

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

APPEAL OF:

WILLIAM HULME,
Appellant

-vs-

CASE NO. 1588

NORTHWEST LOCAL UNION 163, UAW
REGION 1A
(Westland, Michigan)
(THE UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA),
Appellee.

DECISION

(Issued June 10, 2008)

PANEL SITTING: Prof. Theodore J. St. Antoine, Chairperson,
Prof. Janice R. Bellace, Prof. James J.
Brudney, Prof. Fred Feinstein, Prof. James E.
Jones, Jr., Dean Harry C. Katz, and Prof. Maria
L. Ontiveros.

William Hulme argues that his Local Union's settlement of a group of grievances filed on his behalf regarding disciplinary actions and violations of his right to work overtime lacked a rational basis.

FACTS

William Hulme was employed at General Motors' Powertrain Romulus Engine Operations ("GM") in a bargaining unit represented by UAW Northwest Local 163. On November 19, 2004, Hulme filed Grievance No. R04324 charging management with violating his right to work overtime. Hulme asserted that he was the low man on the overtime equalization list and he was not asked to work overtime from November 15 to November 23.¹ Hulme filed a similar grievance, Grievance No. R06263, on December 10, 2004.² In addition, Hulme filed Grievance No. R06264 charging

¹ Record, p. 1

² Record, p. 5.

management with improperly charging him with 32.3 hours on the overtime equalization list.³ Hulme submitted the following statement in support of his overtime grievances:

“On 12/2/04, I notified Larry Ball [that] my personal protective equipment was not working properly. On 12/3/04, Larry Ball told me to go to medical and get [a] proper one. At 8:30 a.m. I [saw] Rob in Health & Safety and discussed the respirator. He talked to [the] supplier and a new one was to be delivered 12/6/04. I worked 12/4/04 (Sat.) with no respirator in Gage Inspection. This week, because H&S failed to provide my personal protective equipment, I was bypassed for Sat. 12/11/04. Demand 12 hrs. pay.”⁴

Labor Relations Supervisor Larry Ball responded to Hulme’s grievances by explaining that Hulme was bypassed for overtime because he is required to wear a respirator to work on the floor. Ball reported that the Safety Department had ordered a new filter for Hulme’s respirator, but it had not been received by Friday, December 10, 2004. Ball stated that as soon Hulme received the filter he could be trained on floor activities such as servicing Zeiss Equipment.⁵

On December 7, 2004, Hulme was issued a reprimand for violating safety rules. The reprimand indicates that Hulme was observed in a manufacturing area without his respirator.⁶ Hulme filed Grievance No. R04758 protesting the discipline. The grievance states:

“Charge Mgt. with giving me an unjust penalty for Shop Rule 35 (Safety). Mgt. claims that a safety mask should be worn at all times. I would [have] worn it if it was available. Demand this reprimand be removed immediately and that Mgt. abides by all my restrictions.”⁷

On April 12, 2005, Hulme was put on notice for wasting time.⁸ On April 13, 2005, the Company issued Hulme a disciplinary layoff of the balance of his shift plus one day for wasting time. The disciplinary notice states:

“On 4-11-05, you were absent from your work area from 10:45 a.m. til 2:00 p.m. (Lunch 11:18 to 11:48)”⁹

³ Record, p. 6.

⁴ Record, p. 8.

⁵ Record, p. 7.

⁶ Record, p. 2.

⁷ Record, p. 4.

⁸ Record, p. 9.

⁹ Record, p. 10.

