

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

APPEAL OF:

DAMON SHEPARD,
Appellant,

-vs-

CASE NO. 1495

UAW LOCAL UNION 174
(Romulus, Michigan)
REGION 1A
(THE UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA),
Appellee.

DECISION

(Issued May 13, 2005)

PANEL SITTING: Prof. Theodore J. St. Antoine, Chairperson,
Prof. Benjamin Aaron, Prof. James J. Brudney,
Prof. James E. Jones, Jr., Prof. Maria L.
Ontiveros, and Prof. Paul C. Weiler.

Damon Shepard contends that the decision of International Representative John Uram to withdraw his grievance protesting his termination by Lear Corporation lacked a rational basis.

FACTS

Damon Shepard was a Die Setter at Lear Corporation in Taylor, Michigan, with a seniority date of March 25, 2002. On February 25, 2003, Shepard received a written warning under Shop Rule #6 (Lesser Offense).¹ The disciplinary form issued to Shepard on February 25 describes the following violation under the shop rule:

“SR #6 (Lesser offense) Substandard quality and/or quantity of work produced: You did not clean the grinder on C4 when doing mold change on 2/19. This was part of the mold set up checklist. There was a lot of contamination as a result.”²

¹ A written warning is the second step of progressive discipline applicable to lesser offenses under the plant's shop rules. (Record, p. 39)

² Record, p. 4.

On March 22, 2003, Shepard received a three day disciplinary layoff under Shop Rule #6 based on the following complaint:

“You checked off you did a complete on a hopper. Process tech on 1st shift opened throat on C-7 and found material was contaminated. On C-4, tool was incorrectly watered. Check sheet says tool was watered correctly.”³

On July 18, 2003, Shepard was terminated for a citation under Shop Rule #6. Once again, the Company claimed that material became contaminated because a hopper was not properly cleaned.⁴

UAW Local 174 filed a grievance on Shepard’s behalf. The grievance states that Shepard denied leaving the hopper contaminated and that he believed that he was being singled out by Management. The Union asked that Shepard be reinstated on a six month probationary basis. Shepard was reinstated on July 23, 2003, under the terms of a six month agreement that provided as follows:

“The ‘Last Chance Agreement’ requires that the employee does not:

Violate a Shop Rule (including both Major and Minor offences)

Violate a Plant Safety Rule

Violate the Attendance Policy (no calling off, coming in late, or leaving early).”⁵

The terms of this reinstatement agreement were amended on July 30, 2003. Under the terms of the amended agreement, Shepard agreed to become an Operator and leave the classification Die Setter. In return, Management reduced the term of his probation to three months.⁶

On March 5, 2004, Shepard got involved in a disagreement with an employee from the front office, Gail Aceves. Shepard’s Supervisor Chris Bonner gave a statement describing the incident. Bonner reported that Gail Aceves informed him that Shepard had put material on the shelf before she had a chance to verify and tag it. Bonner stated that he told Aceves to return and ask Shepard to take the material off the shelf so she could tag it. According to Bonner, Aceves came back and said that he would have to tell Shepard to take the material down, because he would not do it for her. Bonner stated:

³ Record, p. 5.

⁴ Record, p. 8.

⁵ Record, p. 10.

⁶ Record, p. 11.

“Shortly after this conversation, Damon was walking down the aisle where I approached him with the material receipts and asked him to take the Gaylords off the rack. He then proceeded to spout off excuses, and where in frustration I said, “Damon, take the shit off the shelf.” After I said that, he then continued to spout off excuses, and wanting Union representation, at the same time all I was doing was pleading with him to listen.”⁷

Bonner said that the discussion then moved to the Human Resources office, where he apologized to Shepard for swearing at him. Bonner said that Shepard would not listen. Bonner concluded:

“Last words I said to him as he left the office is just take down the Gaylords. He said he would and left the office.”⁸

On March 8, 2004, Shepard filed a grievance charging that a supervisor had spoken to him using abusive language in violation of Article 14, Section 10 of the collective bargaining agreement.⁹ On March 10, 2004, Shepard was terminated for a violation under Shop Rule #13 (Major Offence). Shop Rule #13 describes “Insubordination or refusal to obey a direct order.”¹⁰ Local 174 filed a grievance for Shepard protesting the termination as unjust.

