

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

APPEAL OF:

RANDALL W. NORRIS, Member
UAW LOCAL UNION 600
(Dearborn, Michigan),
Appellant,

-vs-

CASE NO. 1485

INTERNATIONAL UNION, UAW
REGION 1A
(THE UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA),
Appellee.

DECISION

(Issued February 10, 2005)

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. Maria L. Ontiveros, and Prof. Paul C.
Weiler.

Randall Norris argues that International Representative Greenfield's decision to withdraw a grievance protesting his discharge for violating the terms of a reinstatement waiver lacked a rational basis.

FACTS

Randall Norris worked for Ford Motor Company as a Press Operator assigned to the Visteon-Milan Plastics Plant with a seniority date of July 31, 1995. On October 4, 2002, Ford issued Norris a thirty-day suspension for chronic absenteeism. Ford discharged Norris on January 23, 2003, for being absent without leave (AWOL) on January 16, 2003. A grievance protesting the discharge was settled during a Review Board meeting conducted on February 25, 2003, based on the Company's agreement to reinstate Norris under the terms of a reinstatement waiver.¹ Paragraph D of the reinstatement waiver states as follows:

¹ Record, p. 7.

“I shall be regarded, for disciplinary purposes, as being on probation for a period of 12 months and understand that I will not have access to the grievance procedure to protest the reasonableness of any penalty, including discharge, I may receive during this period for an infraction of Company rules or misconduct.”²

On September 2, 2003, Ford Motor Company discharged Norris for violating his reinstatement waiver. The Disciplinary Action Report issued to Norris on September 2 states as follows:

“Mr. Norris was AWOL on 8/20/03, absence unjustified. Did not call in to security or supv. to report absence. Did not provide any documentation to Medical as required.”³

Local Union 600 filed Grievance 700093 protesting Norris’ discharge. The grievance states:

“The aggrieved was ill and his doctor could not see him that day, he went to the doctor’s office to get a slip saying (he) the doctor was full that day and was seen by the doctor the next day and given medical excuse for August 20, 2003. He gave his excuse to the supervisor.”⁴

Grievance 700093 was denied by the Company and appealed to the third step on September 2, 2003.

Labor Relations Representative Kimberly Bender of the Visteon-Milan Plant prepared a Statement of Facts and Position for the Company based on the third step hearing.⁵ She reported that the certificate that Norris brought in to work on August 21 stated only that he had called the doctor and that no appointment was available. Bender stated that Norris brought a second medical certificate to work on August 22, which indicated that he had been treated for diarrhea at the Milan Family Practice Clinic on August 21, 2003. Bender noted that Norris did not take these medical certificates to the Medical Department to have his absence on August 20 justified. Instead, he gave the documents to his supervisor. On August 25, Labor Relations instructed the supervisor to send Norris to medical to have his absence justified. Bender reported that the Medical Department gave Norris a “Release of Medical Information” form to sign so

² Record, p. 8

³ Record, p. 20.

⁴ Record, p. 21.

⁵ Record, pp. 23-24.

that the medical staff could contact his doctor, but that Norris did not return the signed form to medical. Bender wrote:

“Medical staff sent a note to Labor Relations on Friday, 8/29/03 @ 4:00 PM stating that they had not received the signed release form from the employee; he had not returned to the Medical Department since being given the form to sign. As of the hearing date, 9/2/03, Mr. Norris still had not provided the signed form and when asked, he stated that he had not.”⁶

Bender stated further that Norris had missed nearly 300 hours of work for short-term illnesses since his reinstatement on February 26, so that he was well aware of the Company’s rule that medical certificates should be presented to the Medical Department. Bender cited numerous Umpire decisions upholding the penalty of discharge for chronic absenteeism. She concluded that the grievance should continue to be denied.

On September 22, 2003, Representative Rich Greenfield from the UAW Region 1A office interviewed Norris about his grievance at Local Union 600. Representative Jimmy Settles reported the results of Greenfield’s interview in a memorandum to President Gettelfinger on December 17.⁷ According to Settles, Norris told Greenfield that he could not call the Company to report his absence on August 20 in accordance with the Company’s procedure because he had only two minutes left on his Tracfone. Settles further stated that Norris acknowledged that Bargaining Chairperson Pete Piazza had advised him to sign the medical release form given to him by the Company’s Medical Department. Settles stated that the Union presented the Company with documents showing that Norris had a long history of medical problems in an attempt to persuade the Company that Norris’ absence was legitimate, but that the Company refused to change its position.

The Company denied Norris’ grievance at a Review Board Meeting on November 5, 2003. Representative Greenfield decided not to appeal the grievance to the fourth stage. Norris was notified of Greenfield’s decision by mail on November 17, 2003. He appealed Greenfield’s decision to the International Executive Board (IEB) on December 5.

