

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

APPEAL OF:

RONALD D. KEITH,
Appellant

-vs-

CASE NO. 1458

UAW LOCAL UNION 524
(Flint, Michigan)
REGION 1C
(THE UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL
IMPLEMENT WORKERS OF AMERICA),
Appellee.

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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

Ronald Keith argues that the decision of International Representative J. T. Thomas not to arbitrate a grievance protesting his discharge was motivated by collusion or lacked a rational basis.

FACTS

Ronald Keith worked for the Lear Corporation in Flint, Michigan with a seniority date of October 14, 1985. On January 31, 2002, Keith was suspended for violating Shop Rule #10 which prohibits:

"Refusal to do job assignment, not following directions or not following job instructions."¹

On February 7, 2002, Keith's suspension was converted to a discharge and Local Union 524 filed Grievance 3747 protesting the discipline. In support of the grievance, Keith signed a statement describing the events that took place on the night of

¹ Record, p. 52.

January 29, 2002. According to Keith, he began receiving bad back frames from one of Lear Corporation's subsidiaries. As a consequence, he and his co-worker Peggy Riley got behind in their production of parts. Keith states that Committeeperson Mike Thayer advised Production Manager Craig Herring and Human Resources Representative Chris Deramus that Keith and Riley needed help to regain their lost stock, but Management failed to provide the needed help. In addition, Keith states that the Hi-Lo driver failed to deliver additional frames to his area, even though he had been paged to the area at 8:00 and again at 8:30.²

On this same evening, Keith was taken to Labor Relations and interviewed about accusations that he was harassing fellow employee Jill Gibson. Keith denied that he did anything to Gibson. With respect to the charges involving Gibson, Keith stated that his co-worker Peggy Riley could verify that he had not said anything to Gibson, and that he had not said anything to anyone else about Gibson.³

Management denied Keith's grievance at the second and third steps of the grievance procedure and the grievance was appealed to the fourth step of the procedure. A memorandum prepared by Local Chairman Brian Jones concerning prior grievances filed by Local 524 indicates that Keith had previously experienced problems in keeping up with production. Jones indicates that Keith was given a 30-day penalty for coming back late from break on November 7, 2001. Jones explained:

"...Ron was having a hard time keeping up on the job so he worked a few minutes into his break to get some parts out so the line would not be shut down. So at the end of the break Ron took an additional couple of minutes to make up for him working into his break. A day or two after finishing this discipline Management was ready to send Ron back out for wasting time[.] Mike Thayer step[ed] in and worked out an agreement where Ron would have to do a certain number of parts on Monday then increase that number thru out the whole week until Friday when he would be up to full production. Ron came in on the following Sunday could not keep up and was suspended and will be fired before the week is out. We feel that this discipline should be removed because he was not given an adequate amount of training or time to learn the job..."⁴

The Local Union's notes for the fourth step meeting on Grievance 3747 describe the Keith case as follows:

² Record, p. 8.

³ Record, p. 10.

⁴ Record, p. 17.

“Ron Keith – Ron was terminated for shop rule violations. Not leaving a wip [Work in Progress] on his job at the end of his shift. Ron had built up several back frames before realizing that they were bad. Ron was taken into the office about another subject and was told he would be given help to get caught up but never received that help. He subsequently was unable to catch his wip up and left it short. The company says Ron had time to get caught up because the line did not run at full capacity. The underlying issue here is that the company received more info that Ron was harassing Jill Gibson again. They also say they have written statements from hourly supporting that fact. Ron has a lawyer on the outside.”⁵

Keith's appeal was heard at a fourth step grievance meeting on April 9, 2002. Following that meeting, Lear Corporation's Director of Employee Relations, Robert Standen, sent a letter to International Representative J. T. Thomas with the Company's fourth step answer to Ronald Keith's grievance. Standen stated that Keith was fired for two violations. The first was his failure to follow instructions to restore his “WIP” at the end of his shift, and the second was for continuing to harass another employee after being explicitly told to stop such conduct. Standen noted that the Union had requested that Keith be given another chance during the fourth step meeting, but he responded that an evaluation of Keith's record and the nature of the current offense convinced the Company that Keith could not conform to the rules of the Plant. Standen listed the following disciplinary actions from Keith's record:

