

**THE PUBLIC REVIEW BOARD
INTERNATIONAL UNION, UAW**

APPEAL OF:

RAWN MITCHELL,

Appellant

-vs-

CASE NO. 1456

UAW LOCAL UNION 533
(Fostoria, Ohio)
REGION 2B
(THE UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL
IMPLEMENT WORKERS OF AMERICA),
Appellee

_____ /

DECISION

(Issued February 20, 2004)

PANEL SITTING: Prof. Theodore J. St. Antoine, Chairperson,
Prof. Benjamin Aaron, Prof. Janice R. Bellace,
Professor James J. Brudney, Prof. James E.
Jones, Jr., Prof. Paul Weiler and Prof. Marilyn
V. Yarbrough.

Rawn Mitchell claims that the decision to withdraw his discharge grievance was motivated by collusion or lacked a rational basis.

FACTS

Rawn Mitchell worked at Honeywell's Spark Plug Plant in Fostoria, Ohio as a Technical Assistant with a seniority date of August 16, 1999. On May 23, 2000, Mitchell requested a personal leave from July 2 until July 28 so he could return to Australia to visit family and friends. A portion of this period was covered by the Company's July shutdown. On June 8, 2000, Mitchell's Team Advisor, Darren Ruffin, denied his request. Ruffin stated:

"The only time we can allow will be the first week of the plant shutdown or the week of July 3rd, 2000. Due to the heavy production demands placed upon department 10, your presence at work will be required for the remainder of the time you have requested. You are not being singled out as an individual in regards to this request, all employees with

less than one-year seniority will be required to work this period as well.”¹

UAW Local 533 President wrote an e-mail to Ruffin on June 12, 2000, asking the Company to reconsider its denial of leave for Mitchell, but apparently to no avail.

On June 29, 2000, Mitchell submitted a request for medical leave beginning on July 3, 2000. Mitchell presented forms to the Plant’s Medical Department indicating that time off was justified from July 3, 2000, through July 26, 2000. The Company’s form indicates that Mitchell requested conditional sick leave beginning July 3, 2000, and that documentation confirming the need for sick leave was due July 17, 2000. The Local Union’s summary of information collected in connection with Mitchell’s discharge and grievance indicates that Dr. Gomez submitted paperwork confirming Mitchell’s illness on July 17, 2000.

According to a report prepared by the CIGNA Group Insurance Company in response to Mitchell’s claim for short term disability benefits, Mitchell consulted Dr. Gomez on June 23 for treatment of depression and an inability to concentrate. When CIGNA contacted Dr. Gomez to inquire into the exact nature of Mitchell’s disability, he indicated that he had not treated Mitchell after his initial consultation on June 23.

Dr. Douglas Patron from Honeywell’s Medical Department reported in an e-mail to the Company on August 4, 2000, that he had spoken with Dr. Gomez earlier in the week. According to Dr. Patron, Dr. Gomez stated that he did consult with Mitchell, but that he had not provided any treatment in the form of counseling or medication. Patron wrote that Dr. Gomez said that he did not feel comfortable stating that Mitchell was unable to perform his work activities.²

On July 27, 2000, Mitchell returned to work and was called into the Human Resources Manager’s office for a fact-finding meeting. On July 28, 2000, Human Resources Manager Mark Ellis issued a letter to Mitchell advising him that he was being suspended for his unexcused absence from July 10 through July 26. The suspension was converted to a discharge on August 4, 2000. In its letter to Mitchell regarding his discharge, the Company noted that Mitchell’s request for personal leave to visit Australia had been expressly denied. The Company pointed out that under the contract, the seniority of an employee with less than one year’s seniority will be broken if he is absent for three working days without notifying the Company.

Local 533 filed Grievance #00-18 protesting Mitchell’s termination on August 18, 2000. In support of Mitchell’s grievance, the Union argued that the Medical Department informed Mitchell that the paperwork supporting his request for medical leave would

¹ Record p. 9.

² Record, p. 15.

have to be received prior to July 17, 2000. Mitchell's name appeared on the weekly Hourly Personnel Move Sheet on June 30, 2000, as being on medical leave. The Union argued that the Company's actions led Mitchell to believe that he had been granted an automatic sick leave of absence as stated in Article VIII, §24 of the collective bargaining agreement.³ The Union charged that the Company's denial of Mitchell's medical leave violated Article IX, §23(f)(2), of the Collective Bargaining Agreement.⁴ The Union argued that this subsection declares that an employee's "proof of illness" will automatically be considered valid unless the Company's Medical Department rejects it within two weeks following its submission by the employee. The Union stated that Mitchell did not know that his leave had been denied until he met with Mark Ellis prior to his suspension on July 28.

The Company denied Mitchell's grievance on October 26, 2000. The Company maintained that the documents submitted by Mitchell's doctor did not substantiate his need for a medical leave from July 10 through July 17.

At the third stage of the grievance procedure, the Union continued to argue that Mitchell had been placed on conditional leave on June 30, which was extended based on documents submitted by his doctor on July 17. In addition, the summary of information concerning Mitchell's discharge indicates that the Union asserted that Mitchell's team advisor Darren Ruffin disliked Mitchell because he had criticized the scheduling in Department 10.

