

TO: Branch 111, National Association of Letter Carriers
Sharla Groves – Secretary
Mike Miller – President
Members: Branch 111, NALC
2261 South Redwood Rd. Suite #14
Salt Lake City, UT 84119

DATE: August 17, 2004

RE: Official Notice of Charges against Mike Miller brought by Steve McNees

Per Article 10 of the National Constitution of the National Association of Letter Carriers, this serves as official notice of charges against President Mike Miller. I am charging President Miller with negligence, gross negligence, misconduct, and gross misconduct having violated of the following laws, rules, and regulations:

- National Constitution of the NALC
- Bylaws of Branch 111
- Federal Law
 - Title I – Bill Of Rights Of Members Of Labor Organizations
 - 29 U.S.C. 411; Sec. 101
 - 29 U.S.C. 413; Sec. 203
 - 29 U.S.C. 530 – Deprivation of Rights Under Act by Violence
 - 29 CFR 458.2; Sec. 458.2
 - National Labor Relations Act

Background: During the morning of 3/11/04, Steve McNees was involved in a number of incidents with management that resulted in his having trouble breathing. Mr. McNees was provided compensation forms by his supervisor (CA-1 and CA-16) and sent to the hospital for treatment (hyperventilation syndrome). Mr. McNees completed the forms and submitted them to the hospital and his supervisor as instructed.

Mr. Miller was asked by management for a statement of what he witnessed on 3/11/04. Instead, on 3/15/04, Branch president, Mike Miller, sent a letter to OWCP as an official branch representative (president) and as the State Compensation Specialist for the NALC. He requested that the compensation claim of Mr. McNees be denied based, in part, on information that he was not a party to and failing to consider all of the incidents (including those he was not a party to) in his “official” communication to OWCP. Mr. Miller used his official office to harm a union member and violate his responsibilities as an elected union officer to fairly represent all members.

The incidents of 3/11/04 that led to Mr. McNees’ medical problems:

1. The postmaster announced a change in the break policy that had been properly negotiated many years prior by Mr. McNees (and 2 other Sandy carriers). The result was that Mr. McNees

- and others would no longer be allowed to take their morning breaks together as negotiated. There were several unhappy carriers who voiced their anger at the actions of the postmaster.
2. Steve McNees returned to his case to sort mail.
 3. Union President Mike Miller remained on the workroom floor after the announcement and continued to talk to carriers about his actions regarding the break change.
 4. At least twice Mr. McNees complained about the disruption (Miller talking, out of sight) to several managers (Byron Burnett MPO, supervisor, and route inspectors). The managers ignored his complaints and allowed the disruption to continue.
 5. Mr. McNees shortly thereafter took a “time-out” (after telling at least two managers) and left the workroom floor to calm down.
 6. At the door the postmaster stopped Mr. McNees and threatened him with discipline/removal if he took the time out. After asking the postmaster if he was stopping Mr. McNees from taking a time-out (while witnesses were present), the postmaster allowed Mr. McNees to step outside.
 7. Mr. McNees returned to his work location. Mr. Miller was standing with managers about 15 feet from Mr. McNees’ case. Mr. McNees asked the managers to move Mr. Miller away from Mr. McNees’ work area considering the controversy and disruption that had already occurred during a day of route inspection.
 8. Mr. Miller came at McNees and angrily told Mr. McNees “I, as the President, would come into the Sandy Station any time I wanted and as often as I wanted whether he liked it or not, and if he didn't want to look at me then he should turn around.” This quote comes from Mr. Miller’s letter to OWCP.

In other words, Mr. McNees was upset with the postmaster’s inconsiderate announcement of the policy change, Mr. Burnett (and other managers) who refused to stop Mr. Miller from discussing the break issue (during route inspections), the postmaster threatening to fire Mr. McNees, and then management allowing Mr. Miller to come at McNees with a threat/statement obviously meant to anger Mr. McNees. This was not a union battle; it was about management’s actions and/or failure to act regarding several arguments on the workroom floor during route inspections.

