconvincing and appeared to consist of post hoc rationalizations that varied over time and finally evolved into a theory that the truck had suffered a blowout in one of its tires.

At the hearing before me, several alternative theories of how the accident occurred were proposed to challenge the version accepted by the Election Officer. I have very carefully considered these arguments - that there was a blowout, that the steering mechanism was defective, or that an improper load had shifted.

Upon weighing all of the explanations I find the Election Officer's conclusions the most credible. For example, it seems implausible that a driver would not hear the sound of a blowout or that the tire would not show the characteristic shredding from contact with the rim as it moved over the asphalt in a deflated conditions. It also seems unlikely that vague allegations of steering problems after the accident are relevant to the state of the pre-accident steering mechanism. Finally, there is simply no evidence that the truck was loaded improperly.

More importantly, the Election Officer is not an interested party who desires a particular outcome. As the only neutral fact finder in the process, the Election Officer's findings are entitled

to deference. Only if it is shown that his findings are erroneous - that they are plainly wrong or that material, relevant evidence is missing - should the Election Officer's factual conclusions be overturned or remanded. Nothing presented at the hearing showed the Election Officer's conclusion to be erroneous or unfounded. To the contrary, the Election Officer's conclusions were convincing, logical and well grounded in the evidence. It was the counter arguments - for example, the allegation that the Election Officer looked at the wrong photographs - that appeared ill founded. Accordingly, I affirm the Election Officer's findings concerning the cause of the accident.

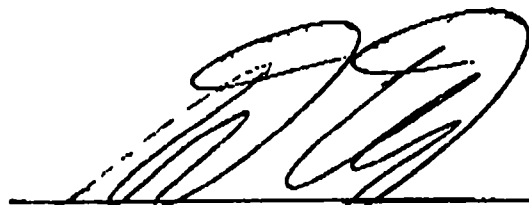
At the hearing before me, Walker admitted to having been fired and subsequently reinstated after having a major preventable accident in March of 1990. Walker also offered a lengthy recitation of his prior accidents along with his reasons for believing why none of them should be considered his fault. What emerges here is a compelling picture of an accident prone truck driver.² Under these circumstances it is clear that Consolidated had good reason, apart from political animus, for discharging Walker.

Based on the above, I affirm the Election Officer's conclusion that Consolidated would have fired Walker even in the absence of his political activity.

² The National Master Freight Agreement apparently forbids reliance on a warning that is more than nine months old when imposing discipline. Here, evidence of Walker's prior accidents is relevant only insofar as it corroborates his profile as an accident prone driver.

In addition, the Election Officer's investigation produced no evidence that either Jacobs or the JGC discriminated against Walker for his political views. For example, the Election Officer found Walker's complaints about Jacob's failure to call a witness to be patently untrue. Most significantly, there was no evidence that Jacobs handled Walker's grievance differently than he handled any other grievance. Likewise, there was no evidence that members of the JGC were aware of Walker's political views or that their decision was caused by animus. The JGC asked Walker whether he had been fairly represented and had offered all of his evidence and arguments, and Walker replied that he had. Nothing indicates that the JGC's decision was anything other than a reasonable reaction to the evidence and to Walker's credibility. Theories of animus and collusion between Consolidated, Jacobs, and the JGC are speculative and unfounded.

For the foregoing reasons the Election Officer's decision is affirmed in all respects.



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

Dated: October 22, 1991