Hulme filed Grievance No. R05350 on April 13, 2005, protesting the discipline. Hulme maintained that he was not absent from his work area during the time period described in the disciplinary notice.¹⁰

On May 6, 2005, the Company issued Hulme a disciplinary layoff of balance of shift plus three days for leaving the plant during working hours. The Notice of Disciplinary Actions states:

“Larry Ball watched Mr. Hulme exit the plant on 5/6/05@10:48 a.m. He got in his truck and drove out of the parking lot. Mr. Hulme was observed returning to the plant in his truck at 12:14 p.m. He was away from the plant 1 HR, 26 MIN.”¹¹

Hulme filed Grievance No. R04512 on May 9, 2005, protesting the discipline. Once again, Hulme insisted that he did not leave the plant as charged by management. Hulme demanded that he be paid all lost wages and benefits resulting from the penalty.¹² Hulme stated that he ate his lunch in the Inspection Room with Frank Rakoczy and Linden Foster and that they could verify that he was in the plant on May 6, 2005, at the times specified in the disciplinary notice. Frank Rakoczy submitted the following statement:

“On May 6th at 11:00 a.m., I saw Bill in the area before I went to lunch.”¹³

Linden Foster stated:

“At 11:45 on May 6th, when I returned from lunch, Bill was at his bench.”¹⁴

Hulme also filed Grievance No. R04513 on May 9, 2005, charging management with harassment.¹⁵

Hulme was issued a balance of shift plus one week disciplinary leave for wasting time during working hours on May 23, 2005. The disciplinary notice states:

“Mr. Hulme was away from his assigned area on several occasions on 5/18/05 when his supervisor was looking for him. Also, he was assigned to inspect gages, but only did two.”¹⁶

¹⁰ Record, p. 11.

¹¹ Record, p. 18.

¹² Record, p. 22.

¹³ Record, p. 16.

¹⁴ Record, p. 16.

¹⁵ Record, p. 23.

Hulme filed four grievances protesting this discipline on May 23, 2005. Grievance No. R07568 charges management with issuing an unjust penalty and demands all lost wages and benefits.¹⁷ Grievance No. R07569 charges management with failure to conduct a proper disciplinary interview. It demands that Mark Arnold be schooled in conducting interviews in accordance with Paragraph (76a) of the UAW-GM National Agreement.¹⁸ Grievance No. R07570 charges Manager Larry Ball and Supervisor Mark Arnold with harassment and demands that the harassment stop immediately.¹⁹ Grievance No. R07571 charges management with failing to provide Hulme with a copy of his disciplinary action notice on May 6, 2005, in violation of Paragraph (76b) of the National Agreement.²⁰

Grievance No. R07569 indicates that it was resolved on October 25, 2005, based on the following response:

“Supervisor Mark Arnold no longer works for General Motors, which makes it impossible for Mgt. to school employee.”²¹

Grievance No. R07570 indicates that it was resolved on October 25, 2005, based on the following response:

“It is not management’s intent to harass employees. Mgt. agrees to abide by the contract regarding harassment of employees.”²²

Grievance No. R07571 indicates that it was withdrawn on June 14, 2005.²³

On January 26, 2006, Local 163 Committeeperson Robert W. Jones agreed to settle all of Hulme’s outstanding grievances based on the following memorandum:

“The following grievances are settled based [on] employee’s disciplinary record to reflect a balance of shift plus 1 day for other than shop rule #6, grievance payment of 60 hours straight time without charges to his equalization, and 44.3 hours removed from employee equalization hours.

R04758, R06264, R06263, R04324, R04512, R07570, R07568, R07569, R07571 & R05350”²⁴

¹⁶ Record, p. 25.

¹⁷ Record, p. 27.

¹⁸ Record, p. 28.

¹⁹ Record, p. 30.

²⁰ Record, p. 32.

²¹ Record, p. 29.

²² Record, p. 31.

²³ Record, p. 32.

