

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

APPEAL OF:

RAY SPARROW,

Appellant

-vs-

CASE NO. 1457

UAW LOCAL UNION 1250
(Brookpark, Ohio)
REGION 2B
(THE UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL
IMPLEMENT WORKERS OF AMERICA),
Appellee

_____ /

DECISION

(Issued February 23, 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

Ray Sparrow argues that the decision to settle his grievance without an award of back pay was improperly motivated or lacked a rational basis.

FACTS

Ray Sparrow works at Ford Motor Company's Cleveland Engine Plant with a seniority date of June 6, 1994. In 1999, the UAW and Ford adopted a Letter of Understanding concerning complaints of sexual harassment in the work environment and stating Ford's commitment not to tolerate harassment of any kind. A Ford Motor Company memorandum dated October 15, 1999 titled, "Zero Tolerance of Harassment and Discrimination," states the policy in relevant part as follows:

"It is our policy that any disrespectful language and/or inappropriate behavior is not condoned. Examples of this behavior include:

Telling jokes with sexual, racial, ethnic or religious
meaning
Offensive gestures/language

Graffiti of a sexual, racial, ethnic or religious
Unwanted physical touching
Displaying sexually suggestive objects or pictures
Use of sexually explicit entertainment in the workplace or
at Company functions

Breaches of acceptable standards of conduct will be considered as serious misconduct and will be handled in accordance with established principles of discipline.”¹

On March 16, 1999, Ray Sparrow was given a one-month disciplinary layoff based on the following charge:

“Mr. Sparrow used abusive language containing racial overtones to co-worker.”²

According to Sparrow's attorney, Loren Gordon, Plant Labor Relations initially told Sparrow that he was going to be terminated, but Local 1250 was able to negotiate the one-month penalty and Sparrow was actually returned to work on a "time served" basis which amounted to 93 hours.³ Attorney Gordon asserts that the penalty assessed in 1999 was excessive in comparison to Ford's treatment of similar infractions. Nevertheless, Sparrow did not appeal the penalty assessed in 1999.

On August 15 and 16, 2000, Labor Relations took statements from several employees concerning incidents that occurred on August 14 and 15 involving Ray Sparrow and co-worker Lois Bergenstein. Bergenstein stated that on August 14, back up coordinator Jared Newell told her not to drink her Pepsi. When she asked why, Bergenstein stated that Newell told her that Melvin Macklin had seen Ray Sparrow doing something to it. Bergenstein wrote that she asked Macklin what Sparrow had done and he replied, "I don't want to tell you what he did but it was wrong."⁴ The

¹ Record, p. 5.

² Record, p. 17.

³ The events giving rise to this discipline were not explained by either the Union or the Appellant until December 1, 2003, when attorney Loren Gordon submitted his argument in support of Sparrow's appeal to the Public Review Board. Gordon describes the incident as follows:

“In March 1999, Mr. Sparrow was involved in a verbal incident with co-worker Simone Thompson. Ms. Thompson is the daughter of a close friend of Willie Hubbard, the President of Local 1250. Mr. Sparrow said to Ms. Thompson, "Here comes Uncle Willie." Ms. Thompson responded, "You're harassing me." Mr. Sparrow then stated, "If I wanted to harass you I'd call you a black nigger bitch." Mr. Hubbard learned of the incident within a few minutes and, obviously incensed, demanded to Ford that Mr. Sparrow be fired. Ford officially disciplined Mr. Sparrow with 30 days but allowed him to return after having served about 93 hours.” (Record, p. 214)

⁴ Record, p. 6.

following day Bergenstein reported that Sparrow came into her area and grabbed her Pepsi and put it to his anus and stated, "There is a difference between pissing in the bottle and this." Bergenstein stated that she and Sparrow then began to argue and that she said that he did not scare her and that he was acting like a child. He responded by calling her a "fucking cunt."⁵ Employees Jared Newell, Melvin Macklin, Karen Robinson, Sudan Khaliff, Joe Arcara and Melanie Russ signed a statement corroborating this account.⁶

Local 1250 Committeeperson Ron Diperna arranged to have Sparrow interviewed by Labor Relations Representative Les Harris concerning the incident with Lois Bergenstein on August 16, but Sparrow did not report to work on that day. Diperna states that he commented to Harris that Sparrow had been talking about quitting and added that maybe he did quit. According to Diperna, Harris responded that the outcome would have been the same anyway, because he intended to terminate Sparrow.⁷ Harris denies that he said that he was going to terminate Sparrow before interviewing him. Harris claims that he merely said that they would deal with Sparrow when he reported back to work.⁸

