

24-709

No. 24A381

IN THE
SUPREME COURT OF THE UNITED STATES

Kirk E. Knopp,

Petitioner,

v.

Nat'l Railway Adjustment Board, et al.

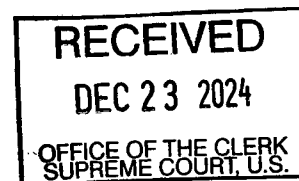
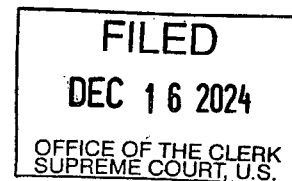
Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

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ORIGINAL



QUESTION PRESENTED

Whether indirect notice to an employee by a union representative satisfies 45 U.S.C. § 153, First (j) (reproduced at Pet. App. 17a), when the union materially ignores the employee it is representing before a special board of adjustment convened under the Railway Labor Act.

PARTIES TO THE PROCEEDING

Petitioner is Kirk Knopp.

Respondent is CSX Transportation, Inc.

The National Railway Adjustment Board Special Board of Adjustment Number 1185 was dismissed as a party in the district court. The Brother of Locomotive Engineers and Trainmen was not served in the district court.

LIST OF PROCEEDINGS

Knopp v. Nat'l Ry. Adjustment Bd. Special Bd. of Adjustment No. 1185, et al., No. 3:22-cv-00553, U.S. District Court of the Northern District of Ohio, Judgment Entered October 16, 2023.

Knopp v. Nat'l Ry. Adjustment Bd., et al., No. 23-3865, U.S. Court of Appeals for the Sixth Circuit, Judgment Entered July 18, 2024.

OPINIONS BELOW

The Sixth Circuit's decision (reproduced at Pet. App. 1a) is available at 2024 U.S. App. LEXIS 17867. The district court's opinion (reproduced at Pet. App. 9a) is published at 704 F. Supp. 3d 803.

JURISDICTION

The Sixth Circuit entered its decision on July 18, 2024. This Court has jurisdiction under 28 U.S.C. § 1254(1) to review the judgment of the Sixth Circuit on a writ of certiorari.

STATUTORY PROVISIONS

The relevant statutory provisions are 45 U.S.C. § 153, First (j) (reproduced at Pet. App. 17a) and 45 U.S.C. § 153, First (q) (reproduced at Pet. App. 17a-18a).

STATEMENT OF THE CASE

On May 27, 2019, an article was posted on social media regarding the death of a 21-year old man who was accidentally struck and killed by a CSX Transportation, Inc. ("CSX") freight train. CSX employee Kirk Knopp ("Knopp") posted a comment through his personal social media account stating, "One less Idiot, I have to deal with!" CSX received an ethical complaint regarding Knopp's post. Knopp was subsequently terminated by CSX on July 8, 2019, following a formal investigation finding a violating CSX's social media policy.

While represented by the Brotherhood of Locomotive Engineers and Trainmen General Committee of Adjustment CSX Transportation Northern Railroad Lines (the "Union"), Knopp appealed his termination under the Railway Labor Act ("RLA"). The National Railway Special Board of Adjustment No. 1185 (the "Board") voted 2-1 to uphold Knopp's termination. The dissent asserted that the penalty of dismissal was arbitrary and overly harsh as a result of a single infraction.

On April 6, 2022, Knopp filed a complaint in the Northern District of Ohio naming the Board, the Union, and CSX as defendants. The Board was dismissed and the Union was not served. Knopp's complaint asserted (1) that the Board failed to confine itself within the scope of its jurisdiction in violation of the RLA, (2) that his termination based on a social media comment violated his First Amendment rights and was contrary to public policy, and (3) that "he was denied his right to participate and present testimony" based on his Union's interaction and communication with him.

The district court granted summary judgment on two of the three issues and dismissed Knopp's case. Neither party addressed Knopp's notice claim in summary judgment.

With new counsel, Knopp filed a motion for relief from judgment 73 days after summary judgment was granted asserting that the district court committed legal error because CSX only moved for summary judgment on two of the three claims raised in his complaint. The district court denied Knopp's

motion as untimely and rejected Knopp's notice arguments on the merits.

Knopp filed a timely appeal. The Sixth Circuit affirmed the district court's decision after finding that the district court did not abuse its discretion by finding that Knopp's motion for relief from judgment filed 73 days after summary judgment was untimely. The Sixth Circuit did not address Knopp's notice argument.

The Sixth Circuit had jurisdiction because 45 U.S.C. § 153, First (p) provides for review of a Railway Labor Act ("RLA") adjustment board order.

REASONS FOR GRANTING THE WRIT

This Court should accept this case in order to address an important problem—the Railway Labor Act (the "RLA") no longer provides the protections that Congress intended. Railroad engineers and airline pilots project American economic power by operating powerful locomotives and awe-inspiring Boeing 747's. Without carriers like CSX and its trainmen, America does not move. Congress recognized this and provided unique protections under the RLA for both carriers and their employees. The issue with the RLA is not the statute, the carriers, or its employees. The problem generally lies with unions. Specifically, the problem in this case is Knopp's union.¹ Knopp asserts that this case is indicative of a larger problem where unions materially ignore their members before providing "assembly line"

¹ It is regrettable that the failings of Knopp's union have been imputed upon CSX to defend.

representation before the Board. This "assembly line" representation is characterized by materially ignoring its members and fails to satisfy the requirements of the RLA because employees are denied the opportunity to convey information helpful to their case to the Board. Critically, in many cases, including the instant case, employees do not understand the Board process, much less have notice of it or the opportunity to be heard through their union "representatives," who often subtly discourage employees from appearing before the Board.

The RLA provides two important rights. First that parties have a right to be heard; second that "the Adjustment Board shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to them." 45 U.S.C. § 153, First (j). "Actual notice for this purpose is notice of the hearing for a sufficient period prior thereto to permit the employee to consult with union officials and relay such information as he possesses which might allow the union to more effectively present his claim." *Cole v. Erie Lackawanna Ry. Co.*, 541 F.2d 528, 534 (6th Cir. 1976). Notice and the right to be heard are meaningless when a union materially ignores its members and provides assembly line representation before the Board.

The Sixth Circuit declined to review the district court's analysis of Knopp's notice arguments because the trial court found Knopp's motion for relief from judgment to be untimely. This Court faces no such restraint. Even if the trial court had discretion to deny Knopp's motion for relief from judgment as untimely, this Court can—and should—review the district

court's analysis of the legal standard of notice under the RLA. A district court's improper application of law is grounds for granting a motion for relief from judgment under Fed. R. Civ. P. 60(b)(1). *See Kemp v. United States*, 142 S. Ct. 1856, 1861-1862 (2022)

The district court held that "[Knopp] attempts to characterize his notice argument as one differentiating 'direct notice' from 'indirect notice.' But Plaintiff fails to provide any legal support for this difference." The RLA requires that an employee receive direct notice of Board proceedings. Indirect notice through a union may satisfy the notice requirements of the RLA, but only if the notice provides the employee the opportunity to convey and relay information to more effectively present a claim to the Board.

Knopp respectfully invites this Court to accept this case in order to determine when indirect notice satisfies the notice and right to be heard requirements of the RLA. This is an important question of federal law that has not been, but should be, settled by this Court.

Respectfully submitted,



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CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limit of Sup. Ct. R. 33(1)(h) because it contains 1,096 words, excluding the parts of the brief exempted by Sup. Ct. R. 33(1)(d).