

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

APPEAL OF:

PENELOPE MOSCATO, MEMBER
LOCAL UNION 2280, UAW, REGION 1
(Utica, Michigan),

Appellant

-vs-

CASE NO. 1483

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

Appellee.

DECISION

(Issued October 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 C. Weiler.

Penelope (Penny) Moscato argues that the settlement of her grievances by the UAW Ford Department lacked a rational basis.

FACTS

Penelope Moscato works at Ford Motor Company's Van Dyke Plant in Sterling Heights, Michigan, with a seniority date of June 29, 1999. On June 2, 2001, Moscato completed her training as a qualified machine technician in Departments 614 and 615 at the plant.¹

On October 19, 2001, Moscato received a Disciplinary Action Report (Form 4600) for careless workmanship in Department 614. The report indicates that Moscato's machine went down for a routine die change and later for a broken punch on October 17. Management maintained that these routine problems should have been corrected in 1.5 hours, but that Moscato had five hours of down time as a result of them. The form advises Moscato that it is the first official notice of disqualification.² Local

¹ Record, p. 3.

² Record, p. 10.

Union 2280 filed Grievance JK021 protesting the report.³ The grievance requests that the Form 4600 be stricken from the grievant's record and that she be paid all lost time.

On December 19, 2001, Moscato received three additional Disciplinary Action Reports, one for careless workmanship on December 14, one for failure to put forth a reasonable effort on December 17, and the third for being away from her work station on December 17.⁴ The two notices on December 17 involved the same incident.⁵ Moscato went to Labor Relations on December 18 and spoke with Labor Relations Representative William Scott about the discipline she had received in her department. In a statement dated December 19, 2001, Moscato wrote that she met with Scott about the harassment and discrimination she was experiencing in her department. She stated that Scott advised her to pursue a grievance with her Local Union representative.⁶

On January 8, 2002, Moscato received a Final Notice of Disqualification from Representative William Scott.⁷ Moscato attended a hearing in her department in the presence of her Union representatives to discuss this notice. Moscato submitted a statement at the January 8 hearing. She argued that the three Disciplinary Action Reports she had received prior to the hearing resulted from ongoing harassment and discrimination on the part of her advisor, Brad Lyons. She stated that she believed that

³ The Grievance states:

"The supervisor did not detail the deficiencies on the Form 4600, so this cannot be her 1st informal notice of disqualification. Furthermore, [the] supervisor cannot put 2 charges on a 4600 hoping one of them will hold up. This said supervisor has no idea what he is doing and needs to be counseled on his attempts to being unfair and uneducated." (Record, p. 13)

⁴ Record, p. 83.

⁵ The report on failure to put forth a reasonable effort states:

"On 12/17/01 Ms. Moscato was operating the North Bore. She ran 54 cycles for the entire night. She was down 4 hours, however this is still unacceptable for a level 4 tech. I then asked her to do repairs for her 9th hour @ 10:55 pm. She said fine and stormed out of the office. She then came back in the office to use the telephone twice b/f 11:10, at 11:15 pm, when I walked by she was not in the work area nor when I came back by @ 11:35. At 11:45, she told me she was not trained to do repairs. She essentially ran 54 cycles for 8 hours and did nothing for her overtime. On June 2nd, 2001, Penny signed a written document stating that she had completed her training. This is failure to put forth a reasonable effort." (Record, p. 17)

⁶ Record, p. 19.

⁷ The notice states:

"Penelope has shown little improvement since the 1st stage of disqualification. There were 3 4600s written since the 1st stage of disqualification for careless workmanship, failure to put forth reasonable effort and AWOL from the work area. This will serve as the Final Notice of Disqualification. Penny has been instructed in the areas for improvement. If improvements do not happen, Penny will be disqualified from her current position." (Record, p. 21)

Lyons had been encouraged to discriminate against her by Supervisor Steve Neal, because of past disputes between her and Neal. Moscato concluded:

