

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

APPEAL OF:

COLIN COMBS, Member
UAW LOCAL UNION 400
REGION 1
(Utica, Michigan),

Appellant

-vs-

CASE NO. 1478

UAW FORD DEPARTMENT
(THE UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA),
Appellee.

DECISION

(Issued May 26, 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., and Prof. Paul Weiler.

Colin Combs argues that the Ford Department's decision to withdraw his grievance protesting a 30-day disciplinary layoff for sending inappropriate e-mails was motivated by collusion or lacked a rational basis.

FACTS

Colin Combs was appointed to the position of UAW Job Security and Standards Representative at Ford Motor Company's Chesterfield Plant in 1993. Combs has a Ford Motor Company service date of February 6, 1973. In January 2000, Visteon Corporation, a division of Ford Motor Company, assumed ownership of the Chesterfield Plant as well as Ford Motor Company's obligations under its 1999 collective bargaining policy with the UAW.

On May 7, 2001, an e-mail was sent to all Chesterfield Plant computer users describing Visteon's policy pertaining to the use of computers. The policy states that Visteon retains the right to access or monitor user e-mail and Internet usage without notice to the user. The policy further states:

“Waste of Technology Resources. Users may not deliberately perform acts that waste Technology Resources or unfairly monopolize resources to the exclusion of others. These acts include, but are not limited to, sending non-business related mass e-mailings or chain e-mail, subscribing to non-business related Listserv, spending excessive time on the Internet, playing games, engaging in non-business related online ‘chat groups,’ or otherwise creating unnecessary network traffic.”¹

The e-mail message advised computer users that violations of the Company’s policy could result in disciplinary action, including termination.

A proposal for disciplinary action against Combs prepared by the Chesterfield Plant’s Human Resource Manager, Jayne Sabo, indicates that the Visteon Legal Office had advised her in May 2002 that e-mails were being circulated within the Company’s Outlook accounts that violated the Company’s policy against harassment.² The Company investigated and found three e-mails sent by Combs on May 2, 2002, to recipients identified as “Marc” and “Mindi” that included pictures of naked men and women with captions intended to be humorous. The Company subsequently reviewed Combs’ Outlook account and found other instances of inappropriate e-mail.

On June 7, 2002, Human Resource Manager Sabo recommended that Combs be given a 30-day disciplinary suspension and a final warning for inappropriate use of Company resources in violation of the Visteon “No Harassment” policy. Sabo’s report indicates that when Combs was questioned about the e-mails, he stated that a member of Management told him that it was “okay” to send such e-mail. Combs is reported to have said:

“I was under the impression if I received an e-mail I could send it outside the company and not inside if it happen[ed] to be offensive.”³

Combs was issued the disciplinary suspension on June 21, 2002, and he filed Grievance CK0001, protesting the discipline on June 26. On June 24, Manager Sabo forwarded a copy of the e-mail describing Visteon’s policy with regard to the use of computers to all users once again.

On June 27, 2002, the Vice President and Director of the UAW Ford Department, Gerald Bantom, removed Combs from his position as UAW Job Security and Standards

¹ Record, p. 28.

² Record, p. 2

³ Record, p. 1.

Representative, effective July 15, 2002. Combs appealed his removal to the International Executive Board (IEB) on July 19. In his appeal, Combs stated that his removal was arbitrary and denied him due process. He declared that the penalties assessed by the Company had been grieved as an unequal application of the work rules because use of e-mail to circulate jokes and similar material had been a common practice at Visteon. Combs argued that any change in the practice would require advance notification to the affected employees. In addition, Combs maintained that he had been given specific permission by a member of Management to use the computer to send such e-mails to people outside the plant.⁴ Combs reported that the Labor Affairs Representative, Crystal Pascoe, had informed him that the Company's investigation of e-mails being sent by its employees was triggered by litigation involving the Chesterfield Unit. He argued that litigation did not nullify the Company's contractual obligation to provide adequate notice of its policies as well as training with respect to its rules, practices and policies.