In accordance with this settlement, the discipline issued on May 9, 2005, was reduced to a balance of shift plus one day penalty.²⁵ The discipline issued on May 23, 2005, was removed.²⁶

On January 17, 2007, Hulme appealed the settlement of Grievance Nos. R04758, R05350, R04512, and R07568 to the Local 163 Executive Board. Hulme explained that these grievances protested unjust disciplinary layoffs issued to him for wasting time or being out of the plant. Hulme stated that he had given Committeeperson Jones statements from employees affirming that he was in the plant. Hulme further complained that Jones had improperly combined his disciplinary grievances with his equalization of overtime grievances. Hulme stated that he only learned that his disciplinary grievances had been combined with his overtime grievances after repeated inquiries. He reported that Committeeperson Jones did not provide him with numbers of the disciplinary grievances so that he could appeal their settlement until January 17, 2007.²⁷

The Local 163 Executive Board considered Hulme's appeal at a meeting on March 30, 2007. Local Recording Secretary Carolyn Farabee reported to Hulme about the Local Executive Board's action on the appeal. Her letter to him states:

"Your Committeeman, Rob Jones, stated he did the best he could for you under the circumstances. Furthermore, when he inherited your grievances from retired Committeeman John Graczyk, they were already approximately one year old. This put these grievances on your record much too long.

Rather than prolonging your case any further, these penalties had to be cleared from your records due to the fact that if any further infractions were to occur on your record, you would be facing up to a two-week disciplinary action.

The Board finds Committeeman Rob Jones settled these grievances having in mind your best interest regarding your case. Therefore, the Executive Board found no grounds to overturn your agreed upon settlements."²⁸

Hulme appealed the Local Executive Board's decision to the International Executive Board (IEB) on April 9, 2007.

²⁴ Record, p. 33.

²⁵ Record, p. 19

²⁶ Record, p. 26.

²⁷ Record, p. 34.

²⁸ Record, p. 41.

In support of his appeal to the IEB, Hulme stated that he had had no disciplinary problems during his 30 years of employment at GM. He reported that he was issued several disciplinary layoffs in 2005 for wasting time. He explained that he lacked training on the inspection equipment so that it took him longer to complete his assignments. He insisted that he had done everything that he had been told to do. Furthermore, he stated that he had witnesses to refute management's claim that he was out of the plant during working hours. Hulme stated that he was seeking all wages and benefits lost as a result of these unfair disciplinary layoffs.²⁹

President Gettelfinger's Administrative Assistant Don Sarkesian conducted a hearing on Hulme's appeal on November 14, 2007. Sarkesian prepared a report to the IEB on behalf of President Gettelfinger based on testimony given at the hearing and information provided by Local Union 163 and William Hulme. Sarkesian reported that Hulme was assigned to the Gage Inspection Department because of his medical restrictions. He observed that all of Hulme's disciplinary problems occurred following his assignment to Gage Inspection and that he had not received any discipline after he was returned to his original work area.³⁰

According to Sarkesian's report, Committeeperson Jones testified that Hulme's grievances had already been in the system for a while when he received them. He said that he conducted his own investigation because the grievances did not provide a lot of detail. Jones explained that Hulme's witnesses told him that they did not want to get involved in the case or to provide more detailed statements to support Hulme's claim that he was in the plant when management accused him of being away. Jones stated that management, on the other hand, felt confident that they had enough evidence to support the discipline that was issued.³¹ Jones explained that he was concerned about the progressive discipline on Hulme's record and sought to achieve a compromise settlement of all of Hulme's grievances. Jones reported that he notified Hulme of the settlement shortly after it was made.³²

Sarkesian observed that Hulme had received the 60 hours pay shortly after the settlement was agreed to in January 2006, but that he did not appeal the settlement until almost a year later, so that his appeal was technically untimely. In response, Hulme explained that he thought that the 60 hours pay was in settlement of his overtime equalization grievances. He stated that he did not understand that the disciplinary grievances had been included in the settlement until he finally received the grievance numbers from Committeeperson Jones on January 2, 2007. Sarkesian reported that Local 163 President Long explained that while members of the Local Union Executive Board had some uncertainty about the timeliness of Hulme's appeal, they decided to

²⁹ Record, p. 44.

³⁰ Record, p. 56.

³¹ Record, p. 57.