Sparrow did report to work on August 30 and was taken directly to Labor Relations where he was interviewed by Tyra Grier-Coleman. Grier-Coleman reported that Sparrow's statement could not have been taken any sooner because he did not report back to work until August 30, which was the date scheduled for his disciplinary hearing.⁹ On August 30, 2000, Sparrow was terminated based on the following charge:

"Employee disrespected fellow employee on 8-14-00 and 8-15-00. Zero tolerance policy explained and progressive penalty imposed."¹⁰

Local 1250 filed Grievance P3370 protesting Sparrow's discharge on September 2, 2000. In support of the grievance, the Union argued that the Company failed to investigate Sparrow's side of the story and had already predetermined the penalty to be assessed prior to the disciplinary hearing. Furthermore, the Union argued that the penalty was too harsh and did not follow the progressive steps of discipline stated in the contract. On January 3, 2001, Management denied Sparrow's grievance at the second stage with the following disposition:

⁵ Record, p. 6.

⁶ The employees' statements are in the record at pages 8-9, 10-11, 12, 13, 14, and 15-16.

⁷ Record, p. 30.

⁸ Record, p. 29.

⁹ Record, p. 28.

¹⁰ Record, p. 17.

“The aggrieved employee was guilty of disrespect to fellow employee as charged. Based upon his previous disciplinary record for similar offenses, the penalty assessed was not excessive.”¹¹

On January 3, 2002, Local 1250 Building Chairperson Granakis and Local President Willie Hubbard wrote to the National Ford Department that they had been unable to resolve Sparrow's grievance at the third stage and were therefore forced to appeal to the next step of the procedure. A Notice of Appeal to Umpire was filed on January 4, 2002. At a meeting on May 14, 2002, Ford Department Representative Pete Piccini agreed to settle Sparrow's grievance on the following basis:

“Per our meeting on May 14, 2002, Ray Sparrow is to be reinstated with no back pay effective May 20, 2002. It is agreed that Mr. Sparrow's disciplinary record will stand. The penalty of discharge will remain on Mr. Sparrow's disciplinary record for 18 months from the date of reinstatement.”¹²

Ford Department Representative Donald Hunter telephoned Sparrow on May 15, 2002, and advised him that his grievance had been settled and that he should report back to work on May 20, 2002. Sparrow did report to work on May 20 and completed some paperwork and took a physical. On May 21, he resumed his duties. At this point, Sparrow did not know the terms of the settlement agreement. The terms of the settlement are contained in a letter from Ford Motor Company to Representative Piccini dated June 13, 2002.

Attorney Loren Gordon filed an appeal with the International Executive Board protesting the settlement of Sparrow's grievance on June 19, 2002. Representative Pete Piccini prepared a Memorandum in response to Sparrow's appeal dated November 13, 2002. Piccini pointed out that the one-month disciplinary layoff assessed on March 16, 1999, was still on Sparrow's record when the incident with Bergenstein occurred, and that discharge is the next step of progressive discipline under the contract. Piccini stated:

“During my grievance meeting with the company, they were adamant about non-receipt of back pay. I felt that if this grievance went to arbitration, we would not receive a favorable decision. Based on this, I settled the grievance accordingly.”¹³

¹¹ Record, p. 22.

¹² Record, p. 39.

¹³ Record, p. 55.

Ben Gross and Bill Sparks, acting for the International President, conducted a hearing on Sparrow's appeal on March 11, 2003, and prepared a report for the International Executive Board based on evidence produced at the hearing and statements submitted by International Representative Nick Parente, and Sparrow's attorney, Loren Gordon.

In a letter dated March 26, 2003, Gordon argued that the one-month disciplinary layoff assessed against Sparrow by Ford for his first offense in 1999 was such a deviation from the Company's usual practice in cases arising under the "Zero Tolerance" policy that it tainted all subsequent discipline. Gordon argued that the standard discipline for first offenses under the policy is a three-day disciplinary layoff. His letter states:

"...For example, after four incidents (one of which involved fighting), employee Endo received only three days. After two incidents (one of which involved a threat to kill), employee Seals received only 30 days. After numerous incidents involving threats and fights, employee Ware received only a few weeks off. ..."14

Had Ford assessed the standard discipline in 1999, Gordon stated, Sparrow would have received something less than termination in 2000 under the progressive discipline described in the collective bargaining agreement.

