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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

V. N. Meekins and L. A. Koenig,)	
Plaintiffs,)	
v.)	CA 89-0627-R
United Transportation Union,)	
Defendant.)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This case is before the Court for resolution after a trial to the bench on the plaintiffs' claim that the United Transportation Union (UTU) breached its duty of fair representation under the Railway Labor Act, 45 U.S.C. §§ 151-188. Pursuant to Rule 52 of the Federal Rules of Civil Procedure, and on the basis of all the evidence admitted at trial or contained in the parties' exhibits, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. On December 12, 1989, this Court entered an Order denying the defendant's motion to dismiss pursuant to Rule 12(b) of the Federal Rules of Civil Procedure. The defendant's motion was based on its assertions that the plaintiffs' claims were barred by the applicable statute of limitations and by the doctrine of res judicata. The facts material to the defendant's motion to dismiss were not disputed, so the Court treated that motion as one for summary judgment. Because the UTU did not submit any new probative

evidence on these defenses during the trial of this matter, the Court incorporates by reference the findings of its December 12, 1989 Order as Findings of Fact here.

2. On February 9, 1989, this Court entered a Final Judgment Order and an accompanying Findings of Fact and Conclusions of Law in Dement, et al. v. United Transportation Union, Civil Action No. 86-715-R, which was not appealed. The UTU was the sole remaining defendant at the time of final judgment in CA 86-715, and is the only defendant to the present cause of action. Further, the plaintiffs in CA 86-715 included the two plaintiffs currently before the Court. Because of the identity of parties and of many of the factual issues involved in these two cases, and based on the doctrine of collateral estoppel, the Court incorporates by reference the Findings of Fact it made in CA 86-715 as Findings of Fact here.

3. Plaintiffs V. N. Meekins and L. A. Koenig were employees of the Seaboard Coast Line Railroad Company and members of the UTU at the time this cause of action arose. (Testimony of Meekins and Koenig)

4. After this Court entered judgment in favor of the plaintiffs in CA 86-714, Meekins and Koenig believed that the UTU would attempt to revise the 1979 Crew Consist Agreement to include them as "protected employees." The plaintiffs requested that representatives from their UTU local pursue their continuing claims for short crew and productivity pay for their work at the Acca Yard. (Testimony of Hines, Meekins and Koenig; Plaintiffs'

Exhibits 1, 3, 5, and 6)

5. On April 4, 1989, James A. Chapman, III, the chairman of the plaintiff's UTU local, wrote to Fred A. Hardin, the International President of the UTU, requesting relief for their continuing claims. (Plaintiffs' Exhibit 1) Chapman's expectation in writing that letter was that Hardin would use his power to attempt to resolve the continuing controversy of payment of former Seaboard employees working at the Acca Yard. (Testimony of Chapman)

6. On April 11, 1989, Clinton J. Miller, III, the Assistant General Counsel for the UTU, wrote back to Chapman stating that this Court's Order dated February 9, 1989 was the only relief the plaintiffs would receive, specifically stating that they would receive no short-crew allowance or productivity trust fund contributions for their work at the Acca Yard. (Plaintiffs' Exhibit 2) Before that time, the plaintiffs believed that the UTU would respond to this Court's Final Judgment Order in CA 86-715 by attempting to renegotiate the 1979 Crew Consist Agreement to include them within the "protected class" of employees. (Testimony of Meekins and Koenig)

7. In support of its Final Judgment Order entered in CA 86-715, this Court found: "The RF&P [the Richmond, Fredericksburg & Potomac Railroad Company] did not object to permitting Seaboard employees to receive the short crew allowance and a share of the Productivity Trust Fund." (February 9, 1989 Findings of Fact and Conclusions of Law, at 4, para. 12) No evidence has been presented

to the Court indicating that the RF&P's position has changed on this matter. Nevertheless, the UTU did not use its authority to attempt to have the plaintiffs included in the benefits offered by the 1979 Crew Consist Agreement subsequent to entry of this Court's Final Judgment Order in CA 86-715. (Id. at 4, para. 15)

