

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

APPEAL OF:

STEVEN FRIERSON,
Appellant,

-vs-

CASE NO. 1545

LOCAL UNION 235, UAW
REGION 1
(Hamtramck, Michigan)
(THE UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA),
Appellee.

DECISION

(Issued October 27, 2006)

PANEL SITTING: Prof. Theodore J. St. Antoine, Chairperson,
Prof. Benjamin Aaron, Prof. Janice R. Bellace,
Prof. James J. Brudney, Prof. James E. Jones,
Jr., and Prof. Maria L. Ontiveros.

Steven Frierson argues that Local 235 Committeeperson's handling of his discharge grievance lacked a rational basis.

FACTS

Steven Frierson worked at American Axle & Manufacturing Inc. with a seniority date of March 27, 1995. On October 20, 2004, Frierson was discharged. A disciplinary action notice issued to Frierson described the reason for the discharge as follows:

“... because of Shop Rule #40 ‘Misconduct’ when on Friday, October 15, 2004, while on Company time at approximately 4:34 pm, you were observed in the parking lot of Local #235 with another AAM hourly associate repeatedly snorting a white powdery substance from a clear bag. Following this snorting activity, you were also observed drinking from a bottle contained in a brown paper bag.”¹

¹ Record, p. 1

Frierson was reinstated effective December 6, 2004, under the terms of a conditional reinstatement agreement. Paragraph 5 of the agreement provides as follows:

“The period of twelve months from the date of this reinstatement will be a probationary period requiring the total abstinence from the consumption of alcohol or drugs. Consistent with this provision, the Company will require periodic urine screening. If the associate refuses to be tested in accordance with this provision, the refusal will be treated as though the associate tested positive. In furtherance of this provision, associate agrees to waive provisions of the Memorandum of Understanding on ‘Substance Abuse Testing.’ Therefore, any prohibition regarding substance abuse testing, as may be contained in the collective bargaining agreement is hereby waived.”²

On June 6, 2005, the Company Medical Department reported that drug screen results from a urine sample provided by Frierson on May 23 tested positive.³ Frierson was discharged on June 6, 2005. The disciplinary action notice issued to him described the reason for his discharge as follows:

“...because on 5-23-05 you were in violation of Shop Rule #40 (Misconduct) when you failed a random urine screening. By failing the random urine screening, you are in violation of the provisions in the Last Chance Agreement which states that the associate must abstain from the use of drugs and alcohol for 12 months from the date of the reinstatement. The reinstatement date is Monday, December 6, 2004.”⁴

Local Committeeperson Devrick Brown filed Grievance No. 20038856 on June 6 protesting Frierson’s discharge. The grievance indicates that it was withdrawn by Brown on June 23, 2005.⁵

Frierson appealed the Local Union’s decision to withdraw his grievance to the Local 235 Executive Board on July 22, 2005. In support of his appeal, Frierson argued that he had not been advised of assistance available to employees under the Employee Assistance Program (EAP) after his first discharge. He said treatment under the program would have been a big help to him and that he was still seeking help for his drug problem.⁶

² Record, p. 2.

³ Record, p. 5.

⁴ Record, p. 4.

⁵ Record, p. 6.

⁶ Record, p. 8.

The Local 235 Executive Board considered Frierson's appeal at a meeting on August 30, 2005. The minutes of that meeting demonstrate that several members of the Local Executive Board were sympathetic to Frierson's claim that he should have received help for his drug problem under the EAP. Local Chairperson Andy Pfeifle responded that Frierson understood that he was signing away his rights under that program in return for his reinstatement. The Chairperson stated that when Management offers a discharged employee reinstatement on a last chance basis, the person is notified and they have the right to accept or reject the settlement. In this case, Pfeifle explained, Frierson did agree to the terms of the last chance agreement and he was discharged for violating that agreement. The Executive Board concluded that Frierson's grievance was properly withdrawn.⁷

Frierson was notified of the Local Executive Board's decision on September 2, 2005, and he appealed to the International Executive Board (IEB) on September 22. In his appeal to the IEB, Frierson argued that his initial discharge on October 20, 2004, should have been challenged. He complained that he did not receive adequate representation in connection with the first discharge. He explained that the discharge was based on a video tape that was obtained by the Company in violation of the agreement. He reported that the Company called him into the office on the basis of this video tape and had police officers search him for drugs. He stated that he asked for his Committeeperson to be present during this search, but that the Company would not allow the Committeeperson in. He said that after these events, the Company continually harassed him. Frierson also stated that he had not been informed by his Union Representative of the options available to him under the Employee Assistance Program before he signed the reinstatement agreement.⁸ Local 235 responded to Frierson's appeal on October 13, 2005. Recording Secretary LaTonya Baker explained that the members of the Local Executive Board had concluded that Frierson knowingly waived his rights under the EAP and that he breached the reinstatement agreement he made with the Company.⁹

