

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

APPEAL OF:

EDWIN E. ANDERSON,  
Appellant

-vs-

CASE NO. 1484

UAW LOCAL UNION 659  
(Flint, Michigan)  
REGION 1C  
(THE UNITED AUTOMOBILE, AEROSPACE  
AND AGRICULTURAL IMPLEMENT  
WORKERS OF AMERICA),  
Appellee.

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**DECISION**

(Issued November 22, 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.

Edwin Anderson argues that the handling and disposition of his discharge grievance lacked a rational basis.

**FACTS**

Edwin Anderson was a truck driver for Automotive Component Carrier, Inc. (ACC) with a hire date of March 12, 1997. ACC transports parts between factories. On January 2, 2002, Anderson had an accident while driving between Plant 4 and Plant 5 of the Delphi Complex in Saginaw, Michigan. Anderson reported that the road was slippery and that he was traveling at a rate of 10 miles per hour when his truck bogged down. He stated that he gave his truck a little gas and it jackknifed.<sup>1</sup> In response to a question regarding mechanical defects on the accident report that he submitted to the Company, Anderson wrote that the clutch on his truck was slipping and the road condition was poor.<sup>2</sup>

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<sup>1</sup> Record, p. 5.

<sup>2</sup> Record, p. 75,

An estimate for repairs on the truck amounted to \$19,475.65.<sup>3</sup> The value of the truck was \$22,500; therefore, ACC considered the truck totaled.<sup>4</sup> On January 11, 2002, following an interview conducted in accordance with Paragraph (76a) of the National Agreement between ACC and the UAW, ACC suspended Anderson as a result of the accident. The Company's Notice of Disciplinary Action states:

"On January 2, 2002, at 0100 (1:00 am) Mr. Anderson jackknifed tractor 468665 in front of Plant 4. This accident is preventable and has caused an excessive cost to ACC."<sup>5</sup>

The suspension was converted to a discharge on January 17, 2002.<sup>6</sup>

The ACC Transportation Unit of UAW Local 659 filed grievance 005159 protesting the discipline on January 11, 2002. The grievance was denied by Management and referred to the next step on January 18.<sup>7</sup> The second page of the grievance indicates that the Company denied the grievance on January 28, citing Anderson's prior discharge within 180 days.<sup>8</sup> That disposition was referred to a Management-Shop Committee meeting where the grievance was once again denied by Management based on the facts of the case. The grievance was then withdrawn by the Unit.<sup>9</sup>

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<sup>3</sup> Record, p. 4.

<sup>4</sup> Record, p. 17.

<sup>5</sup> Record, p. 6.

<sup>6</sup> Record, p. 9.

<sup>7</sup> Record, p. 7.

<sup>8</sup> Record, p. 8. Anderson had been suspended by the Company on March 16, 2001, on a charge that he falsified his pay records and accepted money for time not worked. That suspension was converted to a discharge on March 20, 2001. (Record, p. 3) The Union was able to negotiate Anderson's reinstatement effective April 10, 2001, with a balance of shift plus a 30-day disciplinary leave on his record. (Record, p. 26)

<sup>9</sup> The date of the withdrawal is unclear on the grievance form. Anderson maintains that the grievance form has been altered. He included a copy of the second page of the grievance in his appeal to the PRB with the following note written on it:

"This document has been tampered with. If you look closely, you can see how someone tried to make this document appear that the grievance was withdrawn later than it actually was. Someone "over-layed" the 3 with a six. Originally it said 3/26/02. If the Union admits the grievance was withdrawn on 3/26/02, they cannot support their claim."  
(Record, p. 8)

On July 8, 2002, Anderson wrote to Local 659 President Vernon Burns complaining about the lack of progress on his grievance. In his letter to Burns, Anderson described the accident on January 2 as follows:

“...It was a snowy and icy night. I had been stuck twice that night with the same truck and trailer. I reported to dispatch each time it occurred. On one of those occasions, Rita the dispatcher came down and observed that I was stuck. I kept rocking the truck back and forth until I got free. Later I was leaving one dock going to another dock, driving approximately 10 mph. My truck was straight; I was not turning or going around any curve, when all of a sudden the truck jackknifed.”<sup>10</sup>

