

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

APPEAL OF:

CECIL ADDISON, Member,  
LOCAL UNION 2069, UAW  
(Dublin, Virginia),

Appellants

-vs-

CASE NO. 1600

REGION 8, UAW  
(THE UNITED AUTOMOBILE, AEROSPACE  
AND AGRICULTURAL IMPLEMENT  
WORKERS OF AMERICA),  
Appellee.

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**DECISION**

(Issued December 16, 2008)

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

Cecil Addison argues that the Union's handling of a grievance protesting his termination was influenced by discrimination and lacked a rational basis.

**FACTS**

Cecil Addison worked for Volvo Trucks North America ("Volvo") in Dublin, Virginia, in a bargaining unit represented by UAW Local Union 2069. He had a seniority date of June 9, 1999. Addison held the classification Document Specialist III. On June 19, 2007, Volvo terminated Addison's employment after his supervisor complained about the amount of time Addison spent talking on the telephone. The letter advising Addison of his termination gives the following explanation:

"Early this year your supervisor, John Pennington, had a discussion with you concerning the amount of time you were spending on the phone each day outside your lunch and break period making personal calls. At that time, Mr. Pennington informed you must minimize the amount of time for personal calls and to try to keep them down to lunch and breaks.

Mr. Pennington has not seen improvement; therefore, he requested to have your phone records reviewed.”<sup>1</sup>

Volvo reported that a review of Addison’s phone records revealed that he was spending approximately one hour per day on the telephone making personal calls in addition to his normal breaks.<sup>2</sup> Volvo asserted that this amounted to a violation of Shop Rule #35, which states:

“Unauthorized or inappropriate use of Company communications equipment; e.g., computers, phones, copy machines, etc.”<sup>3</sup>

Shop Rule #35 is listed under the following category of progressive discipline:

“The following violations of Plant Rules 24 through 35 may warrant the immediate termination of employment of any employee.”<sup>4</sup>

Local 2069 negotiated Addison’s reinstatement on a “Last Chance” basis on the same day that he was terminated.<sup>5</sup> A letter addressed to Addison from Volvo Labor Relations Representative David Lilly described the conditions of his reinstatement as follows:

“You will not use company phones for the purpose of making personal phone calls during work hours unless authorized to do so by your supervisor.

You will return to work on 6/20/2007 with no loss of salary or benefits.

Your disciplinary record will remain reflective of a ‘discharge.’ You must comply with all company shop rules, policies, and procedures. Any future infractions or violations may result in immediate termination of your employment.”<sup>6</sup>

On June 26, 2007, Volvo posted three openings for salaried bargaining unit positions including Product Engineer, Grade 27. Addison applied for the position of Product Engineer.<sup>7</sup> On July 18, 2007, an email was sent to Addison announcing that

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<sup>1</sup> Record, Book 1, p. 9.

<sup>2</sup> Record, Book 1, p. 9.

<sup>3</sup> Record, Book 1, p. 5.

<sup>4</sup> Record, Book 1, p. 5.

<sup>5</sup> Record, Book 1, p. 7.

<sup>6</sup> Record, Book 1, p. 7.

<sup>7</sup> Record, Book 1, p. 17.

the successful candidate for the Product Engineer position was Nick Misyak.<sup>8</sup> On July 30, 2007, Addison filed a complaint with the Equal Employment Opportunity Commission (“EEOC”) charging Volvo with racial discrimination. Addison reported that he was the most senior qualified person who applied for the Product Engineer position. He stated that the contract between Volvo and the UAW required the Company to award the position to the most senior qualified applicant. He argued that Volvo’s failure to award him the position was based on race. He wrote:

“...Prior to the actual posting of the vacant position of Product Engineer, the company (Volvo) systematically conspired to change the requirements of the job description, as agreed upon in the original and current contract agreement (without the approval and agreement of the UAW Local 2069), in order to prevent the Charging Party (Cecil D. Addison) from being awarded the position, and allow for a less qualified, less senior, white male to be awarded the position.”<sup>9</sup>

