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June 16, 1992

VIA UPS OVERNIGHT

Leroy Ellis
18807 Oakwood Avenue
Country Club Hills, IL 60478

Roadway Express
2000 Lincoln Highway
Chicago Heights, IL 60141

Daniel Liguoris
Secretary-Treasurer
IBT Local Union 705
300 South Ashland Avenue
Chicago, IL 60607

Re: Election Office Case No. P-916-LU705-CHI

Gentlemen

A protest was filed pursuant to Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules") by Leroy Ellis, a member of Local 705 and a successful candidate for International Union Vice President on the Ron Carey Slate. Mr. Ellis protests his discharge as an employee of Roadway Express ("Roadway"), claiming that Roadway's claimed basis for his discharge was pretextual, and that the real reason for his discharge was Roadway's animus against him because of his candidacy for International Union office as a member of the Ron Carey Slate. The protest was investigated by the Chicago Regional Office of the Election Officer, principally by Adjunct Regional Coordinators Deborah Schaaf and Dennis Sarsany.

Mr. Ellis has been employed by Roadway for approximately eight (8) years. He was terminated from his employment on September 19, 1991 allegedly for gross misuse of company time. Roadway claims that he was sleeping during worktime on that date and that such action constitutes gross misuse of company time, an offense which Roadway alleges is not subject to progressive discipline under the collective bargaining agreement. Roadway's position is that Mr. Ellis' conduct on September 19, 1991, particularly when reviewed in light of his previous disciplinary record, justifies the discharge.

Mr. Ellis claims that he was not sleeping during worktime on September 19, 1991. Further, and assuming he was sleeping on September 19, 1991, Mr. Ellis claims that utilization of progressive discipline is a pre-requisite for discharge for misuse of company time. He states that all prior disciplinary proceedings against him by Roadway had been rescinded. Further, and even assuming that his prior discipline had not been

Leroy Ellis
June 16, 1992
Page 2

rescinded, he had no prior discipline for misuse of company time within nine (9) months of the date of his discharge. Accordingly, the company could not - and did not at the arbitration hearing - demonstrate prior progressive discipline within the parameters of the collective bargaining agreement.

Mr. Ellis claims that the company's alleged rationale for terminating him was totally pretextual. He claims that his discharge was motivated by Roadway's animus against the International Union officer candidates on the Ron Carey slate and their supporters, and that he was terminated because he was a candidate for International Union Vice President on Mr. Carey's slate.

The Incident

On September 19, 1991, Mr. Ellis was working the evening or night shift. He reported to work at approximately 6:00 p.m. on September 18, 1991. One of the dispatches given to him during his workshift was to deliver a trailer to the Burlington Northern rail yard located at Cicero, Illinois, pick-up an empty trailer at that location and proceed to a Roadway terminal with the empty trailer. He was instructed to take his lunch prior to returning the empty trailer to the Roadway facility.

Among the managerial employees of Burlington Northern is a former Roadway supervisor, Chuck Letko. Mr. Letko was formerly the terminal manager at the Chicago Heights Roadway facility. While so employed, his assistant was Mike Lamphere, the present terminal manager at Chicago Heights and the supervisor who discharged Mr. Ellis. The Burlington terminal manager, Bob Stein, working the night shift on September 18-19, 1992, observed Mr. Ellis in his cab in an empty lot in the Burlington facilities at 1:45 a.m. on September 19, 1991. Mr. Stein claimed that Mr. Ellis appeared to be asleep.

Mr. Stein, however, did not attempt to wake Mr. Ellis. Neither did Mr. Stein ask Mr. Ellis to move his vehicle although Burlington Northern's policy prohibited truck drivers from companies such as Roadway from parking their vehicles and/or taking their breaks or lunch periods in the lot where Mr. Ellis was allegedly asleep. The Roadway supervisor who communicated with Burlington Northern that evening reported that she was told by Burlington Northern that drivers were not to be parked in the lot where Mr. Ellis' vehicle was discovered. Further, the independent security officer who later spoke to Mr. Ellis confirmed that this was the policy of Burlington Northern, he so told Mr. Ellis.