In support of his grievance, Shepard stated that he paged Gail Aceves and advised her that a truck of material had arrived at 11:00 a.m. on the morning of March 5. He reported that when he returned from his break at 1:45 p.m., he encountered Aceves who was screaming and using vulgar and intimidating language towards him. He stated that Aceves spoke with his supervisor Chris Bonner and then Bonner approached him angrily and began to curse. At this point, Shepard reported that the plant manager came out and asked that the matter be handled in the office. Shepard concluded:

“...While in the office all that came of this was a modern day lynching and a one-sided event. After all the events that have taken place, I still completed all of my job duties. No

⁷ Record, p. 19.

⁸ Record, p. 19.

⁹ Article 14, Section 10 of the collective bargaining agreement provides as follows:

“Mutual Respect

Neither the Company nor the Union shall condone the use of abusive language, coercion, or intimidation among all associates. Moreover, the Company and the Union both subscribe and support the principle of mutual cooperation and respect between the supervision and associates in their day-to-day relationship.” (Record, p. 38)

¹⁰ Record, p. 39.

one should have to be spoken to in a vulgar and verbally abusive manner. Here are a few witnesses, Gail Miguel and Nina Bibbs.”¹¹

Shepard’s grievance was appealed to the third step where it was denied by Management on March 10, 2004. International Representative John Uram interviewed Shepard on May 4 concerning the events that led to his termination. According to notes prepared by Uram, Shepard stated that the power kept going off and on during the day on March 5, so that sometimes the dock door would not open. He explained that he put the material on the shelf before Aceves arrived to tag it because it was in his way. He said that Aceves came “running and screaming” after his last break telling him to take the stuff down.¹² Uram’s notes indicate that Shepard reported that Chris Bonner also came out yelling, “You are going to get this mother-fucking shit off the shelf.”¹³ Shepard stated that he did take the material off the shelf after leaving the Human Resources office, which was about forty-five minutes after he was asked to do so. Uram’s notes indicate that he made the following statements to Shepard:

“I told him that what I know of his record and with this incident. The facts would not allow an Arbitrator to provide relief or back pay which is problematic for us. I told him I already lost a similar case for a longer-term employee on back pay.”¹⁴

On May 17, 2004, Uram interviewed Local Representatives Rose Murrell and Berry Albright who witnessed the incident on March 5. According to Uram’s notes from the interview, both Murrell and Albright stated that Shepard was out of control and would not listen to anyone. Uram reported:

“Rose and Berry stated Damon was told repeatedly to do the work over and repeatedly refused. There was no doubt that he doesn’t remember what he said because he was so out of control.”¹⁵

Uram reported that he asked Rose Murrell if she had interviewed Shepard’s witnesses. According to Uram, Murrell replied that she tried to but they did not want to get involved. Murrell told Uram that she believed that statements from Miguel and Bibb would only make matters worse for Shepard.¹⁶

¹¹ Record, p. 16.

¹² Record, p. 20.

¹³ Record, p. 20.

¹⁴ Record, p. 21.

¹⁵ Record, p. 22.

¹⁶ Record, p. 22.

On May 19, 2004, Lear Employee Relations Director Denise Dorigo Jones advised Representative Uram of the following disposition of Shepard's grievance:

"Damon Shepard—Mr. Shepard was terminated on 3/10/2004 for a violation of Shop Rule #13—Insubordination. Mr. Shepard's seniority date is 3/25/02. Within his less than two years of service, Mr. Shepard has been disciplined several times and was previously terminated and reinstated in July of 2003. The Company believes Mr. Shepard was properly terminated for his actions."¹⁷

Uram withdrew the grievance from the procedure and advised Shepard of his decision by letter dated June 3, 2004. In that letter, Uram stated:

"As I informed you, I believe the facts and record provided no legitimate basis in which an arbitrator could grant all or even part of the relief requested in the grievance(s) due to lack of merit.