Anderson continued that he had called the Local Shop Chairperson, Rick Toldo, three times in February 2002, but after his first call, Toldo never called him back. Anderson reported that he went to the Union office in March and spoke with Shop Committeeperson Ron Fulbright, who told him that he was now handling the case. Anderson declared that he had telephoned Fulbright on a number of occasions, and that Fulbright advised him on May 7, 2002, that the Union had made no progress on his case. At this point, Anderson said that he requested the Union to send him a copy of the grievance and all the notes of meetings with Management concerning his case. Anderson wrote that Fulbright promised to send him these materials, but that he had received nothing by June 13, 2002. Anderson concluded his letter with the following statement:

“Because of the lack of communication, I feel that the shop chairman has not put forth his best efforts in trying to get me reinstated with the ACC Truck Fleet. I feel as though my case is being [swept] under the rug. So, Mr. President, because I feel my case has not received the proper attention it should have received, I’m requesting that you get involved. And if possible have all documents and reports relevant to my case be forwarded to me. I am also formally requesting that my case be presented through every level of the grievance process, from the local to the regional. And even to the national level, if it cannot be settled prior to that stage.”<sup>11</sup>

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<sup>10</sup> Record, p. 10.

<sup>11</sup> Record, p. 11.

Anderson sent a similar letter to ACC Unit Executive Board Chairperson Ron Sheick on July 24, 2002.<sup>12</sup> Sheick treated the communication as an appeal under Article 33 of the Union's Constitution.

On April 23, 2003, Chairperson Sheick notified Anderson that the ACC Transportation Unit Executive Board had denied his appeal at a meeting conducted on April 10, 2003. Anderson appealed the Unit Executive Board's decision to the Local Union on April 28, 2003. On May 8, 2003, Local 659 Recording Secretary Reggie Smith advised Anderson that the Local 659 Executive Board would consider his appeal on May 16, 2003. A memorandum in the record titled "Edwin Anderson's Appeal Hearing" indicates that Anderson argued before the Local 659 Executive Board that the load on the truck contributed to the accident.<sup>13</sup> Anderson stated that he had had no prior accidents, but that he was on probation for leaving early. The memorandum states:

"...Explained why he was on probation. Says he was asked if he could leave at 6:00 or 6:30 and was told that should be no problem leaving at 6:05 or 6:10. Should have been leaving at 6:30. Did 30 days and 18 months probation. He said that 30 days given, but said might have been on one (1) year when discharged."<sup>14</sup>

According to the memorandum, Chairperson Sheick made a motion to deny the appeal.

On May 19, 2003, Recording Secretary Smith advised Anderson that his appeal had been denied by the Local 659 Executive Board. Anderson appealed the Local Executive Board's decision to the IEB on May 22, 2003.

Presidential Administrative Assistants Eunice Stokes-Wilson and Bob Kinkade conducted two hearings on Anderson's appeal on behalf of International President Ron Gettelfinger. Following the first hearing on December 4, 2003, Local 659 Representative Ron Fulbright submitted a letter to Eunice Stokes-Wilson addressing some of the points that had been raised by appellant Anderson. Stokes-Wilson and Kinkade conducted a second hearing on April 2, 2004, to give Anderson a chance to respond to Fulbright's letter. They then prepared a report for the IEB based on the two hearings.

According to the report prepared by Stokes-Wilson and Kinkade, Anderson's arguments during the first hearing focused primarily on the Unit's failure to pursue his grievance and to keep him informed of its progress.<sup>15</sup> In the letter that Representative

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<sup>12</sup> Record, pp. 12, 13.

<sup>13</sup> Record, p. 17.

<sup>14</sup> Record, p. 17.

<sup>15</sup> Record, p. 27.