President Gettelfinger's staff determined that a hearing was unnecessary on Frierson's appeal, and they prepared a report for the IEB based on the information provided by Frierson and Local Union 235. Staff decided that the Union's decision to withdraw Grievance 20038856 was not devoid of a rational basis because Frierson had violated the reinstatement agreement. Staff concluded that there was no remedy available to Frierson under the Union's appellate procedures in light of the fact that he had violated the terms of his reinstatement agreement with the Company.¹⁰ Staff denied Frierson's appeal and their report was adopted by the IEB.

⁷ Record, p. 12.

⁸ Record, pp. 17-19.

⁹ Record, p. 20.

¹⁰ Record, pp. 30-31.

The IEB notified Frierson of its decision on May 23, 2006, and he appealed to the PRB on June 23.

ARGUMENT

A. Steven Frierson:

The IEB's decision is based entirely on what Chairperson Andy Pfeifle said. Chairperson Andy Pfeifle was not present in the room when I signed the reinstatement agreement, so he has no personal knowledge of what took place during that meeting. I did not waive my rights under the UAW agreement. I was not made aware of my rights. They did not explain the forms or give me adequate time to read through them. They rushed me to sign the forms so that I could return to work. There is no way that I would have signed those forms if I knew that I was waiving my rights. I was given the impression that if I did not sign the forms, I would not be able to return to work.

The Union representatives who were present during this meeting never told me about the EAP Program. This was the first time for me going through something like this. The Union should have introduced me to this program. I have worked ten long years for American Axle and I feel that I should have received better representation.

B. International Union, UAW:

Appellant was fired for violating the express terms of the conditional reinstatement agreement that he signed. It is uncontested that appellant was subject to this agreement, requiring his abstinence from alcohol and drugs and subjecting him to random urine tests for one full year. It is also undisputed that appellant took and failed one such random urine test during the probationary period established by the reinstatement agreement. Consequently, appellant breached the terms of his probationary reinstatement and was subject to termination.

There has been no showing that the Local Union's decision to withdraw appellant's grievance was based on fraud, discrimination, or collusion with management. Furthermore, the withdrawal of his grievance is soundly based on the undisputed fact that Frierson violated the terms of his reinstatement agreement with the Company.

DISCUSSION

Frierson argues that he should not have been permitted to sign the reinstatement agreement in December 2003. He states that he was not informed by his Local Union Representative that he was waiving his rights under the EAP by signing this agreement. It is not clear what right Frierson believes he relinquished when he accepted the terms of the reinstatement agreement. The substance abuse program that the UAW participates in with employers under the National Agreement does not confer any specific rights on employees. The program specifically states that none of its provisions

should be construed as a waiver of Management's responsibility to maintain discipline or invoke disciplinary measures. In fact, the reinstatement agreement that Frierson signed is one of the methods recommended in the EAP for dealing with substance abuse problems.¹¹

Frierson states that he was given the impression that if he did not sign the reinstatement agreement, he could not return to work. This was, no doubt, an accurate assessment of the situation. The employer was under no obligation to reinstate Frierson after he was discharged for using drugs on Company property. Umpires have consistently sustained discharge of employees for using drugs on Company property. After Frierson's first discharge, the Union succeeding in convincing the Company to give him another chance to overcome his substance abuse problems. The Union had no realistic hope of successfully arbitrating Frierson's grievance after he failed the drug screening conducted pursuant to his reinstatement agreement.

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.¹² The Local Chairperson withdrew Frierson's grievance based on his conclusion that it could not be successfully arbitrated. That conclusion provided a rational basis for his decision.

The decision of the IEB is affirmed.

¹¹ The EAP program available to employees of American Axle & Manufacturing is described in the 2003 GM-UAW National Agreement. The program contains the following recommendation:

"When Employee Assistance Program participants or other employees suspected of being in need of EAP services return to work the following can be agreed upon between the bargaining unit representative, Labor Relations, the Work/Family team and the employee.

5. A specific period of total non-use of alcohol or other drugs can be agreed to between the parties. The Work/Family team and the employee must concur with this probationary period which is defined as not less than six months nor more than two years and it must be understood by all parties that resumed use could result in termination of employment during that period."

¹² UAW Constitution, Article 33, §4(i).