

Labor & Employment Advisory

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Second Circuit Decides 'Due Notice' Does Not Always Require Personal Notice to Employees

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In a recent opinion, the Second Circuit joined two sister circuits in holding that when an employee has authorized his or her union to represent him or her before a special board of adjustment and has not withdrawn that authority, the employee's right to "due notice" under the Railway Labor Act (RLA) is satisfied upon timely notice to the employee's union. *Ollman v. Spec. Bd. of Adjustment No. 1063*, No. 05-1706, 2008 U.S. App. LEXIS 11759 (2d Cir. Jun. 3, 2008). Therefore, the RLA does not necessarily require personal notice to a represented employee.

In reaching this conclusion, the Second Circuit rejected the argument of a terminated employee that the "due notice" requirement of 45 U.S.C. § 153, First (j) obligated boards to *personally* notify involved employees, and not just their representatives, of pending hearings. Here, the Brotherhood of Locomotive Engineers (BLE) represented Ollman during the on-property investigation and petitioned the board for review of his termination. Although Ollman did not appear at the board hearing, the BLE appeared and presented arguments on his behalf, and there was no indication that Ollman no longer desired for the BLE to represent his interests. Relying on case law from the Fifth and Seventh Circuits and the Supreme Court, the Second Circuit concluded that when an employee is represented by his or her collective bargaining representative, and has not withdrawn that authority, notice by the board to that representative satisfies the "due notice" requirements of the RLA, even if the employee was not personally informed. Through this decision, the Second Circuit underscored the seriousness with which courts view a union's duty of fair representation, recognizing that the ill-informed employee's right to recourse is against the union that fails to inform him of a pending board proceeding or otherwise misrepresents his interests.

While this opinion broadened the definition of "due notice" under the RLA, carriers still should proceed with caution before relying solely on notice to an employee's union. Carriers must be attentive to whether there exists any evidence that the employee has withdrawn from his or her union the authority to represent his or her interests.

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