

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

APPEAL OF:

RONALD L. SIMPSON,
Appellant

-vs-

CASE NO. 1623

LOCAL UNION 155, UAW
(Warren, Michigan)
REGION 1
(THE UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA),
Appellee.

DECISION

(Issued June 24, 2009)

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

Ronald Simpson argues that the Local Union President's handling of his grievance was influenced by hostility and lacked a rational basis.

FACTS

Ronald L. Simpson began working for Detroit Heading, LLC, in a bargaining unit represented by UAW Local Union 155 on July 5, 2005. On November 3, 2005, representatives of the Company informed Simpson that his 120 day probationary period was going to be extended for an additional 45 days. On December 17, 2005, Simpson was terminated by the Company. Local Union 155 filed Grievance 0-33-D protesting Simpson's termination on December 19, 2005. In a statement describing the basis for his grievance, Simpson wrote:

“...I am protesting and grieving this matter because based on the contract agreement in place with Local 155 and the Detroit Heading LLC Company, there is a 120 day period for the Company to examine any new hourly employee and my 120th day was on November 1, 2005. Secondly, I am protesting the legitimacy of the extended probationary period due in part that no Union representative or officer signed off on the extended

probationary period which conflicts with the contractual agreement between Local 155 and the Detroit Heading LLC Company.”¹

Simpson’s grievance received no response from the Company at the third step, so the Local submitted it to arbitration on June 26, 2006.² Local 155 President Clarence Presley submitted a post hearing brief on Simpson’s appeal on February 1, 2007. Presley reported that the Company claimed that Simpson was an employee-at-will because he had not completed his probationary period. Presley pointed out that Simpson had completed his 120 day probationary period when he was discharged. In fact, he had completed 165 days of employment. In response to the Company’s claim that Simpson’s probationary period had been extended, Presley wrote:

“The statements of Mr. Ron Richie and Ms. Carolyn Hampton stated that he/she had talked to Mr. Lance Lindell, the former President of Local 155, in the late months of 2005 about giving probationary employees extensions and they claim Mr. Lindell agreed. Mr. Arbitrator, this could not be true because I, Clarence Presley, was President of Local 155 beginning June 16, 2005. This was before Mr. Simpson was even hired at Detroit Heading LLC.

Mr. Lance Lindell has not been back to this Local since he transferred to the organizing department at the International Union Solidarity House around March 2005. The Company has not provided any proof of this agreement with Mr. Lance Lindell, nor did they subpoena him or Mr. Ron Morton.”³

Arbitrator Richard E. Allen reinstated Simpson without back pay.⁴

On May 2, 2007, the Company’s Vice President of Human Resources, Carolyn Hampton, wrote to Simpson offering him reinstatement in accordance with the arbitrator’s award. Hampton stated that the offer was contingent upon a physical examination and drug screen. She instructed Simpson to respond within seven days.⁵ Simpson had found other employment after he was terminated by Detroit Heading, and the Company agreed to delay his return to work to accommodate his other employment. Simpson was scheduled to return to work on May 29, 2007. Simpson did report to work on May 29, 2007, but he became ill on May 30, and was unable to return to work until June 12, 2007.

¹ Record, p. 1.

² Record, p. 2.

³ Record, p. 8.

⁴ Record, p. 29.

⁵ Record, p. 12.

A statement dated June 1, 2007, signed by Dr. Anna L. Lukowski, indicates the following diagnoses of Simpson's illness:

"Mr. Simpson has been ill with a probable kidney stone since May 30, 2007, and should be ready to return to work on June 5th, 2007."⁶

A "Return to Work/School Letter" from the Henry Ford Medical Center indicates that Simpson was unable to work from June 5, 2007 through June 10, 2007, and could resume full work load activities effective June 11, 2007.⁷ A call log for Ronald Simpson indicates that he called in ill on May 30, 2007, and reported that he did not know when he could return to work. Simpson called in on June 1, June 5, June 6, and reported that he was waiting for his doctor to give him a return-to-work date. On June 8, 2007, Simpson called in and stated that he expected to return to work on June 11, 2007. On June 11, he called in and stated that he expected to return to work on June 12.⁸ Simpson returned to work on June 12, 2007, and met with Vice President Hampton. In a document dated December 1, 2008, titled, "Employment Time Line," he described his meeting with Hampton as follows:

"June 12, 2007 – I had meeting with Carolyn Hampton concerning my return to work and my illness. At that meeting, I presented her with all of the doctor's notes and she informed me that the company had already submitted a claim to MetLife, the short term disability provider, and that if they did not cover me for the days that I had missed that my employment would be terminated. I was also granted a floating vacation day, which I took on June 15, 2007."⁹

A report on Simpson's disability claim provided by the Metropolitan Life Insurance Company (MetLife) indicates that Simpson's claim for short term disability benefits was submitted on June 11, 2007.¹⁰ MetLife's log indicates that it had the report of Dr. Anna Lukowski of the Henry Ford Hospital.¹¹ The report states that there was a question raised about whether Simpson was receiving wages from his former employer during the alleged period of disability. An entry on June 11, 2007 states:

"Employee is collecting wages from Redford Academy."¹²

An entry on June 12, 2007, states:

⁶ Record, p. 14.

