THE PUBLIC REVIEW BOARD
INTERNATIONAL UNION, UAW

APPEAL OF:

HOWARD F. CARROLL, Member
UAW LOCAL UNION 723
(Monroe, Michigan),
Appellant

-vs- CASE NO. 1472

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

DECISION
(Issued May 26, 2004)

PANEL SITTING: Prof. Theodore J. St. Antoine, Chairperson, Prof. Benjamin Aaron, Prof. Janice Bellace, Prof. James J. Brudney, Prof. James E. Jones, Jr., and Prof. Paul Weiler.

Howard Carroll argues that the decision to withdraw a grievance protesting his termination for failure to respond to a five-day quit letter lacked a rational basis.

FACTS

Howard Carroll was a lift truck operator at Ford Motor Company's Visteon Corporation with a seniority date of November 15, 1993. Carroll went on leave effective July 17, 2002, because there was no work available for him within the medical restrictions issued by his personal physician. Carroll's personnel records indicate that, at this point his last day worked was June 27, 2002.[1]

On July 24, Connie Ourlian from Visteon's Hourly Personnel Office telephoned Carroll and advised him that the Company had found a job that fit within his restrictions and that he should report to work on July 25. Carroll responded that he was going to see his doctor before coming in. Ourlian wrote a note in Carroll's personnel file

[1] Record, p. 39.

indicating that she had informed him that if he did not show up for work on July 25, he would be coded AWOL.[2]

A Statement of Facts prepared by the Company in connection with Carroll's grievance indicates that Carroll telephoned Company Security on July 28, 2002, and stated that he had a back injury and would be off until August 8. According to the Company, Carroll did not contact the Medical Department or provide any documentation concerning his injury at this time.[3] On August 1, therefore, the Company sent Carroll a notice to report to work within 5 working days pursuant to Article VIII, Section 5, of the UAW-Ford National Agreement.[4] The notice advised Carroll that if he was unable to work because of illness, he should provide the Employment Office with evidence of his disability in order to obtain a leave of absence.[5]

The return receipt on the Company's letter to Carroll indicates that a notice of attempted delivery was left on August 2 and on August 8. In his appeal to the Public Review Board (PRB), Carroll states that he found the notice of an attempt to deliver mail

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[2] The following note is handwritten on Carroll's Medical Restriction Inquiry form:

> "7/24/02
> Employee called 5:15 pm stated he called his Dr. & he was going to see him before coming in. I informed employee if he did not show up he would be coded AWOL. C.O." (Record, p. 12)

[3] Record, p. 24.

[4] Article VIII, Section 5, of the 1999 Agreement between the UAW and Ford Motor Company provides, in pertinent part, as follows:

> "Seniority shall be broken for the following reasons:
> ***
> (4) If the employee does not, within five (5) working days (excluding Saturdays, Sundays and Holidays) after notice to report has been sent to him/her, either to report for work or give a satisfactory reason for his/her absence, unless it is not possible for him/her to comply with either of these requirements; and provided at least ten (10) working days have elapsed since his/her last day worked."

[5] The letter sent to Carroll states:

> "Our records show that it has been five or more working days since you last worked. If you do not, within 5 working days (excluding Saturdays, Sundays and Holidays) from the above date, either report to the Employment Office for work or give a satisfactory reason for your absence to the Employment Office in writing or by telephone, your employment will be terminated and you will lose your seniority (unless it is impossible for you to comply with the above).
>
> If you are unable to work because of illness or injury, and so report to the Employment Office within the same time, you will be granted a sick leave of absence to cover the period of your disability upon presenting satisfactory evidence thereof.
>
> If you respond by telephone, request a call-in number. Calls should be made to (734) 243-4777. If there is no answer after 4:00 p.m. or on weekends or holidays, calls should be made to the Security Gate at (734) 243-4728." (Record, p. 15)

on August 8. He says that he faxed a Request for Leave of Absence (Form 5166) to the Company's Medical Department the next morning on August 9.[6] Carroll's employment was terminated on August 9, 2002, for failing to respond within five days to the Company's notice to report to work.