Rather, the only action taken by Mr. Stein was to call his assistant, Bill Beem, and instruct Mr. Beem to phone Roadway to determine the status of the driver observed by

Leroy Ellis
June 16, 1992
Page 3

Mr Stein Mr Beem did so and spoke to Deborah Halsted, a supervisor at the Chicago Heights Roadway facility Ms Halsted confirmed that the driver was Leroy Ellis

She then asked Mr Beem to indicate the time of Mr Ellis' arrival at the Burlington facility Mr Beem stated that Roadway's records showed that Mr Ellis arrived at 12 32 a m After calculating the time Mr Ellis should have utilized to drop his load, Ms Halsted informed Mr Beem that Mr Ellis was probably on his lunch break, she stated that Mr Ellis probably had an additional fifteen (15) minutes or so before his lunch period was over Upon receiving this report, Burlington took no action and permitted Mr Ellis to remain undisturbed despite the fact that its original inquiry to Roadway was purportedly occasioned by Burlington's policy of not permitting drivers to be in the lot where Mr Ellis was found

Mr Stein reports that he again saw Mr Ellis - still asleep - in the same lot at approximately 3 15 a m At this time - and for the first time - Mr Stein decided to approach the vehicle He directed the independent security firm employed by Burlington to have one of its officers check on Mr Ellis

Mr David R Swiatek did so He found Mr Ellis parked in his trailer in the Burlington lot and, according to Mr Swiatek, asleep Mr Swiatek claims he was required to sound his horn several times before Mr Ellis awakened After awakening Mr Ellis, Mr Swiatek told him, "Leroy, Burlington Northern doesn't allow people to sleep in their lot " Mr Swiatek personally notified Mr Beem that he woke the driver and advised him not to sleep on Burlington Northern property in the future The daily incident report for Burlington Northern shows that this report by Mr Swiatek was made at 3 20 a m Burlington computer records show that Mr Ellis exited the facility at 3.41 a m

Mr Ellis denies sleeping at any time while he was at the Burlington facility He also claims that he arrived at the facility later than 12 32 a m While Burlington maintains computer records of all driver check-in and check-out times, it was unable to find or produce the computer record showing Mr Ellis' check-in, the time Burlington Northern reports Mr Ellis arrived at the terminal comes from its handwritten records

Mr Ellis claims that his one-hour lunch break started after 2 00 a m He states that the period between his arrival time at 12 51 a m and 2 08 a m was expended in dropping off the trailer he was dispatched to deliver, arguing that drivers often encounter lengthy waits at the Burlington facility Other IBT members employed by Roadway as well as those employed by other trucking concerns confirm Mr Ellis' report that lengthy waits are often encountered at the Burlington Cicero, Illinois facility

Mr Ellis claims that he was not sleeping when the independent security officer approached his vehicle He claims that he was still on his lunch hour when so

approached and left the facility as soon as his lunch hour was over. He agrees with the computer records produced by Burlington that he left the facility at 3:41 a.m.

Mr. Ellis' Prior Work History

Mr. Ellis was employed by Roadway for approximately eight years. Roadway contends that Mr. Ellis was disciplined on twenty-three occasions prior to the time of his discharge. In addition, Roadway claims that an additional six (6) disciplinary actions were taken by it against Mr. Ellis, all of which were rescinded as a result of grievances resolved in Mr. Ellis' favor.

Mr. Ellis contends that he has no discipline record at Roadway and contends that all discipline notices issued to him by Roadway were rescinded in the grievance procedure. Local 705 supports Mr. Ellis' contention in this regard.