“I find it very stressful to be singled out by a person who has just arrived in the department, and Ford, who is suddenly striving for my disqualification on charges that are never discussed in any civil manner. It is always presented to me aggressively without any warning usually four days after the event and with no discussion at all to what facts I can present. This in itself brought my own conclusion that it has nothing to do with my ability to perform my work to Ford’s standards of quality in the workplace.”⁸

During the January 8 hearing, Moscato received from Labor Relations a written list of areas requiring improvement.⁹ The list is signed by Labor Relations Representative William Scott and by Moscato’s Departmental Advisor Brad Lyons. It indicates that Moscato and her Union representative refused to sign it.¹⁰

On January 9, Moscato called Ford Motor Company’s Harassment Hot Line and submitted a written statement requesting assistance in connection with her problems in Department 615. Moscato declared that she is 55 years old and that her advisor, Brad Lyons, is 22 and came to the department right out of college. She stated that she had once complained to Labor Relations about her former advisor, Steve Neal, and that she believed Neal was coaching Lyons in the numerous Form 4600s that she had received over the past two months. She reported that her Local Union representative spoke to Lyons about his charges on 8 or 9 occasions, and explained that his complaints had no

⁸ Record, p. 24.

⁹ The following specific areas are listed as requiring improvement:

- “1. Tool Changes, Die Changes, Punch Changes, Tape Changes, and any other quick change operation in a timely manner
2. Relies on Coordinator and other time members too much.
 - a. Must be able to reset simple faults on her own
 - b. Must be able to perform simple troubleshooting of problems to select correct trade.
 - c. It is good to ask questions, but for a Level 4 machinist she is too reliant on other team members
3. Communication relaying problems to me as well as trades is vague and she must improve
 - a. Often she does not communicate to me why or how long she is down.
4. She leaves machines in bad shape on a regular basis at the end of shift.
 - a. Must replace tolling after crash, as well as alert me and proper trade.
5. Overall Ms. Moscato must demonstrate proficiency on all remaining equipment in the Hub & Plate/Front Support machining area to be qualified as a Level 4 Machinist in Department 614/615.” (Record, p. 27)

¹⁰ Record, p. 27.

bearing on her qualifications as a machinist. She described her reaction to the two most recent Disciplinary Action Reports as follows:

“...On Wednesday, December 19, I went back to William Scott to explain that there were two more write-ups, and I now wished to proceed to the next level for harassment and discrimination where Brad Lyons is writing me up for disqualification. He said I must first go through [the] procedure [of] letting my union rep dispute the charges. For this reason, I had a meeting with my plant chairman, Jim Keitz, Jr., and my committeeman Todd McCaullam. I requested that the practice of not accepting these 4600s from Brad Lyons was not in my favor. I needed this to come to the surface and fight it because the practice was not going to stop. And frankly I was starting to wear down emotionally.”¹¹

On January 14, Local 2280 filed Grievance JK026 on behalf of Moscato charging Management with harassment.¹² The grievance demanded that the Company conduct a full-scale investigation into Moscato’s allegations of discrimination and harassment, and that if the allegations were sustained, the two supervisors be terminated. On the same day, the Local Union filed Grievance JK027 charging Management with issuing an unjust penalty. In support of this grievance, the Union pointed out that the most recent Form 4600 issued to Moscato did not indicate what she had done wrong.¹³

On March 19, 2002, Moscato received another Disciplinary Action Report for careless workmanship.¹⁴ As a result, she was disqualified from her position and re-assigned to Department 623. The Union filed Grievance JK040 on March 25 protesting the discipline. The grievance states:

“The aggrieved is being singled out when it comes to machine failure, Ms. Moscato cannot be held responsible for machinery that has a history of troubles & breakdowns. The Union feels this is a continuation of harassment, and Mr. Neal trying to bring her out of the Dept. Furthermore, Mrs.

¹¹ Record, p. 23.

¹² The grievance states:

“The aggrieved has been thru constant harassment by supervisors Brad Lyons and Steve Neal as the statements clearly specify. We the Union cannot tolerate this kind of behavior and we demand a full scale investigation immediately. Mrs. Moscato is a very good worker and her attendance is remarkable.” (Record, p. 28)

¹³ Record, p. 29.