Mr. Miller improperly informed OWCP that he was the cause of Mr. McNees’ health problem when in fact it was management who was the cause of the problem by not following postal regulations regarding the handling of workplace problems.

If OWCP had been provided the truth by Mr. Miller their decision could not have been that the harm done was by a union officer and that harm, by a union officer, is not compensable. But, Mr. McNees’ claim for compensation was denied based on Mike Miller’s libelous letter to OWCP (attached). There is nothing in compensation rules that say a confrontation between a union president and a letter carrier which results in physical harm is not compensable, yet Mr. Miller claimed it to be true and OWCP accepted it.

Mr. Miller’s letter to OWCP was in violation of his Duty of Fair Representation, NALC policy, his own policy, and was a violation of law in that he spoke as an expert to events he had not witnessed (libel).

Issues in Mr. Miller’s letter to OWCP that were at best assumption and in some cases just not true (libelous) [is there a difference between false assumptions put in writing and a lie?]:

He was extremely upset because I had requested that a grievance be remanded back to formal A from the Business Agents Office concerning the break issue and I settled it the day prior.

This is not true. Mr. Miller assumed McNees was “extremely upset” about the remanding and settling of the grievance but in the same paragraph admits he never talked to Mr. McNees. At the time Mr. McNees was not extremely upset about this issue. Mr. Miller’s statement to OWCP is false.

Mr. McNees was already angered from the fact that I had just settled a grievance he did not want settled and several other grievances that I had taken away from him prior to that day.

This is also false. Mr. McNees was not upset when he came to work. He became upset when the postmaster announced that he was going to ignore the local union’s right to input on setting break times and locations and read a list of names and their break time. He indicated that these carriers, times, and places were in effect for a year and could not be changed. At this point Mr. McNees became upset and expressed his being upset to the postmaster as well as did several others. To this point Mr. Miller was not involved in any activities and was not the focus of any anger or frustration as his letter indicates. In fact, Mr. McNees could not see Mr. Miller during this time.

Mr. McNees was also angered that I had just removed him as the Formal A Rep and Chief Steward for the Sandy Installation two days prior to this incident.

Again, this is false regarding 3/11/04. It was true on a prior day. Steve and the carriers in Sandy were upset when this happened but not on 3/11/04. On 3/11 Mr. McNees was first upset with the postmaster’s announcement on 3/11/04. Mr. Miller’s assumption was again not based on fact or conversation and was therefore libelous.

Steve McNees’ anger and stress levels were, in my opinion, self-inflicted and at the most due to an administrative action between he and myself and not the Postal Service, and do not amount to a Traumatic Injury.

Mr. Miller’s “expert” opinion was used as a basis for the claim being denied. The problem was that the claim was not for stress and the administrative actions referred to did not happen on this day and were not involved in the health problems experienced by Mr. McNees on 3/11. Mr. Miller is correct about the administrative action not involving the USPS but it was also irrelevant to the compensation claim filed and was not mentioned by Mr. McNees in his claim (nor any other witness statement). In addition, Mr. Miller has no professional training to determine if Mr. McNees’ was suffering from stress and if there was stress had not interviewed Mr. McNees to determine its cause.

Mr. McNees states that being around me, Mike Miller, he considers this to be an act of violence...

This statement was never made, especially to Mr. Miller. In a private communication to Mr. McNees’ supervisor it was written that “I would suggest that Mike Miller not be at work when I return. I would consider it an act of violence.” It was also explained to this supervisor, in writing, what this statement meant:

“I will consider it an act of violence as defined contractually in the "Violence in the Workplace" memos. I will file appropriate grievances if my suggestion bears fruit.”

Clearly the inference that being around Miller is an act of violence is inconsistent with the private communications with McNees' supervisor. The fact Mr. Miller only got part of the communication did not give him the right to share his "interpretation" of that communication (which was strictly "hearsay" information to Miller), with OWCP as an "official" of the union. How he obtained the information is potentially a violation of the Privacy Act.

