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RAILROAD TRAINMEN V. VIRGINIA BAR, 377 U. S. 1 (1964)

Case Preview

Full Text of Case

U.S. Supreme Court

Railroad Trainmen v. Virginia Bar, 377 U.S. 1 (1964)

Brotherhood of Railroad Trainmen v.

Virginia ex rel. Virginia State Bar

No. 34

Argued January 13, 1964

Decided April 20, 1964

advising one another in asserting the rights Congress gave them in the Safety Appliance Act and the

the vital fact was that the claimed privilege was a "form of political expression" to secure, through court action, constitutionally protected civil rights. [Footnote 2/1] Personal injury litigation is not a form of political expression, but rather a procedure for the settlement of damage claims. No guaranteed civil right is involved. Here, the question involves solely the regulation of the profession, a power long recognized as belonging peculiarly to the State. Button, as well as its ancestry cited by the majority in the footnotes, is not apposite.

Finally, no substantive evil would result from the activity permitted in *Button.* But here, the past history of the union indicates the contrary. Its Legal Aid Department (now the Department of Legal Counsel) was set up in 1930 for the admitted purposes of advising members "relative to their rights respecting claims for damages" and assisting them "in negotiating settlements. . . ." The Department had a complete reporting service on all major

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injuries or deaths suffered by its members, regional investigators to whom such reports were referred, and the 16 approved regional counsel (many of whom remain the same today) to whom the cases were channeled for prosecution and who split their fees with the union. And, what is of even more significance, the trial court in this case found "that the defendant Brotherhood still adheres to the pattern and design of the plan formulated and implemented in 1930."

The union admits that it did operate in this manner until 1959, but says that it has now reformed its operation. But the record shows that this identical union plan has been before several other courts, [Footnote 2/2] and, while the union has repeatedly promised to reform, as here, it has consistently renewed the same practices. But even if the union has sincerely reformed, which I doubt, the plan it now proposes to follow is subject to the same deficiencies. It includes: the approval of 16 regional attorneys by the president of the union, who also has power to discharge them at his pleasure; the solicitation of all injured members by the local officials of the Brotherhood who urge the employment of an approved counsel; the furnishing of the name of the approved counsel to the injured brother as the only attorney approved by the Brotherhood; the furnishing of the names and addresses of injured members to the approved attorneys; the furnishing of investigative services to the approved attorney, the cost of which, it is indicated, comes from the fees received by the latter; and, finally, the "tooting" of the approved attorneys in union literature and meetings.

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I do not read the decree approved by the State as prohibiting union members from recommending an attorney to their brothers in the union. Virginia has sought only to halt the gross abuses of channeling and soliciting litigation which have been going on here for 30 years. The potential for evil in the union's system is enormous, and, in my view, will bring disrepute to the legal profession. The system must also work to the disadvantage of the Brotherhood members by directing their claims into the hands of the 16 approved attorneys, who are subject to the control of one man, the president of the union. Finally, it will encourage further departures from the high standards set by canons of ethics, as well as by state regulatory procedures, and will be a green light to other groups who for years have attempted to engage in similar practices. *E.g., People ex rel., Chicago Bar Ass'n v. Chicago Motor Club,* 362 Ill. 50, 199 N.E. 1; *Rhode Island Bar Ass'n v. Automobile Service Ass'n,* 55 R.I. 122, 179 A. 139; *cf. Semler v. Oregon State Board of Dental Examiners,* 294 U. S. 608 (1935); *Williamson v. Lee*

Optical of Oklahoma, Inc., 348 U. S. 483 (1955).

[Footnote 2/1]

"In the context of NAACP objectives, litigation is not a technique of resolving private differences; it is a means for achieving the lawful objectives of equality of treatment by all government, federal, state and local, for the members of the Negro community in this country. It is thus a form of political expression."

NAACP v. Button, supra, at 371 U. S. 429.

[Footnote 2/2]

E.g., In re Petition of Committee on Rule 28 of the Cleveland Bar Ass'n, 15 Ohio Law Abst. 106 (1933); *In re Brotherhood of Railroad Trainmen,* 13 Ill.2d 391, 150 N.E.2d 163 (1958); *In re O'Neill,* 5 F.Supp. 465 (E.D.N.Y.1933); *Young v. Gulf M. & O. R. Co., No. 3957 (E.D.Mo.1946); Reynolds v. Gulf M.O. & Texas Pac. R. Co.,* No. 772 (E.D.Tenn.1946); *North Carolina ex rel. McLean v. Hice,* Superior Ct. of N.C., County of Buncombe (1948).

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