

OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
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Election Officer

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February 6, 1992

VIA UPS OVERNIGHT

Clifford T. Chentnik
RR #2, Box 499-3
Lake Geneva, WI 53147

Michael J. Reid
Terminal Manager
Roadway Express, Inc.
985 South Main Street
Janesville, WI 53546

Brendan F. Kaiser
Secretary-Treasurer
IBT Local Union 579
2214 Center Avenue
Janesville, WI 5346-8999

Re: Election Office Case No. P-1116-LU579-NCE

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 Clifford T. Chentnik, a member of IBT Local Union 579. In his protest Mr. Chentnik alleges that he was wrongfully issued a warning letter by his employer Roadway Express, Inc. ("Roadway") because of his failure to report for his assigned shift on November 11, 1991. Chentnik contends that the warning letter was issued in retaliation for his campaign activity on behalf of Ron Carey. This protest was investigated by Election Office Regional Coordinator Barbara Z. Quindel.

On Monday, November 11, 1991, Chentnik was scheduled to start a shift at the Roadway Janesville/Bailed Terminal at 9:50 am. On his way to work his car broke down and as a result he was unable to report for his shift. Chentnik called the terminal three times informing Roadway personnel that he would be unable to make it into work because of car trouble, before he was able to reach Terminal Manager Michael Reid. On his fourth attempt he reached Reid and informed him that he would not be in.

On November 18, 1991, Terminal Manager Reid issued a warning letter to Chentnik as a result of his absence on November 11, 1991. The warning letter was sent by certified mail to Chentnik, with a copy to Local Union 579. On November 21, 1991, at a meeting between Reid and Local Union 579 representatives, the warning letter issued to Chentnik, which had been received by the Local Union, was discussed. Reid described the three phone calls from Chentnik on the morning of November 11 informing Roadway personnel that he could not report in because of car trouble and stated that when he spoke to Chentnik all Chentnik said was that he would not be in and

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then hung up. Local Union Secretary-Treasurer Brendan Kaiser argued that the issuance of a warning letter to an employee who informed the employer that he could not report to work because of car trouble was totally unjustified and that the letter issued to Chentnik should be revoked. An extensive discussion ensued during which Reid argued that he did not believe that Chentnik really had car trouble. In response Kaiser argued that Chentnik should be given an opportunity to present evidence that his absence was due to car trouble.

After the conclusion of the meeting Reid approached Chentnik, who had not yet received the warning letter, and told him that he was doing a favor for a friend and then asked Chentnik if he had any receipts for the car trouble that he had on November 11. Reid did not inform Chentnik that a warning letter had issued or that if he produced receipts the letter would be withdrawn. Chentnik asked Reid who the "friend" was and Reid stated that it was Brendan Kaiser. Chentnik then told Reid that his breakdown could be verified by contacting the Walworth County Sheriff's department. Chentnik did not provide Reid with receipts for the break down and the warning letter was not withdrawn.

Chentnik received his copy of the warning letter on November 22, 1991. On November 23, 1991, Chentnik filed the instant protest alleging that other employees who are absent do not receive warning letters and that he was being discriminated against because of his campaign activity and suggesting that Mr. Kaiser had instigated or participated in his allegedly discriminatory treatment by Roadway. On November 26, 1991 Chentnik filed a grievance objecting to the warning letter. Chentnik provided Alternate Steward Barker with copies of the receipts for the towing of his car on November 11, 1991 in support of his grievance.

In his position statement filed with the Election Officer, dated November 26, 1991, Kaiser takes great exception with the allegations contained in Chentnik's November 23, 1991 protest. After reviewing his efforts on Chentnik's behalf at the November 21 meeting with Reid, including his view that Reid was unreasonable in issuing the warning letter, Kaiser concluded that the allegations of harassment--including the charges of harassment against him and the Local--contained in Chentnik's protest were "fraudulent" and politically motivated. Kaiser also urged that Chentnik be "reprimanded by the Election Officer" for filing the protest.

