

1 UNITED STATES COURT OF APPEALS

2  
3 FOR THE SECOND CIRCUIT

4  
5 August Term, 2004

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7  
8 (Argued: June 9, 2005 Decided: July 20, 2005)

9  
10 Docket No. 04-5127

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14 Fred Sanozky,

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16 Plaintiff-Appellant,

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18 - v.-

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20 International Association of Machinists and Aerospace  
21 Workers, District Lodge 142 International Association of  
22 Machinists and Aerospace Workers,

23  
24 Defendants-Appellees,

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26 James T. Varsel, in his capacity as Airline Coordinator  
27 (IAMAW); William O'Driscoll, in his capacity as President-  
28 Directing General Chairperson (District 142 IAMAW); John and  
29 Jane Does 1 through 5,

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31 Defendants.

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35 Before: JACOBS, SACK, and RAGGI, Circuit Judges.

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38 Fred Sanozky appeals from a judgment entered in the  
39 United States District Court for the Eastern District of New  
40 York (Block, J.) dismissing on summary judgment Sanozky's  
41 hybrid § 301/duty of fair representation claim against his

1 union. We agree with the district court that Sanozky failed  
2 to adduce evidence of arbitrariness, discrimination, or bad  
3 faith on the part of the union; additionally, the district  
4 court did not abuse its discretion in denying Sanozky's  
5 request for reconsideration or in awarding costs. Affirmed.

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7 Terrence P. Buckley, Islandia,  
8 N.Y., for Plaintiff-Appellant.

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10 Robert S. Clayman, Carmen R.  
11 Parcelli, Guerrieri, Edmond &  
12 Claymon, P.C., Washington, D.C.,  
13 for Defendants-Appellees.  
14

15 Per Curiam:

16 Fred Sanozky, an airline mechanic, brought suit in the  
17 United States District Court for the Eastern District of New  
18 York alleging that his union had violated its duty of fair  
19 representation under the Railway Labor Act, 45 U.S.C. §§  
20 151-188. Sanozky contends that District 142 of the  
21 International Association of Machinists and Aerospace  
22 Workers ("IAMAW" or "the union") failed to adequately pursue  
23 his wrongful termination grievance against Trans World  
24 Airlines ("TWA"). The district court (Block, J.) granted  
25 summary judgment in favor of the union on the ground that  
26 Sanozky had failed to adduce evidence of arbitrariness,

1 discrimination or bad faith on the part of the union. The  
2 district court awarded fees to the union and denied  
3 Sanozky's request for an extension of time to "renew and  
4 reargu[e] the summary judgment motion." We affirm.

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6 I

7 On October 29, 1999, Sanozky was terminated after  
8 twenty-five years of employment at TWA. The IAMAW  
9 represented Sanozky through the initial grievance process.  
10 In the course of that process, IAMAW conveyed to Sanozky the  
11 offer of a four-day unpaid suspension in lieu of  
12 termination, but Sanozky declined.

13 IAMAW and Sanozky sought arbitration before the System  
14 Board of Adjustment. The initial arbitration date of  
15 October 4, 2000 was rescheduled when the arbitrator recused  
16 herself, and the arbitration was later cancelled. Sanozky  
17 sought the union's assistance in getting TWA to participate  
18 in arbitration, but (by Sanozky's account) the union was  
19 unresponsive.

20 Meanwhile, TWA was in bankruptcy. See In re Trans  
21 World Airlines, et al., No 01-0056 (Bankr. D. Del. 2001).  
22 TWA maintained that, unless it reached an agreement to sell

1 substantially all of its assets to American Airlines, TWA  
2 would be liquidated and all of its then-active employees  
3 would be unemployed. The union was negotiating with TWA in  
4 an effort to preserve the employment of active TWA employees  
5 after American Airlines took control of TWA. However, TWA  
6 represented that American had no interest in hiring non-  
7 active TWA employees (such as Sanozky) who were facing  
8 termination hearings under the collective bargaining  
9 agreement. In April 2004, TWA agreed that twenty-four of  
10 these termination hearings would be arbitrated as part of  
11 the terms of its bankruptcy disposition. IAMAW decided not  
12 to include Sanozky's case in the twenty-four arbitrations.

13 Sanozky had already been employed by American Airlines  
14 at this time (having concealed his firing by TWA). IAMAW  
15 recommended to Sanozky that he discontinue arbitration  
16 because he would risk discovery by American that he had been  
17 terminated by TWA and because there was little chance of any  
18 appreciable damages from a bankrupt entity. Sanozky,  
19 however, persevered. On September 6, 2001, TWA informed  
20 Sanozky that it was not going to proceed with arbitration  
21 and IAMAW told Sanozky that it could do nothing further to  
22 assist him with his termination grievance.