¹⁴ Record, p. 53.

Moscato was [written] up for Careless Workmanship, not a final notice of disqualification.”¹⁵

Labor Relations Representative Scott denied Moscato’s four grievances in a letter to Team Coordinator Lydia V. Morales on October 8, 2002. Scott maintained that Moscato was disciplined for valid reasons. He wrote, in pertinent part:

“Third, Ms. Moscato claims she was falsely accused of crashing machines. Ms. Moscato was not disciplined for the act of crashing machines. However, she was disciplined for careless workmanship, which included leaving machines crashed with tooling in them. Additionally, she was disciplined for down time associated with completing tool changes, failing to assess and communicate problems effectively and in a timely manner, failing to perform basic troubleshooting and an overall lack of effort.”¹⁶

Moscato’s grievances were referred to the 3rd stage where they were denied on March 12, 2003. The grievances were appealed to the Umpire on March 19. Ford Motor Company submitted a Statement of Facts and Position with respect to the grievances on April 7, 2003. According to the Company, Advisor Lyons had tried to assist Moscato in learning her job. The Company wrote:

“During that meeting on 1/8/02, in a final effort to assist the aggrieved in meeting her performance objectives, Labor Relations asked the supervisor to offer any additional training that could help her address areas of needed improvement. On 1/14/02, Lyons asked the aggrieved to specify the areas [where] she believed she needed training. The aggrieved responded that she would get back to him. Unfortunately, she did not follow up with him and take advantage of this offer.”¹⁷

The Company stated that despite many warnings from Lyons that her continued unsatisfactory performance could not be condoned, Moscato insisted that she had no work inefficiencies. The Company concluded that Moscato had been justly penalized. It stated further that there was no evidence she had been discriminated against or harassed.¹⁸

¹⁵ Record, p. 54.

¹⁶ Record, p. 66.

¹⁷ Record, p. 84.

¹⁸ Record, p. 86.

Moscato's four grievances were settled by International Servicing Representative Pete Piccini of the UAW-Ford National Department on June 24, based on the following disposition:

"Partial Grant. The aggrieved will be returned to her original department (Dept 614/615) for a probationary period of 90 working days. If at any time documentation shows unsatisfactory job performance the employee will be disqualified and will be placed according to the local agreement reduction process. The Company will not be required to provide additional training to employee (per letter dated 6/21/2001). If the employee successfully performs job assignments during this 90 day working period, all 4600s related to these grievances will be removed.

In settlement of these grievances, there will be a joint investigation from the Van Dyke Plant Civil Rights Local Committee and Company Representative regarding the employee's concerns of harassment."¹⁹

Moscato wrote to Piccini on September 9 stating that she had received notice of the settlement. She expressed dissatisfaction with the settlement and asked how she could appeal. Moscato next attempted to appeal the settlement of her grievances to the Public Review Board (PRB) on September 30. On October 8, Presidential Administrative Assistant Gary Bryner advised Moscato that her appeal to the PRB was premature, but that her appeal would be referred to the International Executive Board (IEB).

Presidential Administrative Assistants Eunice Stokes-Wilson and Bob Kinkade conducted a hearing on Moscato's appeal and prepared a report for the IEB on behalf of International President Ron Gettelfinger based on evidence presented at the hearing. According to the report, Representative Piccini stated that he asked Moscato several times if returning her to the machinist classification would be an acceptable settlement of her grievances and she had answered affirmatively.²⁰

The hearing officers concluded that the settlement that was obtained by Piccini addressed all of the reasonable demands made in the four grievances that Local 2280 had filed on behalf of Moscato. The hearing officers pointed out that the Union is without power to demand that the Company discipline members of Management. They noted that the only thing demanded in the grievances that Piccini did not obtain for Moscato was the income she lost as a result of the balance of shift and one day disciplinary layoff she protested in Grievance JK040. They wrote:

¹⁹ Record, p. 87.

