

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

APPEAL OF:

SEAN HAMILTON, MEMBER
UAW LOCAL UNION 624
(East Syracuse, New York),
Appellant

-vs-

CASE NO. 1460

UAW REGION 9
(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, Prof. James J. Brudney, Prof. James
E. Jones, Jr., Prof. Paul C. Weiler and
Prof. Marilyn V. Yarbrough.

Sean Hamilton argues that the decision to withdraw a grievance protesting his termination for failure to report to work lacked a rational basis.

FACTS

Sean Hamilton began working for New Venture Gear in Syracuse, New York on November 30, 1992, in a bargaining unit represented by UAW Local 624. On July 10, 1999, Hamilton took a one-week leave of absence under the Family and Medical Leave Act for the birth of his daughter, Ariana. At the conclusion of the plant's holiday shutdown on January 3, 2000, Hamilton's daughter became very ill and he had to take her to the Emergency Room. Hamilton states that he called New Venture Gear on January 3, 2000, and advised them that he would be out on Family and Medical Leave because of his daughter's illness until January 10, 2000. He reports that he was given a "call in" number of 515.¹

¹ Record, p. 21.

On January 10, 2000, New Venture Gear sent Hamilton a letter advising him that his seniority had been terminated because he had been absent for 5 days without notifying the plant. The letter instructed Hamilton to contact the Hourly Employment Supervisor within 7 days if he had evidence that he had notified the plant or that he was unable to do so for a reason beyond his control. Hamilton apparently did make contact with the plant in response to this letter, because his seniority was not terminated at this time. On January 25, 2000, the Company sent Hamilton a certified letter directing him to report to the Plant Employment Office on or before February 1, 2000, and present evidence to support a reason for his absence or his employment would be terminated.

Hamilton's mother, Carolyn Wingate, who is also an employee of new Venture Gear, received the January 25, 2000 letter. Hamilton states that he gave his mother his Family and Medical Leave Act papers to give to the Hourly Employment Supervisor, but that the Supervisor would not accept them from her. Hamilton called the plant on February 1, 2000, at 3:30 and advised Supervisor Owen McGraw that he was on Family and Medical Leave; McGraw told him to report the next day by 3:30 with evidence to support his absence.

A statement submitted by Local President Scott Stanton on April 3, 2003, indicates that Hamilton did report to work on February 2, 2000, and met with Supervisor McGraw in the presence of Chief Steward Denny Densmore.² Densmore describes the meeting in a statement dated March 24, 2003. According to Densmore, Hamilton was talking about quitting his job at this time but the Supervisor urged him to take family leave instead.³ Densmore states that after he left the meeting with McGraw and Hamilton, he did not hear from Hamilton again until January 2002.

According to President Stanton, Hamilton was told at the February 2, 2000 meeting to bring in certification of his entitlement to Family and Medical Leave by February 11. President Stanton reports that the Company checked with its Medical Department on February 18 and again on March 1, but that no Family and Medical Leave Act papers had been submitted by Hamilton. On March 2, 2000, the Company sent Hamilton a letter stating that his seniority had been terminated effective February 11, 2000, because he had been absent for 5 days without notifying the plant.⁴

² Record, p. 33.

³ Record, p. 48.

⁴ Paragraph (49) of the 1999 Agreement between DaimlerChrysler Corporation and the UAW provides as follows:

“An employee shall lose his seniority for the following reasons only:

(c) He is absent for five (5) days without notifying the plant in accordance with its procedure established pursuant to Section (94) of the Agreement unless, for a reason beyond his control, he is unable to comply with such notice requirements. After such absence, management will send written notification to the employee at his last known address that he has lost his seniority. Such notice will

This letter also gave Hamilton 7 days to provide evidence that he had notified the plant or been unable to do so for reasons beyond his control.

In his appeal to the International Union, Hamilton claims that he did present his application for Family and Medical leave to Supervisor McGraw on February 11, 2000, but that Supervisor McGraw would not accept his FMLA papers and told him that he would have to contact his Committeeperson, write a grievance, and submit the papers to the Company that way.