Fulbright sent to Stokes-Wilson following the first hearing on Anderson's appeal, he responded to this argument as follows:

“As for the claim Brother Anderson makes that phone calls were not returned and the Bargaining Committee would not tell him about his case is simply false. I talked to Edwin Anderson several times, explained to him each time the seriousness of his case, and based on the facts of his case as presented in the 76A interview, the jackknife accident was preventable and that his previous record played a role in this becoming a discharge. Edwin Anderson, for some reason, would not accept this and therefore kept calling back, wanting to know about his case.”<sup>16</sup>

Fulbright stated that Management emphatically refused to reduce Anderson's penalty from discharge during a meeting on March 22, 2002, and that Management's representative wrote on the grievance form that it had been closed, even though the Union had indicated that it intended to keep the grievance open. Fulbright reported that he persuaded Management to change Anderson's discharge to a voluntary quit, but Anderson rejected this offer. He stated that he withdrew the grievance in June 2002, after it became apparent that the case could not be won.<sup>17</sup>

Stokes-Wilson and Kinkade reported that Anderson claimed during the hearing that his accident was caused by the way the truck was loaded. They stated that Anderson drew a diagram to illustrate the problem with the load. In addition, they reported that Anderson argued that the truck was old and not used for driving on the highway.<sup>18</sup> In response to these arguments, they said Representative Fulbright agreed that if the truck had been loaded in the manner described by Anderson, it would have been unsafe and could have caused the truck to jackknife; however, Fulbright had maintained that if the truck had been loaded unsafely, it was Anderson's obligation to report it and to refuse to drive the truck. Moreover, Fulbright argued that Anderson had not raised the issue of the truck's condition prior to the hearing on December 4, 2003. In any event, Fulbright claimed that it was Anderson's responsibility to personally inspect each tractor and trailer that he was assigned to operate before departing, and to record any defects. Fulbright stated that Anderson had not noted any defects in the equipment he was using on January 2, 2002, prior to the accident.<sup>19</sup> Finally, Fulbright noted that Anderson reported that he had been driving at a rate of 10 miles per hour at the time of the accident, whereas the speed limit on that section of road is 5 miles per hour.

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<sup>16</sup> Record, p. 86.

<sup>17</sup> Record, p. 86.

<sup>18</sup> Record, p. 30.

<sup>19</sup> Record, pp. 86-87.

When Andersen was given the opportunity to respond to Representative Fulbright's letter at the second hearing, Stokes-Wilson and Kinkade reported that he explained that he did not know that the accident was caused by the way that the truck was loaded until the matter was presented to the Unit Executive Board.<sup>20</sup> Stokes-Wilson and Kinkade reported that Anderson stated that it was common practice for General Motors to load trucks in this fashion.

In their report, Stokes-Wilson and Kinkade ruled that Anderson should not be allowed to raise issues on appeal that were not presented during the processing of the grievance. They stated:

“Article 33 was not designed to create a ‘new story’ in support of reinstating a grievance into the procedure. We are limited to a review of the facts and circumstances available during the processing of the grievance unless mitigating circumstances exist in support of introducing new evidence. Here none was presented.”<sup>21</sup>

Stokes-Wilson and Kinkade determined that the settlement of Grievance 005159 was not devoid of a rational basis and they denied Anderson's appeal.

The IEB adopted the report as its decision and notified Anderson on May 26, 2004. He has now appealed to the PRB.

### ARGUMENT

#### **A. Edwin E. Anderson:**

I feel that the decision of the IEB was distorted and unfair. The report of the International President's hearing officers quotes certain things that I said while omitting others. I argued that the Union as my representative was supposed to investigate possible causes of the accident, but they did not do this. I mentioned that we use trucks that other fleets have pulled off the road because they are old and the Union agreed with this, yet the hearing officers do not mention it. The Union was supposed to help me reconstruct the accident to determine if there was something I had left out or not thought about. I mentioned this at the hearing, but somehow these statements did not make it into the report.

At the second hearing, I reminded the Local that I brought up the issue of the way the truck was loaded prior to the hearing on December 4. This was not a new

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<sup>20</sup> Record, p. 34.

<sup>21</sup> Record, p. 35.

claim. This issue came out at the ACC Executive Board meeting. I was asked how the truck was loaded and when I explained, the Board concluded that was most likely the cause of the accident.

The subject of my prior discipline came up during the hearing conducted by the International Union, but when I tried to explain the circumstances of that case, the hearing officer said that it was irrelevant. I was never allowed the opportunity to explain that situation, although it was clearly an important factor in the decision to withdraw my grievance. In the conclusion to their report, the hearing officers described my work record as "checkered." That in itself shows bias, particularly in light of the fact that I was not permitted to present my explanation for the prior discipline.

