

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

APPEAL OF:

JAMES N. REDFERN, Member
UAW LOCAL UNION 961
(Detroit, Michigan),
Appellant,

-vs-

CASE NO. 1489

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

DECISION

(Issued January 13, 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.

James Redfern argues that he filed a timely appeal of the decision to withdraw his grievance within the meaning of Article 33, §4(c), of the International Constitution; or, if the appeal was not timely, that the circumstances warranted a waiver of the time limits by the International President.

FACTS

James Redfern was hired by DaimlerChrysler Detroit Axle Plant on May 3, 1999. Redfern was discharged by the Corporation for being absent without leave while he was in jail in September 2002. UAW Local 961 filed a grievance protesting the discharge. The grievance was processed to the Appeal Board step of the grievance procedure where it was withdrawn by International DaimlerChrysler Department Representative Virdell King. Local Union 961 sent Redfern a letter dated November 25, 2003, notifying him that his grievance had been withdrawn.¹

¹ Record, p. 1.

In a letter dated January 23, 2004, Redfern wrote that he contacted Local 961 President Rich Boyer for information about how to appeal the withdrawal of his grievance, and that Boyer told him that he had sixty days to appeal King's decision.² Presidential Administrative Assistant Gary Bryner responded to Redfern on January 28 advising him that his attempt to appeal the withdrawal of his grievance on January 23 was untimely. Bryner noted that under Article 33, §4(c), of the Constitution appeals to the IEB must be filed within thirty days. Bryner wrote:

"I spoke with Virdell King and she advised me that she talked to you by phone the week of November 17, 2003, and the Local Union also sent you a letter, dated November 25, 2003. Based on this information, your letter of January 23, 2003, was approximately 57 days after you were aware of the decision by Virdell King.

Your request cannot be considered as it is untimely."³

Redfern appealed Bryner's ruling in a letter to President Gettelfinger on February 4, 2004.

In response to Redfern's February 4 appeal, Bryner wrote to Local 961 President Boyer for an account of the steps taken by the Local on Redfern's grievance. Boyer wrote that Redfern had come to the Local on January 28 or 29 for advice on how to appeal Representative King's decision to withdraw his grievance. Boyer wrote:

"...Next, Brother Redfern expressed to me his displeasure with International Representative Virdell King for withdrawing his grievance in the fifth step of the procedure, and subsequently asked me what could he do about it. I told him that he had to read the Constitution and follow the guidelines of the process. In conclusion, I gave him a copy of an old Constitution and advised him to read it. That was the extent of the meeting. ..." ⁴

On February 19, Bryner wrote to Redfern and reaffirmed his decision that Redfern's appeal was untimely.

Again, Redfern appealed Bryner's ruling to President Gettelfinger on March 6, 2004. In this appeal, Redfern pointed out that if Virdell King had responded to his telephone call to her on December 12, 2004, he would have had sufficient time to appeal her decision to withdraw his grievance, even though he had not received the

² Record p. 2.

³ Record, p. 5.

⁴ Record, p. 7.

notice sent to him by the Local Union by certified mail. Redfern further maintained that if his appeal was untimely under the Constitution, the circumstances warranted a waiver of the time limits pursuant to Article 33, §4(d). Redfern also asked President Gettelfinger to advise him of the next step in the appeal process if his request for a waiver was denied.

On March 12, 2004, President Gettelfinger sent Redfern a letter denying his request for a waiver of the Constitutional time limits. Gettelfinger wrote:

“Your suggestion that someone else signed for the certified letter and didn’t tell you or give you the letter does not constitute a reason to waive the time limits of the International Constitution.”⁵

Subsequently, Redfern wrote a letter to the International Executive Board (IEB) in which he argued that the circumstances warranted a waiver of the time limits for appealing the decision to withdraw his grievance. The letter is undated, but it is date-stamped April 23, 2003.⁶ On April 27, Administrative Assistant James Patton advised Redfern that his appeal from President Gettelfinger’s denial of his request for a waiver was untimely because it came thirty-seven days after he was notified of Gettelfinger’s action. Patton wrote:

“President Gettelfinger sent you a letter dated March 12, 2004, denying your request to waive time limits. Your request to appeal his decision is postmarked April 22, 2004, or approximately thirty-seven (37) days after you were notified.”⁷

Redfern appealed Patton’s ruling to the IEB on June 3, 2004.