⁷ Record, p. 15.

⁸ Record, p. 17

⁹ Record, p. 96.

¹⁰ Record, p. 72.

¹¹ Record, p. 73.

¹² Record, p. 73

“Carolyn Hampton Manager advised that she wants to make sure the part of where he is working someplace is filled in for this associate.”¹³

The following entry appears on June 15, 2007:

“Carolyn Hampton Manager advised that EE she wants to make sure the CM knows he was paid by another ER during the STD – wanted CM to be aware.”¹⁴

On June 19, 2007, the MetLife case manager reported that he had received information that Simpson received wages from another employer during the claimed period of disability. The report states:

“Outgoing call to employer

Other ER Advance Educational Staffing PH 248-552-7301. Spoke w/Mrs. Bailey/HR confirmed EE did work for them as less than part-time 05/30 – 06/11/07. (This was the period of disability under primary ER.) CM request EE’s hrs worked each wk and amt of wkly earnings. ER advised could not release w/o auth from EE. BReynolds CM.”¹⁵

MetLife’s diary indicates that it contacted Vice President Hampton to get authorization from Simpson to release information about his employment with Advance Educational Staffing. The report states:

“Outgoing call to employer

HR/Carolyn Hampton CM L VMSG w/800# for CB. CM called to have ER relay message to EE to contact their other ER HR/Mrs. Bailey 248-552-7301 and provide authorization for her to release his part-time hrs worked and amt earned 5/30 – 6/11/07. BReynolds CM.”¹⁶

In his “Employment Time Line,” Simpson reported that he was not contacted by MetLife about this issue in June 2007. His Employment Time Line states:

“June 19, 2007 – MetLife faxes over papers to Carolyn Hampton, proof of fax in Local Union report submitted on pages 000053 thru 000057. MetLife contacts Detroit Heading to get my home phone number. MetLife told by employer that I was an employee that was returning from layoff, page 10 of diary report. MetLife also called second employer, spoke with

¹³ Record, p. 73.

¹⁴ Record, p. 80.

¹⁵ Record, p. 82.

¹⁶ Record, p. 82.

Ms. Bailey who indicated that I worked part time during disability period, which was an error. MetLife claims it attempted to reach me but was unable. Therefore, from June 19, 2007 thru June 28, 2007, I did not hear from anyone at MetLife.”¹⁷

When MetLife did not receive the requested authorization, it closed Simpson’s claim for disability. An entry in its log on June 26, 2007, states:

“Decision CM closed/denied claim based on CM needs other employer info prior to claim initiate. CM has contacted other ER and EE. CM needs PT earnings from other ER for EE’s period of disability. Sent closure letter, and other info not rec’d. BReynolds CM.”¹⁸

The case manager indicates that he tried to telephone Simpson with this information on June 26, but could not reach him. The case manager did contact Simpson on July 2, 2007. His report states:

“Outgoing call to claimant

Spoke with EE regarding claim denial and reporting of 2nd ER. CM info’d that his ER called us on 6-15 and told us that EE was working for 2nd ER. CM info’d that we merely need ER to contact us to let us know that EE did not work during that time and clm can proceed.”¹⁹

Simspon described his response to MetLife’s call as follows:

“July 2, 2007 – I received a phone call from MetLife case manager who stated that my claim was denied and that I needed to provide them with information that I did not work or of any earnings during the disability period from 5-30-07 thru 6-10-07. My second employer (A.E.S.) requested forms to be sent to them so that they can fill out earnings information. Page 14 of the diary report.”²⁰

There was apparently a problem with the information provided by A.E.S., because it did not indicate Simpson’s last day worked. An entry by the case manager on July 18, 2007, states:

¹⁷ Record, pp. 96-97.

¹⁸ Record, p. 83.

¹⁹ Record, p. 85

²⁰ Record, p. 97.

“Outgoing call to claimant

Spoke with EE. Info'd that ER did not provide info that indicates EE was not working. EE states that he was still paid for the salaried position even if he does not work. CM said that's fine, but we still need confirmation that you did not go to work while you were disabled.”²¹

On August 31, 2007, MetLife contacted Simpson to explain its denial of his claim for short term disability benefits. MetLife's diary review for August 31, 2007, contains the following entry at 14:19:

“Outgoing call to claimant

To discuss claim further. UM advised that on 6/19 Ms. Bailey advised that EE did work during 5/30 – 6/11 PT. She also advised that we would need to get a written auth from the EE for her to release this info. EE advised that ER got it wrong and that he did not work and his supervisor can confirm this. UM advised that she will attempt to call Ms. Bailey again to confirm this information. EE also advised that Ms. Bailey is in the home office which is 30 minutes away. Has no idea of the schedules at the place where he works.

