



OFFICE OF THE ELECTION OFFICER
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February 6, 1992

VIA UPS OVERNIGHT

Juan G. Hardin
3600-173rd Ct. #5A
Lansing, IL 60438

Roadway Express
2000 Lincoln Highway
Chicago Heights, IL 60141

William D. Joyce
Secretary-Treasurer
IBT Local Union 710
4217 S. Halsted St.
Chicago, IL 60609

Re: Election Office Case No. P-1010-LU710-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 Juan Hardin, an employee of Roadway Express ("*Roadway*") and a member of IBT Local Union 710. Mr. Hardin's original protest was filed with the Election Officer on October 22, 1991 and supplemented on October 28, 1991. In his filings Mr. Hardin alleges that he has been the subject of a pattern of harassment by Roadway because of his support and activity on behalf of IBT Central Conference Vice President candidate Leroy Ellis. This protest was investigated by Adjunct Regional Coordinator Deborah Schaaf.

Juan Hardin has been employed by Roadway as a driver since May, 1986 and is based at its Chicago Heights, Illinois facility. Mr. Hardin began campaigning on behalf of Leroy Ellis after Mr. Ellis' nomination at the 1991 IBT International Convention in June, 1991. Prior to that time Hardin was not actively engaged in campaign activities protected by the *Rules*.

In his protest, Mr. Hardin cites two instances of alleged harassment which occurred prior to the start of his campaign activity on behalf of Mr. Ellis. On January 25, 1991, he was issued a warning letter for absenteeism and on May 28, 1991, he was counseled by a driver-supervisor because of Roadway's view that Mr. Hardin was having a greater than usual number of breakdowns. A grievance was filed with respect to the incident which resulted in the warning letter for absenteeism. That grievance was heard by a Joint Area Grievance Committee on May 1, 1991 and denied. The counseling session was not a form of discipline and did not result in any subsequent discipline being imposed on Mr. Hardin.

On August 26, 1991, Roadway sent Hardin a "letter of investigation" stating that a motorist had complained that he was almost run off the road by a Roadway vehicle

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driven by Hardin. The letter of investigation is a common procedure that the employer uses to inform an employee that there have been allegations of misconduct involving the employee which the employer is investigating. The investigation uncovered no facts to support the allegations and Roadway determined not to take any further action. Mr. Hardin was informed of the outcome of the investigation.

On October 25, 1991, Hardin while en route to Chicago Heights with a load of freight experienced a mechanical breakdown stranding him on the side of the road. The weather was inclement with cold and rainy conditions. Mr. Hardin told a passing Roadway driver of the condition of his tractor and asked the driver to notify the Roadway driver-supervisor. A short time later another Roadway driver passed by and Hardin asked for a ride to the next service area. Hardin left the tractor unlocked and with the key in the ignition for the mechanic who he expected would be dispatched to repair the vehicle. When Hardin arrived at the service area and called his driver-supervisor, he was told that a mechanic had been dispatched to repair his vehicle and that he should return to, and remain with, his vehicle. Hardin did not receive any discipline for leaving his vehicle.

Hardin contends that it was unreasonable for Roadway to require him to remain with his vehicle for several hours given the inclement weather and the cold. Hardin further contends that drivers often leave their vehicle while waiting for repairs. Roadway alleges that it is their policy to require drivers to remain with disabled vehicles in order to assist in repairing the vehicle, to put the vehicle back in service when repaired and to insure that the vehicle and the freight is secure from theft. While the investigation revealed evidence of drivers leaving disabled vehicles, this occurred in situations where the driver was able to keep the vehicle under visual observation. The service area that Hardin went to was several miles from the breakdown.

On October 30, 1991, Roadway issued Hardin a letter of investigation concerning an allegation that on October 28, 1991 he backed his unit into a car at a stoplight causing minor damage to the car. Hardin denies the allegation and further contends that no traffic citation was issued as a result of the accident. On November 11, 1991, Roadway issued a warning letter stating that Hardin "failed to maintain proper control of your unit causing minor damage to another vehicle."

Under the National Master Freight Agreement, a warning letter remains in an employee's personnel file for nine months. The warning letter can be used by the employer as the basis for more severe disciplinary action if the employee commits the same or a similar offense during that period. After 9 months a warning letter cannot be used as the basis for imposing discipline on an employee.

Mr. Hardin filed a grievance regarding the November 11, 1991 warning letter.

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That grievance was heard by the Joint Area Grievance Committee. In accordance with their standard practice, after the panel deadlocked on the grievance they agreed to hold the grievance in abeyance for nine months. As a result, if Roadway disciplines Hardin again during this period, and uses the warning letter as a basis for the discipline or the penalty, the warning can be arbitrated. If Hardin prevails on his challenge to the original letter, the subsequent discipline will have to be modified. If Mr. Hardin is not disciplined during the nine months, the warning letter will automatically be removed from his file and his grievance challenging the letter will be moot.

Considering all of the allegations contained in Mr. Hardin's protest and all of the facts uncovered in the investigation of that protest, the Election Officer concludes that the actions of Roadway involving Mr. Hardin do not, either singularly or taken as a whole, constitute a pattern of harassment because of Mr. Hardin's election related activity. The first two actions of Roadway, the warning letter for alleged absenteeism and the counseling regarding driving practices, occurred prior to the time that Mr. Hardin became active in election related activities. Accordingly, they could not have been motivated by the employer's alleged hostility to Mr. Hardin's campaign activity. Requiring Hardin to remain with his disabled truck, even in inclement weather, appears to be reasonable and consistent with company policy. Finally, the issuance of the warning letter concerning the accident with the car on October 28, 1991 is also consistent with employer policy.² Moreover, the merits of this warning letter of November 11, 1991—the last act of alleged harassment—will either be the subject of arbitration or the letter will be removed from Hardin's personnel file after nine months in accordance with the requirements of the National Master Freight Agreement.

For the foregoing 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

¹ Hardin, of course, also has the opportunity to challenge the subsequent discipline on its merits in the grievance procedure.

² It should be emphasized that the employer did not impose any discipline in response to the allegation that Hardin tried to run someone off the road. When the employer's investigation revealed no evidence to support this allegation the matter was dismissed and Hardin was so informed. If the employer had been engaged in a policy of harassment, as Mr. Hardin contends, the employer could have issued a warning letter and forced Hardin to "clear his name" by going through the grievance procedure.