Conflict of Interest:

Mr. Miller has an obligation to protect the rights and benefits of the members in Branch 111. His actions to successfully deny compensation benefits to a member when he has been elected to two offices to protect those benefits is a gross violation of his duties.

Incompetence:

Mr. Miller's actions have been precipitated by anger on his part. His letter to OWCP along with his written communications with Mr. McNees discuss that his actions were consistently the result of displeasure with Mr. McNees (for exposing his actions) but never a single issue of "specific" wrongdoing by Mr. McNees. In a meeting with Mary Martinez, RAA, Mr. Miller admitted that Mr. McNees had not done anything wrong in the performance of his union duties. His acting out of emotion has placed the branch/and state in legal and financial danger.

Political Retaliation:

Although this writer has no evidence, it appears that Mr. Miller's motivations were political and intended to remove Mr. McNees as a political rival. Mr. Miller stated at a meeting with the Sandy Carriers and Mary Martinez, RAA, that he believed that Mr. McNees was going to run against him during the next election. This is also a violation of the law. Mr. Miller's information was also false. Mr. McNees had absolutely no intention or desire of running for any union office for 2006.

Summary:

Mr. Miller failed to fairly represent a member of his branch. Mr. Miller also violated his obligation as a Utah State Compensation Specialist to represent, to the best of his ability, a member with a claim for compensation benefits. In fact, Mr. Miller acted out of anger to harm a member (deny compensation benefits) who had been attempting to protect an entire installation of letter carriers who had just been harmed by Mr. Miller.

RELEVANT DOCUMENTATION:

NALC CONSTITUTION

Article 1; Section 5

The objects of the Association shall be: to **unite fraternally all letter carriers** and other employees of the Postal Career Service for **their mutual benefit**; to obtain and **secure our rights as employees** of the United States Postal Service; and to strive at all times to **promote the safety and the welfare** of every member; in conjunction with the Postal Service, to strive for the constant improvement of the Service ...

Article 9 ... Duties of the President

He/she shall have authority and **responsibility** ... **to enforce the rights** of the Union and its members under **all** collective bargaining agreements.

NALC CONSTITUTION – CONSTITUTION FOR THE GOVERNMENT OF SUBORDINATE AND FEDERAL BRANCHES

Article 1; Section 2

The objects of this Branch are to **unite** all employees who are eligible for the membership under Article 2, Section 2, of the National Constitution **into one harmonious body for their mutual benefit** and to assist the National Association of Letter Carriers in its efforts to **improve the condition** of its entire membership.

INSTALLATION CEREMONY

You will ... observe and faithfully execute the laws of the National Association of Letter Carriers and the By-Laws of this Branch. I will perform, to the best of my ability the **duties of the office** to which I have been elected. ...

§ 7120. Standards of conduct for labor organizations

(a) An agency shall only accord recognition to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. Except as provided in subsection (b) of this section, an organization is not required to prove that it is free from such influences if it is subject to governing requirements adopted by the organization or by a national or international labor organization or federation of labor organizations with which it is affiliated, or in which it participates, containing explicit and detailed provisions to which it subscribes calling for—

(1) the maintenance of democratic procedures and practices including provisions for periodic elections to be conducted subject to recognized safeguards and provisions defining and securing the right of individual members to participate in the affairs of the organization, **to receive fair and equal treatment under the governing rules of the organization**, and to receive fair process in disciplinary proceedings;

Section 7116. Unfair labor practices

(b) **For the purpose of this chapter, it shall be an unfair labor practice for a labor organization - (1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter; (2) to cause or attempt to cause an agency to discriminate against any employee in the exercise by the employee of any right under this chapter;**

These represent only a partial list of the regulations, laws, and NALC regulations that require a union officer to fairly represent a letter carrier with the same legal obligations (and in some cases greater obligation) of that between an attorney and his client.

All of the provisions of the National Labor Relations Act and other Labor Laws regarding the rights and responsibilities of unions to fairly represent those that they are required to represent are included by reference as documentation to substantiate the violations listed above (although not individually cited).