

INVESTIGATIONS OFFICER,	:	
	:	
Claimant,	:	DECISION OF
	:	THE INDEPENDENT
v.	:	ADMINISTRATOR
	:	
GORDON ROBERTS,	:	
	:	
Respondent.	:	

This matter concerns a charge filed by the Investigations Officer, Charles M. Carberry, against Gordon Roberts ("Roberts"), former Trustee and Shop Steward, and current member of IBT Local 843 in Springfield, New Jersey. A hearing on this charge commenced before me on April 20, 1992. On that day, Roberts was present without counsel for the first portion of the hearing but did not return after the luncheon recess. Nonetheless, evidence and testimony was received, both for and against Roberts, on that day. I then continued the hearing until April 23, 1992, to give Mr. Roberts the opportunity to appear with counsel, which he did.

Having reviewed the evidence, the hearing testimony, and the Investigations Officer's post-hearing submission,¹ I find that the Investigations Officer has met his just cause burden of proving the

¹ At the close of the April 23, 1992, hearing, a post-hearing briefing schedule was set, according to which both the Investigations Officer and Roberts' counsel were directed to submit post-hearing memoranda. The Investigations Officer submitted his memorandum on schedule. Although Roberts' counsel was given extensions, no post-hearing submission was ever received on Roberts' behalf.

charges against Roberts by a fair preponderance of the evidence. See United States v. IBT, 754 F. Supp. 333, 337-338 (S.D.N.Y. 1990) ("[T]he Investigations Officer must establish just cause at disciplinary hearings by a fair preponderance of evidence.").

THE CHARGE

The Investigations Officer charged Roberts as follows:

While an officer of Local 843 [Roberts] embezzled and converted to [his] own use, approximately \$1,200 of the funds of Local 843, in violation of the IBT Constitution, Article XIX, Section 6(b)(3)² and [his] fiduciary duty to the members.

TO WIT: In March 1991 [Roberts] knowingly submitted a "Trip Expense Report" to the Local 843 which included a receipt for a hotel bill in Columbus, Ohio in the approximate amount of \$671. This hotel bill was charged to the American Express account of Teamster Local 843 and Local 843 paid this bill. Nevertheless, [he] fraudulently caused Local 843 to give [him] approximately \$671 as reimbursement for this hotel bill. Therefore, [he] caused Local 843 to pay this hotel bill twice.

In March 1991 [Roberts] also knowingly submitted with [his] "Trip Expense Report" a receipt for a rental car in the amount of approximately \$396. The charge for this rental car was billed to Local 843's American Express Card and Local 843 paid this rental car bill. Nevertheless, [he] fraudulently caused Local 843 to give [him] approximately \$396 as reimbursement for this rental car bill. Therefore, [he] caused Local 843 to pay this rental car bill twice.

In July 1991 [Roberts] knowingly incurred or permitted to be incurred unauthorized charges on the American Express Account or Teamster Local 843 in the approximate amount of \$210 during [his] vacation in Cancun, Mexico. [His] use of Local 843's credit card in this manner was unauthorized, unrelated to the Local's business and of no benefit to the members of Local 843.

² Article XIX, Section 6(b)(3) prohibits "embezzlement of Union funds or property" by IBT officers and members.

BACKGROUND

Roberts has been an IBT member, a member of IBT Local 843 and an employee of Anheuser-Busch since 1954. IO-2 at p. 4;³ T44-4 to 6.⁴ In the "early part" of 1991 until November 1991, Roberts served on the Local 843's Executive Board as a "replacement" Trustee.⁵ IO-2 at pp. 4-5. In 1991, Roberts also served as a Shop Steward. T8-12 to 17.

The Cancun Trip

In July 1991, while a Local 843 Shop Steward and Trustee, Roberts took a trip to Cancun, Mexico, with his fiancée. IO-2 at p. 43-44. During that trip, Roberts charged \$210.38 in personal expenses on his Local 843 American Express card. Id.; T40-13 to 19; IO-6 (American Express item nos. 14, 15 and 16). At the hearing before me, Roberts admitted that he used his union credit card "to pay for items [he] should not have used that credit card for." T40-16 to 19.

Soon after Roberts' return from Cancun, Giacumbo sent Roberts two letters confirming that Roberts was to reimburse the Local for

³ The Investigations Officer's exhibits are referred to as "IO," followed by the exhibit number and page reference, if appropriate.

⁴ Unless specified otherwise, all transcript references are to the second day (April 23, 1992) of the hearing before me. The citation refers to the transcript page number followed by the line number. In this instance, "T44-4 to 6" refers to page 44, lines 4 through 6.