The IEB issued a decision in response to Combs' appeal based on a report prepared by Presidential Administrative Assistant Eunice Stokes-Wilson. Stokes-Wilson's report states:

"The Job Security and Standards position is a creature of the Collective Bargaining Agreement and the appointee serves at the will of the Director of the UAW Ford Department. The Appellant's activities were wholly unwarranted and irresponsible. Activities as such would bring reproach on the National Department and are highly detrimental to the development of fair industrial relations that is basic to the existence of a Collective Bargaining agreement."⁵

Stokes-Wilson held that the decision to remove Combs was within the discretion of the Ford Department Vice President and she denied Combs' appeal. The IEB adopted Stokes-Wilson's report and notified Combs of its decision on October 30, 2002.

On August 20, 2003, Ford Department Representative Frank Savalle withdrew Combs' grievance protesting the 30-day disciplinary layoff. Acting President Gary Witcher of Local Union 400 notified Combs that his grievance had been withdrawn on September 10, 2003. Combs appealed the decision to withdraw his grievance to the IEB on October 1.

Combs argued that there was no rational basis for the decision to withdraw his grievance. He once again asserted that the Company had not given him prior notice of its policy with respect to the use of its computer equipment. He stated that he had been given permission to send humorous e-mails by Plant Manager Frank Remesch.

⁴ Record, p. 30

⁵ Record, p. 35.

Furthermore, he stated that the penalty assessed was outside the norm and was not in line with the progressive steps of discipline outlined in the contract.

In addition, Combs argued that the Union and the Company colluded in the selection of certain individuals for disciplinary action in order to settle a lawsuit he identified as *Battaglia v. Ford/Visteon*. He maintained that many International Staff Representatives communicated in the same manner using the Company's computers and were not removed or disciplined. He argued that the unequal application of the Collective Bargaining Agreement by the Union violated the due process guaranteed to him by the Ethical Practices Code.

Representative Frank Savalle responded to Combs' appeal in a memorandum to Vice President Gerald Bantom on November 3, 2003. Savalle attached to his memorandum a copy of the e-mail that was sent to Visteon's computer users describing the Company's policy on computer use on May 7, 2001, and forwarded again by Manager Sabo on June 24, 2002.⁶ Savalle stated that Combs sent at least nine "derogatory" jokes and five "pornographic" pictures in violation of this policy. Savalle named four other employees who were issued 30-day disciplinary layoffs for sending similar e-mails.⁷

The International President's office staff determined that a hearing was unnecessary on Combs' appeal and prepared a report for the IEB based on information provided by Combs and the Local Union. The report prepared by the President's staff indicates that the Company had taken the position that the discipline issued to Combs was not subject to the grievance procedure because it related to the use of equipment provided pursuant to a Letter of Understanding regarding funding for joint programs computers. The staff report quotes the following portion of the letter:

"Users are required to comply with Company rules regarding the use and operation of equipment, prohibitions regarding unauthorized software, and the handling of information...The Grievance Procedure set forth in Article VII of the Collective Bargaining Agreement has no application to, or jurisdiction over, any matter related to this letter."⁸

The report indicates that Representative Savalle met with the Company and asked it to reduce the penalty, but the Company refused. According to the report, Savalle withdrew Combs' grievance based on his determination that the Company had not violated the Collective Bargaining Agreement, and the fact that the Company issued the same penalty to each employee who had violated the policy. The President's staff found no fault with Representative Savalle's reasoning and it denied Combs' appeal.

⁶ Record, pp. 26-28.

⁷ Record, p. 47.

⁸ Record, p. 54.

The IEB adopted the report of the President's office staff as its decision and notified Combs on February 5, 2004. Combs has now appealed the IEB's decision to the Public Review Board (PRB).

ARGUMENT

A. Colin Combs:

This case was at its conclusion before it began because the Union was acting in collusion with the Company in response to litigation at the Chesterfield Plant, so any actions taken by the Union were perfunctory at best. Representative Savalle told the UAW Plant Chairperson Frank DiGiorgio that the severe penalty assessed was the direct result of the lawsuit involving the Chesterfield Unit.