On July 25, 2007, Addison’s employment with Volvo was terminated for violating a departmental policy on start times for weekend overtime. In a letter to Addison explaining the reason for his termination, Volvo Labor Relations Representative David Lilly stated that on December 16, 2006, the Engineering Department was notified via email that overtime scheduled on weekends or shutdown periods must be worked between the hours of 5:00 a.m. and 5:00 p.m. Lilly stated that a review of the After Hours Sign-In Log revealed that Addison had logged in at 3:57 a.m. in violation of the policy. Lilly stated that Addison’s failure to adhere to the policy for working overtime on weekends amounted to a violation of Shop Rule #16, which states:

“Insubordination or refusal to obey orders of your supervisor, members of management, or plant Security Personnel.”<sup>10</sup>

Lilly’s letter states:

“You are currently under a Last Chance Agreement which in part required you to comply with all shop rules, policies, and procedures. Based on this, the Company, Volvo Trucks North America, is terminating your employment, effective immediately. Please be advised that effective today you will no longer be permitted on Company property unless making prior arrangements through me to do so. If you return to the plant without prior approval from me you will be subject to arrest with a charge of trespassing.”<sup>11</sup>

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<sup>8</sup> Record, Book 1, p. 12.

<sup>9</sup> Record, Book 1, p. 17.

<sup>10</sup> Record, Book 1, p. 5.

<sup>11</sup> Record, Book 1, p. 14.

Local 2069 filed Grievance NRS07-016 protesting Addison's termination on July 31, 2007. The grievance asserts Addison's conduct did not warrant termination.<sup>12</sup> In a letter to the Virginia Employment Commission appealing the denial of his unemployment benefits, Addison explained that he never saw the email sent on December 16, 2006, informing employees in the Engineering Department that overtime on weekends must be worked between 5:00 a.m. and 5:00 p.m. because he was on vacation when the email was sent.<sup>13</sup> He reported that when he returned to work after vacation, he cleared out his inbox and never saw the email. In addition, Addison reported that he had been coming in early to work overtime on weekends throughout the year and that no one had ever questioned his schedule. He wrote:

"This also supports my previous argument that from January 2007 through May 2007, I continued to come in early (before 5:00 a.m.) when I had to work overtime on weekends. My supervisor was aware of this and he never said a word to me concerning my work schedule on weekends. This is why I came in before 5:00 a.m. on Saturday, July 21, 2007, when we were asked to work overtime for that weekend. I was simply doing what I had done on the previous weekends between January and May of 2007. I was not being insubordinate in any way. I was simply doing my job."<sup>14</sup>

Documents requested by the Union confirmed that the email regarding weekend overtime was sent on Saturday, December 13, 2006, and that Addison was on vacation during this period.<sup>15</sup>

The Virginia Employment Commission granted Addison's appeal from the denial of his unemployment benefits. The Appeals Examiner made the following findings of fact:

"On December 16, 2006, a mass email was sent to various departments and their employees, which included the claimant. The email said, 'when working overtime on weekends or during shut downs, please schedule the time worked within the hours of 5:00 a.m. to 5:00 p.m.' The claimant was on leave when the email was sent and denied he read it when he returned to work on January 2, 2007. The supervisor wrote an unsworn statement that he met with the claimant and others to announce mandatory overtime for the week of July 16, which included Saturday, July 21. The supervisor wrote he reiterated that the start time could not be earlier than 5:00 a.m. The claimant acknowledged the meeting, but denied the supervisor mentioned anything about the starting time. Since January 2, 2007, he

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<sup>12</sup> Record, Book 1, p. 19.

<sup>13</sup> Record, Book 1, p. 23.

<sup>14</sup> Record, Book 1, p. 24.

