

**IN THE SUPREME COURT OF MISSISSIPPI  
CIVIL ACTION NO. 2010-CA-01427**

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**ROBERT L. McCLATCHY, III**

**Plaintiff/Appellant**

**v.**

**BROTHERHOOD'S RELIEF & COMPENSATION FUND**

**Defendant/Appellee**

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**APPEAL FROM THE CIRCUIT COURT OF  
ADAMS COUNTY, MISSISSIPPI  
CIVIL ACTION 08-KV-0005-J**

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**BRIEF OF APPELLANT, ROBERT L. McCLATCHY, III**

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**ORAL ARGUMENT REQUESTED**

## **CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court may evaluate possible disqualification or recusal.

**1. Plaintiff/Appellant**

Robert L. McClatchy, III  
L. V. Galati  
Jessie Taylor

**2. Defendant/Appellant:**

Brotherhood's Relief & Compensation Fund

**3. Counsel for Plaintiffs/Appellees:**

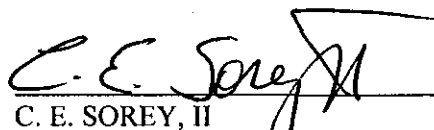
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Honorable Forrest Al Johnson  
Adams County Circuit Court Judge  
P. O. Box 1381  
Natchez, MS 38121



C. E. SOREY, II  
ATTORNEY OF RECORD FOR APPELLANT

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## **STATEMENT OF ISSUES**

Do Mississippi citizens have the right to have contract issues with voluntary organizations decided in the Mississippi Courts?

## **STATEMENT OF THE CASE**

The instant case is a contracts case filed by Robert L. McClatchy, III, (hereinafter "McClatchy") against the Brotherhood's Relief and Compensation Fund (hereinafter "BRCF"). McClatchy first submitted his claim against the Defendant and was turned down. He then appealed that decision to the Board of Directors of the Voluntary Association. McClatchy was again turned down. On January 17, 2008, McClatchy filed suit against BRCF. BRCF answered and McClatchy filed some discovery. On June 3, 2010, the Defendant filed for Summary Judgment on three grounds. First, McClatchy's claim did not occur while in the performance of his employment. Second, McClatchy's claim for "held out of service" benefits was a result of McClatchy's willful or intentional violation of the rules of the Kansas City Railroad. Third, McClatchy failed to timely provide notice of appeal as required by BRCF's Constitution.

The lower court ruled that the Defendant's first Count, that McClatchy's claim did not arise during his duties of employment was without merit. Next, the court ruled that as to the second Count that the Plaintiff did not file his claim in court within one hundred fifty days of the decision of the Board of Directors which violated Miss. Code, Ann., Section 15-1-5. As to their third Count of willfully and intentionally failing to report his injury, the judge ruled that the Plaintiff had at least raised a genuine issue of fact. However, the judge went on to say that the Constitution of BRCF placed that discretion within the Board of Directors without the ability to appeal the decision. Therefore, he granted the Defendant's Summary Judgment motion from which we appealed.

**A. Statement of the Facts:**

The definition for "held out of service" is found in Article XXXIII, Section 1-A:

The term "Held Out of Service," as used in this Constitution, shall include all cases where an employee of the Motive Power or Transportation Department has been entirely and permanently, or temporarily, relieved by his employer from the performance of his said usual duties after formal investigation, at which said employee was properly represented by a representative of the local grievance committee or other employee, as discipline for an offense or offenses, not, however, because of any willful or intentional violation or infraction of any order or orders, rule or rules, regulation or regulations, expressed or implied, of his employer, or of any violation or infraction of any Federal or State Law now in force or hereafter enacted. (T.R. 74)

There are no definitions for "willful" or "intentional" in the Constitution for the BRCF. Further, under this Constitution in Article XXXI entitled Appeals, the following is found under Section 3:

Whenever an appeal is taken, in any matter as aforesaid, to the Board of Directors, it shall be heard by the said Board of Directors at the next stated meeting thereof, or at such subsequent meeting or time that the Board may designate.

The decision of the Board of Directors by a majority vote of the members thereof upon any such matter shall be final, binding and conclusive as to all matters vested in their discretion under this Constitution, including interpretation of the Constitutional provisions, and no appeal shall be taken therefrom except as herein provided. Whether offenses are willful or intentional shall be determined within the discretion of the Board of Directors and no appeal shall lie therefrom. (T.R. 74)

Hence, the Constitution of the BRCF purports to take away from its members the right of appeal and the right of a court to interpret whether an action is "willful" or "intentional."