Furthermore, Gordon argued that Ford's Labor Relations representatives did not adequately investigate the incident that led to Sparrow's discharge. If they had, he said, they would have discovered that Bergenstein and Sparrow were friends who often engaged in banter and shoptalk and that Ms. Bergenstein had never indicated that Sparrow's acts or words were unwelcome.

Gordon urged that it was irrational for the Union to settle Sparrow's grievance under these circumstances after he had lost 21 months of pay. Gordon noted that Sparrow had supported challengers to the Local President and Vice President in the last election and suggested that this may have influenced their handling of Sparrow's grievance. Furthermore, Gordon stated that President Willie Hubbard held a grudge against Sparrow because he believed Sparrow had been harassing a co-worker who was related to him. In addition, Gordon claimed the Union was aware that the Company might have been seeking revenge for NLRB and OSHA charges filed by Sparrow.

International Representative Nick Parente submitted a statement on behalf of the Union at the hearing on March 11, 2003. Parente stated that the Union advanced three arguments in support of Sparrow's grievance: lack of due process, disparate treatment,

¹⁴ Record, p. 73.

and failure to follow progressive discipline. On the issue of due process, Parente commented that while the Employer's investigation was perfunctory, it did take a statement from the grievant which basically confirmed the statements given by the Company's witnesses.¹⁵

With respect to the issue of disparate treatment, Parente reported that the Union presented evidence during the Third Step investigation showing a totally inconsistent application of discipline when it came to the enforcement of the Employer's rule on zero tolerance. He stated that for infractions very similar to Sparrow's, penalties ranged from simple warnings to suspensions of a week or two.¹⁶ He noted that the Company had never assessed a thirty-day penalty for a first violation of the rule as it did against Sparrow on March 16, 1999. Parente pointed out, however, that Sparrow did not appeal the closure of his grievance on that penalty and that the next progressive disciplinary step after a thirty-day layoff is termination.

According to Parente, even though the Employer had the right to progress to termination as the next penalty, the Union still felt that Sparrow's grievance deserved consideration due to the perfunctory nature of the Employer's investigation and its inconsistent administration of discipline, so the grievance was appealed to the Umpire. Parente reported that when the offer of reinstatement was made, however, Pete Piccini felt that it was not worth the gamble to proceed to the Umpire and possibly end up with a negative ruling where the grievant would not have regained his employment. Parente argued that the Union acted in a responsible and just manner on Sparrow's behalf.

In response to Representative Parente's argument, Attorney Gordon insisted that Piccini's opinion that the Union might receive an unfavorable ruling from the Arbitrator is contradicted by all of the evidence gathered by the Union and the facts of the case. Gordon concluded that Ford's pattern and practice demonstrated that it does not severely discipline employees for first offenses, particularly where the offense is merely a verbal altercation, and that it does not terminate for a second offense of this type. In light of this, Gordon argued that the Union's decision to withdraw Sparrow's case without receiving back pay lacked a rational basis.

¹⁵ Record, p. 69

¹⁶ The evidence collected by the Union to support its argument of disparate treatment is attached to the report of the hearing officers after Representative Parente's and attorney Gordon's statements. These records show that Scott Meder was given a "Reprimand and Warning" for calling Avon transfers "assholes." (Record, p. 77) Employee Debbie Zelenka was issued a two-week disciplinary layoff after a confrontation involving abusive language and slapping. (Record, p. 81) Hassen Williams was given one week off for calling a Plant Production Officer a "punkass." He denied calling him a "punk Uncle Tom nigger." (Record, p. 90) Rich LaPlanta was issued a Balance of Shift plus one day for calling a co-worker a "bitch." (Record, p. 94) Mary Anna Tascar received a "Reprimand and Warning" plus the balance of shift for disrespecting a fellow employee in connection with an ongoing dispute between Tascar and her co-worker, Dora Oney. (Record, p. 100)

The hearing officers reported that during the hearing, Sparrow named three more employees in addition to those whose records were submitted by Nick Parente who violated the rule against abusive language and received no penalty or only a verbal warning. They concluded, however, that the statement presented by Parente adequately explained why the grievance was settled. The hearing officers held that the decision of the International Representative was proper and not devoid of rational basis.