In support of his grievance, Norris stated that on August 20, 2003, he had a serious case of diarrhea and could not report to work. Although he could not get an appointment with the doctor on August 20, he reported that he did get a note from the clinic indicating that he had attempted to see the doctor that day. Norris reported that

⁶ Record, p. 23.

⁷ Record, pp. 35-38.

when he gave this note to his supervisor, the supervisor told him that he had three days to turn in his medical excuse. Norris wrote that he did give his supervisor a note from the clinic on the following day, and that he asked the supervisor if he needed to go to medical himself. According to Norris, the supervisor responded, "No, we're square; you're all set."⁸ Norris argued that he was terminated for not following procedure, even though he did exactly as he was instructed by his supervisor.

Norris wrote that when he finally did report to medical, the nurse wanted him to sign a medical release form, but he wanted to talk to his Union Representative before signing it. He wrote:

"The Medical Dept. wanted me to sign a release form; I wanted to talk to the Union about it first. They told me to go ahead and sign it. We also talked about the AWOL Medical gave me and the Union said let them come after you, don't go to them. I misunderstood that as meaning for the medical release also, and I did not sign it. I am deaf in one ear and that sometimes leads me to misunderstandings. I was told if I had signed it I would not have been fired. This leads me to believe I was fired for not giving the Company the right to look at my medical record. I would also add that they gave me no time frame to sign the release. They also gave me no indication of how much of my record they wanted to see. I am assuming that I should expect that they also have limits. Even on a waiver, I should still have certain rights to my privacy."⁹

Norris complained that Representative Greenfield was unsympathetic to his case, and spoke to him in a derogatory manner. Norris reported that his Local Representatives tried for two days to convince Greenfield to take the grievance to the fourth stage, but he refused.

President Gettelfinger's staff determined that a hearing was unnecessary on Norris' appeal. Staff prepared a report on behalf of President Gettelfinger for the IEB based on the information provided by appellant and the Local Union.¹⁰ Staff reported that when Norris was discharged in January 2003, his disciplinary record read as follows:

"R&W plus 1 week – absent 1/2/02 – 1/16/02
R&W plus 2 weeks – absent 1/24/02

⁸ Record, p. 29.

⁹ Record, p. 29.

¹⁰ Record, pp. 72-78.

R&W plus 1 month – absent 1/28/02 - 3/12/02
R&W plus 1 month – absent 4/29/02 – 6/4/02
R&W plus 2 weeks – absent 9/10/02 – 9/11/02
R&W plus 1 month – absent 9/13/02 – 9/22/02”¹¹

In addition, staff reported that Norris had worked approximately 545.7 hours and was absent 1457.3 hours in the year prior to his termination. In the year prior to his discharge for the unexcused absence on August 20, 2003, staff reported that Norris had 46 days of medical leave and 16 days of unexcused absences.¹²

Staff noted that there was no factual dispute about the circumstances leading up to Norris’ discharge, but only the question whether Norris had violated the terms of his reinstatement waiver, since the Union was foreclosed by the terms of that waiver from contesting the reasonableness of the penalty. Staff acknowledged Norris’ claim that he followed his supervisor’s instructions on returning to work, but also reported that Norris failed to call in his absence on August 20, 2003. Furthermore, Norris did not return the signed medical release form to medical. Staff wrote:

“If we accept appellant’s claim that giving his excuse to his supervisor was acceptable, he has not provided an acceptable excuse for his failure and/or refusal to sign the medical release authorization form. Because of appellant’s attendance record and reinstatement waiver, any absence is held to a higher standard of scrutiny. His refusal to comply resulted in his discharge. If the appellant did not violate his waiver, he had nothing to fear from the Medical Department questioning his doctor about his absence of August 20, 2003.”¹³

Staff cited the numerous Umpire decisions relied on by the Company in refusing to reinstate Norris as well as Representative Greenfield’s conclusion that the Umpire would not sustain Norris’ grievance under these circumstances. Staff concluded that Representative Greenfield’s decision was not devoid of a rational basis in view of the undisputed facts, and that there was no evidence that discrimination, fraud, or collusion with management motivated the decision. Staff denied Norris’ appeal, and its decision was adopted by the IEB.

The IEB notified Norris of its decision on October 19, 2004. He has now appealed to the Public Review Board (PRB).

¹¹ Record, p. 73.

¹² Record, p. 75

¹³ Record, pp. 77-78.

ARGUMENT

A. Randall W. Norris:

The decision of the IEB indicates that I did not call in my absence on August 20, 2003. This is not correct. I did call, but I was put on hold for more than two minutes and I had only two minutes left on my Tracfone. My time expired before they came back on.

