

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

APPEAL OF:

THEODRIC BALLARD, Member,
LOCAL UNION 7, UAW
(Detroit, Michigan)
REGION 1,

Appellant

-vs-

CASE NO. 1615

UAW NATIONAL CHRYSLER DEPARTMENT
(THE UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA),
Appellee

DECISION

(Issued February 25, 2009)

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

Theodric Ballard argues that International Representative Troy Davis' decision to withdraw his grievance lacked a rational basis.

FACTS

Theodric Ballard worked at DaimlerChrysler's Jefferson North Assembly Plant in a bargaining unit represented by UAW Local 7. He had a seniority date of May 31, 1996.¹ On February 15, 2002, Ballard was discharged for being away from his work station. Grievance 02-110 was filed protesting the discharge and that grievance was submitted to arbitration on February 4, 2003.² The arbitrator reinstated Ballard with full back pay.³ In his appeal to the Public Review Board (PRB), Ballard reports that he received a check in the amount of \$45,000 from DaimlerChrysler as a result of the arbitration.⁴

¹ Record, p. 12.

² Record, p. 61.

³ Record, p. 71.

⁴ Record, p. 51.

In his appeal to the PRB, Ballard reported that he was in a serious automobile accident on May 29, 2003. He claims that he went on an approved leave under the Family and Medical Leave Act as a result of injuries he suffered in that accident.⁵ The International Union's response to Ballard's appeal reports that the Company did not know that Ballard was injured or on a medical leave. The International Union states that the Company considered Ballard to be absent without leave so it disabled his DaimlerChrysler badge.⁶ On June 6, 2003, Ballard went to the Company to pick up his paycheck from the previous week. According to Ballard's account, payroll did not have his check. Ballard states that when he called the Human Resources manager to find out about his check, he was harassed and detained by Security and then fired.⁷ The International Union reports that Ballard had an encounter with the Security Office which led to his receiving a suspension pending investigation for violation of DaimlerChrysler's Standards of Conduct.⁸ The suspension was converted to a discharge on June 12, 2003. The Company cited the following violations in support of its decision to discharge Ballard: "Failure or refusal to follow the instructions of a supervisor," and "Threatening, intimidating, coercing, harassing, retaliating, or using abusive language to others."⁹

Local 7 filed Grievance 03-493 protesting Ballard's discharge. That grievance was settled on September 15, 2004, based on the Company's offer to reinstate Ballard on a conditional basis.¹⁰ Ballard reports that on September 22, 2004, Local 7 Vice President Joe Walker left a message on his answering machine instructing him to report to work for reinstatement on September 24, 2004. Ballard claims that he was unable to report to work on September 24 because of his injuries, and that he informed Walker about his condition during four separate telephone conversations.¹¹

A DaimlerChrysler Labor Relations Supervisor, Hakim W. Berry, prepared a statement describing what took place following the settlement of Grievance 03-493 in 2004. Berry stated that Ballard was scheduled to meet with him and Vice President Walker at 9:00 a.m. on September 24, 2004, in order to be reinstated, but that he did not show up for his appointment. Ballard reported to the employment office for reinstatement on September 27 at which time Berry called Vice President Walker to deal with the reinstatement agreement. Walker subsequently informed Berry that Ballard was refusing to sign the conditional reinstatement agreement. Berry stated that he met with Walker and Ballard to discuss the situation. He described the meeting as follows:

⁵ Record, p. 51.

⁶ Record, p. 46.

⁷ Record, pp. 51-52.

⁸ Record, p. 46.

⁹ Record, p. 46.

¹⁰ Record, p. 3.

¹¹ Record, pp. 13-14.

“...Upon greeting the gentlemen, writer noticed that Mr. Ballard had a tape recorder on the counter and was recording the conversation. Writer then requested that Mr. Ballard cease with the recording of the conversation. Mr. Ballard stated that he would not cease recording because he felt the writer should have nothing to hide. Mr. Ballard then stated that he would not sign any conditional reinstatement, and that he would like to go on with his life. The writer then informed Mr. Ballard that by refusing to sign he was forfeiting the agreement that the International UAW and Corporate had made relative to his employment with the Corporation. Mr. Ballard stated that he understood and would like to go on with his life and would wait to hear something from the Union. The meeting was then concluded.”¹²

On July 24, 2006, Ballard reported to the employment office at the Jefferson North Assembly Plant and asked to be reinstated from sick leave.¹³ At this time, Ballard apparently presented a doctor’s certificate signed by Dr. Hampton J. Mansion. The statement indicates that Ballard was “totally incapacitated” from 5/29/03 until 7/25/06. The reason given for the disability is illegible.¹⁴ Management informed Ballard that he had been discharged on September 24, 2004, after he refused to sign his conditional reinstatement agreement.¹⁵ Local 7 filed Grievance 06-375 protesting management’s refusal to reinstate Ballard on July 24, 2006.

