THE PUBLIC REVIEW BOARD
INTERNATIONAL UNION, UAW

APPEAL OF:

RICHARD CHESTER AND
RAYMOND GOLDEN, JR., Members
LOCAL UNION 180, UAW
(Racine, Wisconsin),
Appellants

-vs- CASE NO. 1547

REGION 4, UAW
(THE UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA),
Appellee.
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DECISION
(Issued December 18, 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., Dean Harry C. Katz, and Prof. Maria L. Ontiveros.

Richard A. Chester and Raymond Golden, Jr. argue that they should be compensated for losses they sustained during the period from 1984 through 1989 as a result of being laid off while less senior employees were working in the Chip and Grind classification.

FACTS

Richard A. Chester and Raymond Golden, Jr., work for CNH – Global, N. V., formerly known as the J. I. Case Co., in Racine, Wisconsin, in a bargaining unit represented by UAW Local 180. Chester has a Company seniority date of September 16, 1974, and Golden has a Company seniority date of September 24, 1974.

On August 21, 2000, Richard Chester filed Grievance 188541 claiming that he was laid off while people with less seniority were working in the Chip and Grind Department (Department 063-007). The grievance was written by Raymond Golden who was a Union steward at the time. The Grievance Fact Sheet for Grievance 188541 states that Chester was laid off in 1984. He was recalled on January 29, 1990, and

assigned to the Chip and Grind Department. The Fact Sheet asserts that Chester performed satisfactorily in the Chip and Grind Department for several months. The Fact Sheet further states that employees with less seniority than Chester were working in the Chip and Grind Department throughout the period that Chester was laid off. The grievance demands that Chester be made whole for his losses.[1]

On November 13, 2000, Golden submitted a list of names of other employees who claimed that they should receive credit for time they were laid off while less senior employees were working in the Chip and Grind Department. In this letter, Golden stated:

> "…We have proof that some employees have gotten their time back and others were denied unfairly. …"[2]

In a letter dated February 7, 2001, Chester and Golden referred to the settlement of Grievances 20441 and 20442. These were the grievances which appellants claimed obtained credit for the grievants for time they spent on layoff while less senior employees were working in the Chip and Grind Department.[3]

The record contains documents related to the history of Grievance 20441. The grievance was filed on behalf of John L. Shannon demanding that he be made whole for the time he was laid off while less senior employees were still working. Grievance 20441 was settled on September 21, 1993, based on the following answer:

> "In settlement of this grievance as we agreed to in the pre-arbitration meeting held on December 1, 1992, grievant will be credited for 6 additional years towards pension plus any credited Foundry time entitled to him." [4]

Shannon appealed the settlement, because he felt that he was entitled to back pay. Shannon argued that the Company had determined that he was not a qualified chipper based on an erroneous interpretation of his production record, but that he had established his qualifications in the Chip and Grind Classification, and therefore, should not have been laid off.[5]

The UAW Convention Appeals Committee (CAC) ruled that Shannon's grievance should be pursued further. His grievance was therefore submitted to arbitration and a decision was issued by Arbitrator George R. Fleischli on February 7, 1996. In the

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[1] Record, p. 82.

[2] Record, p. 59.

[3] Record, p. 63.

[4] Record p. 17.

[5] Record, pp. 28-29.

course of his opinion, Arbitrator Fleischli provided some history of the situation in the Chip and Grind Department to explain why Shannon had been laid off while less senior employees were still working in that department. Fleischli reported that Supervisor Donald Matt explained that the Company was anticipating a large reduction in force and it was concerned about a "revolving door" developing in the Chip and Grind classification. Matt stated that employees in the Chip and Grind classification generally had low seniority because of the nature of the work and the low pay grade in that classification. Employees targeted for layoff therefore frequently bumped into that classification even though they lacked the ability to perform the work. Fleischli's opinion reported that Matt claimed that a foreman in the foundry had reached an agreement with Pat McManaway, then Chairperson of the Union's Bargaining Committee, that employees would no longer be permitted to bump into the Chip and Grind classification unless they were deemed to be qualified to perform the work in that classification.[6] Arbitrator Fleischli never reached the question whether Shannon should have been considered qualified to bump into the Chip and Grind Department, however, because he determined that the Letter of Understanding regarding the reinstatement of grievances included in the collective bargaining agreement between the Company and the Union did not authorize the reinstatement of Shannon's grievance.[7]

On September 21, 2004, Region 4 Representative Lula Smith withdrew Grievance 188541.[8] Chester appealed the Region's decision to the International Executive Board (IEB) on October 15. Chester explained that he was laid off several times during the period from 1984 though 1989, and was never permitted to bump into the Chip and Grind Department, even though people with less seniority were working there.

