

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	88 CIV. 4486 (LAP)
	:	
v.	:	APPLICATION 113 OF THE
	:	INDEPENDENT REVIEW BOARD
	:	-- AGREEMENT BETWEEN THE
INTERNATIONAL BROTHERHOOD OF	:	INDEPENDENT REVIEW BOARD
TEAMSTERS, <u>et al.</u>	:	AND CARLOW SCALF
	:	
Defendants.	:	

Pursuant to Paragraph O. of the Rules and Procedures for Operation of the Independent Review Board for the International Brotherhood of Teamsters ("IRB Rules"), the Independent Review Board ("IRB") files this Application submitting the Agreement with Carlow Scalf ("Scalf"), the Executive Assistant to the IBT General President in Washington, DC. The IRB has agreed to the Agreement and it is submitted to Your Honor for review and, if appropriate, to be entered as an order.

As a background, on October 22, 2003, the IRB requested IBT records concerning housing and car allowances for IBT employees, and specifically any General Executive Board documents concerning housing allowances. Based upon a review of the records submitted to the IRB, the IRB learned that Scalf had forms on file which declared that he was a Michigan resident. As a Michigan resident

he would be eligible for a housing allowance and expenses relating to his duties in the Washington, DC, office. However, the IRB learned that Scalf from about March 2001 through January 2004 caused the IBT to pay more than \$65,000 in housing expenses when he did not have a principal place of residence out of state as the General Executive Board approval for his housing expenses required. In February 2004 Scalf reimbursed \$69,500 to the IBT in connection with housing payments the IBT paid on his behalf. The IRB informed Scalf through his counsel that it planned to recommend a charge against him for providing inaccurate or incomplete information on residence forms he submitted to the IBT. Before the IRB could issue a report on this matter, Scalf signed an Agreement seeking to resolve the matter. The Agreement is enclosed.

This Application complies with former United States District Court Judge David N. Edelstein's February 2, 1994, Order stating that all IRB Agreements shall "contain a paragraph informing signatories that the agreement will be reviewed and may be rejected." The Agreement reached between the IRB and Scalf satisfies this procedure. One "backed" original and one copy of an Acknowledgment of Receipt are enclosed with this Application for execution by Your Honor.

Effective January 12, 2005, the first business day after the IRB agreed to the Agreement, Carlow Scalf has agreed to serve a sixty day suspension from all IBT-affiliated positions, including the Executive Assistant position, except IBT membership. From

the effective date forward, he has further agreed for a period of sixty days not to:

(1) hold any position with the IBT or any employment, office, position or consulting or similar relationship, whether paid or unpaid, with the IBT and any other IBT Entities;

(2) accept any salary, allowance, fee or compensation of any kind, except that he may receive any vested pension benefits; in addition, after the expiration of the suspension period, he will not take or accept any compensation or remuneration in money or other things of value to replace the compensation or benefits lost pursuant to this Agreement;

(3) accept any contributions from the IBT and all other IBT entities on his behalf to any pension, health and welfare, severance or other benefit fund;

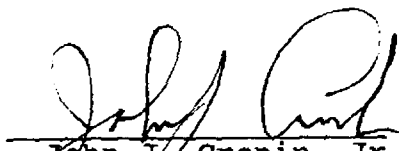
(4) receive any gratuities, severance payments or gifts of any kind whatsoever from the IBT and all other IBT Entities; and

(5) participate in any manner in any of the activities or affairs of the IBT or any other IBT Entities.

We have found the Agreement serves to resolve the matter in a fair and equitable manner.

Therefore, we respectfully request that Your Honor execute the Agreement on the line provided. This will, in effect, serve to have the Agreement "so ordered" by the Court. Thereafter, it is respectfully requested that a member of Your Honor's staff file the fully executed original Agreement with the Clerk and transmit to me a confirmed copy of the Agreement as "so ordered."

By:


John J. Cronin, Jr.
Administrator

Dated: January 11, 2005

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,      :
                                :
                                :      88 Civ. 4486 (LAP)
                                :
                                :      MEMORANDUM AND ORDER
                                :
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INTERNATIONAL BROTHERHOOD OF  :
TEAMSTERS,                    :
-----X
APPLICATION 113: Carlow Scalf :
                                :
                                :      Defendant.
                                :
-----X

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LORETTA A. PRESKA, United States District Judge:

By Application 113, the Independent Review Board ("IRB") submitted a compromise agreement reached between the IRB and International Brotherhood of Teamsters ("IBT") member Carlow Scalf, then serving as Executive Assistant to General President Hoffa of the IBT. Application 113 disclosed that after various records had been required from Scalf concerning housing and car allowances for IBT employees and after the IRB learned that Scalf from about March 2001 through January 2004 caused the IBT to pay over \$65,000 in housing expenses on his behalf when he did not have a principal place of residence out of state as the General Executive Board approval for his housing expenses required, Scalf reimbursed \$69,500 to the IBT. It also disclosed that after the IRB informed Scalf that it planned to recommend a charge against him for providing inaccurate or incomplete information on residence forms he submitted to

the IBT, Scalf signed the compromise agreement resolving the matter principally by the repayment and a 60-day suspension from the IBT.