In response to an inquiry from Local 7 President Dale Hunt concerning what took place in 2004, Ballard reported that he went to the employment office on September 27, 2004, and informed the staff in the personnel office that he was still on an approved medical leave. Ballard stated that he was walking with the assistance of a cane at this time. Ballard reported that he did not understand why he had been offered a conditional reinstatement agreement, because he did not believe that he had committed any violation of the Company’s rules of conduct. Ballard stated that he told Vice President Walker and the Company’s representative Reginald Gaither that he was concerned about retaliation by the Company as a result of the outcome of Grievance 02-110. Ballard told President Hunt, however, that at this point he simply wished to be reinstated.¹⁶

Grievance 06-375 was referred to the third step on September 22, 2006. At this stage, the Local argued that Ballard had informed management on September 24, 2004, that he was not medically fit for work and that he would sign the conditional reinstatement agreement when he was able to return to work. The Union asked

¹² Record, p. 5.

¹³ Record, p. 12.

¹⁴ Record, p. 6.

¹⁵ Record, p. 15.

¹⁶ Record, pp. 13-14.

management to give Ballard another opportunity to sign the conditional reinstatement agreement.¹⁷ Management denied this request on November 27, 2006.¹⁸ At this point, International Representative Troy Davis withdrew the grievance.¹⁹ Local 7 advised Ballard of the disposition of Grievance 06-375 on December 7, 2007.

Ballard appealed the withdrawal of his grievance to the International Executive Board (IEB) on January 14, 2008. In support of his appeal, Ballard insisted that he had never refused reinstatement to his job.²⁰ Representative Troy Davis responded to an inquiry from President Gettelfinger's staff regarding Ballard's appeal on March 3, 2008. Davis stated that he contacted Vice President Joe Walker to confirm Supervisor Berry's account of the offer of reinstatement made in 2004. Davis stated that Walker confirmed the events as described by Supervisor Berry and added that Ballard became belligerent during the meeting. Davis reported that he met with representatives of management on several occasions attempting to have Ballard reinstated, but that the Corporation refused. Davis noted that he had never received any documents supporting Ballard's medical leave of absence. He reported that he asked Vice President Walker if Ballard had any medical issues. According to Davis, Walker stated that Ballard never mentioned any physical restriction or anything else regarding medical issues.²¹

Acting on behalf of President Gettelfinger, Gary Bryner and Ben Gross conducted a hearing on Ballard's appeal on May 1, 2008. Bryner and Gross prepared a report to the IEB on the appeal based on documents provided by the Local Union and testimony given at the hearing. The hearing officers found no violation of the Collective Bargaining Agreement by the Company that would justify reinstating Ballard's grievance. They pointed out that Ballard was offered a conditional reinstatement on September 27, 2004, but that he did not accept the offer or appeal the settlement of his grievance at that time.²²

The hearing officers also noted that Ballard never made any claim for sick leave pay while he was supposedly on a medical leave. According to the hearing officers, when he was asked about this at the hearing, Ballard responded that he did not know what to do. The hearing officers found that this explanation lacked credibility. They pointed out that Ballard had filed charges with the National Labor Relations Board and the Equal Employment Opportunity Commission following his discharge in 2003. The hearing officers concluded:

¹⁷ Record, p. 15.

¹⁸ Record, p. 16.

¹⁹ Record, p. 17

²⁰ Record, p. 19.

²¹ Record, pp. 22-23.

²² Record, p. 35.

“The appellant abandoned his job and reappears twenty-two (22) months later expecting to be reinstated. One might conclude that after failing to get relief from the outside agencies, he attempted to breathe life into an otherwise dormant issue.

Nevertheless, Representative Davis concluded that the grievance would not prevail before an arbitrator, and we see no reason to disagree with him.”²³

The hearing officers held that Representative Davis’ decision did not lack a rational basis and that there is no evidence in the record of discrimination, fraud, or collusion with management.

The hearing officers denied Ballard’s appeal and their report was adopted by the IEB in a letter dated September 25, 2008. Ballard has now appealed the IEB’s decision to the PRB.