Chester stated that he went to the Local Chief Steward Pat McManaway after he was recalled to the Chip and Grind Department in 1990 and asked why all of these people had been permitted to continue working in the Chip and Grind Department while he was laid off. Chester asserted that McManaway told him to be glad that he had a job and that he would throw out any grievance Chester filed concerning the issue.[9] Chester explained that this was why no grievance was filed in 1990.

Chester argued that the Union was trying to cover up its past mistakes. He reported that the Union Representatives would react angrily whenever he raised the issue of low seniority employees working in the Chip and Grind Department. He stated that there were some people who could not or would not do the work in the Chip and Grind Department, but that he was not one of them. Chester concluded:

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[6] Record, p. 43.

[7] Record, pp. 56-57.

[8] Record, p. 92.

[9] Record, p. 77.

> "…Yes, there were many people that either disqualified themselves or got disqualified because they could not or would not do the work; I was not one of them. I stayed and I made. To me, my work record speaks for itself. I never went to a job at Case that I could not do, because I had and still have the ability and want to always succeed. Therefore, I feel I should be made whole for lost time, credits, wages and all benefits."[10]

Representative Lula Smith submitted a report on her handling of Chester's grievance to UAW Region 4 on January 4, 2005. Smith stated that prior to the extensive reduction in force in 1983, the Union and the Company determined that the Chip and Grind Classification, Department 063-007, would be considered a by-pass classification. She commented:

> "…This I am told was because Chip & Grind was a very physically complicated and challenging job. Many individuals were disqualified from this classification on a regular basis."[11]

Smith reported that she could not find any written record of the Company's and the Union's agreement to make the Chip and Grind classification a by-pass classification, but she had been assured by the past President Pat McManaway that there was such an agreement. Subsequently, according to Smith, the Company developed a need for additional manpower in the Chip and Grind classification and they proposed hiring new employees. The Union absolutely refused to allow this while Local 180 members were laid off. Smith reported:

> "The Company and the Union struck a deal that would allow for the immediate recall of laid off employees by seniority into the Chip and Grind classification. Those employees unable to qualify in that classification would be returned to layoff to await recall according to the Agreement."[12]

Smith reported that the employees working in the plant with less seniority than Chester after the reduction in force in 1983 were employees who possessed the required skills to do the work in Department 063-007 at the time of the layoff. She acknowledged that Chester and others like him believed that they should have been given the opportunity to qualify for positions in Department 063-007 at the time of the reduction in force in 1983. She stated that she placed Chester's grievance and others like it on the arbitration docket with the aim of attempting to negotiate some pension

[10] Record, pp. 78-79.

[11] Record, p. 93.

[12] Record, p. 93

credits for the grievants during contract negotiations. When this approach was unsuccessful, however, Smith stated that she withdrew the grievances because she did not believe that they could be arbitrated successfully.[13] Smith explained that a by-pass agreement such as that described by McManaway was supported by language found in Article VI, §5, of the collective bargaining agreement which requires employees who wish to bump into another classification on the basis of seniority to possess the ability to perform the work.[14]

On June 16, 2005, John D. Hunter, Phil Rose, and Charles Stewart conducted a hearing on appeals filed by Richard Chester, Raymond Golden, and Michael J. Pease challenging the Region's decision to withdraw grievances protesting their layoffs during the 1980s while less senior employees were working. The hearing officers, acting on behalf of President Gettelfinger, prepared a report for the IEB on the appeals based on information gathered during that hearing.

The hearing officers reported that the Company had refused to consider the grievances filed on behalf of the appellants because they were untimely. Their report contains the text of a letter which the Company sent to Representative Lula Smith on August 13, 2002, in which the Company observed that the events upon which the grievances were based occurred twenty years ago. The letter states:

> Due to this extraordinary passage of time and unreasonable delay in filing the grievance, the relevant events, facts and circumstances may be impossible to reconstruct because of the unavailability of decision makers, other relevant witnesses, and relevant documents. For these reasons, the Doctrine of Laches applies and the grievance is not procedurally arbitrable.[15]

The Company maintained that in any event it had followed the procedure for layoffs set forth in the collective bargaining agreement.

