

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

APPEAL OF:

JOYCE GARAB, MEMBER
UAW LOCAL UNION 9212
(Indianapolis, Indiana),
Appellant

-vs-

CASE NO. 1461

UAW TOP DEPARTMENT
REGION 3
(THE UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL
IMPLEMENT WORKERS OF AMERICA),
Appellee

DECISION

(Issued March 18, 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 C. Weiler and
Prof. Marilyn V. Yarbrough.

Joyce Garab argues that the TOP Department's decision to settle a grievance protesting her dismissal by the State of Indiana lacked a rational basis.

FACTS

Joyce Garab worked for the State of Indiana in the Department of Transportation as a highway maintenance worker. She began working for the Department of Transportation in July 1977. On December 15, 1999, Garab was discharged. The State's Report of Disciplinary action states that on December 10, 1999, Garab abused co-workers and engaged in general misconduct. A statement attached to the Report indicates that Garab made sexually derogatory comments to crew members, and refused to stop the comments when ordered to do so by the crew leader. According to the State's report, the crew leader was forced to shut down the crew in order to avoid a violent situation as a result of Garab's behavior.¹

¹ Record, p. 17.

UAW Local 9212 represents employees of the State of Indiana. On December 13, 1999, Local 9212 filed a grievance protesting Garab's discharge. The grievance states:

“Joyce, a 22 year employee, was fired unjustly. There were 4 other people in the truck. All were making derogatory statements. Only Joyce was disciplined. Could this be because Foreman Giese has a known vendetta against Joyce?”²

The grievance demanded that Garab be reinstated with full benefits and back pay.

Both Garab and her crew leader, Steve Boyle, gave statements describing the conversation that the crew members were having on December 10, 1999. Garab states that the employees in the crew were exchanging insults and suggestive comments, and that Terri Bierley started making comments about the men she had been married to, which hurt Garab's feelings. Garab reports that Bierley would not stop so she started making fun of Bierley's appearance. At this point, according to Garab, crew leader Steve Boyle did tell the entire crew to stop. Garab describes the incident as follows:

“...Then Steve Boyle said, ‘OK. Enough.’ A little later— ‘Terri, are you offended?’ Terri, ‘No.’ He looked at me, ‘Joyce?’ Me, ‘This is the best Friday I've had in a long time....’”³

Boyle's description of the conversation is consistent with Garab's, although he indicated that Garab initiated the insults. He wrote:

“...Things were getting out of hand so I told Joyce to knock it off, but she continued saying things to Terri; she said we should stop at K-Mart so Terri could buy a bra, then she said they probably don't carry bras that small. I brought the crew back to the unit and left Joyce at the unit to keep her away from Terri. Then I reported this to Steve Giese...”⁴

According to Garab, the crew had to return to the garage after that because their vehicle had a low tire and that she volunteered to stay behind. Garab wrote:

² Record, p. 18.

³ Record, p. 26.

⁴ Record, p. 30.

"...Steve said, 'Someone is going to have to volunteer to stay at the unit when we get back.' Me, 'OK, I will. It's too crowded back here anyway. (We were going back to the garage because we had a low tire.) I asked if he (Steve) was going to tell Leon I was staying in the unit, if not I'd tell him. Apparently, Steve skipped talking to Leon and went straight to the office to talk to Steve Giese. Later, I was handed an envelope by Leon for a hearing on December 13...."⁵

Garab states that when she questioned Boyle about this, he responded, "Joyce, what are you going to say? It's 4 against 1."⁶

Local 9212 appealed Garab's grievance to the third step on December 28, 1999. The grievance form indicates that a grievance meeting was conducted on January 5, 2000, and a denial at the third step was delivered by Angela Timberlake for the State of Indiana Department of Transportation on March 31, 2000. On December 14, 2000, the State Personnel Department issued a denial of the grievance at the fourth step to TOP Department International Representative Debi Bishop. On December 29, 2000, Representative Bishop advised the State that the Union had decided to refer Garab's grievance to non-binding arbitration. Bishop advised Garab of the Union's decision on January 9, 2001.

On February 26, 2002, the Union and the State Personnel Department agreed to settle Garab's grievance based on the following disposition:

"The State agrees to change the grievant's termination to a resignation. The grievant's file will be cleared of any reference to her termination. Additionally, the State agrees to award the grievant a lump sum payment of \$18,000 minus applicable taxes."⁷

Representative Bishop forwarded a copy of this settlement agreement to Garab on March 13, 2002. On March 26, Garab wrote to Assistant Director Dave Burtch of the TOP Department stating that she was dissatisfied with the settlement. Nevertheless, on April 2, Bishop forwarded to Garab the State of Indiana's check in the amount of \$10,980, which represented the net amount of her settlement. On April 10, Bishop advised Garab that if she was dissatisfied with the settlement, she could appeal under Article 33 of the UAW Constitution. Garab appealed the settlement of her grievance to the President's office on April 22, 2002.