The International Executive Board adopted the report of the hearing officers as its decision and the parties were notified of that decision on July 17, 2003. Sparrow has now appealed the International Executive Board's decision to the Public Review Board.

On November 6, 2003, Gordon submitted additional documents for inclusion in the record. Among these documents are more disciplinary records demonstrating that Ford does not ordinarily discharge employees for offenses involving altercations and abusive language. In addition, Gordon submitted documents prepared in connection with Sparrow's NLRB charge and his OSHA Complaint which, Gordon argued, might explain why the Company treated Sparrow more harshly than other employees and why the Union did not fight harder to obtain his lost wages.

ARGUMENT

A. Ray Sparrow by his attorney Loren Gordon:

Mr. Sparrow believes that the Union's decision to settle his case rather than demand arbitration lacked a rational basis and was motivated by discrimination.

The incident for which Sparrow was disciplined in March of 1999 involved co-worker Simone Thompson who is the daughter of a close friend of Local 1250 President Willie Hubbard. Sparrow admittedly used racially offensive language in Thompson's presence and when President Hubbard heard about it, he became incensed and demanded that Ford fire Mr. Sparrow. As we argued at the IEB level, the discipline assessed as a result of this incident was excessive and inconsistent with Ford's past practice. While Sparrow's grievance protesting this discipline was being processed, he learned from Committeeman Mitch Randolph that President Hubbard was telling people that Sparrow was a bigot and that the Local did not want him back.

In addition, Sparrow filed NLRB charges against both Ford and Local 1250 accusing Ford of disciplining him because he wore campaign buttons at work, and the Union of failing to properly process his grievance protesting the discipline because he supported candidates other than the incumbents. In June 2000, Sparrow filed a charge with OSHA alleging that he was disciplined in retaliation for engaging in a protected safety and health related activity. Documents related to these charges were presented to the hearing officers who reported on Sparrow's appeal to the IEB.

The report of the IEB does not address the evidence presented of President Hubbard's motives for retaliating against Sparrow. We demonstrated that Hubbard had

ample reason to seek revenge against Mr. Sparrow. Mr. Hubbard obviously had the ear of Mr. Parente, and also that of the International Representatives Piccini and Hunter. Mr. Hubbard's hostility towards Mr. Sparrow influenced the International's decision on Sparrow's appeal.

The Union has not adequately addressed the issue of disparate treatment. The documents submitted by appellant to the IEB demonstrated that Ford does not terminate employees for arguing, even for second and third offenses. The Union ignored evidence that Ford did not fire Mr. Endo for three instances of fighting, drinking and leaving without permission; or fire Mr. Posey for multiple instances of sleeping; or fire Mr. Seals for multiple verbal altercations, including a threat to kill; or fire Mr. Ware for multiple instances of threats and fights.

There is nothing in the record, on the other hand, to support the Union's assertion that Ford had an absolute right to terminate Sparrow as next step of progressive discipline following the thirty-day disciplinary layoff. The collective bargaining agreement, Article IV, Section 3, requires Ford to have just cause; the local agreement states that progressive discipline will be used, and that discipline will be evaluated on an individual basis.¹⁷ The contract requires that discipline must be appropriate and assessed in accordance with established principles.

The Union did not properly represent Mr. Sparrow. Ford clearly treated Sparrow differently than other employees. President Hubbard's animosity towards Mr. Sparrow must have played a role in the Union's failure to arbitrate his grievance, for the decision cannot otherwise be explained.

B. International Union, UAW:

The evidence presented to the IEB established that the Union's decision to settle Sparrow's grievance was well within the boundaries of its discretion to administer the collective bargaining agreement. There is no evidence that the decision was tainted with hostility, discrimination or bad faith by any of the parties involved.

¹⁷ Article IV, §3 provides as follows:

“Section 3. Discipline and Discharge

The Company retains the sole right to discipline and discharge employees for cause, provided that in the exercise of this right it will not act wrongfully or unjustly or in violation of the terms of this Agreement.

In imposing discipline on a current charge, the Company will not take into account any prior infraction which occurred more than 18 months previously.

Complaints that the Company has violated this paragraph may be taken up through the Grievance Procedure provided in this Agreement.”

