

1981 WL 2424
United States District Court, District of Columbia.

Jessie Berger et al., Plaintiffs
v.
Iron Workers Reinforced Rodmen Local 201 et al.,
Defendants.

No. CA 75-1743 | August 17, 1981

Opinion

PENN, D.J.

[Statement of Case]

*1 This is before the Court on the motion for restraining order filed by the defendants, Local 201, Training Program and Apprenticeship Committee. These defendants, who are joined in the motion by the other defendants, International Association of Bridge, Structural and Ornamental Ironworkers (International) and Construction Contractors Council, ask that the Court restrain the plaintiffs and their agents and servants, from “engaging in any communications of any kind, whether verbal or nonverbal, with any person who has testified on behalf of defendants” and enjoin the plaintiffs “from engaging in any action or communication of an intimidating, threatening or retaliatory nature directed to any person who has testified, will testify or may testify on behalf of Defendants in this action”.

The plaintiffs oppose the motion but do not object to the entry of an order which would impose similar restrictions on all parties.

I

[Incidents]

The plaintiffs in this class action have charged the defendants with discrimination based on race. A nonjury trial commenced on June 10, 1981 and continued until July 8, 1981 when the case was recessed until September 8, 1981. The parties have advised the Court that the case will be completed within four days.

On July 6, 1981, after the testimony of Ivory Davis, a witness called by Local 201, the Court noticed that two of the plaintiffs left the courtroom immediately after Mr. Davis. The Court asked the Deputy United States Marshal to go to the hallway to insure that there was no confrontation between Davis and the plaintiffs. The Marshal observed Mr. Davis, who is black, on the elevator, with two of the plaintiffs and overheard one of the plaintiffs say to Davis “why in hell did you come down here”. TR. 2572. Davis replied “I was subpoenaed here”. *Id.*

The Court took a recess within moments of the departure of Mr. Davis from the courtroom and upon its return to the courtroom, the Court was advised at a bench conference by counsel for the defendant International that one of the plaintiffs was heard to state in the courtroom, “we’re going to hang Mr. Davis tonight”. TR. 2569. At the hearing on August 13, 1981, counsel for the plaintiffs disputed the remarks attributed to a plaintiff in the courtroom and stated that when Mr. Davis left the well of the court, one of the plaintiffs stated “we are not going to hang him”, apparently referring to Mr. Davis.

The incident was the subject of a bench conference. TR. 2569-2574. Thereafter, the Court, in open court, admonished those plaintiffs seated in the courtroom to refrain from any contact with witnesses for the defendants. TR. 2574-2576. The Court stated “that if it comes to my attention that any witness in any way is being placed under any type of pressure that this Court will take appropriate action”. Counsel for the plaintiffs informed the Court that on the following day he advised those of his clients who were present that they should make no contact with or have any confrontation with witnesses for the defense. As was noted, the trial was thereafter recessed on July 8, 1981.

2 Later that month, Local 201 advised the Court and the parties that an employee of Capital Steel had received a telephone call for Herbert Jones and when the caller was advised that Mr. Jones was not in, the caller left a message for Jones saying “he deflected us and you tell him we are going to get him”.

There is no question that the plaintiffs were involved in the incident of July 6, 1981, however, as to the telephone call of July 10, 1981, while one may assume that the call was made by the plaintiffs or someone associated with them, there is no evidence that that is a fact.

II

Order

[Need for Restraining Order]

Although there is no evidence that the call on July 10, 1981, was made by the plaintiffs or by anyone associated with them, it is clear that some of the plaintiffs were involved in the incident with Davis on July 6, 1981. Plaintiffs argue that the July 6th incident was the result of a flip remark by a plaintiff or plaintiffs and was not intended to threaten or intimidate Mr. Davis. The actions of the plaintiff participants on July 6th did not strike this Court as being entirely in jest. At the very least, such statements are the result of extremely poor judgment, and if made in jest, are subject to misinterpretation. The purported statement of July 10, if made by the plaintiffs, raises a much more serious question because, while it can be argued that the July 6th statement was made in court and perhaps on the spur of the moment, the July 10th statement was apparently made deliberately and after the Court's admonition of July 6th. Such statements could very well have a chilling effect on witnesses and therefore cannot and will not be tolerated by the Court. Moreover, such statements if intended as a threat or to chill the testimony of witnesses, amount to obstruction of justice and may also jeopardize a fair trial.

The Court concludes that it is appropriate to enter an order directing the plaintiffs to cease all such statements directed to defendants and their witnesses. While there is absolutely no contention that the defendants have attempted to contact plaintiffs' witnesses or the plaintiffs for the matter, the Court nevertheless concludes that the order should be addressed to *all* parties in this action. While entering such an order, the Court makes clear that the order results not from the actions of the defendants but solely from those of the plaintiffs.

*3 It having come to the attention of the Court that certain communications of a potentially intimidating nature have been made to a witness or witnesses for the defendants, and it further appearing that action by this Court is appropriate and necessary to prevent further communications of this kind, it is therefore

Ordered that the parties in the aboveentitled action, their agents and servants, all persons acting under their control, authority or direction, and all persons acting in aid of or in conjunction with any of the parties, be restrained and enjoined for the duration of the trial in this matter from engaging in any communication of any kind, whether verbal or nonverbal, concerning this case, with any person who has testified or is to testify in the case and it is further

Ordered that the parties in the aboveentitled action, their agents and servants, all persons acting under their control, authority or direction, and all persons acting in aid of or in conjunction with any of the parties, be enjoined from engaging in any action or communication of an intimidating, threatening, or retaliatory nature directed to any person who has testified, will testify or may testify in this case, and it is further

Ordered that this order does not restrict communications or discussions concerning the case between the experts called by the parties in this case or between counsel for any party and witnesses for that party or any other party and it is further

Ordered that counsel shall ensure that each party represented by that counsel received a copy of this Order and shall certify to the Court that each and every party has been served with a copy of the Order, setting forth the name of the party and the date of service.