³² Record, p. 58.

give him the benefit of the doubt and consider the merits. Long added that the Local Union Shop Chairperson and the members of the Local Executive Board all concluded that Committeeperson Jones had done a good job and they found no grounds to overturn the settlement of Hulme's grievances.³³

Sarkesian reported that he too found nothing wrong with the way Committeeperson Jones had resolved Hulme's grievances.³⁴ Sarkesian pointed out that a Local Representative does not need a grievant's permission to resolve grievances. He explained that Local Union representatives have full discretion in the processing and settling of grievances as long as their actions are honest, not discriminatory, and have a rational basis. Sarkesian noted that Jones' only alternative to settling the grievances was to pursue the case through the grievance procedure and possibly to the Umpire.³⁵ In order to do that successfully, Jones would have needed sufficient proof that members of management had abused their right to discipline. Sarkesian concluded that Jones' decision to settle the grievances was based on the lack of evidence to support Hulme's claim that he was innocent of the charges against him. Sarkesian wrote:

"The appellant didn't provide any witnesses to support his case either. He did provide two one-sentence statements allegedly signed by two members. We reviewed both statements and concluded they provide insufficient proof of innocence. Also, Committeeperson Jones did go out and talk to these two, as mentioned previously, which didn't help the appellant's case."³⁶

Furthermore, Sarkesian found that the settlement obtained by Jones was a good one and that there was little likelihood a better result could have been achieved if the case had been presented to the Umpire.³⁷

Sarkesian denied Hulme's appeal and his report was adopted by the IEB as its decision. The IEB issued its decision on December 21, 2007. Hulme has now appealed the IEB's decision to the Public Review Board (PRB).

ARGUMENT

A. William R. Hulme:

Much of the evidence that supported my grievances was destroyed. I supplied overtime sheets to Committeeperson Graczyk for my Paragraph (71) overtime

³³ Record, pp. 58-59.

³⁴ Record, p. 62.

³⁵ Record, p. 61

³⁶ Record, p. 61.

³⁷ Record, p. 62.

grievances. Committeeperson Jones told me that Graczyk and management had destroyed most of the overtime records so that he was unable to get what I was due. I received only 60 hours out of the 130 hours that I claimed. This was the result of fraud and collusion with management.

I provided Graczyk with a detailed statement of the events leading up to the discipline protested in Grievance No. R07568. I received a balance of shift plus one week disciplinary layoff. I filed four grievances protesting this discipline: one for the unjust disciplinary layoff, one for bargaining in bad faith, one for no 24-hour letter, and one for violation of Paragraph (76). I lost 58 hours of pay as a result of this discipline. Management laid me off while on this disciplinary layoff and leveled me back to the toolmaking classification. I never had any more discipline until I retired in April 2007.

Much of the evidence that I presented at the hearing conducted by Administrative Assistant Sarkesian was not presented in the report to the IEB. I received a disciplinary layoff for wasting time and lost 18.5 hours of pay. Committeeperson Graczyk filed four grievances protesting this layoff, but only Grievance No. R05350 could be found.

The report to the IEB does not include all of the information regarding Grievance No. R04512. I was given a balance of shift and three day disciplinary layoff for leaving the plant without permission. I did not leave the plant. I was in the print room. The statements from Frank Rakoczy and Linden Foster proving that I was in the plant were dismissed by the Union as insufficient. Yes, they are simple statements, but they are accurate. The IEB and Committeeperson Jones are insinuating that we are not telling the truth. I wrote three grievances protesting this discipline and only Grievance No. R04512 could be found. I lost 37 hours of pay.

The report to the IEB indicated that I received 60 hours of pay in settlement of my disciplinary grievances, but the fact is that this was for my overtime grievances. I lost a total of 113.5 hours as a result of the unjust disciplinary layoffs. When you add in the 130 hours that I lost as a result of the Company's violation of Paragraph (71) it comes to 243.5 hours of pay. The compromise settlement made by Committeeperson Jones lacked a rational basis. No reasonable person would think that 60 hours pay was a reasonable settlement for the loss of 243.5 hours pay.

