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THE HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED TRANSPORTATION UNION, and RICHARD D. KITE,)	No. 3:10-CV-05808-RBL
)	
Plaintiffs,)	DECLARATION OF ROGER BOLDRA IN
)	SUPPORT OF BNSF RAILWAY
vs.)	COMPANY’S MOTION TO DISMISS
)	
BNSF RAILWAY COMPANY,)	NOTE ON MOTION CALENDAR:
)	January 7, 2011
Defendant.)	
)	
)	
)	

1. My name is Roger Boldra. I am of legal age and otherwise competent to make this declaration. Unless otherwise stated, the information contained herein is based on my personal knowledge.

2. I am a Director Labor Relations for BNSF Railway. I have worked in BNSF’s Labor Relations’ Department for over 23 years. During that time, I and my team have had labor-

1 relations responsibilities for a portion of the transportation employees that work for BNSF. As
2 part of those responsibilities, my group deals with General Chairman Schollmeyer (and his local
3 chairmen) to address issues arising out the United Transportation Union (UTU or the Union)
4 labor agreements that cover the membership within his committee's jurisdiction.
5

6 3. Mr. Richard D. Kite was, at the time of the discipline issues giving rise to this lawsuit,
7 covered by the UTU collective bargaining agreement (CBA) that my group handles.
8

9 4. In early 2005, Mr. Kite was found to have operated a train while intoxicated. Because it
10 was his second offense, dismissal was assessed as the appropriated discipline for the offense.
11 The UTU appealed the dismissal via the "on property" system, but BNSF denied that appeal.

12 5. The UTU then appealed Mr. Kite's case "off the property" and it was initially assigned to
13 Public Law Board 7204 (the Board or the PLB).
14

15 6. I was BNSF's member of PLB 7204 that heard Mr. Kite's appeal, and Mr. Schollmeyer
16 was the Union's Board member. As the Carrier and Union members, I and Mr. Schollmeyer
17 were partisan Board members, not neutrals.

18 7. The first Neutral arbitrator assigned to hear Mr. Kite's appeal was Referee Jacalyn
19 Zimmerman.
20

21 8. Mr. Schollmeyer and I submitted briefs concerning Mr. Kite's dismissal to Referee
22 Zimmerman, and then argued the case in front of her. She then took the case under advisement.
23

24 9. In December 2008, Referee Zimmerman circulated an unsigned opinion. To this day,
25 that opinion has never been signed by me, nor have I seen a copy signed by either Referee
26 Zimmerman or Mr. Schollmeyer. Apart from the fact that Referee Zimmerman never signed it,
27

1 e-mail correspondence from her establishes that the document was (and was intended to be) a
2 draft opinion. Arbitrator Zimmerman herself described the award in that email as a “draft” when
3 she forwarded it to the parties on December 22, 2008. She stated that she “attached the first set
4 of draft awards for this Board” and encouraged Mr. Boldra and Mr. Schollmeyer to “let [her]
5 know if you have any comments on the drafts and if we need to talk about anything in Executive
6 Session.” Clearly, Referee Zimmerman intended the document at issue to be a non-final, draft
7 award subject to modification and debate in Executive Session. A true and correct copy of that
8 e-mail is attached hereto as exhibit A.
9

10 10. That same email circulated draft opinions for multiple cases and invited the parties to ask
11 for an “executive session” if either wanted to discuss the proposed awards.
12

13 11. I noticed that the draft award said the record didn’t reflect that Mr. Kite had a previous
14 alcohol violation (and without the previous violation in the record, Referee Zimmerman
15 concluded that dismissal was excessive punishment). I checked the record and determined that it
16 had evidence of the previous alcohol violation. So I took Referee Zimmerman up on her offer
17 and asked for an executive session. The request was granted and the Board convened by phone
18 to discuss the draft awards.
19

20 12. During the executive session, Referee Zimmerman stated that her notes from the in-
21 person oral argument indicated that I agreed that reinstatement would be an appropriate remedy.
22 I had not said that during the oral argument, and I told her so. She then indicated she was still
23 inclined to use her original analysis based on her notes. I then reminded her of what I said at the
24 oral argument: allowing a second-violation employee back to work would create an emotional
25 response from the Carrier, and that I didn’t know how I could have made that point any clearer
26
27

1 unless I'd said "you won't be able to work in the industry if you make decisions like that."