The IEB's answer to my appeal indicates that all employees were subject to the same standards and penalties. That is not true. The Union was supplied with copies of e-mails sent by other UAW staff members as well as Joint Programs appointees in connection with the lawsuit against the Chesterfield Unit that were similar to the ones I sent, but these others were not charged similarly.

The dates on the notices that were supposedly sent to computer users at Visteon are suspect. These notices were produced in response to the litigation. In fact, the Plant Manager responsible for the implementation of Visteon's policies specifically told me that sending and receiving such messages was permitted.

The IEB's reference to the Letter of Understanding in respect to the funding of Joint Programs computers takes only a small segment of that letter. I did not violate the letter quoted in the IEB's report. There was no mention of unauthorized software or the mishandling of information in connection with the discipline assessed. Furthermore, the IEB did not quote the part of the letter which clearly states that the Company is responsible for user training. There was no such training provided. In the absence of such training, the Union and the Company cannot contend that I was aware of the definitions of appropriate communications. Again, it should be noted that the Plant Manager participated in the circulation of these e-mails and did not inform me of any potential wrongdoing.

The Union has used litigation against the Company as a basis to discipline me by removing me from my appointed position and allowing the Company to assess inappropriate disciplinary actions. Therefore, the Union should be directed to remove any disciplinary action and to make me whole. Although I originally requested to be returned to my appointed position, I have now retired. My retirement is the direct result of the Union's failure to represent me. I had no intention of retiring prior to the mishandling of my case by the Union. My retirement does not absolve the Union from its obligation to make me whole, however. I ask that the Union be ordered to pay me the difference between my retirement wages and what I would have earned as a full-

time Ford/Visteon/UAW Special Purpose Representative from the time I was removed to the end of the current Agreement.

B. International Union, UAW:

On one day in May 2002, the Company took a "snapshot" of all e-mail activity in its system and identified twelve employees that, on that day, sent or received sexually suggestive material. Appellant signed a written statement in which he admitted sending and receiving the e-mails in question. Then, all twelve people, both salaried and hourly alike, including Appellant, were given thirty-day disciplinary layoffs.

When Combs' grievance was appealed to the National Ford Department, Representative Savalle interviewed Combs and met with the Company to plead for a reduction in the penalty assessed. When the Company refused, Savalle determined that there was no factual or contractual basis for submitting the grievance to arbitration. His decision to withdraw the grievance was, therefore, rational.

Combs has not produced any evidence that the handling of his grievance was tainted by hostility, discrimination or bad faith on the part of any member of the IEB or the Ford Department. Therefore, this appeal should be denied.

DISCUSSION

Combs admits that he sent the improper e-mails. He claims, however, that the discipline imposed by the Company for using its equipment for this purpose could have been successfully challenged because he did not have adequate notice of the Company's policy in regard to the distribution of lewd pictures and potentially offensive jokes using its Outlook account. This claim has no merit. In the first place, the Company did notify computer users of its policy by means of an e-mail sent on May 7, 2001, and forwarded again on June 24, 2002. Combs has questioned the authenticity of this notice, but he has offered no evidence, such as statements from other computer users, to support his argument that the e-mail in the record was manufactured in response to a lawsuit. In any event, an employee does not need special training to know that he is not supposed to be wasting time circulating vulgar jokes and pictures while he is being paid to be working.

It may be true, as Combs asserts, that the severity of the discipline assessed was influenced by a lawsuit involving claims of harassment. There is no evidence, however, that the Local Union or the Ford Department played any role in the Company's investigation of the e-mail being circulated on its Outlook accounts, or in its decision to discipline violators of its policies.

In any event, the Union could not have taken Combs' grievance to arbitration to challenge the severity of the discipline assessed because the parties had specifically excluded matters related to the use and operation of computers in jointly funded programs from the Grievance Procedure. This exclusion is clearly stated in the Letter

of Understanding cited in the IEB's decision, and the Company's argument on this point would have been difficult to refute. The Union did all it could do when it asked the Company to reconsider the penalty. When the Company refused, its decision not to pursue arbitration over the penalty was not devoid of a rational basis.

The decision of the IEB is affirmed.