There are several inaccurate statements in the report to the IEB. I was not reassigned to the Gage Inspection Department because of a lung disorder. I applied for a Paragraph (63b) opening in Gage Inspection. The supervisor in Gage Inspection, Larry Ball, was displeased that I had a restriction, because I had to wear a breathing mask in the coolant areas.

There was no reason for Committeeperson Jones to settle my grievances. He knew that I did not want to settle the disciplinary grievances. He claims that he was concerned about the progressive discipline, but it had been eight months since the last disciplinary layoff and 15 months since the first one. After being laid off, I was placed in

a different department with a good supervisor and didn't receive any more discipline, so Jones' reasoning lacks a rational basis.

I am a dues paying member and expect the best representation without fraud and collusion with management. I demand that all of my grievances be reinstated and that I be paid the 113.5 hours pay that I lost as a result of my unjust disciplinary layoffs.

B. International Union, UAW:

District Shop Committeeperson Jones took over responsibility for Hulme's grievances when Committeeperson John Graczyk retired. Jones acknowledged that the investigative reports he received with the grievances did not contain a lot of detail. He conducted his own investigation, therefore, by talking with management and the two witnesses Hulme claimed supported his case. The witnesses were not helpful. One told Jones that he did not want to get involved and the other said that he would not sign a more detailed statement. Neither of the witnesses appeared at the hearing on Hulme's appeal to the IEB. There is no indication that the Union was involved in destroying any documents. Most of the documents that Hulme claims were destroyed have to do with grievances that were settled earlier and which are not part of this appeal.

Committeeperson Jones' handling of Hulme's grievances and the settlement he negotiated were not devoid of a rational basis. Hulme had ample opportunity to present his evidence to Jones and he apparently did so. Hulme does not argue that Jones misunderstood or ignored his version of the events. Jones simply disagreed with Hulme's assessment regarding the merits of his grievances. Jones concluded that settling the case for reduced discipline, 60 hours pay, and a 44.3 hour adjustment to Hulme's overtime equalization calculation was a better result than could be obtained if the case were presented to the Umpire. Jones' decision was rational and well within the discretion afforded Union representatives when handling grievances.

C. Rebuttal, by William Hulme:

The International Union claims that the grievances that were withdrawn by Committeeperson Graczyk are not part of this appeal. They are relevant to this appeal in that they contain the information which supported Grievances R05350, R04512, and R07568. The IEB is concealing the rest of my grievances, which is unfair to me and lacks a rational basis. The evidence of the merits of my grievances is in those concealed grievances that the IEB has. These prior grievances must be included in my appeal to the PRB for they all support my case for the unjust discipline and the violation of disciplinary procedures.

The Union has failed to address management's many violations of the UAW/GM Agreement. Administrative Assistant Sarkesian stated merely that I alleged various violations of contractual disciplinary procedures. All of my grievances supported my case against management for abuse of the disciplinary procedures. Committeeperson

Jones was aware that Grievance No. R07571 was about Paragraph (76) of the UAW/GM Agreement. He knew there was no 24-hour letter to extend the disciplinary interview. Ten days elapsed between my being put on notice and my being interviewed, which is a violation of the Local Agreement, so that the matter should have been closed. This has been in all of my appeals but neither Jones nor the IEB have addressed it. Management made a mockery of the UAW/GM Agreement. To settle my grievances without addressing these violations constitutes collusion with management and lacks a rational basis.

I received no compensation for my unjust disciplinary layoffs. Jones and the IEB state that there was not a lot of detail to support my grievances. Jones reported that he talked to management and to my witnesses. I was the one who was disciplined, but he decided to talk to management first. They make a point of the fact that my witnesses did not appear at the IEB hearing. Jones and the IEB had no witnesses or written statements. They merely presented management's position with no evidence. The IEB and Committeeperson Jones could have requested Graczyk to appear at the hearing, but he was not there. I had detailed discussions with Jones giving him all the information provided in this appeal. That is why he knew that I was so adamant about not settling these grievances without compensation. Yet, he did not listen.