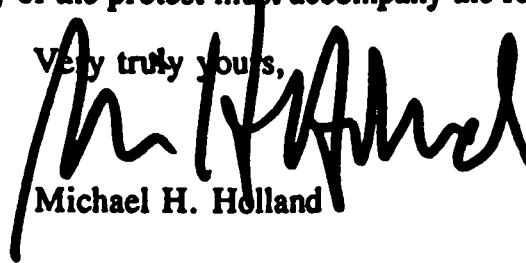
A hearing was held on Chentnik's grievance on December 20, 1991. Those present at the meeting included Chentnik, Kaiser, Reid and Barker. While Chentnik had previously provided receipts to Alternate Steward Barker concerning the November 11 car trouble. But prior to the time Barker was able to produce them at the hearing, Kaiser stated that the grievance would be withdrawn because Chentnik had failed to produce receipts to the company in response to Reid's November 21 request. The

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presented by someone other than Secretary-Treasurer Kaiser.

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,

A handwritten signature in black ink, appearing to read "Michael H. Holland". The signature is stylized and cursive.

Michael H. Holland

MHH/mjv

cc: Frederick B. Lacey, Independent Administrator, IBT

Barbara Zack Quindel, Regional Coordinator

IN RE:

CLIFFORD T. CHENTNIK

and

MICHAEL J. REID
ROADWAY EXPRESS, INC.

and

IBT LOCAL UNION NO. 579

92 - Elec. App. - 250 (SA)

DECISION OF THE
INDEPENDENT ADMINISTRATOR

This matter arises as an appeal from the Election Officer's decision in Case No. P-1116-LU579-NCE. 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; Barbara Quindel, a Regional Coordinator; Scott Soldon, an attorney on behalf of IBT Local 579; Brendan F. Kaiser, the Secretary-Treasurer of IBT Local 579; and Clifford T. Chentnik, the complainant. In addition, the Election Officer submitted a written Summary in accordance with Article XI, Section 1.a.(7) of the Rules for The IBT International Union Delegate and Officer Election ("Election Rules").

At issue is a complaint by Mr. Chentnik that his employer, Roadway Express, Inc. ("Roadway") wrongfully issued him a warning notice when he failed to report for his assigned shift on November 11, 1991. Mr. Chentnik alleges that Roadway was retaliating against him because of his support for Ron Carey for IBT General

President in the recent IBT election for International Officers. In addition, Mr. Chentnik complains that Mr. Kaiser, who opposed Mr. Carey's candidacy in the IBT election and who had also run against Mr. Chentnik for a Local Union office in the past, did not properly represent Mr. Chentnik in his grievance proceedings before Roadway.

The relevant facts establish that Mr. Chentnik is a member of IBT Local 579 and an employee of Roadway. As noted, Mr. Chentnik supported Mr. Carey for IBT General President in the recently completed International Officer elections. In the past, Mr. Chentnik had opposed Mr. Kaiser in Local Union elections. In addition, as also noted, Mr. Kaiser did not support Mr. Carey in the recently completed International elections.

On November 11, 1991, Mr. Chentnik was scheduled to start his shift at 9:50 a.m. Mr. Chentnik claims that his car broke down on the way to work making it impossible for him to report for his shift. Mr. Chentnik called the Roadway terminal four times to report his car trouble. On his fourth call, he reached Michael J. Reid, the Terminal Manager, and informed him that he would not be in that day. Mr. Reid claims that Mr. Chentnik did not explain the reason for his absence in that call.

Several days later, on November 18, 1991, Mr. Reid issued a warning letter to Mr. Chentnik for his absence from work on November 11, and mailed the letter to Mr. Chentnik. The warning letter remains in Mr. Chentnik's personnel file and could serve as a basis for more severe discipline in the future.

Mr. Chentnik did not receive the warning letter until November 22, 1991. The previous day, November 21, 1991, Mr. Kaiser defended Mr. Chentnik to Mr. Reid and complained that Roadway should not have issued the warning letter under the circumstances. Mr. Kaiser suggested that Mr. Chentnik should be given the opportunity to bring proof, such as towing receipts, that his car broke down. Mr. Reid took the position that any proof that Mr. Chentnik came forward with could easily be falsified and thus, he would not give it any weight. Mr. Kaiser argued that if Mr. Chentnik brought the proof in the very next day, it would be impossible for him to falsify the documents because he would not have time to create any false receipts.