Carroll's request for leave indicates that as a result of back pain, he would be prevented from working from July 24, 2002, through August 18, 2002.[7] The request indicates that it was completed on July 24, 2002. The Company's date stamp shows that it was received on August 9.[8] Carroll states that he subsequently telephoned the Company's Medical Department to make certain that they had received his fax and the Medical Department told him to call Kevin Robinson. Carroll reports that when he called Robinson, he was told that he had been fired.

UAW Local 723 filed Grievance RDM-2000 protesting Carroll's termination on August 15, 2002. The Company denied Carroll's grievance at a second stage meeting on October 17, 2002, and the grievance was appealed to the third step on November 1, 2002. The Company filed a Statement of Fact and Position on December 9, 2002. The Company stated that when Carroll contacted Kevin Robinson on August 12, Robinson asked him why he had not been home to receive the first and second attempted deliveries of the notice to report, and that Carroll "had no response."[9] The Company reported that Carroll made no claim that he had been unable to respond. It added that it had sent Carroll seven notices to report to work pursuant to Article VIII, Section 5(4), of the National Agreement over the last two years, so that Carroll knew the procedure to be followed. The Company concluded:

> "Because the Aggrieved failed to respond to the Report to Work Notice on a timely basis and failed to provide justification proving an inability to respond, this grievance is thereby denied."[10]

The Company also cited Carroll's poor attendance record during the period from August 9, 2001 to August 9, 2002, as a further justification for its decision to terminate him.

On January 2, 2003, the Local 723 Plant Chairman notified Carroll that his grievance had been resolved during a third stage grievance meeting on December 17,

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[6] Record, p. 80.

[7] The Company's Statement of Facts indicates that Carroll requested leave until August 8. The date is somewhat unclear on the form, but Carroll maintains that it was intended to be August 18. (Record, p. 80)

[8] Record, p. 14.

[9] Record, p. 25.

[10] Record, p. 25.

2002, and the decision was made not to appeal the grievance to the Umpire.[11] Carroll appealed that decision to the International Executive Board (IEB) on January 8, 2003.

In support of his appeal, Carroll stated that he did not receive the first notice of an attempt to deliver mail on August 2. When he did receive the second notice on August 8, he said that he faxed a copy of his medical report to the Company as soon as possible. Carroll wrote that after his first conversation with Connie Ourlian on July 24, he called her back and informed her that his doctor had told him not to return to work until he had seen him. Carroll argued that his call to Company Security on July 28 did comply with the Company's instructions in its notice to report to work. Carroll stated that he had complied with the procedures, so he could not understand why his grievance had been dropped. Carroll attached to his appeal a letter from Clinical Therapist Sherry Gearhart concerning treatment he had received during this period for anxiety and alcohol abuse. He wrote:

> "I have also included a copy of a letter from Sherry Gearhart, Clinical Therapist, verifying that I suffered from Generalized Anxiety Disorder at the time all of this happened. I did not want to disclose this information because of the stigma that is attached. But, at this point and time I have nothing to lose by sharing this information."[12]

Region 1A Director James Settles submitted a memorandum in response to Carroll's appeal on February 27, 2003. Settles reported that Carroll could not explain why he did not immediately present the request for leave signed by his doctor on July 24, 2002. Settles stated that instead, Carroll faxed the information on August 9, which was one day after the deadline in the Company's notice to report, and sixteen days after he had been instructed to report to work by the personnel office. Settles reported that Carroll had not mentioned his treatment for anxiety when he was interviewed by Regional Representative Greg Drudi about his grievance prior to the third stage hearing. Settles noted the Company's argument that Carroll had received seven "report to work" notices during the last two years and had accumulated 1000 hours of medical leave, so that he was quite familiar with the Company's procedures regarding medical leaves.[13] He attached to his Memorandum copies of previous notices that the Company had sent to Carroll, as well as personnel records showing Carroll's numerous medical leaves during his employment with the Company.[14] He reported that the Union had concluded that based on Carroll's record, the grievance could not be successfully arbitrated.

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[11] Record, p. 26.

[12] Record, p. 33.

[13] Record, pp. 36-38.

[14] Record, pp. 6-11 and 39-52.