The lower court determined that a contract did exist between McClatchy and BRCF. (T.R. 123) (R.E. 2) The lower court also determined that the Plaintiff had at least raised an issue of fact as to whether he "willfully" failed to report his injury. (T.R.125) (R.E. 2)

Then the lower court found on the summary judgment for BRCF basing its decision that the

Constitution for the BRCF allowed the Board of Directors to determine whether a member's action was "willful" or "intentional" all without appeal. (T.R.125) (RE 2)

### **SUMMARY OF THE ARGUMENT**

The Plaintiff, in the argument, simply asks this Court to continue to follow the logic set out in *Lowery v. International Brotherhood of Broilermakers*, 241 Miss. 458, 130 So.2d 831 (1961); *Morf v. North Central Mississippi Board of Realtors, Inc.*, 27 So.3d 1188 (Miss.2009); *Communication Workers of America Local 10517 v. Gann*, 510 So.2d 781 (Miss.1987) and *United Brotherhood of Carpenters & Joiners of America v. Barr*, 217 Miss. 360, 64 So.2d 150 (1953). These cases allowed the member of a voluntary association to contest the constitution or bylaws of the voluntary association in state court. Further, these cases followed our State Constitution, Section 24, in stating that our courts are open to all citizens for any legal issue they may have.

### **ARGUMENT**

In the present case, it is simply a breach of contract case between the member of an association, McClatchy, and the Association, BRCF.

The Plaintiff, as a railroad conductor for the Kansas City Southern Railway, purchased held out of service insurance from the BRCF on January 22, 2007. (T.R. 1) On February 3, 2007, the Plaintiff was working as a conductor when he stepped off of a box car and slightly twisted his knee. McClatchy did not file an accident report because he thought it so slight that it would not be a reportable injury. (T.R. 2) (T.R. 111-12)

As fate would have it, several weeks after the incident, he was limping slightly while performing his duties and the Trainmaster asked him what happened. McClatchy told the Trainmaster about the incident, and that he thought he would be alright. The Trainmaster made him

fill out an accident report. On February 20, 2007, the railroad pulled the Plaintiff out of service and held a hearing or investigation for his failure to timely fill out an accident report on February 3, 2007. On March 2, 2007, McClatchy was terminated from the railroad. (T.R. 2) The termination letter from the railroad did not include that McClatchy had done anything intentional or willful. (T.R. 77) McClatchy and his union appealed the decision of the Kansas City Southern to the Public Law Board. Even though the Public Law Board upheld the railroad by stating McClatchy had violated a rule on the railroad, it did not find it to be willful or intentional. (T.R. 78-79)

McClatchy, in his affidavit, stated that he did not report the incident because he did not think it was a reportable injury because it was so slight. (T.R. 111-12) If one reported every little bump or bruise they got while working on the railroad, they would spend their entire shift filling out accident forms. This may have been a poor decision for McClatchy but, it does not mean that he did it willfully or intentionally. Further, there is absolutely no proof that he did it willfully or intentionally.

McClatchy applied for his held out of service benefits with BRCF and was advised by letter dated March 14, 2007, that he did not qualify because of Article XXXIII of the Constitution. He was also advised that he could appeal the decision to the Board of Directors. (T.R. 80) Then the Plaintiff filed his appeal. (T.R.81) On April 23, 2007, the Board of Directors sustained the decision reached in the denial letter of March 14, 2007. (T.R.55)

The Board relied on Article XXXIII Section 1-A-Definitions for held out of service which does not include an action taken which was willful or intentional. (T.R. 74) It is of note that the Constitution does not include a definition of willful or intentional.

The Board also relied on XXXI Appeals Section 3 which states, in part, “[w]hether offenses are willful or intentional shall be determined within the discretion of the Board of Directors and no



appeal shall lie therefrom.” (T.R. 74)

So, not only does the Board tell you they have the right to decide whether an offense is willful or intentional, with or without evidence, they also tell you that you cannot appeal that decision. This is one of the reasons this Court needs to stand by its previous decisions and allow members of a voluntary association to take these organizations to court.

In *Lowery v. International Brotherhood of Boilermakers*, 241 Miss. 458, 130 So.2d 831 (1961), the Court answered the question as to whether or not the constitution of a voluntary association is a contract between the organization and the member.

In *Lowery*, the Court quoted from 4 Am.Jur 459 Section 6:

It is now a well-settled rule that a union constitution is a contract between the members of the union and the association. The articles of agreement of a labor union, whether called a constitution, charter, bylaws or any other name, constitute a contract between the union and its members, as well as a contract between the members of the union, which the court will enforce, if not immoral or contrary to public policy or the law of the land.” *Id.* At 468-69.

*Lowery* thus makes it clear that in Mississippi the constitution of a voluntary organization is a contract between the association and its members and will be enforced by our courts.

*Lowery* further stated, “rights can only be protected in the courts, and our State Constitution requires that ‘courts shall remain open to every person for an injury done him in his lands, goods, person or reputation, and he shall have remedy by due process of law, and right and justice shall be administered without sale, denial or delay,’ Mississippi Constitution, Section 24.” *Id.* At 471-72.