<sup>15</sup> Record, Book 1, pp. 20 and 22.

had worked many Saturdays, and had reported to work before 5:00 a.m. as he was unaware of the new rule. He would be told a number of approved hours, such as five hours of overtime, but it would be left up to him when he would start and stop, as long as the work was done. He opted to come in early, so that he could depart early and preserve the majority of the weekend for family time.”<sup>16</sup>

The Examiner concluded that Addison’s testimony that he did not know about the policy for working overtime was credible. He found that while Addison did report an hour early for work, he did not work more hours than authorized. The Examiner ruled that the evidence was insufficient to establish willful misconduct.<sup>17</sup>

Representatives of the Union and the Company reviewed Addison’s grievance at a meeting on October 11, 2007. The Company argued that Supervisor Pennington reminded everyone in his department during a staff meeting on July 12, 2007, about the policy of reporting to work no earlier than 5:00 a.m. on weekends. The Company gave the following explanation of its decision to terminate Addison:

“It was brought to the attention of management by an employee and a request by the Union to know why Mr. Addison was allowed to come in early when everyone else was not. At this point it was investigated and based on the “Last Chance” letter that Mr. Addison had received one month prior to this we terminated his employment on 7/27/2007.”<sup>18</sup>

Addison’s grievance was withdrawn by Region 8 Representative Dean Eason following the meeting on October 11. Bargaining Chairperson Nicky Twine informed Addison of Eason’s decision in a letter dated October 17, 2007.

Addison appealed Eason’s decision to the International Executive Board (IEB) on November 15, 2007. In support of his appeal, Addison explained that the first time he saw the December 16, 2006, email regarding starting times was when he received the Company’s response to his claim for unemployment benefits. He said that he had been reporting for work early on weekends from January 2007 through May 2007, so that he could leave work early and spend more time with his family. He wrote:

“...I was not being insubordinate. I was merely doing exactly what my supervisor had asked me to do, and that was to work 8 hours on Saturday.”<sup>19</sup>

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<sup>16</sup> Record, Book 1, pp. 27-28.

<sup>17</sup> Record, Book 1, p. 28.

<sup>18</sup> Record, Book 1, p. 36.

<sup>19</sup> Record, Book 1, p. 38.

Addison asked the IEB to reinstate the grievance protesting his wrongful termination. He concluded:

“...It is my desire that the remedy to this grievance would be reinstatement to my position as Documentation Specialist III, compensation of back pay, and to be made whole in all ways.”<sup>20</sup>

On November 26, 2007, Addison added a claim to his EEOC charge of discrimination against Volvo that he was retaliated against in the form of discharge for having filed a complaint about being denied a promotion because of his race. Addison provided the following particulars to support his charge:

“I began my employment on June 9, 1999, as a full time Documentation Specialist I. On June 9, 2000, I was promoted to Document Specialist II. On December 11, 2000, I was bumped to the position of Manufacturing Technician. On December 22, 2000, I was laid off. On March 16, 2001, I filed an EEOC charge of discrimination. On June 29, 2001, I was issued a Notice of Right to Sue. On September 26, 2001, I filed suit in federal district court. On June 3, 2002, I was recalled to the position of Document Specialist II. On June 17, 2004, I entered into settlement with the employer. On September 18, 2006, I was promoted to Document Specialist III. On June 19, 2007, I was issued a “last chance write-up.” On July 18, 2007, I was denied promotion to the position of Product Engineer. In fact, the employer changed the requirements and qualifications of the job to suit the qualifications of the less senior and less qualified white male. The Union filed a grievance on my behalf and on July 27, 2007, I was retaliated against in the form of discharge.”<sup>21</sup>

On November 27, 2007, President Gettelfinger’s Administrative Assistant Charlotte Rossi asked Addison to respond to some questions about his work schedule at Volvo. Addison responded to Rossi on December 3, 2007. Addison explained that his normal shift runs from 7:00 a.m. to 4:00 p.m. Employees who wanted to work overtime on the weekends could choose the number of hours up to 8 hours and also the starting time to begin working those hours. Addison stated that he did not always start his weekend overtime shift at 4:00 a.m. He reported that he had started as early as 3:00 a.m. He explained:

“Yes, for weekend overtime schedules, it was my routine to start before 5:00 a.m., so that I could spend as much time as I possibly could with my family on Saturdays. The main reason for starting so early was because of the 1 hour travel time that I had to get to work from Roanoke to Dublin. To get to work by 4:00 a.m., I had to be on the highway at least by 3:00

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<sup>20</sup> Record, Book 1, p. 39.