My Committeeperson did not look at the facts and evidence. Jones listened to management when he should have been representing me by listening to me. I lost a total of 243.5 hours of compensation and received only 60 hours from the settlement. I demand a fair and equitable settlement or compensation for the 113.5 hours I lost as a result of management's abuse of the disciplinary procedures and violation of my contractual rights.

DISCUSSION

Our role in reviewing appeals concerning the handling of grievances is limited to claims 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.³⁸ In his appeal from the settlement of his grievances, Hulme insisted that he was unjustly disciplined so that it was irrational for Committeeperson Jones to settle his disciplinary grievances without back pay. This record does appear to support Hulme's charge that Supervisor Larry Ball unfairly singled him out for discipline. Hulme had a clean record after nearly thirty years of service at GM when he transferred into the Gage Inspection Department. It is not likely that an employee with such an unblemished record would suddenly begin to waste time and leave the plant without permission for long periods of time. Although Hulme's desire not to compromise his disciplinary grievances is understandable under these circumstances, his Committeeperson had to evaluate what could realistically be obtained through further pursuit of the grievances.

³⁸ UAW Constitution, Article 33, §4(i).

Supervisor Larry Ball claimed to have seen Hulme exit the plant and return over an hour later on two separate occasions. Hulme did not have strong evidence to refute that charge. Hulme's witnesses stated that they saw him in the plant at times when Supervisor Ball said he was away, but there is not anything in the statements to verify the time of day when the observations were made. Committeeperson Jones tried to get more substantial statements from the witnesses, but they apparently could not provide any more details. At the same time, Committeeperson Jones did convince management to compensate Hulme for some of the overtime he claimed he was entitled to and to reduce the overtime hours charged to him. In addition, management agreed to reduce the discipline on Hulme's record. In evaluating this offer of settlement, the question Jones had to consider was whether he could obtain a better result for Hulme from the Umpire. Jones' conclusion that he could not was rational. It was based on his interview of Hulme's witnesses and on the absence of evidence to refute Supervisor Ball's charge that he witnessed Hulme leaving the plant.

In his appeal to this Board, Hulme has argued that the discipline assessed against him could not have been sustained if the Union had pursued various grievances asserting violations of disciplinary procedures. Some of these grievances, such as Grievance No. R0759 and Grievance No. R07571, are in the record. Hulme reports that grievances were also filed in connection with other discipline he received charging management with citing the wrong shop rule or naming the wrong person as his Supervisor and he has asked that these grievances be included in the record. Hulme charges that the International Union is attempting to conceal these grievances because they establish the merits of his appeal.

Hulme apparently believes that the establishment of a technical defect in the documents related to a disciplinary action would be grounds for overturning the disciplinary action and awarding back pay. This is clearly not so. The existence of such violations would not alter the merits of a grievance protesting the assessment of discipline. A grievance charging management with citing the wrong shop rule in assessing a disciplinary layoff, for instance, would address the consequences of that error and its impact on the employee, not the justification for the disciplinary layoff. The Umpire would not overturn the discipline simply because the supervisor wrote the wrong shop rule number on the notice of disciplinary action.³⁹ Thus, it simply does not matter that some of these grievances involving technical violations are missing from the record.

This record establishes that Committeeperson Jones negotiated a settlement of all of Hulme's outstanding grievances based on his investigation and evaluation of their merits. There is no evidence that improper motivations influenced Jones' handling of the grievances and his resolution of the matter cannot be said to lack a rational basis.

The decision of the IEB is affirmed.

³⁹ See *Roger Helton and Dennis Wright v. UAW National Heavy Truck Department*, PRB Case No. 1541 (2006).