The Local claimed that my grievance was not withdrawn until June 2003. I presented a document showing that it was withdrawn in March, and that the grievance had been altered. There is no mention of this in the hearing officers' report. The Union did not keep me informed of the status of my grievance. All they would tell me was that they were still working on it. I did not find out that it had been withdrawn until I appealed to the International Union.

**B. International Union:**

Local 659 acted reasonably when it decided not to arbitrate appellant Anderson's grievance. Anderson had only five years of seniority at the time that he was discharged and he had received a 30-day suspension in lieu of discharge during the previous year.

Moreover, Anderson gave conflicting accounts regarding the accident that led to his discharge. In one account, he was stuck; in another, he was moving. It was not until his appeal in 2003 that he contended that his load was improperly balanced. Even if this assertion was true, he had an obligation to spot the problem and either fix it or report it.

Furthermore, contrary to the claims made by Anderson, the representatives who worked on his grievance testified that he was regularly informed about the status of his case, and that the Union officials considered that grievance a "tough sell."

Therefore, the decision of the IEB should be upheld.

**C. Rebuttal by Edwin E. Anderson:**

The IEB deliberately deleted what it could from the records and twisted my statements to support the Local Union's position. I did not know the status of my grievance until I received the records from the IEB. I was never notified that my grievance had been withdrawn. Furthermore, the record shows that the grievance itself was tampered with. The date was changed from March 26, 2002, to June 26, 2002.

I mentioned during the hearing that the Company had an unwritten policy that you were not to refuse an improperly loaded truck on this particular job, because it only involved shuttling parts from one plant to the other. The drivers on this job did not have to go out on the highway, so loads were permitted that would not have been acceptable outside of the complex. This explanation was not mentioned in the hearing officers' report.

I documented every call I made to the Union. I am submitting a record of the calls I made that were not returned while I was being strung along, until I began to put my requests and inquiries in writing.

### DISCUSSION

Our jurisdiction over a local union's disposition of a grievance is limited to the question whether the matter was improperly handled because of fraud, discrimination or collusion with management or whether the resolution of the matter lacked a rational basis.<sup>22</sup> Anderson has not asserted that improper motivations influenced the decision of the ACC Unit Bargaining Committee to withdraw his grievance, so the only question before us is whether the decision not to submit the grievance to the Umpire was rational. We find that it was. Once the Bargaining Committee concluded that it could not persuade ACC Management to reduce Anderson's penalty from discharge, it had no contractual basis for insisting on a lesser penalty.

At the time of his discharge, Anderson was still on probation as a result of his previous discharge. In settlement of a grievance protesting the prior discipline, the Union achieved Anderson's reinstatement with a 30-day suspension. While we can appreciate Anderson's frustration at not being given the opportunity to explain the circumstances surrounding the prior discipline, the Union was nevertheless foreclosed by the settlement from arguing the merits of the prior case in support of his reinstatement in this case.

The record does not support Anderson's assertion that the Union failed to investigate adequately the circumstances surrounding his accident, and to present his case aggressively. The Bargaining Committee apparently did consider the question of the way that Anderson's truck was loaded and this question was discussed at the Unit Executive Board meeting on April 10, 2002, during which Anderson presented his appeal.<sup>23</sup> Unfortunately, as Representative Fulbright has explained, this did not give the Union a means for challenging the Company's determination that Anderson's accident was preventable, because it was Anderson's responsibility to inspect the load and determine that it was safe. Furthermore, Anderson admitted that he was driving five miles over the speed limit at the time of the accident.

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<sup>22</sup> Constitution, International Union, UAW (2002), Article 33, §4(i).

<sup>23</sup> Record, p. 27.

The notes that Anderson submitted reflecting his conversations with Representatives Toldo and Fulbright support Fulbright's account of the Union's efforts to convince the Company to reduce Anderson's penalty from discharge, as well as Anderson's refusal to accept the offer to change the discharge to a voluntary quit.<sup>24</sup> Fulbright's explanation for the alteration of the date the grievance was withdrawn on the grievance form is entirely plausible, for the record supports Fulbright's statement that even though Management stated at the March 22, 2002 grievance meeting that its disposition was final, the Union continued its efforts to convince Management to reinstate Anderson until June 2002, at which time it concluded that its efforts could not succeed.

The decision of the IEB is affirmed.

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<sup>24</sup> Record, pp. 61-62.