²⁰ Record, p. 104

“...The Appellant has alleged throughout the processing of the grievances that she is a qualified machinist capable of performing the responsibilities of the job. She has claimed her innocence with respect to the careless workmanship charge, therefore the remedy is to return to the classification, demonstrate she can perform the job and have the 4600s removed from her record. A qualified machinist has nothing to lose by returning to a job he or she can do. More importantly, the understanding associated with the grievance settlement is that a union representative will closely monitor her return to the classification daily to make sure she is not harassed. Yet the Appellant cries foul.”²¹

The hearing officers found that the settlement of Moscato’s grievances did not lack a rational basis. They found no evidence of fraud, collusion or improper motivation, and they denied her appeal. The IEB adopted the report of the hearing officers as its decision and notified Moscato on March 30, 2004. Moscato has now appealed the settlement of her grievances to the PRB.

ARGUMENT

A. Penelope Moscato:

During the hearing on my appeal, I was advised that I should take Ford Motor Company’s offer with no compensation for the wages I lost after being disqualified from my machinist position. I was told that I should accept the 90 day evaluation period based on the promise that my Union representatives would check every day to make certain that I am not harassed. I said no, because they were not there for me in the past. They were too busy to respond to my pages and calls for help. Why should I believe that they would come to my aid now?

I never told Representative Piccini that I would accept this offer. I refused this offer in April 2003, when it was communicated by my Shop Chairperson Jim Modzelewski. I refused this offer at the meeting on June 24, 2003, at Local 2280, and I refused it during the hearing at Solidarity House on February 24, 2004.

None of the evidence presented during the hearing was evaluated. The primary source of information relied on by the Union were the reports of Labor Relations Representative William Scott. He manipulated the facts to make it appear that I was a poor worker. I presented rebuttals to each of the disciplinary action reports issued to me. No decision was made on the propriety of the charges made by my supervisors.

²¹ Record, p. 110.

B. International Union, UAW:

It is not at all clear that Moscato could have obtained through arbitration the relief that Representative Piccini negotiated on her behalf in settlement of her grievances. Moscato now speaks of lost wages, but the grievances that were filed did not demand the wages Moscato lost as a result of her disqualification. Thus, the Union was fully justified in settling the case without the comparatively small amount of back pay that was demanded. It can safely be said that the Union had virtually no chance, either in settlement or in arbitration, of obtaining a result that required the Company to discipline or fire the supervisors involved in this case.

C. Rebuttal by Penelope Moscato:

I not only lost wages as a result of the unjust discipline issued by the Company, but also because of the loss of overtime opportunities available to machinists in Department 615. This was understood when my grievances were drawn up.

Once Brad Lyons and William Scott set up this trail of 4600s, it should have been up to them to prove their allegations with evidence. They were not required to substantiate their charges. The Van Dyke Plant has now had a reduction in force, and I no longer have the seniority to return to Department 615. At this time, I am only requesting that all the fabricated charges be removed from my file, which was perfect at the onset of this harassment and discrimination.

DISCUSSION

Our jurisdiction over claims arising from the disposition of collective bargaining grievances is limited to the question whether the matter was improperly handled because of fraud, discrimination or collusion with management or whether the handling of the matter was devoid of a rational basis.²² The PRB will not question the judgment of a Ford Department Servicing Representative in negotiating the settlement of grievances as long as the agreement reached is rational.

Appellant has not asserted that any improper motivation influenced Representative Piccini's decision to settle her grievances. She states that she did not agree to the settlement, but the Union is not obliged to obtain a grievant's permission in order to negotiate a settlement of his or her grievances. Furthermore, the agreement Piccini obtained for Moscato was clearly rational. The settlement provided the only possible means for Moscato to obtain the vindication she sought by proving that she had acquired the skills required of a qualified machine technician. It is the Company's right to determine the qualifications of its employees. If Moscato did not return to the Department and establish her credentials, she had no right to any monetary loss resulting from Management's decision to disqualify her.

²² Constitution, International Union, UAW (2002), Article 33, §4(i).

The decision of the IEB is affirmed.