

OFFICE OF THE ELECTION SUPERVISOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: SEAN MASON,)	Protest Decision 2021 ESD 119
)	Issued: June 4, 2021
Protestor.)	OES Case No. P-121-032221-SO
<hr/>		

Sean Mason, member of Local Union 385, filed a pre-election protest pursuant to Article XIII, Section 2(b) of the Rules for the 2020-2021 IBT International Union Delegate and Officer Election (“Rules”). The protest alleged that the local union and the employer violated the Rules by colluding against the protestor to have him discharged from employment for dishonesty, as retaliation for his delegate candidacy.

Election Supervisor representative Dolores Hall investigated this protest.

Findings of Fact and Analysis

Local Union 385 elected 10 delegates and 3 alternate delegates to the IBT convention. Two full slates and 1 independent candidate competed for these positions. The OZ Teamsters United Local 385 slate was headed by Mason, the protestor here. The Teamsters Unite! Stronger Contracts slate was comprised in part by employees of the local union.

Protestor Mason, a long-term employee of UPS, was discharged from employment on February 9, 2021. We outlined the circumstances that resulted in his dismissal in our decision in *Mason*, 2021 ESD 82 (March 13, 2021), *viz.*

Mason was discharged on February 9. The basis for the discharge was fraudulent use of bereavement leave. A grievance has been filed and is scheduled for a joint panel hearing. According to Mason, his father, a Kansas resident, passed away on January 15. Mason told his supervisor he would be off work the week of January 25 to travel to Kansas. During that week, however, he called in sick on January 25, reported for work the next day, and traveled to Kansas later in the week, using the four days of paid bereavement leave permitted by the collective bargaining agreement, and returning on January 31 with his father’s cremains. Mason worked Monday through Friday, February 1 through 5, without incident, and also on Monday, February 8. The next day, February 9, he reported for his shift, was called into a meeting with three UPS managers that lasted the full day, and was discharged for dishonesty. Shop steward Steve Rush was present for the meeting.

A grievance protesting the dismissal was filed and processed to a joint labor-management panel hearing held in April 2021. The panel granted the grievance with partial backpay and benefits, stating the following:

Based on the facts presented in this particular case, discharge is reduced to a warning letter for failure to follow instruction. Grievant will return to work Monday, April 26, 2021. Grievant will be paid daily guarantee and Health, Welfare

June 4, 2021

& Pension payments from March 15 through April 23, 2021. This decision is non-referable and sets no precedent.

Under the terms of this settlement, Mason was granted 6 weeks of backpay and benefits but suffered a warning and loss of pay and benefits of approximately 4½ weeks.

The protest alleged that the discharge decision was motivated by retaliatory animus connected to Mason's candidacy. Proof of retaliation under the Rules requires three elements: 1) activity protected under the rules; 2) knowledge or constructive knowledge by the charged party of that protected activity; and 3) a showing that the protected activity was a motivating factor in the decision or the conduct at issue. *McNally*, 2016 ESD 237 (June 7, 2016) (employee violated the Rules by reporting alleged work misconduct of another employee to management, where the two employees were opposing candidates in the delegates election and the employee reporting the misconduct cited the delegate election as a basis for the report).

The existence of a reasonable independent basis for the decision or conduct at issue is a defense to an allegation of improper motivation so long as it is not shown to be a pretext. There can be no Rules violation if the decision maker would have taken the same action in the absence of the protective activity. *Pope*, 2000 EAD 39 (October 17, 2000); *Hoffa*, P857 (September 11, 1996), *aff'd*, 96 EAM 234 (September 19, 1996). *Miner*, 2005 ESD 1 (May 27, 2005); *Bundrant*, 2005 ESD 19 (October 25, 2005); *Zuckerman*, 2010 ESD 2 (June 7, 2010); *Lytte*, 2011 ESD 282 (June 23, 2011), *aff'd*, 2011 EAM 51 (June 30, 2011) (confiscation of business agent's union-issued laptop and then dismissal of the business agent constituted impermissible retaliation); *Bucalo*, 2015 ESD 42 (October 19, 2015), *aff'd*, 2015 EAM 2 (November 16, 2015) (protestor was suspended from office for usurping executive board authority, not for protected activity); *Matthews*, 2016 ESD 187 (May 4, 2016) (retaliation protest fails on causation element, where local union discipline of elected steward was decided before nominations meeting even though not announced until after). In other words, a retaliation case is analyzed under the Rules just as a discrimination case is under the NLRA. See generally *Wright Line*, 251 NLRB 1083 (1980), *enf'd*, 662 F.2d 899 (1st Cir. 1981), *cert. denied*, 455 U.S. 989 (1982); *Hardin*, *The Developing Labor Law* (3rd ed), pages 194-199. But see *Rushing*, P995 (November 5, 1996), *aff'd*, 96 EAM 283 (November 25, 1996) (the filing and prosecution of a well-founded suit for libel does not violate the rules even if commenced for a retaliatory purpose).

