

BEFORE THE EASTERN AIR LINES PILOTS  
SYSTEM BOARD OF ADJUSTMENT

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BRIEF OF EASTERN AIR LINES, INC., ON GRIEVANCE OF

DAVID W. FERRIE

EASTERN #15-63  
EASTERN #29-63  
EASTERN #48-63

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CHRONOLOGY OF EVENTS

On August 26, 1961, the Company learned through an article in the New Orleans Times-Picayune that Ferrie had been arrested on charges of committing a crime against nature and indecent acts with juvenile boys. (Co. Ex. 55.) On August 29, after unsuccessful attempts to contact Ferrie, the Company suspended him for an "indefinite period and until such time as the charges against (Ferrie) are cleared." (Co. Ex. 56 and 57.) There followed a series of attempts by the Company to obtain some explanation from Ferrie in regard to those charges. (Co. Ex. 57, 58, 59, 60, 61.) Finally, on October 19, 1961, Ferrie sent a letter to Captain Griener based on "reports of reputable detectives." The letter stated that:

" . . . my problem has been traced with certainty to a highly placed local official. We have positive evidence that this official is a Communist and has been in charge of some highly important Communistic activities involving the protection of Communists in the area." (Co. Ex. 62.)

## REVIEW OF EVIDENCE ON BEHALF OF THE COMPANY

The Board in considering this case should keep in mind the fact that the main energies of the grievant were devoted to the suppression of the pertinent facts about his behavior. The hearing was probably the most technical in the long history of arbitrations under the Railway Labor Act insofar as objections and rulings on proffered evidence. Time and time again evidence was excluded which would normally be received as a matter of course.

The grievant's efforts to suppress evidence and keep the Board in the dark as to his activities were so successful that probably the majority of the Company's evidence was excluded. However, in the long run, the efforts of the grievant were unavailing, for even the minor portion of the Company's case which it succeeded in getting before the Board proved conclusively that the charges brought by the Company were true and that the Company's actions were justified.

Sergeant Fournier, the New Orleans police officer who conducted a major portion of the investigation that led to the filing of the eleven criminal charges, testified extensively concerning that investigation. His testimony showed a normal, conscientious police investigation which started with a routine investigation of the report that juvenile Alexander Landry had run away from home.

The only non-routine aspect of the investigation was the fact that, at every step of the police investigation of the runaway juvenile, evidence of criminal activities on the part of Ferrie were uncovered. Thus, the investigation grew in significance and the criminal charges against Ferrie multiplied.

It should also be pointed out that the relatively brief cross examination of Sergeant Fournier did not reveal any inconsistencies in his testimony. Nor did that cross examination reveal any hints of undue pressure brought to bear on the Sergeant during his investigation.

Sergeant Fournier was followed on the stand by James Joseph Landry. James Landry, who is now 18, testified that he met Ferrie in August of 1960 at the New Orleans Airport. (T. 84, 85.) Landry was 16 at the time. The meeting was the result of a discussion between Ferrie and Landry's father, who was an Eastern Ramp Service Man. (T. 86.) Ferrie had inquired as to whether or not James Landry would be interested in joining a Civil Air Patrol Squadron known as the Metairie Falcon Squadron. (T. 85, 86.) On meeting Ferrie, James Landry joined the squadron and was issued a membership card. (Co. Ex. 3.)

Landry's testimony as to his understanding of the status of this squadron as an official part of the Civil Air Patrol was as follows:

"Well, for a long time we did not have a charter. Then, I I guess it was over a year, he finally showed up with a charter and said we were officially in the C.A.P."

Q. "Who is 'he'?"

A. "David Ferrie." (T. 88.)

Landry went on to describe parties at Ferrie's house during which Ferrie supplied and served alcohol to the minors who were in the C.A.P. (T. 89.)

Landry then testified as to having sexual relations with Ferrie on nights that he stayed at Ferrie's home. (T. 98, 102.) The Board's special attention is called to this witness' demeanor on the stand and the fact that vigorous cross examination, in an attempt to show a motive for the testimony, failed to reveal any motive except that the testimony was true. Landry's testimony had the ring of truth, in contrast to the false notes struck by the witnesses for the grievant.

Landry was followed to the stand by Dr. Yaegar. Dr. Yaegar testified concerning complaints received about Ferrie practicing medicine without a license. (T. 142-143.) Ferrie was called in by Dr. Yaegar and warned against such action. Whereupon, through a forty minute interview, Ferrie spun a fantastic web of lies about his background and activities. (Note particularly the testimony about Ferrie claiming to have several Ph.D's at page 144 and compare with Irion's testimony on the same subject.) Unfortunately for Ferrie, Dr. Yaegar was in a position to check many of these statements and found them to be completely false. (T. 144-145.)