According to the hearing officers, appellants testified that stewards, committeepersons, and former Chairperson McManaway refused to write grievances for them when they were being laid off, while they were on layoff, and after their recall to work. On the other hand, McManaway testified that he never refused to file a grievance for appellants nor did he suggest that such a grievance should not be filed. The hearing officers' report states:

> "…He testified that during the 1980s, several hundred grievances were filed and more than one-half (1/2) of them

[13] Record, p. 95.

[14] Record, p. 95

[15] Record, p. 127

> claimed improper layoffs. He said that he fostered an atmosphere which encouraged stewards to file all grievances requested by members whose rights were being violated. …"[16]

The hearing officers reported that appellants acknowledged that they had not attended any Union membership meetings while they were laid off. The hearing officers commented:

> "…If union representatives are in fact refusing to file grievances, as alleged by the appellants, a reasonable person must wonder why this was not appealed to the local union membership."[17]

According to the hearing officers, appellants testified that at the time they were laid off the contract did not require prior experience in the Chip and Grind Department in order to bump a less senior employee in that Department. The hearing officers reported that appellants accused former Chairperson McManaway of making a deal with the Company to make Chip and Grind a by-pass classification. The report indicates that McManaway responded that Chip and Grind was commonly known as a by-pass classification long before the 1981 layoffs. McManaway denied making any deal with the Company.[18] The hearing officers remarked that if the agreement described in Arbitrator Fleischli's decision not to allow employees automatically to bump into the Chip and Grind classification based on previous experience in the classification was the "deal" referred to by appellants, it would not have affected them, because none of them had worked in the classification prior to the layoff.[19]

The hearing officers observed that by the time Representative Smith got involved in appellants' grievances more than twenty years had passed since the alleged violations had occurred. They stated that Representative Smith withdrew the grievances because she believed that they were untimely and could not, therefore, be taken to arbitration. The hearing officers concluded that Representative Smith's decision to withdraw the grievances from the arbitration docket did not lack a rational basis. They found no evidence of improper motivation on the part of the Union representatives involved. Based on these conclusions, the hearing officers denied the appeal.[20]

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[16] Record, pp. 130-131.

[17] Record, p. 131.

[18] Record, p. 129.

[19] Record, p. 129.

[20] Record, p. 133.

On May 22, 2006, the IEB adopted the report of the hearing officers as its decision. Richard Chester and Raymond Golden appealed the IEB's decision to the Public Review Board (PRB) on June 15, 2006.

ARGUMENT

A. Richard Chester and Raymond Golden:

The Appeals Committee accepted the Local Union's claim that there was an agreement between the Union and the Company that the Chip and Grind classification was a by-pass classification before we were laid off. No one has ever produced any evidence of such an agreement. Representative Smith argued that individuals who believed that they were qualified to bump into Chip and Grind had to update their records to show their qualifications prior to being laid off. This was a closed process thanks to our Union leaders. We were never given the opportunity to demonstrate our ability to do the work in the Chip and Grind classification. If there was an agreement to allow the Company not to permit employees to bump into the Chip and Grind classification on the basis of seniority, that agreement was negotiated outside of the collective bargaining agreement without the approval of the rank and file. We believe that was illegal. Our leadership felt they were above rules and language.

The hearing officers for the IEB treated everything that Pat McManaway said as gold while they disregarded our testimony. McManaway was lying to cover up his past mistakes. We do not believe the decision of the IEB should be affirmed. If we had the ability to perform in the Chip and Grind Department when we were recalled then we had the ability when we were laid off. We should have been allowed to bump into that classification on the basis of seniority.

B. International Union, UAW:

Raymond Golden filed Grievance 188540 and Richard Chester filed Grievance 188541 on August 21, 2000. These were taken to Lula Smith, the servicing International Representative. She investigated them, interviewing retirees and examining the paper record. She was able to determine from testimony of the Local's former Chairperson and the Company's Personnel Supervisor that the Chip and Grind classification had been considered a by-pass classification by both Management and the Union long before the layoffs of 1981 and 1982. She also determined that appellants' records did not show any experience in the Chip and Grind classification prior to their layoffs. After Management rejected appellants' grievances as untimely, Representative Smith decided to hold them open in the vain hope of addressing the issues raised during contract negotiations. When that failed, she withdrew the grievances as untimely and lacking merit. This appeal followed.