My supervisor did not put me on notice when I returned to work on August 21, 2003, because I gave him the certificate showing that I had attempted to see the doctor on August 20. Supervisor Andy Aruskevicius kept that note and told me that I had three days to bring in the certificate showing that I had seen the doctor. When I gave him the second slip on Friday morning, I also asked him if I needed to go to Medical myself and he said no.

The Company claimed that I did not explain why I had not signed the medical release form. That is a lie. Chairperson Piazza knows that this was the result of a misunderstanding. When we were talking about the AWOL that I received for August 20, the Local Representative told me, "Don't give them anything; make them come after you." I took that to mean that I should not sign the medical release form.

I was conforming to the Company's attendance standards after I returned to work on the reinstatement waiver. From the time I was reinstated in February 2003 until I was terminated in September, I had no unexcused absences. The Company says that I have two, but they are including the day for which I was fired, even though I did present a doctor's certificate to cover that day. The other day was when my supervisor let me leave early to drive my wife to the doctor. He said he would code that day "G" for "leave early" but he did not do that.

I was forced to sign the reinstatement waiver in February. The Union said that I would have been able to get my job back without signing it based on a technicality, but it would take a very long time. I had to sign the waiver if I wanted to return to work immediately.

B. International Union:

The Union's decision to withdraw the discharge grievance was not unreasonable given the fact that the appellant had been returned to work on a conditional reinstatement letter, that he missed work without calling in and then failed to substantiate his absence, and finally, that he refused to sign a medical release permitting the Company to talk to the doctor about his unexcused absence.

While appellant's situation is unfortunate, it is the consequence of his own actions. When he failed to substantiate his August 20, 2003, absence, and

compounded the violation by refusing to sign the medical release, he sealed his fate. As the record demonstrates, the Local Union consistently and doggedly represented him despite his serious attendance problems. The International Representative's decision to withdraw Norris' grievance after he violated the conditional reinstatement agreement was neither arbitrary, discriminatory nor in bad faith. As a result, the decision of the IEB to affirm that decision should be upheld.

DISCUSSION

We are precluded by Article 33, §4(i), of the International Constitution from reviewing appeals from the disposition of grievances unless it has been alleged that the matter was improperly handled because of fraud, discrimination or collusion with management, or that the disposition or handling of the matter was devoid of any rational basis.¹⁴ There has been no allegation that improper motivations influenced the International Representative's decision not to appeal Norris' grievance to the Umpire, so the only question presented by this appeal is whether that decision lacked a rational basis.

Norris was a relatively low seniority employee who had established a pattern of chronic absenteeism. As a result of his poor attendance, he was working under a last chance agreement when he failed to report to work on August 20, 2003. He did not make a sufficiently reasonable effort to call in his absence on August 20, but presented his supervisor with a doctor's certificate on the following day stating that he had attempted to see the doctor on that day. When he finally did produce a doctor's certificate to verify his illness on August 20, he did not present the certificate to the Company's Medical Department as required by the Company's rules, but instead gave the certificate to his supervisor. Norris' claim that his supervisor told him that this was adequate does not excuse his failure to follow the Company's procedures on justifying medical leaves. It was Norris' responsibility to know the rules and to follow them.

At this point, Norris was subject to discharge for violating the terms of his reinstatement waiver. Nevertheless, it appears that the Company might have been willing to accept Norris' medical certificate if the Medical Department could have confirmed his treatment by speaking with his physician, but then he refused to sign the medical release form. Norris claims that his refusal to sign the release form was based on a misunderstanding of something the Local Union representative said to him. We find it difficult to understand how someone who had used the company's medical leave

¹⁴ Article 33, §4(i), of the Constitution states as follows:

"GRIEVANCE AND RELATED APPEALS.

In any appeal to the Public Review Board, under §3(f), of this Article, concerning the handling of a grievance or other issue involving a collective bargaining agreement, the Public Review Board shall not have jurisdiction unless the appellant has alleged before the International Executive Board that the matter was improperly handled because of fraud, discrimination or collusion with management, or that the disposition or handling of the matter was devoid of any rational basis."

procedures as often as the appellant had could have been confused about the requirement that he sign a medical release form so that the Company could contact his doctor. Norris' apparent reluctance to have the Company's Medical Department scrutinize his medical certificate raises doubts about its authenticity.

In any event, the International Representative's decision not to appeal the Company's denial of Norris' grievance was clearly rational for his termination under these circumstances violated no provision of the collective bargaining agreement. The Union simply had no basis upon which to submit this matter to the Umpire. Indeed, by pursuing this grievance, it might well have risked undermining its ability to negotiate second chances for employees with such chronic attendance problems in the future.

The decision of the IEB is affirmed.