<sup>21</sup> Record, Book 1, p. 40.

a.m. If I decided to work for 5 hours, I would finish working by 9:00 a.m. in order to get back home by 10:00 a.m. As a result, most of the day on Saturday would be salvaged to spend with my family."<sup>22</sup>

Addison stated that the Union had not fully presented his arguments in support of his grievance before the grievance was withdrawn. He wrote:

"First of all, I feel that the Local UAW 2069 should have mailed me a copy of the grievance so that I could be aware of the specifics of the grievance. Secondly, I believe that I should have had the opportunity to be present when the grievance was heard and/or be able to provide any input into the facts of the grievance. I also feel that I should have been informed immediately after the decision had been made to dismiss the grievance, so that I would have ample time to prepare an appeal."<sup>23</sup>

Representative Dean Eason responded to Addison's appeal in a memorandum addressed to Region 8 Director Gary Casteel on January 8, 2008. Eason stated that the staff in the Engineering Department was reminded about not reporting for work on Saturday before 5:00 a.m. during a meeting on July 12, 2007. He reported that Addison had signed the log-in sheet at 3:57 a.m. on July 21, 2007. Eason asserted that the Company had established the guilt of the grievant and that appropriate discipline was given.<sup>24</sup> In addition, Eason gave the following reason for his decision to withdraw the grievance:

"In closing, I think it is important to note that Mr. Addison's disregard for the directive on overtime hours was reported to management by a co-worker (Ms. Karen Slate) who was upset because she thought management was allowing Mr. Addison special privileges on the Saturday in question (July 21, 2007). Ms. Slate asked Mr. Addison about his coming in early and he told her, 'No one will ever find out.'"<sup>25</sup>

Bargaining Chairperson Nicky Twine also submitted a statement in which he stated that he contacted the employees who were at the staff meeting on July 12, 2007, and they stated that Addison was told about the starting times. Twine added:

"...Also, I talked to Cecil and he indicated that the Company had talked to him about coming in early. Cecil received the email that told the employees about their start times on weekend overtime. From my investigation and interview with Cecil, he was told, and knew about the start times. The reason he was not caught until such time was because

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<sup>22</sup> Record, Book 1, pp. 43-44.

<sup>23</sup> Record, Book 1, p. 44.

<sup>24</sup> Record, Book 1, p. 54.

<sup>25</sup> Record, Book 1, p. 55.

the supervisor does not check the sign-in sheet every week. One of the employees notified management of his working hours and they then checked the sheet and this is where the discipline was implemented."<sup>26</sup>

President Gettelfinger's staff determined that a hearing was unnecessary on Addison's appeal and they prepared a report to the IEB on the appeal based on information provided by Addison, UAW Local 2069, and Region 8. Staff reported that International Representative Eason and Chairperson Twine both stated that Addison was informed about the starting times during a meeting in his department.<sup>27</sup> Staff held that Representative Eason satisfied his duty of fair representation in connection with his handling of Addison's grievance, because he could not prove that management had abused its right to discharge for cause. In conclusion, staff commented:

"The only question properly presented by this appeal is whether or not the appellant violated his Last Chance Agreement. If the answer is affirmative, any defense put forth as determinative cannot be considered. A 'Last Chance Agreement' means exactly what it says, 'Last' meaning final or end. The appellant affixed his signature to the Last Chance Agreement and knew of its terms and conditions. He is foreclosed from any defense for violating it."<sup>28</sup>

Staff held that the evidence did not establish that discrimination, fraud, or collusion with management improperly motivated the handling of Addison's grievance, and that the settlement was not devoid of a rational basis. Staff denied Addison's appeal and their report was adopted by the IEB as its decision on February 28, 2008.<sup>29</sup> Addison appealed the IEB's decision to the Public Review Board on March 25, 2008.