⁵ Record, p. 27.

⁶ Record, p. 27.

⁷ Record, p. 52.

International Vice President Elizabeth Bunn submitted a report on Garab's appeal to President Ron Gettelfinger on August 20, 2002. Bunn explained that while Garab's grievance was pending at the fourth step, the TOP Department Representative, Debi Bishop, attempted to negotiate her reinstatement. The Department of Transportation was opposed to Garab's return, Bunn wrote, but the Department of Natural Resources (DNR) initially agreed to hire her. According to Bunn, the DNR later refused to hire Garab by reason of her disciplinary history and the description of the events leading up to her dismissal. Bunn stated that in December 2000, Representative Bishop tried to find Garab a position at the Department of Corrections (DOC), but the DOC would not make a commitment to hire her.⁸

Meanwhile, Bunn stated, the Local Servicing Representative, Kenny Berg, had attempted to gather statements from Garab's co-workers to support her version of the events that led to her discharge in 1999, but in August 2000, Berg reported to Representative Bishop that all of the co-workers present during the incident refused to give statements supporting Garab's perception of the events of December 10, 1999. According to Vice President Bunn's report, Berg stated that all of the employees claimed that Garab had in fact acted in the manner claimed by management.⁹ Bunn noted that while Garab had expressed dissatisfaction with the amount of money she received in settlement of her grievance, she had not returned the settlement check.¹⁰

Ken Suda and Carl Thul conducted a hearing on Garab's appeal for the President's office on March 28, 2003. They prepared a report based on this hearing for the International Executive Board (IEB). In their report of August 8, 2003, the hearing officers remarked that Garab risked being disciplined when she continued to make insulting comments about her co-workers after the crew leader told her to stop. Nevertheless, after reviewing the agreement between Local 9212 and the State of Indiana, the hearing officers concluded that the penalty assessed against Garab was too severe in light of her 22 years of service, and did not follow the progressive steps of discipline set forth in the Collective Bargaining Agreement.¹¹

While her appeal was still pending, on April 8, 2003, Garab wrote to Presidential Assistant Dottie Jones that she no longer wished to work for the Department of Transportation, but that she felt she was entitled to punitive damages because of the anxiety and depression she suffered as a result of her unjust termination by the

⁸ Record, pp. 60-62.

⁹ Record, p. 61.

¹⁰ Record, p. 65.

¹¹ Record, p. 77.

Department. Garab advised Jones that in addition to lost wages and benefits, she felt that she was entitled to \$100,000 in punitive damages.¹²

The hearing officers observe that Garab had been offered another position with the State of Indiana in May 2003.¹³ Their report describes the offer as follows:

“The Department of Corrections will hold for a short period of time a maintenance repairperson 11 job at the Westville Correction Center. They will interview the Appellant and will hire her immediately pending the interview results.”¹⁴

They added that under the State's offer, Garab's seniority would not be broken so she would retain all of her seniority. In addition, the Maintenance Repairperson's job is a higher rated classification than the one from which Garab was terminated. Nevertheless, Garab rejected the State's offer.

The hearing officers concluded that International Representative Bishop believed she was making the best settlement she could get for Garab when she accepted the monetary offer of \$18,000, and that her decision to accept that offer was not devoid of a rational basis. They noted that the contract between the State of Indiana and UAW Local 9212 contains no provisions for the reinstatement of grievances. Based on all of these circumstances, they denied the appeal.

The IEB adopted the hearing officers' report as its decision and Garab was notified of the IEB's decision on August 8, 2003. She appealed to the Public Review Board on August 26.

ARGUMENT

A. Joyce Garab:

I wrote to Dottie Jones what I wanted from the settlement of my grievance. I told her that I did not wish to accept another job with the State. I refused this offer because of the depression and anxiety I suffered because of my termination by the Department of Transportation. I am now on disability as a result.

B. International Union, UAW:

The International Representative's decision to settle Garab's grievance was reasonable. The Union had no witnesses to support Garab's version of the events

¹² Record, p. 79.

¹³ Record, p. 96.

¹⁴ Record, pp. 77-78.

leading up to her dismissal. While an arbitrator might have reduced the penalty, it is equally likely that an arbitrator would have reinstated Garab with no back pay. Garab has made it clear that she did not want to return to work, so the Union made the decision to take the monetary settlement.

It is even clearer that the IEB acted reasonably in denying Garab's appeal after she declined an offer of employment in a completely different department. There is no basis for appeal in this case. The decision of the IEB should therefore be affirmed.

C. Joyce Garab, rebuttal:

I have been a Union member for at least 21 years. I supported the UAW when it sought to represent the employees of the State of Indiana. I have been a UAW steward for many years which caused me to be in management's office numerous times in connection with employee grievances. I have filed grievances against management for harassment. Local Representatives Kenny Berg and Fred Masterson knew that management was trying to get me fired.