On April 10, 2001, Local 533 President Ron Mills advised Mitchell that his grievance had been withdrawn. Mills told Mitchell that the Union had attempted to reach some kind of settlement with the Company on a number of occasions. He reported:

³ Article VIII, §24 provides, in relevant part, as follows:

"An employee who is unable to work because of injury or illness, and who furnishes satisfactory evidence thereof, shall be granted an automatic sick leave of absence covering the period of such disability, subject to the provisions of Section 3 of this Article."

⁴ Article IX, §23 of the contract deals with the calculation of an employee's weeks on the active employment rolls for the purpose of determining eligibility for vacations. Subsection (f) of this section defines which absences may be excluded from consideration in making such calculations. Subsection (f)(2) of Article IX, §23 provides as follows:

"When an employee is absent from his regularly scheduled work because of sickness three (3) consecutive working days or more, but not to exceed ninety (90) accumulated days in one year, and who furnished acceptable proof of such sickness to the Company Medical Department within two (2) weeks following his return to work, such absent time will not be counted in computing the thirty-five (35) days of absence.

Unless the Company Medical Department rejects the submitted proof of illness within two (2) weeks following its submission by the employee, it will automatically be considered valid.

Disputes as to validity may be subject to the Grievance Procedure."

“...After all was said and done the Company still maintained that you purchased tickets prior to obtaining permission for a leave, was in fact denied a leave of absence, went on medical leave in order to get the needed time off and was away from work for 3 weeks. The Company also noted your short tenure as an employee. ...”⁵

Mills stated that it was the unanimous decision of the Bargaining Committee that the Union would probably lose the case if it went to arbitration.

The minutes of a Local 533 Membership meeting dated May 20, 2001, indicate that Mitchell made a motion for the membership to approve his appeal of the withdrawal of his grievance to the International Union, and the motion carried. Mitchell wrote to President Yokich about his case on May 29, 2001. In his letter, Mitchell stated that he had spoken with his team advisor about taking leave to go to Australia six months prior to his departure and that the advisor said, “I don’t see a problem with that.”⁶ Mitchell then described the report he gave concerning the production problems in his department. He explained that it was only after he exposed the scheduling problems in Department 10 that his foreman started to hesitate about granting his leave to go to Australia. Mitchell went on to say that he did have a past history of depression from being homesick and other issues. He argued that his medical leave was automatic under the contract and that he received no 5-day quit letters or other notices during his absence.

On September 16, 2001, Mitchell appeared before the Local 533 membership once again and requested support for his appeal. This time his motion failed by a vote of 28 to 10. Mitchell appealed the membership’s action to the International on September 18, 2001. In support of his appeal, Mitchell argued that President Ron Mills had misrepresented his case to the membership. Once again, Mitchell pointed out that his Team Leader had indicated that there would be no problem with the leave prior to his having purchased his airline tickets to Australia. Mitchell continued to argue that his medical leave was legitimate, even though the dates coincided with his requested personal leave. He stated:

“...With my medical condition part of the problem was not being home in so long. The company strongly gave me the impression that they were not letting me go in July (personal leave) or August (when I had a year’s seniority) or any time I asked. International flights with a family are somewhat hard

⁵ Record, p. 28.

⁶ Record, p. 31

to organize, with my condition I needed to go home. I had already had a PAST HISTORY of the same condition, the flights were already booked and paid for, I needed to go for Mental Sanctuary. The company wasn't being reasonable whatsoever. ..." ⁷

Ben Gross and Willis Starks, acting for the International President, conducted a hearing on Mitchell's appeal on February 12, 2002, and prepared a report for the International Executive Board. The hearing officers concluded that Mitchell took a big risk when he left the country without knowing whether his application for medical leave would be approved, and he lost. They further concluded that the termination of Mitchell's seniority was supported by the contract.⁸ The hearing officers denied the appeal.

On March 20, 2002, Administrative Assistant Dottie Jones asked Mitchell to provide her with a copy of the doctor's letter authorizing his leave for the period July 10 through July 26, 2000. Mitchell advised Jones on April 15 that he had referred her request to his doctor. On June 4, 2002, the Bowling Green Clinic faxed a copy of Jones' inquiry back to Solidarity House with the following notation written on it: "Pt. hasn't been here on these dates."⁹ On April 10, 2003, the International Executive Board sent Mitchell a copy of the hearing officers' report which it had adopted as its decision on Mitchell's appeal. Mitchell appealed to the Public Review Board on May 2.

ARGUMENT

A. Rawn Mitchell:

Under the heading "Appearances" in the report of the hearing officers to the IEB, Nurse Ruth Kaiser is listed as appearing on my behalf. She did testify at the hearing, yet the hearing officers do not even mention her testimony. They appear to have completely disregarded it. The hearing officers' report indicates that I went on an unauthorized leave without the Company's knowledge. The evidence in the record demonstrates that this was not the case. I had documents from the Company granting

⁷ Record, p. 40.