## ARGUMENT

### **A. Cecil D. Addison:**

I held the position of Document Specialist from June 6, 1999, to July 26, 2007. During that period, I had a perfect attendance record and exemplary job performance rating. As a result of my good record, I was promoted to Document Specialist III on September 18, 2006, at an annual salary of \$59, 554.77.

I worked under a number of supervisors during the period from 1999 to 2007, and there was never any issue about my use of the telephone during this period. Everyone in my work group routinely made and received personal telephone calls. This was never an issue because everyone in the group was very dedicated to working hard.

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<sup>26</sup> Record, Book 1, p. 57.

<sup>27</sup> Record, Book 1, p. 70.

<sup>28</sup> Record, Book 1, pp. 71-72.

<sup>29</sup> Record, Book 1, p. 58.

John Pennington became the supervisor of our department in early 2006. There were no issues concerning the use of the telephone during 2006. In early 2007, Pennington informed me that he was concerned about the number of personal calls I was making and receiving. I was stunned by this because I only occasionally used the telephone to make or receive personal calls while at work. My telephone use was no different than anyone else's in the department, yet Pennington did not approach anyone else about use of the Company telephone. Nevertheless, I attempted to use the Company telephone less often.

On June 13, 2007, the position of Product Engineer opened in our Department. I was the most senior qualified person for the position. The collective bargaining agreement provides that any vacant position shall be filled by the most senior qualified applicant. On June 19, 2007, I was discharged for allegedly making too many telephone calls on the Company telephone. On the same day, I was reinstated to my job on a last chance basis after discussions with my Local representatives. I had no choice but to sign the Last Chance Agreement because it was the only way I could keep my job, even though the discipline was entirely unjustified. I had never knowingly or repeatedly violated Company policy.

I believe that the Company discharged and immediately reinstated me on a last chance basis in order to intimidate me from seeking the Product Engineer position. Nevertheless, I applied for the position as soon as it was posted on June 26, 2007. When the Company posted the position, they changed the minimum education and experience requirements from those stated in the job description. The Company changed the job description in order to allow for a less experienced, white male to be put in the position. The successful applicant for the position, Nick Misyak, had only been with the Company for one year. This was not only a violation of the collective bargaining agreement, but also my civil rights.

On July 12, 2007, our Supervisor Pennington called a meeting to inform our group that we had to work mandatory overtime for 8 hours during the weeks of July 16 and July 23, 2007. On July 21, 2007, I reported to work at 3:57 a.m. and worked until 12:30 p.m., which satisfied the required 8 hours. On Friday, July 27, 2007, my employment with Volvo was terminated because of an email sent to the department on December 16, 2007, regarding the start time for working overtime on Saturday.

I believe that the Company systematically asserted fictitious bases for assessing the disciplinary actions against me that led to my discharge simply because I sought promotion to the Product Engineer position. I believe I was entitled to be awarded that position under the terms of the collective bargaining agreement, but that the Company wanted to place a less senior white male in the position. The Local Union failed to represent me adequately. They were fully aware of the Company's actions and violations of the collective bargaining agreement. After I was terminated, the Union failed to represent me adequately in that they did not provide me with a copy of the grievance or get my input about the facts.

The actions of the Union Representatives in response to this appeal provide further evidence of their discrimination and irrationality. How could the Local file a grievance challenging the wrongful dismissal of a member and then respond to his appeal by justifying what the Company did? The International Representative failed to look into the facts of the grievance. Had he done so, he would have discovered that Volvo willfully and systematically conspired to violate my civil rights. In order to prevent me from getting a promotion that I was entitled to, the Company discharged me based on the unsubstantiated allegation of excessive telephone usage.

A charge of racial discrimination and retaliation has been filed with the EEOC. I previously charged the Company with discrimination for a wrongful discharge in 2000. The Company realized that it was discriminating against me again, and that I would challenge that discrimination before the EEOC. They consequently conspired to retaliate against me by conjuring up bogus reasons to discharge me.