⁵ During his testimony before me on April 20, 1992, Local 843's President, Gene Giacumbo ("Giacumbo"), identified Roberts' Executive Board position as that of Trustee. See April 20, 1992, transcript, p. 96 at line 24.

the unauthorized charges. IO-8 (August 24, 1991, letter); IO-9 (September 23, 1991, letter). See also, T42-12 to T43-5. The first letter from Giacumbo reveals that Roberts had told Giacumbo that he had to "resort[] to use of the credit card [while in Cancun] in an emergency situation" At his sworn deposition before the Investigations Officer in December of 1991, however, Roberts testified that his fiancée had simply inadvertently used his credit card. There was no suggestion of any emergency. IO-2 at p. 44. Roberts did not reimburse the Local until December 16, 1991, some five months after he incurred the unauthorized expenses in Cancun. Roberts' reimbursement, however, came on the heels of his having been served with a notice for his in-person sworn examination by the Investigations Officer. T41-15 to T42-4; IO-12 (Notice of Sworn Examination); IO-14 (Robert's reimbursement check).

The Columbus Trip

In March of 1991, while Shop Steward and Trustee, Roberts travelled to Columbus, Ohio, on Union business. T8-12 to 20. After his return, Local 843 gave Roberts a \$1,207.18 check to reimburse him for his Columbus trip expenses. IO-5; T33-12 to T34-2. When Roberts received the check for the Columbus trip, he knew that the Local was overpaying him by approximately \$1,000.

After the Investigations Officer took Roberts' deposition, at which Roberts was asked questions with respect to his Columbus trip expenses (see e.g., IO-2 at p. 40), Roberts reimbursed the Local

\$1,087.71 for the overpayment. IO-15 (Robert's reimbursement check); T58-20 to T61-16.

THE MERITS

It is now settled that to sustain a charge of embezzlement, the Investigations Officer must prove that a respondent acted with "fraudulent intent to deprive the Union of its funds." United States v. Welch, 728 F.2d 1113, 1118 (8th Cir. 1989). See also Investigations Officer v. Vitale, Decision of the Independent Administrator, at pp. 9-10 (December 18, 1990), aff'd United States v. IBT, 775 F. Supp. 90 (S.D.N.Y. 1991), aff'd in relevant part, No. 91-6154, slip op. at 4 (2d Cir. October 31, 1991). It is also settled that it is permissible to infer, from circumstantial evidence, the existence of intent. Vitale, Decision of the Independent Administrator at p. 11, citing, United States v. Local 560, 780 F.2d 267, 284 (3d Cir. 1985). When, as here, we are faced with a late reimbursement, "the timing" of the reimbursement may be considered "evidence of . . . intent to deprive [a] Local of its funds." Investigations Officer v. Baccaro, Decision of the Independent Administrator (June 23, 1992) at p. 6.

The Cancun Trip

Roberts' fraudulent intent to deprive Local 843 of the \$210.38 in personal expenses he charged on his Local's credit card while in Cancun, Mexico, is established by several factors. First, the Cancun charges were clearly unauthorized. Second, Roberts, in an

obvious attempt to conceal the circumstances surrounding the charges, misrepresented to Giacumbo that the charges were incurred in an emergency situation. This, however, was not the case. Roberts' fiancée simply inadvertently used Roberts' credit card during the trip. Third, and perhaps most significantly, despite two letters regarding reimbursement written by the Local's President one month and two months after the trip, Roberts did not reimburse Local 843 until five months had gone by and only after he became aware that he was the subject of the Investigation Officer's investigation.

Roberts contends that "two things . . . caused the delay in payment." T41-3 to 4. First, Roberts stated that he had "tried to get those charges transferred to his Visa card. T41-4 to 5. Second, Roberts stated that the American Express bill was "written in pesos, so [he] had to wait until [he] heard from American Express, until it was broken down in dollars." T41-11 to 14.

Roberts' attempt to transfer the indebtedness to his Visa card does not provide justification for his delay in making reimbursement. If Roberts was concerned with reimbursing the Local in one lump sum, and I must assume that this concern was behind his attempt to get the charges on his Visa card, he could have offered to reimburse the Local in installments. No such offer was ever made. Rather, Roberts sat idly by until summoned by the Investigations Officer to give his deposition.

Roberts' second rationale, that he was waiting for the conversion from pesos to dollars, is wholly unsupported by the

record. Not only did the Local's August 4, 1991, American Express statement reflect the charges in dollars (IO-6), Giacumbo's August 24, 1991, letter to Roberts clearly stated that the amount owing was \$210.38. IO-8.

Thus, I conclude that but for Roberts having been made the subject of an investigation by the Investigations Officer, Roberts would not have reimbursed the Local for his Cancun-related expenses. Roberts' "wait and see" approach amounts to embezzlement, plain and simple. As stated in Investigations Officer v. Baccaro, Decision of the Independent Administrator at p. 6:

To find otherwise would be to invite an intolerable situation where those committing financial wrongdoing would simply wait and see if they are discovered before deciding whether to make restitution.

The Columbus Trip

Following the same analysis, Roberts is also guilty of embezzling the approximately \$1,000 overpayment from the Columbus trip expense check he received from the Local. Roberts did not make any effort to repay the Local until nine months had elapsed, and only after being questioned under oath by the Investigations Officer regarding his Columbus trip expenses.