I did, however, pursue your case in discussion with Lear without success. They were unwilling to mitigate their termination action against you."¹⁸

Shepard appealed Uram's decision to withdraw his two grievances to the International Executive Board (IEB) on June 7, 2004. In his appeal, Shepard complained that his first grievance charging his supervisor with a violation of the "mutual respect" provision of the contract had never been processed. Shepard wrote:

"This case was never about insubordination in which the Company would like you to believe, but in fact about a situation where supervisors were using their position and stature in the company to belittle and degrade me as a person. That is why they have avoided filing the grievance. That one grievance shows that there is a legitimate basis for my appeal and shows that my argument does have merit."¹⁹

In a second letter, Shepard pointed out that he had received no discipline since the expiration of his probation, and that all of his previous disciplines should have been

¹⁷ Record, p. 23.

¹⁸ Record, p. 26.

¹⁹ Record, p. 28.

removed after one year, so that the charge of insubordination should have been treated as a first offense.²⁰

Region 1A Director Jimmy Settles prepared a report for President Gettelfinger in response to Shepard's appeal on August 24, 2004. Settles stated that the Union considered the issue raised by Shepard's grievance of March 8 to have been settled by Bonner's apology. Settles reported that although the Union concluded based on its investigation that Shepard had been insubordinate, it tried to get some relief from the Company. He stated that the issue presented by Shepard's appeal was whether an arbitrator would have reduced the penalty. He argued that there was no legitimate basis for concluding that an arbitrator would grant any type of relief based on Shepard's disciplinary record and his low seniority.²¹

The President's staff concluded that a hearing was unnecessary on Shepard's appeal and it prepared a report on behalf of the President for the IEB based on the information provided by Shepard, the Local Union and the Region. Staff concluded that the decision to withdraw both of Shepard's grievances did not lack a rational basis and that there was no evidence of discrimination, fraud or collusion with management.²² Staff denied Shepard's appeal and the IEB adopted staff's report as its decision. The IEB's decision was mailed to Shepard on October 6, 2004.

Shepard appealed the IEB's decision to the Public Review Board (PRB) on October 12, 2004. On November 3, 2004, Representative Uram sent Presidential Administrative Assistant Charlotte Rossi a further explanation of his decision to withdraw Shepard's grievance. Uram acknowledged that Shepard had done the job he was asked to do within forty-five minutes of the request. He stated that he had argued a similar case before Arbitrator Peter Jason. In *Federal Screw Works and UAW Local 174*, (1990), Uram reported, Arbitrator Jason found that the grievant's delay in performing an assignment did amount to insubordination and the fact that he ultimately performed the work only justified a reduction of the penalty. Uram stated that in *Federal Screw Works* the arbitrator took into account the grievant's seniority and good work record and reinstated him with no back pay, but that these factors were not present in Shepard's case.²³

Furthermore, Uram noted that Federal Screw Works had a more liberal progressive discipline policy than Lear Corporation. Federal Screw Works' policy required a separate progression for each violation, while this was not the case at Lear Corporation. For this reason, Uram explained, Shepard's disciplinary leave on March 22, 2003, and his termination on July 18, 2003, were both still on his record when he was terminated again on March 10, 2004. Uram reasoned as follows:

²⁰ Record, p. 29.

²¹ Record, p. 32.

²² Record, p. 51.

²³ Record, pp. 65-66.