**B. International Union, UAW:**

On July 12, 2007, Addison's supervisor informed his department that they must work mandatory overtime for the week of July 16, 2007. The Company had previously informed the department on several occasions that all overtime must be worked between 5:00 a.m. and 5:00 p.m. and that overtime must be approved by a supervisor. Nevertheless, Addison reported for work at 3:57 a.m. on July 21. He asserts that he did not see a December 16, 2006 email regarding the start times for overtime and that he had punched in before 5:00 a.m. approximately 12 times since December with no repercussions. He admits that the supervisor reminded the department of the 5:00 a.m. rule when announcing the mandatory overtime on July 12, 2007.

In his appeal to the PRB, appellant asserts for the first time that the Company discharged him and then rehired him in an attempt to intimidate him from applying for the open position of Product Engineer. He alleges that the Union failed to represent him adequately and then allowed the Company to create a bogus reason for discharging him. The IEB must object to these assertions. The IEB's decision was based on the terms of the last chance agreement. Appellant cannot use an appeal that is not properly before this Board to breathe life into an issue that expired when he failed to appeal the resolution of his earlier grievance.

The plain language of the Last Chance Agreement indicates that further infractions of the rules could result in immediate termination. The record shows that appellant read and signed the agreement. Yet, the evidence shows that appellant did knowingly violate the Company policy against reporting for work before 5:00 a.m. These facts provided a rational basis for Representative Eason's decision to withdraw Addison's grievance. Addison has provided no evidence that Eason's decision was motivated by fraud, discrimination, or collusion with management.

**C. Rebuttal, by Cecil D. Addison:**

I never admitted to Chairperson Twine or to anyone else that I was reminded about not reporting for work before 5:00 a.m. at the staff meeting on July 12, 2007. There was a brief meeting on that date during which Supervisor Pennington informed us that we were required to work overtime during the next two weeks. Nothing was said during that meeting about starting times.

I am asking this Board to carefully review the facts presented in this record and consider the bizarre circumstances surrounding my dismissal and subsequent reinstatement on June 19, 2007. Consider that I had been an employee at Volvo from June 9, 1999 to July 27, 2007. I had been a loyal and dedicated employee for nine years and all of a sudden I decide to misuse the Company telephone? It did not happen that way. I did not use the Company telephone any more than any of my coworkers. I was singled out because the Company was determined to intimidate me in order to discourage me from applying for a promotion. I should have been awarded that promotion in accordance with the terms of the collective bargaining agreement. I subsequently signed the last chance letter because I had no choice. I did not admit to misusing the Company telephone. I strongly denied using the telephone any more than the others in the group.

The International Union's letter indicates that I asserted that the Union and the Company changed the contract language in order to deny me the promotion. That is not what I said. I asserted that the Company unilaterally changed the language of the contract, without the approval of the Local Union. This can easily be verified by contacting Bargaining Chairperson Twine. Before I was dismissed on July 27, 2007, Twine informed me that a grievance was being filed against the Company on behalf of the entire bargaining unit challenging the Company's unilateral changes to the collective bargaining agreement.

I believe that if my grievance had been adequately investigated and the facts of the case reviewed, the grievance would not have been withdrawn by the International Representative. I believe that Representative Eason's decision to withdraw my grievance lacked a rational basis.

**DISCUSSION**

At the time of his discharge, Addison was working under the terms of a reinstatement agreement. The agreement states that any future infractions or violations of Company shop rules, policies, or procedures may be grounds for termination. There is little the Union can do to challenge the termination of an employee working under the terms of such an agreement once the employer has established that the employee violated one of the Company's shop rules. If the Company refuses to reconsider a discharge under these circumstances, the withdrawal of a grievance protesting the discipline cannot be said to lack a rational basis.