With respect to the issue of misuse of company time, the offence for which Mr. Ellis was discharged, the Roadway contends that Mr. Ellis had been disciplined for misuse of company time on five (5) occasions prior to the date of his discharge. Local 705's records reflect only three (3) such warnings. As noted above, both Mr. Ellis and Local 705 argue that all prior discipline for this offence were rescinded through the grievance procedure. Formal letters have been produced demonstrating that at least one (1) of these three (3) disciplinary notices issued for this offence were, in fact, formally rescinded. These remaining two (2) disciplinary notices were issued in April, 1987 and July, 1989. Even assuming that these two disciplinary notices were not rescinded, both were issued prior to a period of nine (9) months preceding Mr. Ellis' discharge. Similarly, with respect to the two (2) additional warnings Roadway claims it issued Mr. Ellis, one (1) was issued in April, 1986 and the other in August, 1987, years before Mr. Ellis' discharge. The collective bargaining agreement prohibits the utilization of any of these warning notices - even assuming all were issued and none rescinded - for sustaining the propriety of the September, 1991 discharge.

Only three (3) disciplinary warning notices were issued to Mr. Ellis within nine (9) months of the date of Mr. Ellis' discharge, two for absenteeism and one (1) for insubordination. Mr. Ellis contends that these disciplines were reversed in the grievance procedure.

The Right to Discharge for Misuse of Company Time

The collective bargaining agreement by and between the IBT and Roadway does not specifically delineate which offenses are subject to the precepts of progressive discipline, as opposed to those for which prior discipline is not a prerequisite for discharge. Roadway admits that which it has previously treated abuse of company time - including

sleeping on work time - as a disciplinary matter subject to progressive discipline. The company states that progressive discipline has not proved to be effectual in remedying the problem. Accordingly, Roadway claims that in 1989 it changed the policy to make abuse of company time grounds for immediate dismissal. In April of 1989, the company posted a notice so indicating. The notice stated, "Gross abuse of company time will be considered an act of dishonesty and will be considered grounds for immediate dismissal."

Prior to Mr. Ellis, however, no IBT member employed by Roadway at its Chicago Heights facility has ever been discharged for abuse of company time without having been first previously disciplined and suspended for such offense. Although IBT member Robert Morris was subsequently discharged for this offense (See Election Office Case No. P-1028-LU705-CHI), past practice is not established by future events.

Prior to Mr. Ellis' discharge but since April of 1989, the company had given notice of termination to at least nine (9) employee/IBT members for abuse of company time despite the fact that none of the nine (9) have been previously suspended for such offense. However, eight (8) of the nine (9) were voluntarily reinstated to their employment with Roadway prior to the matter being appealed to the arbitration panel. Further, at least two (2) of these eight (8) had been disciplined within nine (9) months of the date of termination for abuse of company time. Prior to Mr. Ellis, the only employee not voluntarily reinstated by Roadway had four (4) prior disciplinary notices for abuse of company time within nine (9) months of the date of his termination, he was reinstated by the grievance panel pursuant to the collective bargaining agreement's grievance/arbitration provisions.

Evidence of Direct Animus

Mr. Ellis claims that his discharge was motivated by Roadway's animus against him based upon his candidacy for International Union office as a member of the Ron Carey Slate. Evidence provided to the Election Officer by a Roadway supervisory employee supports this claim.

The supervisory employee in question has been employed by Roadway for thirteen (13) years. In 1991 he was a work methods supervisor in charge of IBT members employed by Roadway in the yard of the Chicago Heights facility. He retired from Roadway on October 25, 1991 with a disability pension, the employee in question has a brain tumor and his condition is terminal.

All Chicago Heights Roadway supervisors attend weekly staff meetings on Monday mornings. The meetings are held to provide work assignments for the upcoming weeks as well as to review prior and potential problems. The meetings are chaired by the terminal manager, Mike Lamphere.