⁸ Article VIII, §3 of the Contract provides as follows:

"Seniority shall be broken for the following reasons:

(3) (Absent from Work)

If a seniority employee with less than one year seniority is absent for three (3) working days without properly notifying the Company and giving a satisfactory reason for his absence, unless it is not possible for him to do so."

⁹ Record, p. 65.

my conditional medical leave of absence, plus my name was listed on the "Hourly Personnel Short Term Leave" list with the notation "MLA Active."

The Company did not ask senior people in the plant if they wanted to work over the shutdown period in Department 10. The hearing officers' report does not mention that people with less seniority than mine were allowed to go to Las Vegas. Furthermore, the report does not state that the Company originally indicated that my request for leave would be granted.

I do not believe that the real reasons for my termination were considered by the officers who decided my appeal. I believe that the amount of time it took for them to issue their report was abnormal. I believe that the Company and the Local Union must have pulled some strings to get my case denied, because I cannot see any other way that such a disregard for the contract can have occurred.

B. International Union, UAW:

Appellant was terminated pursuant to Article VIII, §3(3), of the collective bargaining agreement, which provides that an employee with less than one year seniority may be terminated for being absent for three or more working days without giving a satisfactory reason for his absence. The Local argued that Mitchell should be reinstated because the Company's Medical Department had conditionally approved his medical leave. The Company repeatedly refused to accept this argument because of the appellant's short seniority and what it viewed as his fraudulent manipulation of the system.

As a short-term employee, appellant took a giant risk that he would lose his job by going on a conditional medical leave just prior to the plant's shutdown. The Medical Department automatically granted the leave because it was unaware of Mitchell's previous requests for personal leave. When the Company returned to operational status a week before appellant was scheduled to return from Australia, the Human Resources Manager learned of appellant's actions, was not amused, and refused to accept what it considered a ruse. With respect to Mitchell's argument that he was justified in relying on the Medical Department's conditional grant of medical leave, Article VIII (4) of the collective bargaining agreement provides that medical leaves will not be cancelled except in unusual situations such as suspected abuse of the medical leave provisions.¹⁰

The Local Union quite reasonably doubted that it could persuade an arbitrator that a ten-month employee who thought he had found a way to sneak around a clear

¹⁰ The relevant portion of Article VIII, §4, states as follows:

"Medical leaves will not be cancelled except in unusual situations such as the suspected abuse of the medical leave provisions."

refusal to grant three weeks of personal leave should be reinstated. For this reason, the IEB's decision should be upheld.

DISCUSSION

Appellant does not deny having applied for medical leave for the purpose of traveling to Australia. He argues instead that he was suffering from depression as a result of being away from his home for so long. Furthermore, he maintains that the depression he suffered on this account was so severe that he was actually disabled and so legitimately entitled to disability leave. He insists, therefore, that he had a contractual right to be absent from work once the Medical Department granted him a conditional medical leave and he followed through with a note from his doctor, Dr. Gomez, confirming that he had consulted him for symptoms of depression. Mitchell claims that unless the Company specifically rejected Dr. Gomez's submission within two weeks, it was contractually required to extend his sick leave of absence.

The section of the collective bargaining agreement that appellant uses to advance this argument does not apply to grants of medical leave, but rather to the calculation of vacation eligibility. It is not relevant to appellant's situation. Article VIII of the collective bargaining agreement addresses issues relating to seniority and the loss of seniority. Article VIII, §4, specifically states that conditional medical leave may be cancelled where abuse of the medical leave provisions is suspected. In light of the appellant's earlier request for personal leave for the same period that he was claiming to be disabled, it was natural for the Company to investigate the basis for Mitchell's claim of disability. Upon investigation, the Company learned that Mitchell was not, in fact, being treated for severe depression. Doctor Gomez admitted to the Company's Associate Medical Director that Mitchell had received no treatment and was not actually disabled.

Mitchell complains that the hearing officers who prepared the report on his appeal for the IEB ignored the testimony of his witness, Ruth Kaiser, defending the legitimacy of his medical condition. While we agree with Mitchell that the hearing officers ought to have acknowledged this testimony, such evidence cannot now be relied upon to challenge the Company's position that Mitchell was not on an approved medical leave in July 2000. Mitchell was required under the contract to justify his leave prior to July 17, 2000, and this he could not do.

Under the circumstances, the Local Union was justified in its conclusion that Mitchell's case could not be successfully arbitrated. Mitchell could not provide the necessary documentation to support his leave, and therefore his absence from work was unexcused. The collective bargaining agreement has a provision specifically authorizing the termination of employees who have less than a year of seniority and who are absent from work for three working days without notifying the employer. The Company did not violate the collective bargaining agreement when it terminated Mitchell, so the Union's decision not to pursue arbitration of his grievance was rational.

Mitchell argues that he was treated unfairly in that less senior employees were granted personal leave to go to Las Vegas, but this circumstance would not give the Union any contractual basis for demanding that the Company grant Mitchell's request for leave and it would have no bearing on the Company's conclusion that Mitchell was not disabled.

The appeal is denied.