1           In November 2001, Sanozky, moved pro se in the  
2 bankruptcy court to compel arbitration. The bankruptcy  
3 court granted this motion. In January 2002, a settlement  
4 between Sanozky and TWA was entered as the final award  
5 before the System Board of Adjustment. The award converted  
6 Sanozky's discharge into an unpaid leave of absence, and  
7 directed Sanozky to apply to the bankruptcy court to  
8 determine any "rights, benefits and entitlements" afforded  
9 by his new status.

10           In May 2002, Sanozky moved in bankruptcy court to  
11 enforce the arbitration award. The court interpreted the  
12 arbitration award as requiring Sanozky to apply as a  
13 creditor for relief in the bankruptcy proceeding, but noted  
14 that the time for creditors to petition for relief had not  
15 yet begun. Sanozky asked that the funds to which he was  
16 entitled be set in escrow, but the court ruled that there  
17 was no basis in bankruptcy law for such escrow, particularly  
18 since Sanozky was an unsecured creditor and unsecured  
19 creditors were unlikely to obtain anything more than nominal  
20 recovery.

21           In September 2002, Sanozky, pro se, brought an action  
22 in the district court against his local union, the national

1 affiliate, and several individual union officers in their  
2 official capacities. The district court construed Sanozky's  
3 claim as a hybrid claim under § 301 of the Labor Management  
4 Relations Act, 29 U.S.C. § 185, and the implied duty of fair  
5 representation under the National Labor Relations Act, 29  
6 U.S.C. §§ 151-169. Because this case involves the airline  
7 industry, plaintiff's fair representation challenge arises  
8 under the Railway Labor Act rather than the National Labor  
9 Relations Act. No matter. The same principles of analysis  
10 apply under both statutes. See Welyczko v. U.S. Air, Inc.,  
11 733 F.2d 239, 240 (2d Cir. 1984) (describing hybrid §  
12 301/fair representation claim as "substantively identical"  
13 to claim under the RLA).

14 The district court granted the defendants' motion to  
15 dismiss on the pleadings as to the individual defendants.  
16 However, as to the local and national IAMAW defendants, the  
17 court held:

18 Sanozky has alleged sufficient facts to survive  
19 IAMAW's motion. In sum, he allege[d] that the  
20 IAMAW's delay caused him to miss his window of  
21 opportunity to obtain a prompt arbitration and to  
22 collect on his monetary claims against TWA, and  
23 that the IAMAW's failure to assist him in the TWA  
24 bankruptcy proceedings reduced him to a pro se  
25 status to mine the internecine complexities of the  
26 bankruptcy laws in his effort to enforce his  
27 arbitration award. Given these allegations, at



1           This Court reviews the district court's grant of  
2 summary judgment de novo. See Young v. County of Fulton,  
3 160 F.3d 899, 902 (2d Cir. 1998). In doing so, this Court  
4 is required to construe the evidence in the light most  
5 favorable to the non-moving party and to draw all reasonable  
6 inferences in its favor. See Anderson v. Liberty Lobby,  
7 Inc., 477 U.S. 242, 255 (1986); Maquire v. Citicorp Retail  
8 Servs., Inc., 147 F.3d 232, 235 (2d Cir. 1998). Summary  
9 judgment is appropriate only where "there is no genuine  
10 issue as to any material fact and . . . the moving party is  
11 entitled to a judgment as a matter of law." Fed. R. Civ. P.  
12 56(c).

13           To prevail on a hybrid § 301/duty of fair  
14 representation claim, Sanozky must demonstrate both (1) that  
15 TWA breached its collective bargaining agreement and (2)  
16 that IAMAW breached its duty of fair representation. See  
17 DelCostello v. Int'l Bhd. of Teamsters, 462 U.S. 151, 164-65  
18 (1983). "[A] union breaches the duty of fair representation  
19 when its conduct toward a member of the bargaining unit is  
20 arbitrary, discriminatory, or in bad faith." Marquez v.  
21 Screen Actors Guild, Inc., 525 U.S. 33, 44 (1998) (internal  
22 citation omitted). "[A] union's actions are arbitrary only

1 if, in light of the factual and legal landscape at the time  
2 of the union's actions, the union's behavior is so far  
3 outside a wide range of reasonableness as to be irrational."  
4 Airline Pilots Ass'n Int'l v. O'Neill, 499 U.S. 65, 67  
5 (1991) (citation and quotation marks omitted). Sanozky must  
6 further establish that any damages he suffered were caused  
7 by the union's breach. Spellacy v. Airline Pilots Ass'n  
8 Int'l, 156 F.3d 120, 126 (2d Cir. 1998).