Leroy Ellis
June 16, 1992
Page 6

At one of these meetings in mid-March, 1991, Mr Lamphere made specific reference to the Ron Carey Slate. When directly asked who Roadway supported in the election, Mr Lamphere replied, "We're not for the Carey Slate, that's for sure. They are TDU and trying to take over the company." His negative remarks included specific derogatory references to Leroy Ellis, Michael Jordan and Ralph Evenhouse, all Local 705 members employed by Roadway at its Chicago Heights facility and activists on behalf of Mr Carey.

At this time, of course, neither Mr Carey nor any of the candidates who would be on his slate had been nominated. However, by this March, 1991 date most of the 1991 IBT International Union officer convention delegate and alternate delegate elections had been concluded, sufficient delegates pledged to Mr Carey's candidacy had been elected to assure his nomination at the June, 1991 convention as well as the nomination of other candidates designated by him.

Also, by March of 1991, Local 705 had completed its delegate and alternate delegate election which had been contested by a slate of candidates seeking delegate and alternate delegate positions committed to Mr Carey. While this slate was unsuccessful, it had made a strong showing among Local 705's membership and demonstrated that the members of that delegate and alternate delegate slate and their supporters would constitute a strong presence in the then-upcoming International Union officer election campaign.

Messrs Ellis, Jordan and Evenhouse had been active participants in the delegate and alternate delegate election campaign on behalf of Ron Carey. All were members of the delegate and alternate delegate slate pledged to Mr Carey, had actively campaigned for that delegate and alternate delegate slate as well as Mr Carey and had filed protests with the Election Officer.

With respect to Messrs Ellis, Jordan and Evenhouse, Mr Lamphere directed that a "special eye be kept" on these individuals with the object of discovering items for which discipline could be imposed against them. He specifically directed the Roadway supervisory employee in charge of drivers - and Messrs Ellis, Jordan and Evenhouse were all drivers for Roadway - to give special attention to them, Mr Lamphere emphasized that he wanted to see disciplinary action brought against them.

Mr Lamphere reiterated these remarks at a staff meeting in mid-June, conducted shortly before the commencement of the 1991 IBT International Union Convention. At this meeting Mr Lamphere once again referred to Messrs Ellis, Jordan and Evenhouse by name and demanded that his staff institute disciplinary proceedings against them.

Roadway denies all statements made by this supervisor. To bolster its position, Roadway has provided the Election Officer with the written agenda for the two (2) staff meetings in question. The written agenda, of course, makes no reference to the International Union officer election, the Ron Carey Slate or Mr. Lamphere's desire to have disciplinary action taken against Messrs. Ellis, Jordan or Evenhouse. The Election Officer would note, however, that it is highly unlikely that any managerial employee would memorialize in writing either that his employer took a partisan position in an internal union election or was seeking to discipline employees because of their intra-union political activities. All such activities are clearly illegal and accordingly would not be put in a written form.

The Election Officer credits the evidence provided him by this former supervisory employee of Roadway. This employee has no motivation for lying. He is no longer employed by Roadway and will not seek reemployment by that or any other company. Given his present physical condition, he can have no expectation for obtaining employment or other patronage opportunity from Mr. Ellis or the present administration of the IBT. Given his present terminal condition, the Election Officer finds that his only motivation is the one he gives - wanting to come forward with the truth before he dies.

Analysis

An analysis of the situation leads to a conclusion that the basis for Mr. Ellis' discharge was pretextual. The evidence credited by the Election Officer demonstrates that Mr. Lamphere - the Chicago Heights terminal manager - harbored animus against Mr. Ellis because of his partisan, intra-Union political activities on behalf of Ron Carey even prior to the time that Mr. Ellis was himself nominated as a candidate on the Ron Carey Slate.

A confidential relationship existed between the Chicago Heights facility of Roadway and the Cicero, Illinois facility of Burlington Northern. Mr. Lamphere, the terminal manager at the Chicago Heights Roadway facility, was formerly assistant to a managerial employee at the Cicero, Illinois Burlington Northern rail yard. Such confidential relationship raises the possibility of collusion.