8. Plaintiff V. N. Meekins worked at the Acca Yard a total of 290 days between February 7, 1989 and April 23, 1990. Had he been entitled to the benefits specified in the 1979 Crew Consist Agreement, he would have received a short crew allowance of \$2,296.80, and productivity contributions totalling \$5,474.24, for a total additional compensation of \$7,771.04. Plaintiff L. A. Koenig worked at the Acca Yard a total of 262 days between February 7, 1989 and April 23, 1990. Had he been entitled to the benefits specified in the 1979 Crew Consist Agreement, he would have received a short crew allowance of \$2,075.04, and productivity contributions totalling \$4,945.70, for a total additional compensation of \$7,020.74. (Testimony of Dement; Plaintiffs' Exhibit Received in Open Court)

CONCLUSIONS OF LAW

1. For the reasons described in Paragraph 1 of the Findings of Fact above, the Court incorporates by reference the legal conclusions of its December 12, 1989 Order as Conclusions of Law here.

2. For the reasons described in Paragraph 2 of the Findings of Fact above, the Court incorporates by reference the Conclusions of Law made in CA 86-715 that were entered on February 9, 1989, as

Conclusions of Law here.

3. The plaintiffs had a reasonable expectation that the defendant would respond to this Court's Order of February 9, 1989 by attempting to have them added to the list of workers entitled to the short crew allowance and productivity contributions. They could not be certain that the UTU would continue to refuse to do so until April 11, 1989, when they received the official response to their letter of April 4, 1989. Thus, their cause of action accrued on April 11, 1989, and this lawsuit was filed within the six months allowed by the applicable statute of limitations.

4. The Court could not have compensated the plaintiffs for their current claim in CA 86-715 because the relief requested now would have been wholly speculative at that time. The relief granted to the plaintiffs now is based on a separate cause of action that did not accrue until after final judgment was entered in their prior case. Therefore, the Court finds that this suit involves a separate transaction from that involved in CA 86-715, that the plaintiffs have not split their cause of action in bringing this suit, and that this action is not barred by the doctrine of res judicata.

5. After this Court entered the Final Judgment Order in CA 86-715 on February 9, 1989, the plaintiffs renewed their request that the UTU seek to include them within the class entitled to increased compensation under its agreements with the RF&P. Because the UTU knew at that point that its purported legal defenses of its refusal to seek to include the plaintiffs were without merit, it

had a duty to act on the plaintiffs' renewed grievance. As was the case in the prior litigation between these parties, the plaintiffs' renewed request is best characterized as one for their union to process a grievance based on past agreements. (February 9, 1989 Findings of Fact and Conclusions of Law, at 6, para. 6).

6. A union breaches the duty of fair representation it owes to its members when it arbitrarily or perfunctorily processes a member's grievance. DelCostello v. Teamsters, 462 U.S. 151 (1983).

7. Although the RF&P remained unopposed to including the plaintiffs within the class of workers entitled to increased compensation, the UTU refused to attempt to have them added to the list of workers entitled to those benefits. The UTU presented no evidence that it had legitimate reasons for this refusal. This constitutes a second instance of the UTU arbitrarily and perfunctorily processing a grievance lodged by the plaintiffs, which is another breach of the duty of fair representation it owes to them.

8. Therefore, the Court finds in favor of the plaintiffs, and assesses as damages the lost wages from the short crew allowance and the productivity fund as shown in Paragraph 8 of the Findings of Fact above.

9. In response to the plaintiffs' prayer for "such other and further relief that may be deemed just and proper," and in recognition of the continuing nature of the plaintiffs' complaint and the problems created by perpetually recurring litigation, the Court also ORDERS as follows: For so long as the UTU continues to

refuse to seek to include the plaintiffs in the short crew and productivity fund benefits provided to others working at the Acca Yard, the UTU shall calculate and pay over to the plaintiffs monthly the amount they would be entitled to if they were included in those benefits.

10. Because the Railway Labor Act does not authorize awards of costs and attorneys' fees, the Court awards no such relief.

It is so ORDERED.

Let the Clerk send a copy of these Findings of Fact and Conclusions of Law to all counsel of record.

DATE

UNITED STATES DISTRICT JUDGE