9 The evidence here is entirely consistent with an effort  
10 by the union to advance Sanozky's interests without  
11 prejudicing the interests of its other members. The  
12 evidence presented by Sanozky simply cannot support the  
13 conclusion that the union's actions were unreasonable.

14 In Carrion v. Enter. Ass'n, 227 F.3d 29 (2d Cir. 2000)  
15 (per curiam), this Court "held that a union's duty of fair  
16 representation includes the union's duty to enforce an  
17 arbitration award." Id. at 33. Often, a breach of the duty  
18 to enforce an arbitration award will establish a breach of  
19 the union's duty of fair representation. However, the  
20 failure to enforce an arbitration award must still be viewed  
21 in the overall test of whether such action was arbitrary,

1 discriminatory or in bad faith.<sup>1</sup>

2 Here, the failure of the union to attempt to enforce  
3 Sanozky's arbitration award was not unreasonable in light of  
4 the circumstances. The IAMAW had a duty to represent the  
5 interests of numerous terminated TWA employees, all entitled  
6 to arbitration, in a situation in which the airline was  
7 willing to arbitrate with only a handful of them. Sanozky  
8 provides no evidence that he was excluded in an arbitrary or  
9 discriminatory manner or that the union acted in bad faith  
10 by not advancing his complaint at the expense of someone  
11 else's. Moreover, the union had reasonable basis for belief  
12 that pursuing Sanozky's arbitration against TWA could  
13 jeopardize his employment with American Airlines and that  
14 recovery against the bankrupt TWA was unlikely. See Barr v.  
15 United Parcel Serv., 868 F.2d 36, 44 (2d Cir. 1989) (holding  
16 that "union's good faith, non-arbitrary failure to take an

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<sup>1</sup>We note also that the court in Carrion was determining whether a claim that the union failed to enforce an arbitration award was a hybrid § 301/duty of fair representation claim. That is, the court was determining how to characterize such claim for the purpose of determining the relevant statute of limitations. The court subsequently rejected the claim before it on timeliness grounds and did not reach the question of whether the failure to enforce the arbitration award was in fact a breach of the duty of fair representation in that case. Id. at 33-34.

1 action that [was] unlikely to be advantageous does not  
2 subject it to liability for breach of its duty of fair  
3 representation”).

4 Under certain labor statutes, union members are not  
5 able to pursue their own relief independent of the union.  
6 See Carrion, 227 F.3d at 34. Sanozky, however, had the  
7 ability to pursue arbitration and enforce his own  
8 arbitration award without the union’s involvement. See  
9 Railway Labor Act, 45 U.S.C. § 153(p) (stating that  
10 individual can bring own grievance action). The union’s  
11 need to exercise triage and the prospect that Sanozky’s  
12 claim might be counter-productive demonstrate that the  
13 union’s conduct was within a range of reasonable practices.

14  
15 **III.**

16 Sanozky’s challenges to the district court’s imposition  
17 of costs and the denial of his request for more time to file  
18 a motion to reargue also fail. We review both decisions for  
19 abuse of discretion. See LoSacco v. City of Middletown, 71  
20 F.3d 88, 92 (2d Cir. 1995) (decisions to award costs are  
21 reviewed for abuse of discretion); Fed. R. Civ. P. 6(b)  
22 (district court may, in its discretion, grant an extension

1 of time to perform an act under the Rules).

2 Rule 54(d)(1) provides for costs in favor of the  
3 prevailing party unless the court directs otherwise.  
4 Sanozky offered no argument before the district court as to  
5 why costs should not be awarded in his case. He cannot now  
6 challenge those costs for the first time on appeal. See  
7 LoSacco, 71 F.3d at 90, 92 (affirming costs against pro se  
8 plaintiff where court expressly ordered calculation of costs  
9 and plaintiff failed to object or contest that order).

10 As to Sanozky's request for an extension of time in  
11 filing his motion for reconsideration, such a request may be  
12 granted, in the district court's discretion, "for cause  
13 shown." Fed. R. Civ. P. 6(b). Sanozky offered no  
14 explanation as to why he had failed to file a timely motion  
15 for reconsideration under Fed. R. Civ. P. 59, nor did he  
16 offer any reason why he required additional time to prepare  
17 such a motion. Moreover, in light of the district court's  
18 sound analysis of the summary judgment motion, any such  
19 motion for reconsideration would likely have been futile.

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1           For the foregoing reasons, the judgment of the district  
2 court is AFFIRMED.

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