Dr. Yaegar's testimony in regard to the complaints received should be considered in connection with Company Exhibit 4 (which shows that Ferrie had himself listed in the telephone directory as Dr.) with Sergeant Fournier's testimony in regard to the medical instruments found in Ferrie's home and with the testimony of Irion, a witness called by Ferrie, who testified that Ferrie often treated him for various sicknesses.

The next witness on behalf of the Company was John Roger Espenan. Mr. Espenan's son had been a member of Ferrie's unauthorized C.A.P. Metairie Falcon Squadron. Mr. Espenan testified as to having become suspicious of the squadron's authenticity, of Ferrie's statements that it was an authorized squadron, and of his obtaining the forged certificate and taking it to the Air Force C.A.P. sergeant who confirmed his suspicion of its being invalid. (T. 285-295.) He, Espenan, also testified that the supposed certificate was on a form used for C.A.P. Certificates. (T. 305, 314.)

After Mr. Espenan's testimony there could be no doubt that Ferrie organized a bogus C.A.P. squadron and deceived the parents and the members as to its status. To quiet the questions about its status, he forged a C.A.P. Certificate. Mr. Espenan's testimony was, of course, completely

confirmed by the records of the C.A.P. and, particularly, the sergeant's Memo to File regarding Espenan's visit to the headquarters with the forged certificate. (Co. Ex. 54.)

The Board should particularly note the representations of Mr. Gill and Ferrie that appear on pages 302-304 of the transcript. Both gentlemen assured the Board there was a state charter, which was obtained in 1961 and which would be introduced in evidence by them. These representations proved to be completely false, as no such document was ever tendered by them.

There was no state charter issued until 1962, long after Ferrie's arrest and the breakup of the squadron. Moreover, they knew that they could not produce any charter issued in 1961. The Company did produce the only state charter issued; it was issued in 1962, and it was signed by Ferrie.

(ALPA Ex. 23; T. 516, 517.)

This attempt to mislead the Board was typical of the grievant's case from beginning to end.

The next witness for the Company was Ronald Hubner. Three exhibits (Co. Ex. 6, 7 and 8) were introduced during his testimony. The first exhibit was a letter from the American Vice Consul in Italy and it exploded completely Ferrie's contention that he had a Ph.D. from Phoenix University in Bari, Italy. (Co. Ex. 6.) The second exhibit was the minutes of the New Orleans Chapter of the Military Order of World Wars meeting of July 24, 1961, at which Ferrie made a speech which inflamed the membership. This record of the meeting shows that Ferrie was indulging in these activities as an Eastern Air Lines' Captain, not as a private individual. (Co. Ex. 7.)

The third exhibit was a letter from Colonel Christiansen of the U. S. Air Force detailing some of the difficulties Ferrie got into in the C.A.P. during the period he was a legitimate member. (Co. Ex. 8.)

The remainder of the Company's case consisted of a series of exhibits. Exhibits 44 through 54 were records of the Civil Air Patrol regarding Ferrie. They showed that from 1955 to 1959 Ferrie was out of the Civil Air Patrol. Apparently he was put out in 1955 against his wishes, and it took him approximately one year, starting in 1958, to obtain permission to return. (Co. Ex. 44 and 47.) He was in the Civil Air Patrol from approximately September 1959 until June of 1960, when he was again forced out because of his misbehavior.

Company Exhibit 48 shows that he used his claim to have a Ph.D. in gaining readmission to the Civil Air Patrol. Company Exhibits 51-54 show that it was generally believed in New Orleans that Ferrie had an authorized squadron in 1961, and these misrepresentations had reached the point that the Civil Air Patrol was considering obtaining newspaper coverage of their denials of any connection with Ferrie.

Exhibits 72 and 73 were rebuttal exhibits to Ferrie's testimony regarding Italian universities. They show the actual methods of accreditation, the requirements for attendance of foreign students, the degrees awarded, and that Phoenix University is not a recognized Italian university. These exhibits should be compared with Ferrie's testimony on this subject. The result is that Ferrie's testimony regarding the Italian system of higher learning (molded by him to fit his claimed alma mater) is completely refuted by the impartial documentary exhibits introduced by the Company.

Other Company exhibits were Ferrie's application for employment (Co. Ex. 9) and the physical record he filled out when applying for employment (Co. Ex. 10). Most of the Company's testimony (showing that many facts were concealed by Ferrie in making out these forms) was excluded. However, Ferrie testified about these matters, and his testimony alone convicts him of

omitting many derogatory items. His explanation for not listing his total educational and employment record is certainly amazing, but hardly persuasive. The health records introduced by Ferrie himself show mental and physical problems which should have been revealed to the Company; especially the record of the Cleveland Clinic, which was introduced after a demand for its production by the Company. (ALPA Ex. 14.) Mr. Gill explained this medical report as being due to Ferrie's "tender age" at the time. (T. 487.) At the time, Ferrie's "tender age" was 26!