On the day in question, Terri Bierley started the conversation by making remarks about the "guy" in the Mishawka unit who was really a woman. Terri and Steve Boyle were both making fun of other employees. At one point Steve and Terri made comments about me, and the men in my life. All I did was make similar comments back and everyone was laughing. No one said that they were offended. When Steve Boyle said, "That is enough," all I said was that he was the one who started the game. The crew went back to the garage to change a flat tire, not because of anything that I said. Fred Masterson did try to question the other employees who were present that day, but he was threatened by them with harassment charges. Let's face it. If any one of them sided with me, they would be on the hit list.

I did not cash the settlement check right away. I telephoned Fred Masterson about the check and told him that my bills were piling up and I was afraid of losing my house. He said that he would cash the check rather than risk losing the house, so I did.

By the time of the IEB hearing, I was seeing a psychiatrist for medication. At this point, I was not able to accept the State's offer of a job in a prison. I am on disability because of the stress that this situation has caused. I had to split up my family, sell my house, and use all of my retirement money to live. I didn't do anything wrong to deserve this. I was set up to get fired.

DISCUSSION

There is no question that Garab had a meritorious grievance. The incident for which she was dismissed did not involve serious misconduct. Garab presented a credible account of a conversation that shifted from jokes and teasing to hurt feelings and angry responses. Her account is not contradicted in any significant way by the crew leader's description of the events of December 10, 1999. A petty quarrel of this

nature does not constitute sexual harassment under the *State of Indiana's Policy Regarding Sexual Harassment*, nor can it justify the termination of an employee with 22 years of service.¹⁵

It is the Union's policy to arbitrate discharge grievances of high seniority employees, unless compelling facts excuse it.¹⁶ In this case, TOP Department Representative Debi Bishop negotiated aggressively on Garab's behalf following her termination trying to find alternative employment for her with the State of Indiana. Although she could not obtain a commitment from the State to rehire Garab, Bishop did achieve a substantial monetary settlement. Bishop stated at the hearing conducted by the President's office that by this time, Garab had advised her that she did not want to return to work and only wanted money.¹⁷ Thus, Bishop accepted the initial settlement of Garab's grievance based on the money alone.

In light of Garab's indication that she did not wish to return to work for the Department of Transportation, which she repeated in a letter to the President's Administrative Assistant Dottie Jones following the hearing conducted by the President's office, this settlement was entirely reasonable. As the International Union has pointed out in response to Garab's appeal, an arbitrator might well have found "cause" for discipline in her case and recommended her reinstatement to her position with the Department with no back pay. Nevertheless, in light of Garab's many years of service, the hearing officers for the President's office concluded that the Union should make further efforts on her behalf. Subsequently, the Union convinced the State to reconsider the matter and obtained the settlement offer described in the hearing officers' report.

The question of arbitration is not central to the resolution of this case, because the Union achieved for Garab all that was available through the grievance procedure. She had already received a monetary settlement, when she was offered a higher rated job with no break in seniority. There was nothing further that could have been achieved through arbitration.

What Garab seeks in her appeal to the Public Review Board is punitive damages, but the parties have not authorized the Umpire to award punitive damages. The

¹⁵ *The State of Indiana's Policy Regarding Sexual Harassment* gives the following definition:

"This policy defines sexual harassment by the Equal Employment Opportunity Commission guidelines as 'unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when: (1) Submission to such conduct by an individual is made explicitly or implicitly a term or condition of employment; (2) Submission to, or rejection of such conduct by an individual is used as the basis for an employment decision; and (3) Such conduct has the purpose or effect to interfere with an individual's work performance, or creates a hostile or intimidating environment.

¹⁶ UAW Administrative Letter, Volume No. 38 – Letter No. 4.

¹⁷ Record, p. 76.

remedies available through arbitration are limited to those provided for in the collective bargaining agreement between the parties. The arbitrator can only enforce the contract; he or she cannot award damages other than lost wages or benefits, or impose a monetary penalty. In *Spencer vs. Local Union 140, UAW*, 8 PRB 210, (1993), we rejected the appellants' claim for damages resulting from an alleged libel on the part of a supervisor. We stated:

“Except for rights which are provided by statute or regulation, all of the privileges and protections which accrue to Spencer and his fellow employees as respects their employment are derived from the collective bargaining agreement between their Union and their Employer. When rights provided in the agreement are abridged or denied, an employee's recourse is to the grievance procedure, but the extent of that recourse is itself defined by the terms of that same agreement.” (8 PRB at 213)

Accordingly, we find that the settlement achieved by the Union for Garab was not devoid of any rational basis.

The decision of the International Executive Board is affirmed.