Whether or not Mr. Ellis was sleeping at the Burlington Northern rail yard on September 18-19, 1991, the actions undertaken that evening by particularly Burlington Northern managerial personnel suggest at best an attempt to obtain incriminating evidence which would provide Roadway with a coverable rationale for discharging Mr. Ellis. According to both the Roadway supervisor who handled the telephone communications from Burlington Northern that evening and the independent security officer sent to awaken Mr. Ellis, Burlington Northern did not allow truck drivers to park, take their breaks, sleep and the like on Burlington Northern property. Indeed, the breach of Burlington Northern's policy in this regard was allegedly the basis for Mr. Stein's initial notice of

Leroy Ellis
June 16, 1992
Page 8

Mr Ellis and his request that Roadway supervision be contacted Yet instead of waking Mr Ellis or sending a security officer to do so, Mr Stein permitted Mr Ellis to remain asleep in his cab in the Burlington Northern lot, despite company policy to the contrary If Mr Stein had awakened Mr Ellis when he first observed Mr Ellis sleeping in his cab, Mr Ellis would not have been guilty of any offence meriting discipline According to Roadway itself, at the time when Mr Stein first observed Mr Ellis - about 1 45 a m - Mr Ellis was on his lunch break of which approximately fifteen (15) minutes still remained Sleeping while on a break is not misuse of company time

Mr Ellis was the first and only employee to be discharged by Roadway for misuse of company time who did not have prior discipline for that offence within nine (9) months of the date of discharge While Roadway has initiated discharge proceedings against employees for abuse of company time who had not been previously disciplined for this offence, in all cases but one Roadway voluntarily reinstated such employees prior to the matter being referred to arbitration under the collective bargaining agreement In only two cases - one occurring prior to Mr Ellis' discharge and the other occurring after (See Election Office Case No P-1028-LU705-CHI) - did Roadway not voluntarily act to reinstate the employee Yet both these employees had been previously disciplined for misuse of company time within nine (9) months of the date of their discharge one - discharged subsequent to Mr Ellis - having been disciplined twice and the other - who was reinstated by the grievance panel - having received four (4) such disciplinary notices

According to Mr Ellis and Local Union 705, Mr Ellis had never been previously validly disciplined for this offence While Roadway claims that Mr. Ellis was disciplined for misuse of company time on prior occasions, documentation has been produced demonstrating that the discipline was formally rescinded for at least one (1) such incidents The remaining two incidents - assuming all occurred - occurred long prior to nine (9) months preceding Mr Ellis' discharge

Under these facts and circumstances - with particular emphasis on the evidence of direct election related animus against Mr Ellis by the Roadway Chicago Heights terminal manager - the Election Officer has no alternative but to conclude that Mr Ellis' discharge was motivated by animus against him based upon his candidacy for International Union Vice President on the Ron Carey Slate Mr Ellis' right to so run is protected by the *Rules* His discharge for exercising rights guaranteed him under Article VIII, §10(a) of the *Rules* constitutes impermissible retaliation in violation of the *Rules*

Leroy Ellis
June 16, 1992
Page 9

Remedy

Having concluded that Mr Ellis was improperly discharged by Roadway, the next issue to be determined by the Election Officer is the appropriate remedy to be imposed. Mr Ellis was a successful candidate for International Union Vice President, he was elected to that position in December, 1991. The election results were announced on December 13, 1991 and Mr Ellis was formally installed as an International Union Vice President on February 1, 1992.