“1-31-02	Suspension converted to a discharge on 2-7-02 for the above described violations.
12-17-01	Balance and 30 days for violation of Rule #2 wasting time.
11-9-01	Balance and 30 days for wasting time.
10-24-01	Balance and 30 days for careless workmanship.
10-11-01	Balance and 2 weeks for harassing another employee.
10-3-01	Balance and 1 week for harassment of another employee.
9-10-01	Balance and 1 week for restricting output.
8-6-01	Written Reprimand for wasting time.” ⁶

⁵ Record, p. 18.

⁶ Record, p. 19-20.

On May 2, 2002, Chairperson Jones advised Keith that his grievance had been withdrawn. Jones stated: "Ron, at this point it is clear to us that we will not be able to settle this grievance, therefore at this point we will be withdrawing your grievance."⁷ The May 2 letter also advised Keith that the Company's decision to terminate him was based on the charge that he was harassing another employee as well as his failure to restore his "WIP" at the end of his shift. Keith appealed the decision to withdraw his grievance to the International Executive Board.

Toffie Abbasse and Jack Campbell, acting on behalf of the International President, conducted a hearing on Keith's appeal on January 30, 2003, and prepared a report for the International Executive Board based on testimony given at the hearing and a written statement supplied by Local 524. The hearing officers state that Keith was discharged for failing to build up his "WIP" after being instructed to do so by his supervisor, Randy Mott. The report indicates that Keith testified he told the supervisor that it was quitting time and that he was going home. When Supervisor Mott insisted that Keith replenish his "WIP" before going home, Keith stated that he asked for his Union representative. Keith testified further that the regular committeeperson was not in, so the Alternate Committeeperson, Jim Mosher, responded. The hearing officers' report indicates that Keith testified that Mosher said to him: "Not to worry, your regular committeeman will be in tomorrow, and he will take care of the problem."⁸ The report states that Keith took an emergency vacation day on January 30, and when he returned to work on January 31, he was suspended.

According to the Local Union's written statement, Management insisted that Keith could have built up the supply of parts in his "WIP" prior to the end of his shift because the line was running slow that night. The Local states further that during contract negotiations in April 2002, International Representative J. T. Thomas and Local Chairperson Brian Jones met with the Company to try to persuade them to bring Keith back to work. The Local reports, however, that the Company's representatives maintained that they were on solid ground and would not be changing their position regarding Ronald Keith.⁹

The report continues that Chairperson Jones testified that he made a constant effort to have Keith reinstated, but that the Company refused to bend. Jones testified that the Company maintained that the day shift operator had no problem keeping his "WIP" full, and that there was no legitimate reason that Keith could not do the same. Jones argued that the evidence was on the Company's side and that the Union could not dispute it. He also pointed out that Keith's disciplinary record did not help his case.¹⁰

⁷ Record, p. 23.

⁸ Record, p. 44

⁹ Record, p. 38.

¹⁰ Record, p. 46.

The hearing officers report that Keith's attorney, Norbert B. Leonard, argued that the Union should have made more of an issue with the Company of the bad parts Keith had received from the supplier. Leonard pointed out that Keith had received commendations in the past for stopping bad parts from being sent to customers. The report indicates that Leonard asked the Local Union's representatives how often they had gone to arbitration, and the Local's representative replied that so far, there had been no need to arbitrate. Leonard is reported to have responded: "That's the problem. They have not taken a case to Arbitration."¹¹

With respect to Management's charge that Keith's termination was based in part on the allegation that he was harassing a fellow employee, the hearing officers' report states the following:

"The Appellant raised another issue of sexual harassment that he was subjected to by a female employee; however that issue was not part of the decision to discharge. The Appellant's attorney and Appeals Committee agreed that the discharge was for violation of Plant Rule #10, and the issue of sexual harassment be left out of discussion."¹²

The hearing officers concluded that Keith was represented fairly and that the Union made every effort to get the Company to reinstate him. It noted that the decision whether to arbitrate a grievance is up to the Union and that it takes grievances to arbitration only when it has a reasonable chance of winning. The hearing officers held that the decision to withdraw Grievance #3747 was proper and not devoid of a rational basis.¹³

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. Keith has now appealed the International Executive Board's decision to the Public Review Board.

ARGUMENT

A. Ronald Keith by his attorney, Norbert B. Leonard:

On January 30, 2002, appellant was asked by his supervisor to build his "work in progress" up. He responded by advising the supervisor that the parts he had received

¹¹ Record, p. 44.

¹² Record, p. 43.

¹³ The report of the hearing officers attributes the decision to withdraw Keith's grievance to the Local Union. This is an error, however. International Representative J. T. Thomas withdrew the grievance at the fourth step.

were not conforming parts and would, ultimately, cause the Lear Corporation to suffer adverse consequences if they were incorporated into the automotive equipment which Lear was manufacturing. Appellant Keith was acting in the employer's best interests. In fact, he has received commendations in the past for his notification to Management of the existence of bad parts.

When the Employer insisted that appellant build up his "work in progress" despite the absence of the necessary parts, Keith called for his Committeeperson. The Alternate Committeeperson, Jim Mosher, responded to the call. Mr. Mosher advised Keith not to worry about the instruction and to go home. Mr. Mosher also told Keith that when the regular Committeeperson returned, the issue would be addressed and taken care of. Appellant Keith followed his Committeeperson's advice.

The Union's handling of this matter was devoid of any rational basis and was influenced by its collusive relationship with the Employer. The Local Union processed appellant's grievance to the fourth step, but then failed to take it to arbitration. In fact, this Local has never taken a single grievance to arbitration.

In response to Keith's appeal, the Union claimed that all of the evidence supported the Company, but that is not true. The arguments offered by the Company to support Keith's discharge were not persuasive. Chairman Jones testified at the hearing on January 30 that the Company maintained that the day shift operator was able to keep his "WIP" full. That other operators chose to build their "WIP" with defective parts without any concern for the consequences would not have compelled an arbitrator's finding in favor of the Company. Moreover, Supervisor Mott's instruction came at the end of Keith's shift. Appellant Keith did not have an obligation at that point to stay and build up his "WIP" with defective parts.

Finally, the nature of the offense charged did not warrant termination of a loyal employee with 16 years of service. Certainly, an arbitrator would have accepted that argument. Yet, because the Local has a *de facto* policy of refusing to take any grievances to arbitration, Mr. Keith was never given the opportunity to get his job back. At the IEB hearing, the Local submitted a summary of its efforts to have appellant Keith reinstated. This document clearly demonstrates the Local's capitulation to the position of Management. Essentially, the Local admits that because Management stated that it would win at arbitration, the Local decided not to pursue Keith's grievance any further. The Union never questioned the severity of the discipline assessed. Even if Keith's behavior were determined to be a violation of the work rules, an arbitrator would certainly have found termination to be too harsh of a sanction. The Local never even pursued this option of resolution.

To date, appellant Keith has lost wages equal to \$60,019.58 as a result of the Union's failure to pursue his meritorious grievance. He has also suffered the loss of his benefits. We ask that the Public Review Board award appellant an amount sufficient to compensate him for the damages which he has suffered as a direct and proximate result of the actions and inactions of Local 524.