#### REVIEW OF TESTIMONY ON BEHALF OF GRIEVANT

It would be a kindness to Ferrie if the Board simply ignores all the testimony introduced on his behalf. Unfortunately for Ferrie, the Board must consider the entire record. It is submitted that the grievant's side of the case, standing alone, is sufficient to justify the Board in upholding the discharge.

Ferrie, on the stand, testified that everyone knew his squadron was not part of the Civil Air Patrol, and that early in 1961 he had obtained a state charter for a non-profit corporation. (T. 515-516.)

An unsworn, unsigned "deposition" in absentia of Martens was offered as an exhibit at this time by Ferrie to support his testimony. (ALPA Ex. 24.) According to Mr. Gill, this "deposition" was based on a letter written by Mr. Martens. Mysteriously, Martens had not had an opportunity to sign it. The "deposition" stated that a charter for a non-profit corporation was obtained in early 1961 and was kept at Ferrie's house. The "deposition" went on to state that this was the document Mr. Espenan and the sergeant of the Civil Air Patrol examined.

Unfortunately, this explanation was doomed to fall apart practically before it was offered for, to assist the Board, the Company at this point produced a copy of the only state charter for a non-profit corporation obtained by Ferrie. This charter was applied for in 1962 -- not 1961. The date is, of course, long after Ferrie's arrest, and even longer after Mr. Espanan had checked the forged C.A.P. Charter. Moreover, the 1962 document was signed by Ferrie, which establishes beyond question his knowledge that no previous charter existed. Of course, this 1962 charter also exploded the unsworn, unsigned "deposition" in absentia of Martens. Indeed, when it was pointed out that the "deposition" contained parenthetical portions indicating that Martens was being handed various documents for inspection while his "deposition" was in progress, Mr. Gill found it necessary to explain further that the "deposition" was not alone based upon a letter from Martens after all, but was also based upon a personal interview in his office -- sort of a mixture of the two.

Ferrie's story changed rapidly. He next claimed that, despite being the leader of the squadron, he did not check details such as a charter. That was the responsibility of the young boys in the squadron. He ignored completely the fact that when he signed the 1962 charter he had to know there was no previous charter in that name, and that when he introduced the Martens "deposition," he knew the facts stated therein were untrue.

Ferrie proceeded with testimony to the effect that the Landry accusation originally related to April 26, 1961. He testified about visiting one Prinz, an Eastern crew scheduler, and obtaining absolute proof that he was not in New Orleans on April 26. The information supposedly obtained from Prinz was to the effect that Ferrie was on a flight as shown by flight records. (T. 596, 597, 601, 602.) Ferrie then implied that the District Attorney was tipped off to this proof and the date on the indictment was changed to April 28, 1961.



On cross-examination he first refused to answer any questions about the proof obtained from Prinz. (T. 618-620.) He then became vague and could not remember what the proof was or whether the proof regarding April 26 was even obtained from Prinz. (T. 621, 626, 628, 629.) This initial refusal to testify and the subsequent vagueness is understandable in view of the proof offered by the Company in the form of pay records showing he was on vacation the last half of April, 1961. (Co. Ex. 71.)

Ferrie's other testimony was as wild and unconvincing as the first two instances noted. First, he had a good, solid Ph.D. Then, after cross-examination, on redirect by his attorney, he took the position that, regardless of its validity, he felt he had benefited by obtaining it. (T. 706.) Of course, the Board should not forget his testimony that he obtained this Ph.D. to impress Harvard professors with his ability in the area of air safety. Also noteworthy was his testimony that he listed himself in the telephone book as "Dr." for the same purpose. Ferrie left to the Board's imagination how the Harvard professors were going to be impressed by his listing in the New Orleans telephone book.

It would serve no useful purpose, and space scarcely permits a discussion of all the inconsistencies and inaccuracies in Ferrie's testimony. One other aspect of his testimony is so important that it must be touched upon. Ferrie had some eleven criminal charges brought against him. On direct examination he did not attempt any detailed explanation of why this should happen to him other than implications that it was done by Mrs. Landry. (He had previously explained in a letter to Captain Griener that it had all happened because he was hot on the trail of Communists, some of whom worked for Eastern.)