Mr Ellis' term of office is five (5) years, the position he holds is a full-time position. The collective bargaining agreement between IBT and Roadway does not require that an employee be granted a leave of absence to serve in an International Union officer position. Indeed Mr Ellis has stated that but for his discharge, he would have resigned from his position with Roadway effective February 1, 1992, the date of his installation as an International Union officer. That resignation would have been an "honorable resignation", Mr Ellis' record would have indicated that he had resigned from Roadway, not that he had been discharged for cause. Given that the Election Officer has found that the discharge action was violative of the *Rules*, the Election Officer requires that the discharge action be rescinded and that a "honorable resignation" effective February 1, 1992 be substituted therefor.

Obviously since Mr Ellis would have resigned from his position as of February 1, 1992, he would be entitled to no pay from Roadway after that date. Accordingly, the Election Officer will order no back pay on or after February 1, 1992 as a remedy for this protest.

Prior to February, 1992, for the period from his discharge through December 13, 1992, Mr Ellis was actively engaged on a full-time basis in election-related campaign activities, including observing the International Union officer election ballot sorting and counting processes. Whether Mr Ellis would have so campaigned on a full-time basis but for the September 19, 1991 discharge is not the relevant factor. As a matter of fact, he did so campaign on a full-time basis. He was not gainfully employed during that period because he was engaged in campaigning on a full-time basis. No evidence was presented of any effort on his part to mitigate his damages during the period by obtaining alternate employment to his employment at Roadway. Rather Mr Ellis determined to utilize the time allowed him by his wrongful discharge from Roadway to campaign for International Union office, a campaign in which he was successful.

An improperly discharged employee is entitled to be made whole, that is to recover that which he was deprived as a result of the discharge. Back-pay is normally a portion of such make whole remedy. However only actual losses are recoverable. As the United States Supreme Court held in Phelps Dodge Corporation v NLRB, 313 US 177 (1941), 8 LRRM 439, 448 (1941) "Deduction should be made not only for actual earnings by

Leroy Ellis
June 16, 1992
Page 10

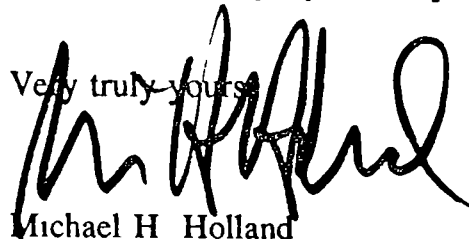
the worker, but also for losses which he willfully incurred " As the Supreme Court noted, those losses include a failure or refusal of the worker to seek or obtain new employment That early enunciated standard has been uniformly followed Back pay is to be "no more than the difference between what he could have earned by working for respondent if he had not been wrongfully discharged and what he could have earned elsewhere if he had used due diligence to secure other employment " NLRB v Pugh and Barr, Inc., ___ F2d ___, 33 LRRM 2006, 2007 (4thCir 1953) In this case, Mr Ellis was neither available for work nor did he undertake any activities to mitigate his damages by seeking interim employment Rather, he used his time to campaign, apparently a worth while endeavor given his and his slate's election success However, by so doing, Mr Ellis did not secure alternate or interim employment or exercise due diligence in attempting to do so Under these circumstances, a back pay remedy is not appropriate

Conclusion

In accordance with the foregoing, the Election Officer grants the instant protest Roadway is directed to expunge from Mr Ellis' personnel files any and all references to any discharge of him for cause on September 19, 1991 or any other date, and to substitute therefore an honorable resignation effective February 1, 1992 Within ten (10) days of the date of this decision, Roadway shall supply appropriate affidavits to the Election Officer demonstrating its compliance with this decision and the expungement of Mr Ellis' file and the substitution in that file of a resignation effective February 1, 1992

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

Leroy Ellis
June 16, 1992
Page 11

MHH/cb

cc Frederick B Lacey, Independent Administrator

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300 S. Ashland Avenue
Chicago, IL 60607