EE advised that due to ML denying his claim, he was terminated. UM advised that his claim was closed based on info not received and the medical that is on file does support. UM to make another attempt to call 2nd employer to obtain additional information on work hours from 5-30/6-11.”²²

An entry on August 31, 2007, at 15:23 confirms that Simpson did not work for A.E.S. during the period of his disability. It states:

“Outgoing call to employer

To 2nd ER. Ms. Bailey to discuss if the EE worked from 5/30 – 6/11. ER advised that the system is showing that he was paid sick time and holiday time. She also indicated that he had an out of work note for the time period.”²³

Based on this information, Simpson's claim for disability benefits was approved on September 4, 2007.²⁴

²¹ Record, p. 89.

²² Record, p. 92.

²³ Record, p. 92

²⁴ Record, p. 39.

According to Simpson, when he reported to work on July 27, 2007, he was called to a meeting with Carolyn Hampton and his Union Chairperson Parrish White. Simpson described his meeting as follows:

“July 27, 2007 – I reported to work and was called to a meeting with Carolyn Hampton, my supervisor, and my Union Chairperson Mr. Parrish White. I was told that my employment was being terminated due to me providing false information concerning my disability effective today and that I needed to gather my tool box and personal effects and leave the building. I did as I was instructed and filed a grievance with Mr. White that day for unjust termination.”²⁵

Grievance D-50-A filed on behalf of Simpson states the following complaint:

“Unjust termination. Employee provided Company with doctor excuses for 5-30-07 thru 6-10-07. Also employee stated was unaware of attendance policy.”²⁶

The Company’s response to Grievance D-50-A, dated July 27, 2007, states as follows:

“Employee was absent 5/30/07 through 6/11/07. The days were not an exception under the attendance policy therefore each day was counted as an occurrence. Employee also presented false information to the Company.”²⁷

Chairperson White sent a fax to President Presley regarding Ronald Simpson on July 30, 2007. White’s notes indicate that Simpson received nine points under the Company’s attendance policy for his absence during the period from May 30 through June 11, 2007. White reported that Simpson had not provided MetLife with his doctor’s statement and that he was working for another Company during his absence from Detroit Heading LLC. White’s notes contain the following comments:

“Ron Simpson never turned in any doctor’s statement into MetLife when they requested.

He was also Advance Education Staffing: Old Redford Academy School. He did not want to file for short-term disability.

The Company gave him six weeks[s] to turn in his doctor’s statement.”²⁸

²⁵ Record, p. 98.

²⁶ Record, p. 21

²⁷ Record, p. 22.

²⁸ Record, p. 24.

The file on Ronald Simpson also contains a note that he had previously been discharged by three of the units represented by Local Union 155.²⁹

On August 27, 2007, Detroit Heading Vice President Hampton wrote to Local 155 President Presley that the Company was closing Simpson's grievance because the Union had not made a timely demand to refer it to Step 3 in accordance with the grievance procedure.³⁰ Step 2 of the grievance procedure provides, in pertinent part, as follows:

"...The decision made at Step 2 will be deemed to be final and binding resolution of the grievance unless either party serves upon the other a written demand that such grievance be referred to Step 3 within five (5) working days of the decision."³¹

On August 31, 2007, President Presley wrote to Simpson to notify him that his grievance had been withdrawn.³²

Simpson appealed the decision to withdraw his grievance to the Local Union membership on September 27, 2007. His appeal was presented to the membership at a meeting on October 21, 2007. The minutes of that meeting report that both President Presley and Ronald Simpson presented arguments in support of their positions. After Presley and Simpson left the meeting the five remaining members present voted unanimously to support Simpson's appeal.³³ On November 29, 2007, Local 155 Recording Secretary Brian Negovan advised President Presley that the membership had voted to reinstate Simpson's grievance.³⁴ On December 3, 2007, President Presley informed Recording Secretary Negovan that he was reinstating Simpson's grievance.³⁵ On January 22, 2008, however, Detroit Heading Vice President Hampton refused Presley's request to reinstate the grievance. Hampton wrote:

"This letter is in response to the faxed letter received today January 22, 2008, regarding Mr. Ronald Simpson (Case 7-CB-15797). We are denying the Union's request to reinstate Mr. Ronald Simpson's grievance. As stated in the attached letter dated August 27, 2007, the Union never submitted a written demand, therefore the grievance was considered

²⁹ Record, p. 25.

³⁰ Record, p. 33.

³¹ Record, p. 6.

³² Record, p. 38.

³³ Record, p. 47.

³⁴ Record, p. 57.