That same day, Mr. Reid told Mr. Chentnik that he was "doing a favor for a friend" and would like Mr. Chentnik to produce receipts for the car trouble he had reported on November 11, 1991. When Mr. Chentnik asked who the "friend" was, Mr. Reid said it was Mr. Kaiser. Given the way Mr. Reid had approached the subject with Mr. Chentnik, Mr. Chentnik reacted with suspicion and refused to produce the receipts. In return, Mr. Reid refused to revoke the warning letter.

The day after Mr. Chentnik received his warning letter, November 23, 1991, he filed his election protest with the Election Officer alleging, inter alia, that Mr. Kaiser had participated in or instigated Roadway's actions.

A few days later, Mr. Chentnik also filed a grievance under the Collective Bargaining Agreement to challenge the warning

letter. In preparation for the grievance, Mr. Chentnik provided copies of his car-towing receipts to a Local Steward. At the grievance hearing Mr. Chentnik was represented by Mr. Kaiser. Mr. Kaiser decided not to present the towing receipts in defense of Mr. Chentnik and, instead, took the position that the grievance should be denied.

At the hearing before me on the election protest, Mr. Kaiser explained his actions by stating that he did not want to give Roadway the opportunity to attack Mr. Chentnik's credibility or the veracity of the receipts. Mr. Kaiser was especially concerned that Mr. Chentnik had delayed production of the receipts and this would add fuel to Mr. Reid's position that the receipts had been falsified. Mr. Kaiser thus decided that it would be best for Mr. Chentnik to have the warning letter stay on his record for the required six months and then he would be able to start with a clean slate. None of this, however, was explained to Mr. Chentnik at the time of his grievance hearing.

Article VIII, Section 10.a. of the Election Rules guarantees IBT members the right to participate in campaign activity without fear of retaliation reprisal. This includes the right to participate in the Election Rules protest procedure without fear of retaliation. See In Re: Petre, 91 - Elec. App. - 238 (SA) (December 6, 1991) (an IBT member who files a protest under the Election Rules enjoys a privilege protecting him from liability in a collateral action).

The Election Officer concluded that Mr. Reid's issuance of the warning letter was not based upon any animosity to Mr. Chentnik's political activity in the IBT election. This finding has not been challenged. What is before me is the Election Officer's finding that Mr. Kaiser decided not to defend Mr. Chentnik in the grievance proceeding because Mr. Chentnik had filed an Election Rules protest implicating Mr. Kaiser.

I affirm the Election Officer's conclusion, and in so doing, I reject Mr. Kaiser's post-hoc rationalization for not defending Mr. Chentnik at the grievance hearing.

It is clear, and Mr. Kaiser does not dispute this, that he was angered by the fact that Mr. Chentnik implicated him in his election protest. Mr. Kaiser was especially angered because originally he had defended Mr. Chentnik to Roadway, and Mr. Chentnik's protest suggests that Mr. Kaiser was acting in concert with Roadway.


Whether Mr. Kaiser was angered by Mr. Chentnik's election protest should not have impacted upon his obligation to vigorously defend Mr. Chentnik in the grievance proceeding. If Mr. Kaiser had a particular strategy that he wanted to follow at the grievance hearing, he should have discussed that strategy with Mr. Chentnik and received Mr. Chentnik's approval before pursuing any particular course.

Simply stated, what we have here is a decision by Mr. Kaiser not to defend Mr. Chentnik based upon Mr. Chentnik's filing of an Election Rules protest. As already held in In Re: Petre, hardships

should not be visited upon IBT members simply because they filed Election Rules protest. Mr. Kaiser had an obligation to vigorously defend Mr. Chentnik and he cannot abandon his obligation simply because he was angry over the protest that Mr. Chentnik filed.

Moreover, the remedy ordered by the Election Officer here is reasonable. The grievance proceeding is to be reopened. Roadway has already indicated its consent to do so. Once reopened, Mr. Chentnik would then have the opportunity to present his case to the grievance panel by a Union representative other than Mr. Kaiser. There is simply no rational basis why Mr. Kaiser would object to this remedy. While Mr. Kaiser may think he knows what is best for Mr. Chentnik, Mr. Chentnik must be given the opportunity to make his own informed decision regarding his own defense.

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



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

Dated: February 20, 1992