President Gettelfinger’s staff determined that a hearing was unnecessary on the appeal and prepared a report for the IEB based on the evidence provided by Redfern, and Local Union 961. Staff’s report notes that under Article 33, §4(c), the time limit for appeals to the IEB is thirty days.⁸ The report also refers to Article 33, §4(b), of the International Constitution which states that the time limits of §4(c), begin to run “from the time the appellant first becomes aware, or reasonably should have become aware, of the alleged action or decision appealed.” Staff noted that Representative King had told

⁵ Record, p. 10.

⁶ Record, pp. 11-13.

⁷ Record, p. 14.

⁸ Article 33, §4(c), of the Constitution provides, in pertinent part:

“TIME LIMITS FOR APPEAL. To be considered, an appeal must comply with these time limits...appeal to International Executive Board appellate or original cases, thirty (30) days; ...”

Administrative Assistant Bryner that she informed Redfern of her decision to withdraw his grievance during a telephone conversation on November 17, 2003. Staff added that Redfern received a written notice of King's action when the Local Union sent a certified letter to his address of record. Staff reported that this certified letter was received by a member of Redfern's family on December 12, 2003.⁹

Staff noted that after Redfern received Bryner's second letter ruling his appeal untimely, he attempted to obtain a waiver of the time limits from President Gettelfinger. Staff wrote:

"In response to Bryner's second notification of untimeliness in a letter addressed to the International Executive Board, dated March 6, 2004, the Appellant specifically made a request to President Gettelfinger to, in the exercise of his discretion, waive the time limits on his original attempt to appeal. Via letter dated March 12, 2003, President Gettelfinger denied this request. Further, President Gettelfinger specifically instructed the Appellant that he could not appeal his decision to the Public Review Board unless he first appealed the refusal of the discretionary waiver to the International Executive Board, and that appeal was, in turn, denied."¹⁰

Staff declared that Redfern did not appeal Gettelfinger's March 12 ruling until April 22, which was outside of the time limits specified in the Constitution for appeals to the IEB. Staff wrote that Administrative Assistant Patton had informed Redfern that his attempt to appeal Gettelfinger's March 12 decision was untimely on April 27, 2004. Staff decided that Redfern's appeal could not be considered because it was not submitted within the time limits specified in the Constitution and the International President, exercising his discretion, did not waive those time limits.¹¹

The IEB adopted staff's report as its decision and informed Redfern on August 3, 2004. He appealed the IEB's decision to the PRB on August 19.

ARGUMENT

A. James Redfern:

I was discharged on September 3, 2002, for being absent without leave while I was incarcerated. When I went to court on the charges against me, the case was

⁹ Record, p. 37.

¹⁰ Record, p. 38

¹¹ Record, p. 40.

dismissed. I began fighting to get my job back immediately, because I was discharged for reasons that were beyond my control. I gave Representative King all of the documents to support my case, but she withdrew my grievance.

King said that she talked to me about my grievance on November 17, 2003, but she did not. I called King on December 12, 2003, to find out the status of my grievance, but she was on vacation. When I finally reached her on January 6, 2004, she did not inform me that she had withdrawn my grievance; instead, she told me to contact my Local Union. When I contacted the Local, I learned of the letter that had been sent to my house on December 5. When I discussed this with the President of the Local, he told me that I had sixty days to appeal King's decision. I do not know if he does not remember telling me this, or if he just does not want to admit it, but that is what he said.

If there were ever a case where extensions of time limits or waivers ought to apply, they ought to be applied here. I knew nothing about Constitutional time limits until I talked to the President of the Local Union.

B. International Union:

This appeal concerns the refusal of President Ron Gettelfinger to waive the time limits for filing an appeal pursuant to Article 33, §4(d), of the International Constitution. The IEB affirmed President Gettelfinger's decision declining to extend the time limits. The decision whether to extend or waive time limits for appeals is one only the International President can make. Therefore, we respectfully submit that Article 33, §4(d), bars the PRB from reviewing his decision.

DISCUSSION

We need not reach the question whether Article 33, §4(d), of the Constitution bars our review of Redfern's arguments in support of his position that his appeal should have been regarded as timely or that the time limits should have been waived, because his subsequent appeal from the President's refusal to waive the time limits was itself untimely. There is no dispute that President Gettelfinger denied Redfern's request for a waiver of the Constitutional time limits on March 12, 2004. Redfern did not write to the International Union again until the letter that was date-stamped April 23, 2004. This was outside the thirty day time limit specified in Article 33, §4(c), of the Constitution for appeals to the IEB.

The appeal is dismissed.