Another recent case involving a voluntary association and its member is *Morf v. North Central Mississippi Board of Realtors, Inc.*, 27 So.3d 1188 (Miss.2009). In *Morf*, a realtor listed two houses on the multiple listing service without authority through a clerk’s error. The Morfs received a most severe fine and feeling aggrieved filed suit against the association. The Court of Appeals

looked at the constitution of the association and determined that it really did not set out an objective method of setting fines and punishment. The Court quoted *Multiple Listing Service of Jackson, Inc. V. Century 21 Cantrell Real Estate, Inc.*, 390 So.2d 982, 986 (Miss.1980), by stating, “[t]o hold that an association might arbitrarily prescribe fines for each individual offense as it sees fit would make possible and invite an abuse of authority.”

When you compare this statement to the Constitution of BRCF Article XXXI Appeals Section 3, “[w]hether offenses are willful or intentional shall be determined within the discretion of the Board of Directors and no appeal shall lie therefrom,” it is obvious that this allows the Board to decide anything it wants with or without evidence. This Court cannot allow that article to go unchallenged. This is the abuse of authority as is discussed in *Multiple Listing* cited above.

In the case of *Communication Workers of America, Local 10517 v. Gann*, 510 So.2d 781 (Miss.1987), the Union fired several members for not honoring a strike. Then the union took them to court to enforce the fines where the judge dismissed the claims because he felt the constitutional article which allowed the fines was not clear. The Supreme Court, in denying the union case, said “[e]ven if the cases cited by the union were to the contrary, we are not bound to follow them. We are bound to follow firmly established basic contract law, and not do violence to its principles.” *Id.* at 786.

This is all we are asking of this Court, give us a chance, in court, to establish our case under basic contract law.

*Gann* also states that if the article is published by the union, then this provision should be most strongly construed against it. *Id.* At 787. In the instant case, if the BRCF did not want to pay people who had been fired or laid off the railroad because they failed to file a claim for an injury when it happened, then they could have easily written that into the constitution. Rather, the BRCF

chose to give unlimited power to the Board to choose how they wanted the matter decided.

*United Brotherhood of Carpenters & Joiners of America v. Barr*, 217 Miss. 360, 64 So.2d 150 (1953) involved a death benefit payment from the union to the deceased member. While the facts of the case are not that important, the Supreme Court stated without limitation, "she had a right to resort to the court to enforce payment of the claim." *Id.* at Miss. 368, *Id.* at 153.

This is all we are asking for.

### **CONCLUSION**

The Appellant in this matter has advised this Court of the several cases that allow members of voluntary organizations to contest the constitution or bylaws of these various voluntary organizations in the Mississippi Circuit Courts. Standing behind Appellant's argument is Section 24 of our Mississippi Constitution which declares our courts open to Mississippi citizens for any wrong perceived by them.

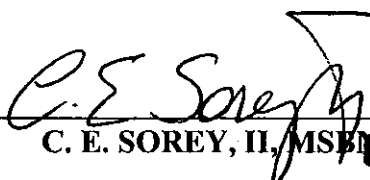
The Appellant requests this Court to follow the precedents and allow him to take his contract issue before the Adams County Circuit Court.

**RESPECTFULLY SUBMITTED**, this the 29<sup>th</sup> day of December, 2010..

**ROBERT L. MCCLATCHY, III**

**PLAINTIFF/APPELANT**

By

  
C. E. SOREY, II, MSBA [REDACTED]

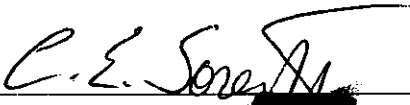
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**CERTIFICATE OF FILING**

I, C. E. Sorey, II, attorney for Plaintiff/Appellant, do hereby certify that I have this mailed U. S. Postage prepaid, to the Clerk of the Mississippi Supreme Court, the original and three (3) copies of Plaintiff/Appellant's Brief in *Robert L. McClatchy, III v. Brotherhood's Relief & Compensation Fund*, No. 2010-CA-01427.

This the 29<sup>th</sup> day of December, 2010.

  
\_\_\_\_\_  
C. E. SOREY, II

**CERTIFICATE OF SERVICE**

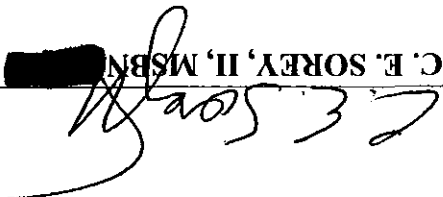
I, C. E. Sorey, II, counsel for Plaintiff/Appellant, do hereby certify that I have this day mailed, postage prepaid, by United States mail, a true and correct copy of the above and foregoing to:

Robert C. Latham, Esq.  
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Honorable Forrest Al Johnson  
Adams County Circuit Court Judge  
P. O. Box 1383  
Natchez, MS 38121

THIS, the 28<sup>th</sup> day of December, 2010

C. E. SOREY, II, MSBN

A handwritten signature in cursive script, appearing to read "C. E. SOREY, II", is written over a horizontal line. To the left of the signature, there is a small, solid black rectangular redaction mark.