In this case, however, the record as originally presented raised some doubt about whether Addison actually had violated any shop rule. Management discharged Addison based on the argument that his reporting for overtime work early on July 21, 2007, amounted to insubordination within the meaning of Shop Rule #16. Addison claimed that he had never been informed about the Company's policy. He pointed out that he had been reporting for work early throughout the year and that no one in management informed him that this was a violation of Company policy. There is no question that such a policy existed. Yet, if Addison really did not know about the policy, it is difficult to see how he could be accused of insubordination. Insubordination suggests a defiance of authority rather than a lapse based on ignorance of the rule.

In addition, Addison claimed that his discharge was in retaliation for an EEOC charge that he filed against the Company accusing management of denying him a promotion based on his African-American race. Addison had previously filed a charge with the EEOC against this employer which resulted in a settlement. In light of this history, we felt the seriousness of Addison's claim warranted further investigation to ensure that racial considerations played no part in the Company's decision to terminate his employment. We do not believe an arbitrator would sustain a racially motivated or retaliatory discharge even where a so-called "last chance" reinstatement agreement was in place.

Following our initial consideration of this appeal, therefore, we asked the International Union to obtain the Company's After Hours Sign-In Log for the period from January 2007 to May 2007 in order to verify Addison's claim that he frequently reported for scheduled overtime prior to 5:00 a.m. during this period.<sup>30</sup> On September 16, 2008, Representative Eason informed the International Union that the Company had shredded those documents. The Company provided the After Hours Sign-In Log for the period from May 2007 through December 2007, and these were forwarded to us.<sup>31</sup> These documents have no relevance to Addison's activities. He apparently did not work overtime in May and June 2007. The Sign-In Log for July does not show him signing in at any time other than on July 21, 2007. He was terminated on July 27, 2007.

In response to this submission Addison argued that the Company's claim that it shredded the Sign-In Log for the beginning of 2007 was questionable. He charged that the Company failed to supply these logs because they would have corroborated his claim that he had been reporting for work early throughout this period. Whatever may have been the Company's motivation for shredding these documents, we agree with Addison that its failure to produce them should be construed in his favor. We will assume, therefore, that Addison reported for work early on January 6, January 20, February 3, February 10, February 24, March 3, March 10, March 17, March 24, March 31, April 14, April 21, and July 21, 2007. Addison has also pointed out that the July 21, 2007 Sign-In Log shows that another employee, Tom Reece, signed in before 5:00 a.m.

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<sup>30</sup> Record, Book 2, p. 1.

<sup>31</sup> Record, Book 2, pp. 13-170.

and that he was not punished in any way. The Sign-In Log for July 21, 2007, shows that Reece signed in at 4:44 a.m.<sup>32</sup> In fact, a review of the Sign-In Logs that were provided by the Company shows that employees frequently sign in 15 or 20 minutes prior to 5:00 a.m.

In his presentation to the IEB, Local Bargaining Chairperson Twine explained that management does not regularly check the Sign-In log and therefore did not know that Addison was reporting early for overtime on a regular basis. Twine stated that Addison was disciplined after someone complained about his reporting early on July 21, 2007. In his report to Regional Director Gary Casteel regarding his decision to withdraw Addison's grievance, Representative Eason also referred to a complaint by a member of Addison's department about management allowing him special privileges. We asked the President's staff if they could provide statements from employees to clarify what instructions were given regarding reporting times during the meeting on July 12, 2007, and the complaints that were raised about Addison reporting early.

Representative Eason provided statements from employees and Bargaining Chairperson Nicky Twine regarding the Company's rule that employees should not report to work early. Karen Slate signed an email message sent to Chairperson Nicky Twine on September 10, 2008. She wrote:

"I was in a group meeting and was told (after Donna was fired) not to come in to work before 5:00. We were also reminded to sign in and out at security on weekends."<sup>33</sup>

Chairperson Twine submitted the following statement:

"I am the Salary Bargaining Chairperson for Local 2069, and I am responding in request to grievance #NRS07-016 concerning Cecil Addison. The Company had previously discharged Donna Phillips who had worked in the same department as Cecil Addison. Donna was discharged for falsifying time. The Company started to check the sign-in sheets with security to make sure that employees were working the hours that they were stating on the time sheets."<sup>34</sup>

Linda B. Muller signed the following statement:

"To the best of my knowledge, with regard to the July 2007 meeting, the following information was communicated in reference to starting times for 1<sup>st</sup> shift employees within our group:

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<sup>32</sup> Record, Book 1, p. 13.