Toffie Abbasse and Jack Campbell, acting for the International President, conducted a hearing on Carroll's appeal on June 25, 2003. The hearing officers prepared a report on the appeal for the IEB. The report indicates that Carroll testified at the hearing that when he advised Connie Ourlian that he was not going to return to work until he had seen his doctor, she replied, "OK."[15] Carroll further stated that if he had received the notice of an attempt to deliver mail on August 2, he would have responded immediately. The hearing officers reported that they questioned Carroll as to why he was not available to receive the notice and that he responded that he was at the Apex Behavioral Health Center being treated for a generalized anxiety disorder and alcohol abuse. In a footnote, however, the hearing officers commented that the letter submitted by Carroll about his treatment does not indicate that he was at the Apex Behavioral Health Center on August 2, or on August 8.[16]

The hearing officers pointed out that the medical certification that Carroll eventually produced did not demonstrate that he was unable to respond to the Company's notice within the time specified. Furthermore, they noted that Carroll's attendance record did not support the Union's plea on his behalf for leniency. They concluded that Carroll's termination was justified by the contract and therefore the Union was unable to advance an argument of a contractual violation or a duty breached. Under the circumstances, the hearing officers stated, the Union was foreclosed from processing the grievance further.

The hearing officers denied Carroll's appeal and their report was adopted by the IEB as its decision. Carroll was notified of the IEB's decision on November 3, 2003. He has now appealed to the PRB.

ARGUMENTS

A. Howard F. Carroll:

In their report, the hearing officers question the authenticity of my medical certification. The Company never questioned my documentation and this document had nothing to do with my termination. I do not understand why the hearing officers raised questions about it.

There were also comments made about my involvement with the Apex Behavioral Center. I mentioned this treatment simply to explain why I was under so much stress during my sick leave from the Monroe Plant. I was never an inpatient at the Apex Center. I simply did not receive my notice to quit, due to no fault of mine, until it was too late. The Apex Center had nothing to do with it.

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[15] Record, p. 57.

[16] Record, p. 58.

B. International Union, UAW:

Article VIII, Section 5(4), of the Ford-UAW National Agreement sets forth a procedure by which the Company may terminate the seniority of employees who fail to report to work when instructed to do so. The Company sent Carroll a notice pursuant to this section of the Agreement on August 1, after which he had five working days either to report to work or provide a satisfactory reason for his absence. Carroll did neither; therefore, Visteon was permitted to discharge him.

Appellant argues that he did not receive the notice, but the contract does not require the Company to establish that such a notice has been received. Moreover, the appellant cannot establish that he acted reasonably. The postal service attempted delivery of the five-day letter on both August 2 and August 8. Although Carroll claims to have been unable to work because of back pain, he was apparently not home on either occasion, and had no explanation for why he was not available to receive the notices.

Appellant claims that Connie Ourlian agreed that he could remain on leave until he had consulted his doctor. The evidence shows, however, that Carroll visited his doctor and obtained his medical certification on July 24. For some reason, Carroll did not communicate this diagnosis to Ourlian. Although he called the plant on July 28, and informed the Security Department of his doctor's recommendation, he did not provide the medical certification to the Company until August 9. It was unreasonable for the appellant to wait two weeks after being told to return to work before supplying medical certification to justify his medical leave.

Finally, there were no mitigating factors which the Union could use to argue for leniency in this case. Prior to August 1, Carroll had received a number of five-day letters, and thus cannot claim ignorance of the procedure provided in Article VIII, Section 5(4), of the Agreement. Furthermore, Carroll's attendance record shows that he was absent without leave for 96 hours – more than two full work weeks – during the year before his discharge. It was therefore reasonable for the Union to conclude that it could not prevail at arbitration, and Carroll's appeal should be denied.

C. Rebuttal, Howard Carroll:

After visiting my doctor on July 24, I called Connie Ourlian and informed her that my doctor did not want me to return to work. She acknowledged that she understood what I had said. On July 28, I notified the guard shack of my medical condition and advised them that I would not be able to return to work until August 18. I believe that this complied with the five-day notice contained in Appendix B to the Ford-UAW National Agreement. The letter states: "either report to the Employment Office for work or give a satisfactory reason for your absence to the Employment Office in writing or by telephone." I believe that I followed these instructions when I notified Connie Ourlian on July 24 and the guard shack on July 28.