Under the UPS master agreement, the length of paid time off for bereavement depends in part on whether the employee attends the funeral or bereavement rite. Investigation showed, and the labor-management panel found, that management discharged Mason because it did not believe he traveled from Florida to attend his father's memorial service in Kansas. Management instructed Mason to produce proof of his travel. He initially declined, asserting that management had no right to make such a request. Management discharged him for declining to present the proof, concluding that it had the right to such information and that Mason's refusal to produce it was evidence that it did not exist. During the grievance procedure, Mason produced proof of travel to Kansas for the rite, demonstrating that he had not been dishonest in asserting his claim for bereavement pay. The panel vindicated Mason's entitlement to the bereavement pay but faulted him for failing to follow management's instructions to produce proof of entitlement promptly.

Mason, 2021 ESD 119

June 4, 2021

Investigation also showed that management was aware of Mason's delegate candidacy. However, we find nothing to connect management's decision to dismiss Mason to that protected activity. Further, we find no evidence of collusion between management and the local union to impose the dismissal or in the processing of the grievance protesting that dismissal.

On these facts, we find insufficient evidence to demonstrate that the dismissal was in retaliation for Mason's protected activity. Accordingly, we DENY the protest.

Any interested party not satisfied with this determination may request a hearing before the Election Appeals Master within two (2) working days of receipt of this decision. Any party requesting a hearing must comply with the requirements of Article XIII, Section 2(i). All parties are reminded that, absent extraordinary circumstances, no party may rely in any such appeal upon evidence that was not presented to the Office of the Election Supervisor. Requests for a hearing shall be made in writing, shall specify the basis for the appeal, and shall be served upon:

Barbara Jones
Election Appeals Master
IBTappealsmaster@bracewell.com

Copies of the request for hearing must be served upon the parties, as well as upon the Election Supervisor for the International Brotherhood of Teamsters, all within the time prescribed above. Service may be accomplished by email, using the "reply all" function on the email by which the party received this decision. A copy of the protest must accompany the request for hearing.

Richard W. Mark
Election Supervisor

cc: Barbara Jones
2021 ESD 119

Mason, 2021 ESD 119
June 4, 2021

DISTRIBUTION LIST (BY EMAIL UNLESS NOTED):

Bradley T. Raymond, General Counsel
International Brotherhood of Teamsters
braymond@teamster.org

Edward Gleason
egleason@gleasonlawdc.com

Patrick Szymanski
szymanski@me.com

Will Bloom
wbloom@dsgchicago.com

Tom Geoghegan
tgeoghegan@dsgchicago.com

Rob Colone
rmcolone@hotmail.com

Barbara Harvey
blmharvey@sbcglobal.net

Kevin Moore
Mooregp2021@gmail.com

F.C. "Chris" Silvera
fitzverity@aol.com

Fred Zuckerman
fredzuckerman@aol.com

Ken Paff
Teamsters for a Democratic Union
ken@tdu.org

Sean Mason
Seanlmason16@gmail.com

Teamsters Local Union 385
Michael McElmury, Trustee
mmcelmury@teamster.org

Randy Collins
rcollins@local385.org

Dolores Hall
dhall@ibtvote.org

Jeffrey Ellison
EllisonEsq@gmail.com