Roberts testified before me that when he received the Columbus trip expense check he realized that it contained an overpayment and he approached Giacumbo on it. Roberts also testified that Giacumbo had told him before he cashed the Columbus trip expense check, "don't worry about it, we'll straighten it out later." T37-6 to

T55-12. Once again, Roberts has not presented himself as a credible witness.

Giacumbo's sworn testimony, both at the hearing before me and during his December 1991 deposition before the Investigations Officer, contradicts Roberts' testimony. At his deposition, Giacumbo stated that he had first become aware of Roberts' overpayment in late December 1991 (IO-20 at pp. 94-95), some nine months after Roberts had received the Columbus trip expense check. In addition, at the hearing before me, Giacumbo set forth his version of events (see, the April 20, 1992, transcript at pp. 95-114) and never testified that he and Roberts had spoken about the overpayment before Roberts cashed the check. See T38-7 to 22.

Conclusion

Accordingly, I find that Roberts acted with fraudulent intent to deprive Local 843 of its funds by waiting until after it was clear that he was under scrutiny by the Investigations Officer to reimburse the Local for the expenses incurred during both the Cancun trip and the Columbus trip.

THE PENALTY TO BE IMPOSED

Every member of a Local Union is obligated to take special care when handling the Local's funds. As a Shop Steward and Trustee, Roberts had a heightened responsibility. See, e.g., Investigations Officer v. Morris and McNeil, Decision of the Independent Administrator (June 14, 1991) at p. 26 ("Officers of

Local Unions must understand that their Local Union coffers are not their personal piggy banks that can be cracked open whenever it serves their personal benefit. The Local's assets belong to the Local's members. The Local's officers are mere trustees of those assets."), aff'd, United States v. IBT, 777 F. Supp. 1130 (S.D.N.Y. 1991); IO-2 at p. 4 (as Trustee, Roberts was responsible for reviewing the financial books and records of the Local).

Roberts breached his fiduciary obligation. Therefore, it is appropriate that Roberts not be permitted to act in any capacity that vests him with responsibility in managing or overseeing members' funds. Accordingly, Roberts is permanently prohibited from holding any office in IBT Local 843 or any other IBT-affiliated entity. In addition, Roberts shall never again be entitled to use Local 843's credit card or have one issued in his name. Similarly, Roberts shall never be entitled to use a credit card from any other IBT-affiliated entity or have any such credit card issued in his name.

However, given that Roberts has been a IBT member for almost forty years, and there is no evidence of any other wrongdoing than that which is before me, I shall permit him to maintain his IBT membership, so that he can maintain his employment with Anheuser-Busch.

BENEFITS

As is always my practice, I provided Roberts the opportunity to submit a schedule of his benefits as well as a memorandum on the

issues raised in imposing sanctions touching upon those benefits.⁶ Roberts, however, did not supply me with any submission regarding his benefits. At the hearing before me, Giacumbo explained that pursuant to the collective bargaining agreement between Anheuser-Busch (Roberts' employer) and Local 843, Anheuser-Busch is responsible for Local 843's members Pension Plan, Health and Welfare Plan, Dental Plan and Stock Participation Plan. April 20, 1992, Transcript at p. 11.

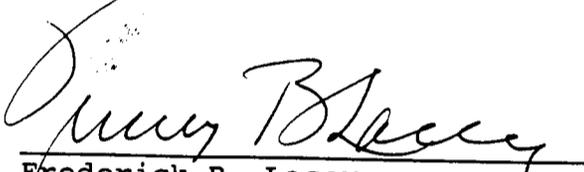
Given my ruling here, I will not alienate any of Roberts' benefits that he receives from his employer, Anheuser-Busch. However, any contributions made by Local 843 or any other IBT-affiliated entity to sustain any benefits on Roberts' behalf in connection with his having served as a Local 843 Shop Steward and Trustee must terminate.

VOLUNTARY STAY

While I would ordinarily stay the imposition of the penalties imposed herein pending Judge Edelstein's review of this Decision, I will not do so here because it is my understanding that Anheuser-Busch is holding an election on July 15, 1992, for the position of Shop Steward. By immediately implementing Roberts' disability on holding office, it will be clear to all concerned that Roberts is

⁶ My authority to impose sanctions on a respondent's employee benefits is now well settled. See Investigations Officer v. Senese et al., Supplemental Decision of the Independent Administrator (November 29, 1990), aff'd, United States v. IBT, 753 F. Supp. 1181 (S.D.N.Y. 1990), aff'd, 941 F. 2d 1292 (2d Cir. 1991). See also, Guidry v. Sheet Metal Workers National Pension Fund, 1210 S. Ct. 680 (1990).

not eligible to run in the upcoming election. Nonetheless, I shall submit this Decision to Judge Edelstein for his review by way of Application.


Frederick B. Lacey
Independent Administrator

Dated: July 9, 1992