By letter dated January 14, 2005, Teamsters for a Democratic Union ("TDU") objected to the compromise agreement, raising various procedural issues and arguing on the merits that a more severe sanction was required. By letter dated March 11, 2005, the IBT informed the IRB that General President Hoffa had rescinded Scalf's appointment as his Executive Assistant, and, accordingly, Mr. Scalf's employment with the IBT terminated effective March 12, 2005. Mr. Scalf, the IBT and the Government have also submitted letter briefs with respect to Application 113.

First, the TDU lacks standing to object to Application 113. TDU is "a caucus of rank-and-file IBT members concerned about corruption, lack of leadership, accountability to the membership, undemocratic procedures, unfair, ineffective and even ill-intentional bargaining and grievance adjustment strategies within the Union." United States v. IBT (TDU/TRF), 968 F.2d 1506, 1508 (2d Cir. 1992) (internal quotations omitted). As a nonparty to the Consent Decree and nonparty to the IRB's disciplinary proceeding against Scalf, TDU lacks standing to object to a disciplinary application of the IRB. See, e.g., United States v. IBT, 138 F.2d 50, 51 (S.D.N.Y. 1991).

Second, even if TDU had standing to object to Application 113, there is no procedural impediment to the Application. Nothing in the IRB Rules precludes the IRB from entering into compromise agreements before an investigation is completed or requires the IRB to recommend formal charges to the IRB before submitting a compromise agreement to the Court for approval. Indeed, under the IRB Rules, the IRB is obligated to prepare an Investigative Report only "[u]pon completion of an investigation." IRB Rules ¶I(1). If, as TDU argues, a report were required whenever the IRB had merely commenced an investigation, the IRB would be required to prepare a full report, regardless of whether or not an investigation uncovered any misconduct -- a grossly inefficient waste of resources. There is nothing in the IRB Rules that precludes presentation of a compromise agreement at this stage of the proceedings.

Finally, there is no merit to TDU's argument that Application 113 should be rejected because the sanction is too lenient. "[I]t is well established that sanctions given in other cases are not relevant to the Court's inquiry as to whether a particular sanction is unwarranted or without justification." United States v. IBT (Bane), 2002 WL 654128, at *16 (S.D.N.Y. Apr. 18, 2002), aff'd, (2d Cir. Mar. 13, 2003); accord United States v. IBT ('Giacumbo'),

170 F.3d 136, 144 (2d Cir. 1999) ("Uneven application of sanctions does not normally render the sanction imposed in a particular case arbitrary or capricious."); United States v. IBT (Sansone), 981 F.2d 1362, 1371-72 (2d Cir. 1992) ("The apparent discrepancy between the penalty imposed here and those imposed in other cases does not inexorably compel the conclusion that the Independent Administrator acted arbitrarily or capriciously."). Similarly, that 1) Scalf was, at the time the compromise agreement was entered into, a high-ranking official of the IBT, 2) the sanction agreed to was a relatively lenient one, and 3) the IRB did not expressly articulate that it took Scalf's position into account in fashioning a sanction does not cast doubt on the agreement. As the Court recognized in a related context, "the IRB's failure expressly to discuss a particular factor in its decision does not necessarily mean that the IRB failed to consider that factor. See Transcript of Proceedings, United States v. IBT (Crawley), 88 Civ. 4486, at 7 (S.D.N.Y. Jan. 13, 2005) ("In sum, I disagree with Mr. Crawley's legal argument that evidence not discussed by the IRB must be found not to have been considered by the IRB.") In this case, the IRB's application, on its face, plainly identifies Scalf as "the Executive Assistant to the IBT General President in Washington, DC." It may well be that, in the IRB's view, its decision to impose any sanction at all -- rather than simply close its investigation without charges -- reflected a desire to hold Scalf accountable

precisely because he is a high-level official of the Union. For present purposes, it is sufficient that TDU has not established that the IRB failed to take Scalf's high-level position into account when considering its choice of sanction.

Moving to the merits, the Court recognizes its obligation to consider the application in a "careful, thorough and probing" manner. 170 F.3d 143 (citing Ward v. Brown, 22 F.3d 516, 521 (2d Cir. 1994)). In reviewing whether the sanction imposed here serves the remedial purposes of the Consent Decree, the Court nevertheless applies a deferential standard of review: "The IRB has 'wide discretion' in imposing sanctions." United States v. IBT (O'Donnell), 29 Fed. Appx. 685, 688 (2d Cir. Feb. 12, 2002) (quoting Giacumbo, 170 F.3d at 144). In reviewing IRB sanctions, the Court asks only whether a sanction imposed represents an "allowable judgment" in the choice of a remedy. United States v. IBT (Wilson, Dickens, Weber), 978 F.2d 68, 73 (2d Cir. 1992) (citation omitted). "[T]he reviewing court should not overturn the . . . choice of sanctions unless it finds the penalty unwarranted in law or without justification in fact." Simpson, 120 F.3d at 348 (citing Wilson, Dickens, Weber, 978 F.2d at 73).

Applying these recognized standards, the sanction reflected in Application 113 serves the remedial purposes of

the Consent Decree. The Court also notes that, as set forth above, since the compromise agreement reflected in Application 113 was reached, Mr. Scalf's employment at the ^{IBT} IBB has also been terminated. Accordingly, he has suffered an additional punishment on account of the conduct reflected in Application 113.

CONCLUSION

Application 113 is granted.

SO ORDERED:

Dated: New York, New York
July 8, 2005

Loretta A. Preska
 LORETTA A. PRESKA, U.S.D.J.