According to the Local Union, Hamilton did not contact the Local or the Company after receiving the March 2, 2000, letter until December 2001. At that time, Hamilton contacted Local 624 Financial Secretary Mark Mezzo and asked how he could get his job back. According to Mezzo's statement, Hamilton told him that he had been having legal problems and that he was not sure whether he would have to do some jail time over a dispute with his daughter's mother. In addition, Hamilton stated that he was being treated for depression.⁵ Mezzo reports that he discussed Hamilton's case with Plant Shop Chairman Mike Kozlowski. Kozlowski reports that after discussing the case with Hamilton he decided to file a grievance to give the Union the opportunity to get the facts from both sides.⁶

Local 624 filed Grievance 111-02 on Hamilton's behalf on January 20, 2002. In support of his grievance, Hamilton explained that in 2000, he was having a lot of problems and that his only focus was to take care of his daughter. He stated that his daughter's mother left around this time and that he was the only person able to look after her. Local 624 reports that it asked the Company for a special dispensation in Hamilton's case based on his seniority and his mother's good work record, but that the Company refused to reinstate Hamilton because of the length of time that he was gone without justification. The Local withdrew Grievance 111-02 on June 6, 2002.

On August 12, 2002, Local 624 advised Hamilton that his grievance had been withdrawn. Hamilton appealed the withdrawal of his grievance to the Local Union on August 26. The membership of Local 624 voted to deny Hamilton's appeal at a meeting on September 17, 2002. The Local informed Hamilton of the membership's action by certified letter dated September 20, 2002.

include the name of a person he is to contact at the plant in the event he has evidence to establish a claim that he did in fact notify the plant of his absence or evidence that his is a proper case in which an exception should be made. Such notice will also advise him of his right to Union representation, at his request, while he is in the employment office. If the disposition made of any such case is not satisfactory, the matter may be referred to Step 2 of the grievance procedure."

⁵ Record, p. 47.

⁶ Record, p. 50.

Hamilton appealed the Local Union's denial of his appeal to the International President's Office on January 14, 2003.⁷ In support of his appeal, Hamilton presented a Certification of Health Care Provider form under the Family and Medical Leave Act concerning the illness of his daughter Ariana in January 2000. Paragraph 4 of this form asks the health care provider to describe the medical facts which support the certification. This space contains the following handwritten comment:

"The patient (child of your employee) was 5 mos old at the time of the occurrence. She was ill & required a visit to the doctor & care thereafter."⁸

In a letter dated April 13, 2003, Hamilton argued that New Venture Gear did not give him sufficient opportunity to provide documentation of his entitlement to Family and Medical Leave as required by law. In addition, Hamilton argued that the Company did not adequately advise him of his rights under the Family and Medical Leave Act.

The President's office determined that a hearing was unnecessary on Hamilton's appeal and decided the matter on the basis of the information provided by Hamilton and the Region 9 Office. The President's Administrative Assistant Eunice Stokes-Wilson prepared a report on the appeal for the International Executive Board. Her report states that Hamilton was notified of the termination of his seniority on March 2, 2000, and he did not contact the Company or the Local Union until December of 2001, approximately 21 months later. Even at that time, Stokes-Wilson points out that he did not provide documentation of his entitlement to leave under the Act, but rather explained that he was suffering from depression.

Stokes-Wilson observes that the doctor's signature on the document ultimately submitted by Hamilton with his appeal to the International was undated, and there is no indication that this document was ever presented to the Company. She reports that the doctor who treated Ariana admitted that he completed the medical form in December 2002.⁹

Stokes-Wilson remarks that it was not sufficient for Hamilton simply to advise the Company over the telephone that he was on family and medical leave in order to excuse his absence from work. Furthermore, since Hamilton had taken Family and Medical Leave Act leave in the past, Stokes-Wilson argued that he could not claim ignorance of the procedures and blame the Company for having failed to advise him of his rights. Stokes-Wilson suggests that the evidence in the record supports the conclusion that Hamilton intended to quit his job and start his own business. Under the

⁷ The receipt for the Local's letter to Hamilton advising him of the membership's action indicates that Hamilton received it on January 13, 2003.

⁸ Record, p. 22.

⁹ Record, p. 63.

circumstances, Stokes-Wilson concludes that the Local Union's decision to withdraw Grievance 111-02 was not devoid of rational basis or motivated by discrimination, fraud or collusion with management.

The International Executive Board adopted Stokes-Wilson's report as its decision and Hamilton was notified of that decision on August 22, 2003. He appealed to the Public Review Board on August 26, 2003.