Although appellants' grievances were filed and withdrawn more recently, they seek review of seniority issues more than twenty years old. We ask the PRB to find that these appeals are untimely within the meaning of Article 33, §4(b) and (c), of the

Constitution, which states that the time limit for an appeal begins to run when the appellant first becomes aware or reasonably should have become aware of the action or decision being appealed. In the case of claims of seniority violations, absent clear and convincing evidence of fraudulent concealment, the Constitutional time limitation must start running when the individual returns to the plant. Seniority lists are posted in the plant and easily available for good reason. Any modest inquiry will expose who has been working and where. Appellants, therefore, must be considered as having known of the issues raised by their appeal when they returned to the plant in 1990.

The Constitutional limitation stated in Article 33, §4, operates regardless of whether the underlying claim has or lacks merit. This limitation is necessary to maintain settled relationships. It avoids the unfairness of new determinations made when the evidence is likely stale or lost, and witnesses to the events are dead. Both of these appellants have acted as Union stewards. They are long-term and experienced members. This record amply demonstrates that these appellants reasonably should have known what their seniority rights were in 1990. Furthermore, while this Board should not reach the issue, appellants are also wrong. Their grievances lacked merit and were properly withdrawn.

This appeal should be dismissed as untimely.

C. Rebuttal by Richard Chester:

The International Union argues that our appeal is untimely. Had the proper procedures been followed at the time that we were laid off, there would be no need for this appeal. The International Union insists that the time limits on claims of seniority violations must begin to run when the wrongfully laid-off employee returns to the plant. When I was recalled, I was assigned to work right beside people with less seniority. I immediately requested a grievance, but Chairperson McManaway told me to be happy that I had a job. This situation has been allowed to exist for twenty years because one person did wrong and now has the backing he needs to justify his wrongdoings. The fact is that for the past seven years our own Local Union has held things up. Yes, we do want to travel back to the 1980s to repair the damage that was done to us and receive the representation we should have received.

The Chip and Grind operation does not require special training or intelligence. It calls for people who have the brawn and willingness to do the job. I had more of that when I was laid off at age 35 then I did when I was recalled to the foundry at age 40. There is no written agreement or minutes of a membership meeting during which the members approved any agreement to allow Chip and Grind to be treated as a by-pass classification. We should have been given the chance to keep working based on our seniority. There are no time limits in our collective bargaining agreement on seniority claims such as ours.

DISCUSSION

If appellants disagreed with Chairperson McManaway's refusal to file a grievance on their behalf in 1990, they had the right to appeal his decision to the Local membership in accordance with the procedures described in Article 33 of the International Constitution. Article 33, §4(c), of the Constitution requires that appeals to a Local Union be submitted within sixty days of the time that the appellant first became aware of the decision being appealed. Appellants did not challenge McManaway's decision within the time limit specified by the Constitution. Appellants' attempt to raise this issue now is untimely and cannot be considered.

This appeal was apparently triggered by appellants' discovery of the arbitration decision issued in John Shannon's case which mentioned an agreement between a Supervisor and Chairperson McManaway regarding the qualifications required to bump into the Chip and Grind classification. Appellants now argue that McManaway refused to grieve their layoffs in order to cover up an inappropriate deal he had made with the Company. Appellants' discovery of Arbitrator Fleischli's decision has no bearing on the time limits applicable to their appeal, however. Appellants knew in 1990 that less senior employees had been working in the Chip and Grind Classification while they were laid off and that Chief Steward McManaway did not intend to grieve the issue. It was this knowledge that started the sixty day time period set by the Constitution for appealing a decision of a Local Union Representative. If appellants had filed a timely challenge to McManaway's decision, the reason for his decision not to file a grievance over the seniority issue could have been established while the record was still relatively fresh.

The Union's subsequent efforts to negotiate pension credits for appellants did not revive the claims they failed to make in 1990. Representative Smith's decision to withdraw appellants' grievances when the Company refused to consider their claims was rational. The passage of time had made any objective evaluation of their claims impossible, as the Company quite reasonably observed. There was no chance, therefore, of obtaining the relief appellants sought from the Company through arbitration.

The decision of the IEB is affirmed.