“So, if again by some miracle we were able to reduce Mr. Shepard’s violation to a lesser progressive offense and remove the Last Chance Agreement, he would still be up for discharge, because it would be his fourth violation, the next step in progressive discipline. Like it or not, that is what the contract states.”²⁴

On November 10, 2004, Presidential Administrative Assistant Eunice Stokes-Wilson requested a remand of Shepard’s appeal for the purpose of conducting a hearing. The case was remanded on November 18, 2004. On December 7, 2004, Uram sent Administrative Assistant Rossi additional statements from members of Lear Corporation’s Management concerning the events of March 5, 2004. Uram forwarded these statements to Administrative Assistant Stokes-Wilson on March 7, along with a copy of the arbitration award in *Federal Screw Works and UAW Local 174*, and several other arbitration awards involving insubordination.

On March 17, 2005, Administrative Assistant Stokes-Wilson asked the PRB to reassume jurisdiction over this appeal to avoid further delay in processing the appeal.

ARGUMENT

A. Damon Shepard:

The statements given by Supervisor Bonner and Gail Aceves were coached and rehearsed. The decision of the IEB does not even acknowledge my grievance charging them with violating the Company’s policy of mutual respect.

The Company’s entire case is based on prior disciplinary actions. Every opportunity for advancement I pursued was followed by write-ups. Management had a gambling pool on how long I would last as an employee. I am asking the PRB to see past the politics and red tape and reinstate my grievance.

B. International Union:

Appellant provides no evidence of hostility, discrimination or bad faith by the International Union Representative. Representative Uram’s decision was not devoid of a rational basis, therefore this appeal should be denied.

C. Response by Damon Shepard:

The Local Chairperson Rose Murrell colluded with Management in mishandling my grievances. On the day I was disciplined, management sent all of the other

²⁴ Record, p. 66.

employees home early in order to set up their charge of insubordination. They did this to ensure that the case would be my word against theirs. There was no insubordination on my part because my duties were done.

The supervisor cursed at me and I requested representation so that I would not get into an altercation with anyone. I filed a grievance to protest his behavior. The reason that there was a meeting in the Plant Manager's office was to address the supervisor cursing at me, not my failure to do my job. The grievance I wrote supports this but it was never filed by Chairperson Murrell.

DISCUSSION

Shepard has requested oral argument in order to clear up discrepancies in the record and to offer proof of improper conduct on the part of the Local Chairperson Rose Murrell. We have decided to deny his request because we find no material discrepancies in the record and documents concerning the actions of Chairperson Murrell would not alter our conclusion that Representative Uram's decision not to arbitrate Shepard's grievance was rational.

Shepard has insisted throughout the processing of his appeal that the charge of insubordination against him could not have been sustained by the Company, because he completed the task assigned to him. It is clear from this record, however, that the Company discharged Shepard because of his angry and disruptive behavior towards Supervisor Bonner in response to the assignment, rather than for a failure to complete any particular task. To explain his decision not to submit Shepard's grievance to arbitration, Uram provided the text of an arbitrator's award in response to a grievance he had presented involving a discharge for insubordination. In *Federal Screw Works*, the arbitrator held that an employee's uncooperative and harassing behavior toward his supervisor did amount to insubordination, even though he did ultimately complete his assignment. Uram explained that the arbitrator reinstated the employee in *Federal Screw Works* after taking into account his substantial seniority and good work record. These factors were not present in Shepard's case so Uram concluded that he could not achieve his reinstatement.

Our task in considering appeals from the disposition of grievances is to determine whether the decision to withdraw the grievance was rational and not influenced by factors such as collusion or discrimination. The record demonstrates that Representative Uram investigated the incident that resulted in Shepard's discharge, but the witnesses to the incident confirmed that Shepard's behavior was out of control. Nevertheless, Uram tried to convince the Company to reduce the penalty. When the Company refused, he withdrew the grievance because he believed that no further relief could be obtained through arbitration. His determination that the case could not be successfully arbitrated cannot be said to lack a rational basis.

The decision of the IEB is affirmed.