ARGUMENT

A. Sean Hamilton:

The International Union's reasons for refusing to order the reinstatement of my grievance are not supported by the evidence in the record. Under the grievance procedure, the Union has to state why a grievance has been withdrawn. There was no reason given for the withdrawal of my grievance. I offered to sign a last chance agreement to be reinstated, but the Local told me that it was illegal for the Company and the Union to sign letters like that. I believe that my situation was handled in a careless and unprofessional manner. I was not notified of the withdrawal of my grievance and I had to go to the Local Union to find out what had happened to it.

The Local told me that I could appeal the withdrawal of my grievance to the Local Union, but then I was informed by International Representative Nathan Head that the Local could not vote to reinstate my grievance; that it had to go to the International Executive Board. So once again, the Local did not follow proper procedure. During the Local Membership Meeting, the Union tried to use my past record to convince the members to vote against me. I was discharged in September 1994 for excessive absenteeism, but once I was reinstated I was never again placed in the absenteeism program. When you examine the membership meeting minutes you will see that the number of votes for and against my appeal does not add up to the total number of votes cast. The votes were tampered with just like the votes in Florida during the Presidential election.

I would like to have my grievance reinstated. All that I am asking for is what was promised to all UAW members: fair and effective representation.

B. International Union, UAW:

The Department of Labor Regulations under the Family and Medical Leave Act authorize an employer to require an employee to provide medical certification to support a request for leave under the Act. The Company requested such documentation from appellant on three occasions, but he never provided it. Appellant's failure to provide medical documentation for his requested FMLA leave justified the employer's decision to terminate his employment for failure to report to work. The termination did not violate the collective bargaining agreement, so the Local Union's decision to withdraw his grievance was within the ambit of its discretionary authority.

C. Rebuttal, by Sean Hamilton:

The International Executive Board's decision suggests that I requested leave in order to start a business. That is untrue. There is no provision in the Collective Bargaining Agreement that would allow an employee to take a leave of absence to start a business. The only leave I requested was under the Family and Medical Leave Act so that I could take care of my daughter.

When I received the letter from the Company on March 2, 2000, I called Owen McGraw on his cell phone and left him a message, but he never called me back. I did not understand why he sent this letter, because earlier he had told me that I would have to present my documents through the grievance procedure. After I called Owen McGraw, I paged my Committeeman Mike Kozlowski, but he did not return my page.

There was never any evidence that I was quitting my job to start my own business. This allegation is based on hearsay. I am asking to have my grievance reinstated and to be paid back pay starting from January 2000 to the present.

DISCUSSION

There is no merit to this appeal, for the Local Union's decision to withdraw Hamilton's grievance was rational. Hamilton's seniority was terminated pursuant to Paragraph (49) of the DaimlerChrysler National Agreement after Hamilton was absent for five days without providing evidence to support the reason for his absence. The record demonstrates that Hamilton was away from his job for a much longer period than the five days specified in the contract and that the Company gave him several opportunities to provide the necessary documents to support his request for leave under the Family and Medical Leave Act.

The Union filed a grievance for Hamilton in order to get both Hamilton's and the Company's version of the events that preceded Hamilton's termination. What the Union discovered was that Hamilton's last day worked was December 23, 1999. On February 2, 2000, in the presence of a Union representative, the Company gave Hamilton until February 11 to file papers certifying his entitlement to leave under the Family and Medical Leave Act. Hamilton did not contact the Union or the Company after that until December 2001. Under these circumstances, the Union had no contractual basis for pursuing Hamilton's grievance once the Company refused to consider reinstating or rehiring Hamilton.

In his appeal to the International, Hamilton claims that he did attempt to present the certification requested by management to Supervisor McGraw on February 11, 2000, but there is no credible evidence in the record to support this claim. Hamilton did not make this claim to the Local Union representatives he spoke with when he inquired about getting his job back in December 2001. The document that Hamilton submitted to support this claim in his appeal to the International Executive Board does not bear any

date stamp or other evidence that it was ever presented to the Company, and the doctor who signed the form is reported to have admitted completing it in December 2002.

Hamilton has expressed concern over comments that he intended to quit his job in order to start his own business. These comments have no bearing on the merits of Hamilton's appeal, however. The Company was contractually justified in terminating Hamilton's employment after he failed to report to work or justify his absence without regard to his motivation.

The appeal is denied.