Roadway Express
2000 Lincoln Highway
Chicago Heights, IL 60141

Re: Election Office Case No. P-1028-LU705-CHI

Gentlemen

A protest was filed pursuant to Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules") by Robert E. Morris, a member of Local Union 705. Mr. Morris contends that he was discharged from his employment with Roadway Express in retaliation for his support for Ron Carey and the members of the Ron Carey Slate, and in particular, Leroy Ellis, a candidate for International Union Vice President on the Ron Carey Slate. The protest was investigated by Adjunct Regional Coordinator Deborah Schaaf

Much of the membership of Local 705 were active participants in all phases of the recently concluded 1991 IBT International Union officer election. Local 705 had a contested election for delegate and alternate delegates to the 1991 IBT International Union convention. The delegate and alternate delegate election was contested by two (2) slates of candidates, one committed to the nomination and election of Ron Carey as the General President of the IBT and the other headed by Local 705 Secretary-Treasurer Daniel Ligurotis. Mr. Ligurotis was nominated and sought election for the position of General Secretary-Treasurer of the IBT as a member of the Shea-Ligurotis Action Team while Leroy Ellis, another member of Local 705, ran for International Union Vice President on the Ron Carey Slate.

Many of the members of Local 705 were vociferous campaigners during all phases of the 1991 IBT International Union officer election, with one group of members first

supporting the delegate slate committed to Mr. Carey and then the Ron Carey Slate in opposition to a group first supporting Mr. Ligurotis' slate for delegates and alternate delegates and then the Shea-Ligurotis Action Team. A smaller number of members also actively campaigned for the Durham Unity Team slate during the general election phase. Over forty (40) protests were filed with the Election Officer by members of Local 705, including protests implicating Roadway Express.

Mr. Morris was not among these most active Local 705 campaign participants. Although Mr. Morris supported Ron Carey and the members of his slate, particularly Leroy Ellis, during the recently concluded 1991 IBT International Union officer election campaign, Mr. Morris does not appear to have been an active campaign participant prior to that time. Other than the instant protest, Mr. Morris has filed no protest with the Election Officer, nor was he implicated in any protest filed by any other Local 705 member.

During the recently concluded 1991 IBT International Union officer election campaign, Mr. Morris wore campaign buttons, discussed the campaign with other IBT members employed by Roadway and distributed literature outside the gates of various Roadway facilities. The Election Officer assumes that such open activities gave notice to Roadway of Mr. Morris' political preference in the election.

The Election Officer notes, however, that many other Local 705 members - including members employed by Roadway Express - also openly participated on behalf of Ron Carey and the Ron Carey Slate. The Election Officer assumes therefore that Roadway had notice of the political preferences of many of its employees, not just Mr. Morris.

Mr. Morris has been employed by Roadway for approximately six (6) years. Mr. Morris was terminated from his employment with Roadway on or about September 24, 1991 for gross abuse or misuse of company time. On that date, he was discovered sleeping during work time by a Roadway supervisory employee and immediately terminated by that supervisor. He had previously been disciplined for abuse or misuse of company time, his personnel file contains two warning letters he previously received within nine months of the date of his termination for misuse or abuse of company time.¹

Mr. Morris does not contest that he was sleeping on company work time on the date he was terminated. Neither does he contest the validity of the prior warning letters issued him for the offense of abusing or misusing work time. Rather, Mr. Morris alleges that discharge for misuse or abuse of company time is subject to the principles

¹ The earlier of the two prior disciplinary notices was issued in December, 1990.

of progressive discipline pursuant to the collective bargaining agreement between Roadway and the IBT, requiring at least one suspension prior to termination. While Mr. Morris was previously issued discipline in the form of warning letters for abuse of company time, he was never suspended for that offense. Thus, Mr. Morris contends that his termination was improper.

