

Wolock & Lott Transmission Company and Lawrence C. Spiegel. Case 22-CA-17235(E)

March 17, 1992

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On December 16, 1991, Administrative Law Judge Eleanor MacDonald issued the attached supplemental decision. The Applicant filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached supplemental decision in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.

ORDER

The recommended Order of the administrative law judge is adopted and the application of the Applicant, Wolock & Lott Transmission Company, Somerville, New Jersey, for attorneys' fees and expenses under the Equal Access to Justice Act is denied.

Dorothy Karlebach, Esq., for the General Counsel.

Stephen E. Klausner, Esq. (Klausner, Hunter & Cige), of Somerville, New Jersey, for the Respondent.

Randi Doner, Esq. (Balk, Oxfeld, Mandell & Cohen), of Newark, New Jersey, for the Charging Party.

SUPPLEMENTAL DECISION

ELEANOR MACDONALD, Administrative Law Judge. On June 13, 1991, I issued my decision in this case holding that Wolock & Lott Transmission Company had not violated the Act by discharging its employee Lawrence C. Spiegel because he engaged in concerted activity. No exceptions were filed and on July 23, 1991, the Board adopted my decision dismissing the complaint.

On August 20, 1991, Wolock & Lott filed its application for award of fees and other expenses. The General Counsel filed a motion to dismiss on September 20, 1991, and counsel for the Charging Party submitted a statement on September 27, 1991.

Although the jurisdictional and other issues raised by the General Counsel and the Charging Party are interesting and may have merit, their resolution would be an empty exercise. This application may be decided most expeditiously by a brief discussion of the issue of substantial justification.

The position of Wolock & Lott is that "from the outset of the investigation, Wolock & Lott took the position that there was absolutely no justification, let alone substantial justification, for the Board proceeding to Complaint and hearing. Mr. Spiegel's story was incredible, changing from day to day. Counsel for the General Counsel knew, or should have known, this to be true from her investigation."

In the underlying case, I discredited Spiegel's testimony and other testimony in his support, and I credited the testimony of Mohl and Fornadel who testified on behalf of Wolock & Lott. Had I decided the credibility issues differently, I would have found that Spiegel had been discharged for engaging in concerted activities in violation of the Act. Indeed, I noted in my decision that credibility findings were necessary to a decision of the issues in the case. I also noted that the issues of credibility were "not easy to resolve" and I continued with a substantial and lengthy discussion of the factors involved in deciding the credibility of the witnesses and finding the facts.

The evidence presented by the General Counsel, if I had credited it, would have been sufficient to establish a prima facie case of unlawful conduct. Accordingly, under the circumstances of this case, the General Counsel was substantially justified in pursuing the litigation. *Carpenters Local 2848 (Dallas Corp.)*, 291 NLRB 787 (1988).

Wolock & Lott has requested that its net worth exhibit be withheld from public disclosure. I shall grant this request.

CONCLUSION OF LAW

The General Counsel's position in litigating the underlying proceeding was substantially justified.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹

ORDER

The application is dismissed.

IT IS FURTHER ORDERED that Wolock & Lott's net worth exhibit shall not be included in the public record, shall be withheld from public disclosure, and shall remain sealed.

¹If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.