2 13. Shortly thereafter, Referee Zimmerman withdrew the draft opinion and recused herself
3 in a formal filing with the (NMB). I never asked Referee Zimmerman to recuse herself from the
4 Kite appeal, or even suggested that she do so.
5

6 14. Neither the Union nor Mr. Kite ever complained to me that any comments I made during
7 the executive session to Referee Zimmerman were fraud, or were improper in any way. In fact,
8 my first knowledge that the Union was alleging improper conduct and fraud on my part
9 stemming from the phone call executive session was in this lawsuit, which was filed 20 months
10 after the February 2009 executive session.
11

12 15. Moreover, I am unaware of any correspondence in which the UTU ever complained to
13 NMB that my actions during the executive session were improper in any way or constituted
14 fraud. Nor was I copied on any correspondence in which the UTU asked the NMB to reinstate
15 Referee Zimmerman as the neutral arbitrator based on my conduct during the executive session.
16

17 16. Mr. Kite's appeal was ultimately submitted to another Board comprised of Mr.
18 Schollmeyer, myself, and neutral referee Robert Peterson.

19 17. The UTU never argued in any correspondence or submission to Arbitrator Peterson that
20 my conduct during the executive session with Referee Zimmerman was improper in any way
21 and/or justified ruling in Mr. Kite's favor. But the UTU did acknowledge in its filing that the
22 Zimmerman Opinion was a draft award. Specifically, the UTU wrote in its submission to
23 Arbitrator Peterson:
24

25 When Arbitrator Jacalyn Zimmerman issued a *draft* of her decision, the Carrier demanded an
26 executive session. Arbitrator Zimmerman recused herself from the case shortly thereafter.
27

1 Exhibit B, at 3, attached hereto (emphasis added). Exhibit B is a true and correct copy of the
2 UTU's submission to Arbitrator Peterson.

3 18. On April 29, 2010, Mr. Peterson issued a signed award ruling in BNSF's favor. Mr.
4 Schollmeyer did not request an executive session on that award; he signed the award; and he did
5 not file a dissenting opinion. After that adverse ruling was secured, the Union raised – *for the*
6 *first time* – the fraud at issue that is at the center of their Complaint.
7

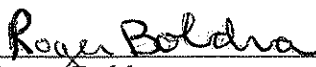
8 19. Although the Union now claims the Referee Zimmerman award is final, it never
9 attempted to enforce the award in court (which it could have attempted as soon as it became
10 obvious that Referee Peterson would hear the Kite matter) until Mr. Kite received an adverse
11 ruling from Referee Peterson.
12

13 20. Attached hereto as exhibits are true and correct copies of the following:

- 14 • Roger Boldra 2-27-2009 correspondence to NMB (exhibit C)
- 15 • J.L. Schollmeyer 3-3-2009 correspondence to NMB (exhibit D)
- 16 • Email dated 3-13-2009 from Carol Conrad at NMB (exhibit E)
- 17 • Email and letter dated 4-30-2009 to NMB from R. Boldra (exhibit F)
- 18 • Boldra 4-30-2009 letter file-stamped by NMB (exhibit G)
- 19 • Agreement creating PLB 7254 (Robert Peterson) (exhibit H)
- 20
- 21
- 22

23 I declare under penalty of perjury that the foregoing is true and correct to the best of my
24 knowledge.

25 Signed the 13th day of December, 2010, at Fort Worth, Texas.

26 
27 Roger Boldra

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CERTIFICATE OF SERVICE

I am over the age of 18; and not a party to this action. I am the assistant to an attorney with Montgomery Scarp MacDougall, PLLC, whose address is 1218 Third Avenue, Suite 2700, Seattle, Washington, 98101.

I hereby certify that a true and complete copy of DECLARATION OF ROGER BOLDRA IN SUPPORT OF BNSF RAILWAY COMPANY’S MOTION TO DISMISS has been filed with the United States District Court via the ECF system which gives automatic notification to the following interested party:

Stephen C. Thompson
Kirklin Thompson & Pope LLP
522 SW Fifth Avenue, Suite 1100
Portland, OR 97204
steve@ktp-law.com

I declare under penalty under the laws of the State of Washington that the foregoing information is true and correct.

DATED this 16th day of December, 2010, at Seattle, Washington.

s/ Kristen Bromenshenkel
Kristen Bromenshenkel