ARGUMENT

A. Theodric Ballard:

I was on an approved medical leave under the Family and Medical Leave Act when I was unjustly terminated on June 6, 2003. I was receiving sickness and accident benefits at that time for the disability starting on May 29, 2003. I provided both President Dale Hunt and International Representative Davis with copies of the check stub from my sickness and accident benefit. The IEB states that I did not make any claim for sick leave pay. How could I make a claim for any more sick leave pay when I had already been fired illegally?

I have had numerous telephone conversations with President Dale Hunt regarding my medical condition. I have recorded these conversations on tape. I also have a tape recording of a discussion about my medical condition with Vice President Joe Walker. I have over 30 audiocassette tapes to prove to anyone listening that I have done nothing wrong. The Company has punished me and retaliated against me beyond belief. Almost six years of my life have been stolen from me due to this whole ordeal. It has to stop!

B. International Union, UAW:

The IEB’s decision is based on the fact that appellant refused an offer of reinstatement on September 27, 2004, and did not appeal the settlement of his grievance at that time. Appellant now claims that he was on approved medical leave of absence when the offer of reinstatement was made. Yet, there are no documents in the record regarding an approved medical leave. Moreover, appellant received no sick

²³ Record, p. 37.

leave pay following his refusal to sign the conditional reinstatement agreement and he did not file any claim for such pay. Instead, appellant had no contact with either the Company or the Local Union for a period of 22 months. He then appeared with an expectation of being reinstated from sick leave. Under the circumstances, it was not unreasonable for International Representative Davis to conclude that Grievance 06-375 could not be won in arbitration.

C. Rebuttal by Theodric Ballard:

When I was unjustly terminated the first time, the UAW Committeeperson, Clarence Cobb, told me they wanted to bring me back to work about a week after I was fired with no back pay. I told him no, because I had done nothing wrong. I pointed out that the supervisor would just keep doing things to get me fired if I were to accept reinstatement without back pay. So, to punish me for not being happy to be getting my job back after being fired for something I did not do, the UAW and Chrysler let me stay out here in the world with no money and no health insurance for an entire year. At that time, Committeeperson Cobb was running for office. I confronted him at a meeting about his inaction on my grievance and he had me thrown out of the meeting by Security. Cobb then distributed a letter throughout the plant attempting to damage my character. The letter is attached as Item A. He lost the election anyway, so the flyer did not work.

My case finally went to arbitration in February 2003. At that time, Chrysler tried to persuade me to accept reinstatement with 30 days back pay. After being off work for an entire year, they tried to give me 30 days back pay. How wrong is that? I told the arbitrator that I was there to represent myself because the UAW representatives never wanted me to get my money. All I had at the arbitration was me, my tapes, and God. I won my arbitration, to make a long story short. When I returned to work, however, the person who represented Chrysler during the arbitration began to harass me. I would catch him staring at me through another line during second shift, and he worked on the first shift up front in the offices. I had to deal with him directly in order to get the money awarded to me by the arbitrator.

Following my automobile accident on May 29, 2003, I had a herniated disc in my lower back and my left leg had radiculopathy in it. When I came in to pick up my check in June, Tim Martin fired me while I was on an approved leave under the Family and Medical Leave Act. That was illegal and wrong. He was still mad at me for beating him at the arbitration hearing and getting my job and money back. I got my job back in February 2003 and four months later I am being fired again and I was not even at work. I had to file another grievance. Then, in September 2004, the Union wanted me to sign a conditional reinstatement to get my job back.

I refused to sign partly because that is what the UAW taught me when I was hired, and mainly because I was still unable to work because of my medical condition. I told them when I was able to return to work, I would. My doctor cleared me to return to work on July 25, 2006. I was then told that I would have to file another grievance to get

my job back. This whole ordeal has ruined my life. I do not understand why the UAW will not represent me. I just pray that this Board is not the same.

DISCUSSION

There is no merit to this appeal, for the International Representative's decision to withdraw Ballard's grievance was clearly rational. There is no evidence in the record that Ballard made any effort to obtain a medical leave of absence in September 2004 when he was offered a conditional reinstatement. If Ballard disagreed with the Local Union's settlement of his grievance in 2004, his option was to appeal that settlement to the membership in accordance with the procedures described in Article 33 of the International Constitution. Instead, he abandoned his job and did not communicate with the Company or the Local Union for nearly two years. There was no contractual basis for Ballard's request to be reinstated in 2006 and the Company was within its rights in refusing that request.

The decision of the IEB is affirmed.