B. International Union, UAW:

It is up to the Company, and not the appellant, to determine whether the process by which it manufactures its products compromises quality. Appellant made clear his difficulty regarding defective parts, and the Company addressed those concerns by assigning others to help him keep his production up. The record demonstrates that appellant's "WIP" had been brought up to standard by the fourth hour and that other operators had no problem keeping their "WIP" full. The record is also clear that appellant was given a direct order by his supervisor to bring his "WIP" into compliance before leaving the plant, and that he refused. He now argues that he was relying on the advice of the Alternate Committeeperson that the matter would be taken care of the following day, but there is no evidence in the record to support this version of events.

Appellant also argues that the Local Union has an arbitrary policy against arbitrating grievances. Again, there is no evidence to support this conclusion. It is up to the Union to determine whether a case should be arbitrated. In this case the Union determined that based on the facts and appellant's record, it could not win. As long as that decision is not devoid of a rational basis, discriminatory, or made in collusion with management, the PRB should uphold the decision of the IEB.

C. Rebuttal by Ronald Keith, by his attorney Norbert B. Leonard:

It is undisputed that this Local has never taken a single grievance to arbitration. The message sent to Management by that utter abdication of the Local's responsibilities could not be clearer: Management can run roughshod over the rights of Local 524's members without ever having to face the consequence of arbitration. Such a message can and did encourage Management to flout the provisions of the Collective Bargaining Agreement and to terminate a UAW member's employment without fear of any repercussions.

Ronald Keith was fired for taking his responsibilities seriously and for following the recommendation of his Alternate Committeeperson. On the basis of this record, appellant Keith submits that the Local clearly violated its duty of fair representation when it failed to take his grievance to arbitration. Had the matter gone to arbitration, Keith submits that his termination would have been reversed, or at the very least, reduced to a suspension.

DISCUSSION

It is the Union's policy that in the case of the discharge of a high seniority employee that the grievance be arbitrated "unless compelling facts excuse it."¹⁴ Keith at the time of his discharge had been employed by Lear for 16 years and was clearly a

¹⁴ UAW Administrative Letter, Volume No. 38 – Letter No. 4.

high seniority person. In this instance, however, we believe there are compelling facts that support the Union's decision not to arbitrate Keith's grievance.

In his presentation of Keith's appeal to the International Executive Board and in his brief to the Public Review Board, Attorney Leonard has focused solely on the Shop Rule violation charged against Keith at the close of this shift on January 29, 2002. The record demonstrates, however, that this was not the sole basis for the Company's decision to discharge Keith. Although Keith's attorney argued during the hearing conducted by the International President's office that the charge of harassment was not part of the Company's decision to discharge, and the hearing officers accepted this position, the letter prepared by the Company's representative, Robert Standen, following the fourth step grievance meeting explicitly identifies the charge of harassment of a co-worker as one of the grounds for Keith's discharge. In addition, Standen explains that the Company's refusal to modify the penalty was based on an evaluation of Keith's entire disciplinary record and the Company's conclusion that his conduct would not change in the future.

Furthermore, the Local Union did not "capitulate" to the Company on its decision to discharge Keith, but pursued the matter to the fourth step of the procedure, where responsibility for its processing was taken over by the International Union. The Local then again raised the issue of Keith's reinstatement during local negotiations. The record also demonstrates that the Local Union had previously intervened on Keith's behalf on a number of occasions where he was charged with wasting time or failing to keep up. The Local Union's ability to resolve grievances without resort to arbitration is not evidence that it has acquiesced in the Company's violation of its members' rights under the Collective Bargaining Agreement.

If Keith's grievance had been taken to arbitration, the arbitrator would have looked at his entire disciplinary record, including the Company's assertion that he continued to harass another employee after being explicitly told to stop such conduct. In addition, Keith's record demonstrates that his failure to keep up with production was an ongoing problem rather than an isolated instance resulting from faulty parts. The Union's conclusion that it could not successfully arbitrate Keith's grievance under the circumstances cannot be considered irrational.

The decision of the International Executive Board is affirmed.