<sup>33</sup> Record, Book 2, p. 7.

<sup>34</sup> Record, Book 2, p. 8.

No one should be at work before 5:00 a.m. at anytime during the period of shutdown and weekends. Everyone must sign in upon entering the building.”<sup>35</sup>

Hollie Weiss signed the following statement.

“To the best of my knowledge, our start/stop times on Saturdays were discussed in a meeting which was followed up by an email from Ivan. It was made clear that we were not to start working until 5:00 a.m.”<sup>36</sup>

Karen Slate gave the following statement about the complaint that prompted the Company to check the Sign-In Log and discipline Addison for coming in early on July 21, 2007:

“A conversation took place on Saturday morning (the day he came in early), between Cecil and a co-worker which was overheard by another co-worker. Cecil got up to leave ‘early’ and was questioned as to why he was getting to leave early that day. Cecil told the co-worker that he came in early and was finished with his time for the day. The co-worker asked if it was okay with John (Pennington). He said something to the effect of ‘it’s nothing to John’ and laughed.”<sup>37</sup>

Chairperson Twine provided the following information about the complaint that was made about Addison coming in early.

“After more conversation with the committeeperson, Diane Burks, she stated that the Manager Ivan Mitchell mentioned in a meeting that John Pennington worked that day and he signed in as well. Supervisor John Pennington stated that an employee had turned in Cecil’s name and that he was getting treatment that they were not. Ivan was out of the country and not available for comment.”<sup>38</sup>

These statements shed light on the purpose of the Company’s policy about not reporting early. Apparently, at least one employee in Addison’s department was found to be misstating the hours that she worked. Employee Donna Phillips was discharged for falsifying her hours. As a result of that situation, the Company established the policy that overtime had to be worked within a certain time frame in order to ensure that the hours written on the Sign-In log were actually worked by the employee. The 5:00 a.m. starting time was put in place to establish an earliest possible end time. The problem

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<sup>35</sup> Record, Book 2, p. 10.

<sup>36</sup> Record, Book 2, p. 11.

<sup>37</sup> Record, Book 2, p. 9.

<sup>38</sup> Record, Book 2, p. 12.

with Addison's schedule on July 21, 2007, at least from the standpoint of his co-workers, was not that he started early, but that he left early.

The co-workers' statements also cast doubt on Addison's claim that he was completely unaware of the Company's policy. Addison has established that he missed the email from Ivan Mitchell on December 15, 2006, but it is difficult to understand how he could remain ignorant of a policy governing overtime in his department when all the other employees in the department knew about it and were complying with it. An employee had previously been fired for abusing a more flexible arrangement for scheduling overtime. Chairperson Twine reported that Addison was told about the policy. Twine clearly believed that Addison knew about the policy. Addison denies this, but the record demonstrates that the employees in the department had been reminded about it at least once. Although Karen Slate's statement is vague about what was said to Addison about his leaving early, it does appear that his actions were not going unnoticed. There is evidence that co-workers did comment on Addison's early departure. If Addison truly did not know about the policy, it can only be because he did not want to know about it. His failure to keep himself informed about the rules operating in his department can be said to have amounted to defiance of those rules.

The Local Union grieved Addison's discharge and when it could not negotiate his reinstatement, the grievance was referred to the Region for processing. Representative Eason withdrew the grievance based on the terms of Addison's reinstatement agreement. The reinstatement agreement provided a rational basis for Eason's conclusion that he could not obtain any further relief for Addison through the grievance procedure. We find nothing in this record to connect Addison's complaint to the EEOC about having been denied a promotion to the discipline he received for disobeying the Company's policy with respect to scheduling overtime.

The decision of the IEB is affirmed.