On cross-examination he was offered the chance to explain. A long statement was made that, based on investigations by private detectives, it could be shown that his troubles with the law were due to Communists and

Mrs. Landry. (T. 676-684.) However, when details were requested, it became apparent that there was no evidence to support the explanation. A District Attorney was supposed to be the key figure; however, Ferrie testified this District Attorney refused to have anything to do with the charges and the majority of the charges were actually brought in an entirely different parish. (T. 679, 682, 683.) No connection was shown between this District Attorney and Mrs. Landry and the individuals who signed statements.

The net result of Ferrie's testimony on this subject was that he had no explanation at all. Thus, Sergeant Fournier's testimony, such as he was allowed to give, involving his normal, impartial police investigation stands completely unrefuted.

The other witnesses called by Ferrie contributed more to the Company's case than to Ferrie's case. Irion's testimony on cross-examination was about the most damaging testimony to Ferrie presented during the hearings. He stated that, during 1955 through 1960, Ferrie participated in C.A.P. meetings and wore a Captain's uniform. (T. 765, 766.) Of course, the previously-introduced C.A.P. documents proved conclusively that Ferrie was not an official member of the C.A.P. during most of this period. (Co. Ex. 44 and 47.) Irion also testified that it was unlawful to wear this uniform unless you were an official member of the C.A.P. (T. 766.) His prejudice was shown by his testimony that his opinion of Ferrie would not be changed even if it were proven to him that Ferrie was not a member of the C.A.P. and was not authorized to wear a uniform during most of the 1955-1960 period. (T. 768.)

Despite approximately a half-hour of leading questions and prompting by grievant's attorney on redirect, Irion stuck to his story about Ferrie's wearing the C.A.P. uniform during periods when he, by his own admission, was not a member of the C.A.P. (T. 783-789.)

His other testimony directly supported the position of the Company, and was directly contrary to Ferrie's testimony. He testified that Ferrie had medical instruments in his home prior to his mother's coming to live with him (Ferie had testified that they were only for his mother); that Ferrie had three college degrees; that Ferrie was supposedly studying to be a medical doctor; that Ferrie hypnotized some of the boys; and that Ferrie had a chalice at his home. (T. 775, 778, 779, 780, 781.)

Lewallen's testimony on behalf of Ferrie was totally unpersuasive. Apparently, the main purpose of calling Lewallen was to support Ferrie's account of how he filled out his inaccurate employment application form in Cleveland just before being hired by Eastern. Since Lewallen was in the Air Force at the time (many miles away in the Carolinas), he explained his presence in Cleveland by testimony that his superior had given him three or four days off in the middle of the week. (T. 816, 817.) According to Lewallen, he was not on leave or on a pass; he just was given some time off, and just happened to be in Cleveland and looking over Ferrie's shoulder at the time the form was filled in and signed as true. He remembered the exact details vividly.

Lewallen also confirmed Irion's testimony about Ferrie's participating in the Civil Air Patrol during 1955-1960, although, under extensive prompting, he later changed his testimony (T. 807-808) and attempted to come in line with the story Ferrie had previously given.

When Mr. Bannister took the stand, the Board was treated to the rare experience of having one attorney for the grievant elicit testimony while the other attorney for the grievant objected to the testimony and had it stricken. About the only conclusion that could be drawn from Mr. Bannister's testimony was that he had interviewed Ferrie's friends and his friends had spoken well of him. From all indications, he interviewed only people whose names Ferrie had supplied. (T. 856-857)

Mr. Bannister testified about his investigation of Ferrie's speech before the veterans' organization in the role of an Eastern Captain. Ferrie must have spoken before that organization twice and had both speeches stopped, either that or Mr. Bannister's investigation was woefully inadequate, for he testified as to Ferrie's attacking the then-President Eisenhower.

(T. 842, 858.) The Company's evidence all related to a speech attacking President Kennedy.

#### DISCUSSION

It would seem obvious that the evidence introduced on behalf of the Company or the evidence introduced on behalf of the grievant, either or both, establishes beyond any doubt that the Company's discharge of Ferrie was justified. The only real defense set forth on behalf of the grievant was that he is smart enough to stay out of jail; so he is certainly good enough to be an Eastern captain. Truly, this is an amazing defense. One might expect to hear it offered in defense of a janitor, but it grates on the sensibilities to hear it offered on behalf of an Eastern captain.

An Eastern captain holds a highly-paid, highly-respected, highly-responsible position. He is responsible for the lives of thousands of passengers and millions on millions of dollars of equipment during the course of a year. If Eastern is to secure passenger revenue with which to pay its thousands of employees, its pilot group must retain the respect and trust of the traveling public.

The general public is in no position to judge the flying ability of a pilot; it makes its judgments on the appearance and general reputation of an airline's pilot personnel. One does not lightly put one's life in the hands of another, and certainly not in the hands of a man like Ferrie.