It was impossible for me to respond to the Company's August 1 letter within five days, because I did not receive the letter. I found the notice from the postal service that Visteon had been trying to contact me late on August 8, and I faxed my medical certification early the next morning.

When Kevin Robinson questioned me as to my whereabouts on August 2 and August 8, I could not then, and still cannot, answer that question. Although my back injury prevented me from working, I was not confined to my bed or my home. I still had household errands to do. I may even have been in bed or in the back of my house making it hard to hear the door, since I do not have a doorbell.

In any event, the Company had no reason to issue the five-day notice because the Personnel Department was well aware of my medical condition. In response to the Union's claim that I missed 96 hours of work during the year before my discharge, I would like to remind the Union that I had been involved in a serious automobile accident and suffered physical injuries. This accident also led to depression causing me to seek treatment from the Apex Behavioral Center.

I feel that I used good faith by notifying Labor Relations and the guard shack. The Company described my termination as a "voluntary quit." I would never have voluntarily quit my job after nine years. I enjoyed my job and the people I worked with. If I had received the five day quit letter, I would have responded. Others from UAW Local 723 have been terminated for the same mistake and have got their jobs back. This would not be the first time that the Union fought and won such a case. Basically, I feel that my appeal should be granted and the Union should do for me as they have done for others.

DISCUSSION

Carroll argues that he complied with the requirements of the Company's notice to report to work when he telephoned the guard shack before the expiration of the five-day period and informed Company Security that he was unable to work, but that telephone call did not satisfy the requirements of the notice. Carroll was required to present satisfactory evidence of his disability to the Employment Office within the specified period in order to obtain a sick leave of absence, and he failed to do this.

The language of Article VIII, Section 5, suggests that the Union might be able to challenge the loss of an employee's seniority for failing to respond to a notice to report to work, if it can be established that the failure was reasonable, and the employee's leave can be justified.[17] Carroll has not been able to show that his failure to respond

[17] The relevant paragraph from Article VIII, Section 5(4), states:

> "Disputes as to the Company's failure to observe the procedural requirements of this provision, (e.g., timeliness of notice and transmittal to proper address) and the reasonableness of the employee's failure to respond to a notice where his period of absence can be justified are subject to the regular Grievance Procedure."

was reasonable, however. It is difficult to understand why he did not physically present his request for medical leave to the Employment Office on July 25, the day he was directed to report to work by the personnel office. Although Carroll claims that he was unable to work, he acknowledges that he was not confined to his bed and that he was able to move about and do household errands. Connie Ourlian from the Company's personnel office, who contacted Carroll on July 24, put him on notice that he would be considered AWOL if he did not report to work on July 25. It was unreasonable for Carroll to assume that a telephone call to the guard shack with no documents to support a request for medical leave would justify his absence until August 18, particularly in light of the warning he had received from Ourlian.

Carroll could still have prevented the loss of his seniority after he failed to report to work on July 25 if he had responded to the Company's five-day letter by August 8, but he failed to do this. He claims that it was impossible because he did not receive the notice of attempt to deliver mail on August 2. The Union points out that the contract does not require the Company to establish that a notice issued pursuant to Article VIII, Section 5, has been received in order to terminate an employee's seniority for failing to report to work. Furthermore, under the circumstances, Carroll should have been alert to the possibility that the Company would issue such a notice to him, after he failed to report to work as directed by Ourlian.

Carroll argues that the Union has been successful in having employees reinstated who have been terminated for failing to report to work and he asks that it be directed to do the same for him. The Union did pursue Carroll's grievance to the third step, but Carroll's poor attendance record precluded a successful plea for leniency on the part of the Company. The Union had no contractual basis for challenging Carroll's termination after he failed to respond to the Company's notice to report to work within the five-day period specified in the Collective Bargaining Agreement. Its decision not to appeal the case to the Umpire was, therefore, rational.

The decision of the IEB is affirmed.