DISCUSSION

The evidence in the record does not support appellant Sparrow's claims that fraud, discrimination or collusion with management influenced the Union's disposition of his grievance. The record shows Sparrow was terminated in August 2000, as the direct result of a confrontation with a co-worker that was witnessed by six other employees. Sparrow admitted that his co-workers' description of his actions on August 14 and 15 were essentially accurate, although he characterized his behavior as "banter and shoptalk" rather than harassment and verbal abuse. There is nothing to connect the discipline imposed on Sparrow with the NLRB charge that he filed in September 1999, or the OSHA complaint he filed in June 2000. The fact that these charges were filed is not evidence that they influenced the Employer or the Union.

Sparrow has shown that the Local President Willie Hubbard may have had reason to dislike him. There is no indication, however, that Hubbard made any effort to interfere with the Local Union's presentation of Sparrow's grievance. The record shows that Building Chairman Huck Granakis and International Representative Nick Parente vigorously pursued Sparrow's grievance and submitted his case to the Umpire when they could not achieve a settlement that they felt was satisfactory. Ford Department Representative Pete Piccini ultimately settled the grievance. Attorney Gordon's speculation that Hubbard may have tried to influence the Ford Department's handling of the appeal because of some personal grudge is improbable and there is no objective evidence to support such a conclusion. Furthermore, the Ford Department's decision to accept Sparrow's reinstatement without back pay rather than risking an unfavorable arbitration decision that would have cost him his job cannot be said to have been devoid of any rational basis.

The primary thrust of Sparrow's argument in his appeal is that the discipline assessed against him was so out of line with Ford's treatment of similar cases that the Union's decision to settle the case without obtaining the 21 months of wages lost by Sparrow as a result of the discipline lacked a rational basis. Sparrow's attorney has presented abundant documentation demonstrating that Ford does not generally assess 30-day disciplinary layoffs for first instances of verbal abuse, and that it does not terminate employees for violations of this kind even where the incidents involved threats and fighting.

Many of the cases cited by attorney Gordon are distinguishable from appellant's circumstance because they do not arise under the "Zero Tolerance of Harassment and Discrimination" policy. The discipline appropriate for sleeping, arguing, fighting or even being intoxicated on the job cannot be compared to the situation where employees are being subjected to racial or sexual harassment. The UAW and Ford Motor Company

have mutually agreed that employees are entitled to a work environment free from this kind of harassment.¹⁸

Even in instances that did arise under the "Zero Tolerance" policy, documents supporting the discipline show that the alleged verbal abuse and threatening behavior occurred in the heat of some argument connected to the work environment and that the sexual or racial content was not intended. Sparrow's behavior, on the other hand, was unprovoked in both of the instances where the Company imposed discipline under the Policy.

When an employee warned Sparrow that his disrespectful reference to the Local Union President as "Uncle Willie" could be considered harassment, his retort was a blatant racial slur. His conditional phrasing of the objectionable language does not insulate it from scrutiny, but rather demonstrates that Sparrow recognized how unacceptable his utterance was. Accordingly, the harsh discipline imposed by the Company for this instance was consistent with its commitment to provide an environment free from racial harassment.

Even after being counseled about the Company's "Zero Tolerance" Policy, Sparrow commenced a series of offensive and aggressive gestures in August 2000, clearly intended to annoy and threaten his co-worker Lois Bergenstein. The record contains no statement from Bergenstein to support Sparrow's attempt to characterize his behavior as a joke between friends. Sparrow's aggression against Bergenstein was deliberate and unprovoked. Both the words and the gestures were highly offensive, and the sort that could create a hostile working environment for any reasonable person. No one would interpret what Sparrow did as shop talk and banter.¹⁹ This is precisely the kind of behavior which the Company's "Zero Tolerance of Harassment and Discrimination" Policy is intended to address. Since Sparrow had already been counseled and disciplined for a serious infraction under the Policy, the Company's decision to terminate him in August 2000 was not inconsistent with its contractual obligations.

The decision of the International Executive Board is affirmed.

¹⁸ See the letter dated October 9, 1999, from Ford's Human Resources Vice President, David L. Murphy, to the then Ford Department Director Ron Gettelfinger that was made part of the UAW-Ford Contract. (Record, pp. 1-4)

¹⁹ Sparrow referred to Bergenstein as a "fucking cunt." (Record, pp. 6, 14) Witnesses also describe Sparrow making obscene gestures with Bergenstein's pop bottle and challenging her to a "pissing match." (Record, pp. 13, 14)