

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

APPEAL OF:

CLARENCE J. CLARK, JR.
Appellant,

-vs-

CASE NO. 1501

UAW LOCAL UNION 325
(Hazelwood, Missouri)
REGION 5
(THE UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA),
Appellee.

DECISION

(Issued April 18, 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.

We consider whether the Local Chairperson's decision to withdraw a grievance protesting Clarence Clark's discharge by Ford Motor Company lacked a rational basis.

FACTS

Clarence Clark worked as a Plumber Pipe-Fitter at Ford Motor Company's St. Louis Assembly Plant with a seniority date of May 9, 1988. In 2002, Clark began to experience problems with absenteeism as the result of personal and health related problems. Clark received progressive discipline under the Company's Attendance Improvement Program and was finally discharged on August 25, 2003. A printout of Absence and Tardy Events for Clark shows the following disciplinary actions leading up to his discharge on August 25, 2003:

03/07/03	1 Day	Absent
03/11/03	3 Days	Absent
03/21/03	1 Week	Absent
04/02/03	2 Weeks	No Medical Documentation
04/24/03	1 Month	No Documentation
08/25/03	Discharge	Not Covered on Medical ¹

¹ Record, pp. 14-15.

Clark was reinstated to his position effective November 3, 2003, under the terms of a Reinstatement Waiver. Paragraph (d) of the Waiver provides as follows:

“I shall be regarded for disciplinary purposes as being on probation for a period of twelve 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 November 6, 2003, Clark was discharged for violation of this Waiver. The Disciplinary Action Report issued to Clark states as follows:

“Mr. Clark was tardy 11-6-03. His call in #T40095 is reflected in the ATS. Reason for being late; he stated he needed to go back to get his medical paperwork. His start time 7:24 and arrived in L/R at 8:00 am.”³

UAW Local 325 filed Grievance T. O. 759 protesting the discharge. The grievance asserts that the penalty was not justified because Clark had called Labor Relations and reported that he would be late for work on November 6, and he was not advised when he called that he would be discharged if he were late. The grievance points out that when Clark did report to work, he was discharged for violation of his Reinstatement Waiver without being given any opportunity to explain the reason for his tardiness.⁴

Local 325 Chairperson T. R. Obrecht withdrew Clark’s grievance on February 19, 2004. Obrecht advised Clark of the action on his grievance on March 3, 2004. Clark appealed the decision to his Local Union on March 15. In support of his appeal, Clark wrote that he did not believe he had violated his Reinstatement Waiver because he had called in and received a tardy pin number prior to the commencement of his shift in accordance with the Company’s established procedures.⁵

The membership considered Clark’s appeal at a meeting on April 14, 2004. The minutes of that meeting reflect the following action by the membership:

² Record, p. 1.

³ Record, p. 2.

⁴ Record, p. 4.

⁵ Record, p. 6.

“Read C. J. Clark Grievance appeal TO-0759

Yes 0

No 54.”⁶

On April 19, 2004, Local 325 sent Clark a letter advising him that his appeal had been reviewed and denied by the membership and that his next level of appeal was to the International Executive Board (IEB). Clark apparently forwarded his appeal to the IEB after receiving this letter. The IEB’s decision contains a reproduction of Clark’s March 15 appeal and indicates that it was received in the President’s office on May 3.⁷

The President’s staff determined that a hearing was unnecessary on Clark’s appeal and prepared a report for the IEB on the President’s behalf based on the information provided by Clark and Local Union 325. Staff’s report indicates that Clark did not appear at the membership meeting on April 14, 2004, during which his appeal was presented.⁸ This is an error. After the IEB issued its decision on November 22, Local 325 President Ken Dearing submitted a letter confirming that Clark had been present at the meeting on April 14. Dearing wrote:

“According to the Appeal decision for Mr. C. J. Clark’s grievance #TO-0759, it was stated in the original document that Mr. Clark received that the appellant did not attend the Local 325 Union meeting to speak on behalf of or present evidence for his appeal. Mr. Clark was indeed in attendance [at] the monthly membership meetings to speak on behalf of his appeal and had numerous questions from the membership about his appeal. The membership did vote to support Mr. Clark’s right to appeal the decision of his grievance #TO-0759. If you have any questions regarding this matter please feel free to call at 314-731-0490.”⁹

Staff’s report indicates that following his reinstatement on November 3, 2003, Clark was absent on November 5. Clark obtained a note from his physician explaining the absence.¹⁰ When returning to work on the following day, however, Clark realized that he had forgotten his medical excuse and that returning home to retrieve the document was going to make him late. He called the Company, therefore, and obtained a tardy pin number, following established Company rules. Staff reported that Clark

⁶ Record, p. 8.

⁷ Record, pp. 21-22.

⁸ Record, p. 21.

⁹ Record, p. 28.

¹⁰ Record, p. 20.

testified that no one told him at the time of his call that he would be discharged upon reporting to work.¹¹

Staff concluded that appellant had violated his Reinstatement Waiver and that Chairperson Obrecht's decision to withdraw the grievance protesting his discharge did not lack a rational basis. Staff concluded that Clark should have known that tardiness was a breach of Ford Motor Company's rules after having received numerous counseling sessions during his sixteen years of employment.¹² The IEB adopted staff's report as its decision and notified Clark on November 22, 2004. Clark appealed to the Public Review Board (PRB) on December 16, 2004.