The collective bargaining agreement does not specifically delineate which offenses are subject to the precepts of progressive discipline, as opposed to those for which all the steps of progressive discipline are not a prerequisite to discharge. Rather, the issue of which offenses are or are not subject to the progressive disciplinary steps of warning and suspension prior to discharge is a matter of practice and interpretation of the collective bargaining agreement. Prior to Mr. Morris' discharge for gross abuse of company time, Roadway had previously discharged at least nine employees for abuse of company time where the employees had not been previously suspended for such offense. While such employees were ultimately reinstated during the grievance procedure - eight prior to arbitration and one with sixteen years of service by the arbitration panel - this prior practice establishes at least Roadway's position that abuse of company time is not an offense for which an employee must have been previously both issued a written warning and suspended prior to discharge.

In this case, Mr. Morris was admittedly sleeping during work time. He concedes that his actions subject him to discipline and merely contests the extent of the discipline. He claims that but for his support for Ron Carey and the Ron Carey Slate, his discipline would have been less severe than discharge. He also suggests that he was discharged in an effort by Roadway to bolster its position with respect to its earlier discharge of Leroy Ellis for the same offense. See Election Office Case No. P-916-LU705-CHI.

Mr. Ellis was terminated from Roadway on September 19, 1991 for the same offense for which Mr. Morris was terminated five (5) days later. Mr. Morris argues that Mr. Ellis' discharge - like his - was pretextual. For Roadway not to have discharged Mr. Morris for that which Mr. Ellis was discharged days earlier would have exposed the pretextual nature of Mr. Ellis' discharge. Mr. Morris claims in effect, that Roadway was forced to discharge him in order to sustain its discharge of Mr. Ellis.

While the Election Officer has determined this date that Mr. Ellis' discharge was in violation of the *Rules*, that decision was based upon evidence in the instant case. Unlike Mr. Morris, Mr. Ellis denied he was sleeping during work time. Also unlike Mr. Morris, Mr. Ellis had no prior discipline for this offense within nine (9) months of the date of his discharge and may never have been disciplined for abuse of time. Evidence was adduced concerning direct election related animus by Roadway against Mr. Ellis, as well as a concerted effort on the part of Roadway to discharge him. See

Robert E. Morris
June 16, 1992
Page 4

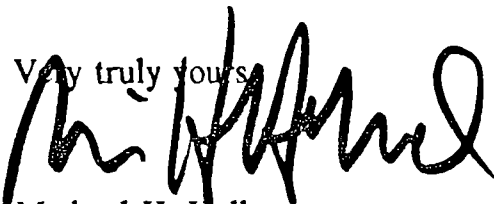
decision issued this date in Election Office Case No P-916-LU705-CHI No such evidence is present in this case

Mr Morris was previously guilty of the same offence for which he was discharged at least twice within the nine (9) month period prior to the date of his discharge and received discipline for those offenses Unlike Mr Ellis' case, no evidence has been adduced here of direct animus on the part of Roadway against Mr Morris Many other Roadway employees were far more active in the 1991 IBT International Union officer election campaign than Mr Morris without Roadway taking retaliatory action against them Prior to Mr Morris' and Mr Ellis' discharge, Roadway had previously discharged without following the tenets of progressive discipline at least nine (9) employees for abuse of company time With respect to Mr Morris' discharge, it was unnecessary for the company to establish a prior practice in so far as Roadway had the right to discharge for abuse of company time, despite the lack of prior suspension for such offence Under these circumstances, and given Mr Morris' prior disciplinary record, the evidence is insufficient to demonstrate that his termination resulted solely from improper motivation, that he would have not been discharged "but for" his campaign activities or Roadway's efforts to sustain its prior discharge of Leroy Ellis Similarly, there is an insufficient showing that the Union members of the arbitration panel discriminated against Mr Morris based on his election related activities Local 705 had many members who successfully grieved during the election period who supported Mr Carey and his slate in a fashion at least as active as Mr Morris

Accordingly, 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. Iolland

Robert E Morris
June 16, 1992
Page 5

MHH/cb

cc Frederick B Lacey, Independent Administrator

Julie E Hamos, Regional Coordinator

Richard Bennett, Esquire
Roadway Services, Inc
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