ARGUMENT

A. Clarence J. Clark, Jr.:

I was distraught to read that my appeal had been denied, especially after having received the support of the Local membership. I went back to read my Waiver to see how I had violated it. I was late and I followed Company policy and reported my tardiness and obtained a PIN number. My Waiver does not state that tardiness is an infraction of Company rules, nor does it state that it is misconduct.

The information relied on by the IEB to support its decision is simply not true. After receiving the Chairperson's letter withdrawing my grievance, I went to the President to find out what I must do to appeal. I was told that I had to attend the next regular union meeting and contest the Chairperson's decision. The IEB states that I was not in attendance at the April 14, 2004, meeting. I was there and did speak on my own behalf. Other members also came forth and contested the Chairperson's decision to withdraw the grievance. I am submitting a letter from our Local President to confirm this.

I had been having serious personal problems during the period prior to my discharge. I do thank the UAW EAP program and its representatives for putting me in touch with my therapist, who has helped me to put things in perspective and function on a daily basis. I have also enclosed a statement from my therapist.

B. International Union, UAW:

At the time of his second discharge, Clark was working under the terms of a reinstatement waiver that precluded him from protesting the reasonableness of any penalty assessed against him by the Company. Under these circumstances, the Union could not hope to convince an arbitrator to order Clark's reinstatement after he was disciplined for being tardy on November 6, 2003. Chairperson Obrecht withdrew Clark's grievance based on adverse Umpire decisions on this very issue.

¹¹ Record, p. 24.

¹² Record, p. 26.

The fact that appellant notified plant Management that he would be late on November 6 does not change the situation. An employee cannot escape discipline merely by providing advance notice that he or she intends to violate a rule. Clark has not identified any contract language to support his claim that Ford will excuse tardiness when an employee notifies the Company in advance. To the contrary, the attendance documents contained in the record indicate that Ford disciplines employees for both absenteeism and tardiness.

While the Union is sensitive to the fact that Clark was a Ford employee with 15 years of seniority, and that he apparently had personal problems at the time of his second discharge, there was little that could have been done on his behalf. In this case, the Company attempted to work with appellant by placing him in the Attendance Improvement Program, and by reinstating him even after he had exhausted the steps of progressive discipline provided for in that Program. Clark had only worked two days after being reinstated, before he violated the attendance rules by being absent on November 5 and tardy on November 6. Although it is regrettable that appellant lost his job, he did so only after receiving multiple opportunities to correct his behavior. Appellant had waived the right to object to any discipline during a one-year probationary period. Even had he not done so, the record demonstrates that Ford had just cause for discharging him. The Union's decision to withdraw the grievance therefore did not lack a rational basis.

DISCUSSION

We are empowered to reinstate a grievance only where we find that the decision to withdraw the grievance was influenced by impermissible factors such as fraud, discrimination or collusion with management, or that the decision to withdraw it was devoid of any rational basis.¹³ On the other hand, it is a stated UAW policy to arbitrate discharge grievances on behalf of high seniority employees, unless there are compelling facts involving the case which should excuse arbitration.¹⁴ At the time of his termination, Clark had fifteen years of service with the Company, so he was entitled to receive careful scrutiny of the circumstances resulting in his discharge before his grievance was withdrawn prior to arbitration.

In this particular case, unfortunately, we find that compelling circumstances do exist that should excuse arbitration. It is true that the specific offense that brought about

¹³ Article 33, §4(i), of the International Constitution provides:

"GRIEVANCE AND RELATED APPEALS.

In any appeal to the Public Review Board, under Section 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."

¹⁴ UAW Administrative Letter Volume 38, No. 4, September 22, 1988.

Clark's termination was a relatively minor infraction, but that was not the only basis for the Company's action. Clark was working under the terms of a Reinstatement Agreement. The terms of that Agreement alter the contractual standard of what constitutes just cause for discharge. An offense that might warrant no more than a reprimand for another employee can justify termination of an employee who has been reinstated on probation.

Furthermore, in addition to the disciplinary actions that led to Clark's termination on August 25, 2003, the Company's records show that Clark was frequently absent for medical reasons during the two year period preceding his discharge. While these absences were not grounds for discipline, they would have made it more difficult for the Union to convince the Company to reinstate Clark after he was terminated for the second time. As the Union has acknowledged, Ford has a right to expect its employees to report on time for their scheduled shifts.

Chairperson Obrecht's conclusion that he could not convince the Company to reinstate Clark is also supported by the practice under the National Agreements negotiated by the UAW in the automobile industry where a pattern of chronic absenteeism and tardiness has not been corrected after progressive discipline and reinstatement under the terms of a last chance agreement. We have in a number of cases affirmed decisions of the IEB holding that the withdrawal of a discharge grievance written on behalf of a high seniority employee under these circumstances was proper.¹⁵ These considerations provided a rational basis for Chairperson Obrecht's decision.

The decision of the IEB is affirmed.

¹⁵*Kevin Johnson v. Local Union 1292, UAW*, PRB Case No. 1222 (September 8, 1998); *Henry Body v. International Union, UAW*, PRB Case No. 1382 (March 13, 2001); and *Frederick Dickerson v. International Union, UAW*, PRB Case No. 1396 (August 16, 2002).