³⁵ Record, p. 62.

untimely and therefore, waived. Additionally, the Company's grievance file was closed."³⁶

On February 15, 2008, President Presley wrote to Hampton that the Union had decided to withdraw Simpson's grievance.³⁷

On March 19, 2008, President Presley informed Simpson that the Company had refused to reinstate his employment.³⁸ Simpson appealed the handling of his grievance to the International Executive Board (IEB) on April 15, 2008. In support of his appeal, Simpson explained that after he returned to work on May 30, 2007, he became ill and was treated at Henry Ford Hospital from May 30 through June 10, 2007. Simpson stated that when he returned to work on June 12, 2007, he provided the Company with all of the documents related to his treatment. He reported that he was told that his absence had to be covered either by the Company's short term disability carrier MetLife or the Family and Medical Leave Act (FMLA) in order to be excluded from the Company's no-fault attendance policy. Simpson stated that he provided all of the medical information requested of him to MetLife and continued to report to work.³⁹

Simpson stated that when he was terminated on July 27, 2007, he was told that MetLife had not approved his claim for disability. Simpson stated that he pointed out that he had no control over how long the insurer took to approve his claim and he filed a grievance. On August 31, 2007, President Presley informed him that his grievance had been withdrawn. On September 4, he received notice that his disability claim had been approved. Simpson asked the IEB's assistance in correcting the injustice that had been done to him.⁴⁰

On December 1, 2008, Bob Kinkade and John Rucker conducted an investigative hearing on Simpson's appeal on behalf of President Gettelfinger. Hearing officers Kinkade and Rucker prepared a report to the IEB based on information provided at the hearing on December 1, 2008. During this hearing, Simpson presented his "Employment Time Line," which described the events preceding his termination.⁴¹ According to the hearing officers, the Union stated that it had never previously seen appellant's "Employment Time Line" or MetLife's Diary Review.⁴²

President Presley testified that he asked Simpson to provide evidence to help them proceed while the grievance was still pending. President Presley stated that

³⁶ Record, p. 64.

³⁷ Record, p. 65.

³⁸ Record, p. 66.

³⁹ Record, p. 67.

⁴⁰ Record, p. 67.

⁴¹ Record, pp. 96-98.

⁴² Record, p. 108.

Simpson refused to provide any information and kept referring to the Health Information Portability and Accounting Act of 1996, or HIPAA law.⁴³ Simpson denied Presley's assertion and insisted that he provided all information requested of him. The hearing officer's report states:

"Additionally, the Local Union's undisputed testimony was they requested evidence that would help them proceed, if necessary, to arbitration. The Local Union gave appellant from July 27, 2007 to August 31, 2007, to provide documentation. The Local Union President states that appellant would not give him any information and kept referring to HIPAA laws. The appellant disputes the Local President's testimony regarding HIPAA. Appellant claims he denied no information to the Local Union and, in fact, he states it was MetLife who dragged this thing out."⁴⁴

According to the hearing officers, Simpson presented a copy of his "Employment Time Line" and argued that the Local Union did not respond to the information he provided about MetLife's processing of his claim and instead relied on information provided by Detroit Heading Vice President Carolyn Hampton. Simpson argued that the Union did not adequately investigate the claim that he was working during the period of his disability. His "Employment Time Line" states:

"August 31, 2007 – Unit manager called Ms. Bailey [to] discuss whether or not I worked. Ms. Bailey indicated that the records show that I was paid sick time and holiday pay during the period of 5-30-07 thru 6-10-07 also that I had provided a note from my doctor for that same time period. I also received a letter from the Union indicating that they had conducted a thorough investigation into my case and was withdrawing my grievance without prejudice. The records indicate that the investigation amounted to a fax sent over by Ms. Carolyn Hampton on 8-29-2007, pages 00004 thru 00006 and page 000031 notes taken."⁴⁵

The hearing officers reported that they asked Simpson why he had not produced his evidence prior to December 1, 2008, when it could have been some use to the Union, and he responded that he never refused to provide anything to the Local Union. The hearing officers concluded that the Local Union President worked with the facts that he had when he determined that Simpson's grievance would not prevail before an arbitrator. They held that the decision of the Local Union was not devoid of a rational basis and that there was no evidence that it was motivated by discrimination, fraud, or collusion with management.⁴⁶

⁴³ Record, p. 120.

⁴⁴ Record, p. 120.

⁴⁵ Record, p. 98

⁴⁶ Record, p. 121.

The hearing officers denied Simpson's appeal and their report was adopted by the IEB on January 7, 2009. Simpson appealed the IEB's decision to the Public Review Board (PRB) on February 1, 2009.

ARGUMENT

A. Ronald L. Simpson:

I was under the impression based on the letter that I received from Recording Secretary Negovan on December 3, 2007, that I had won my appeal to the membership and that my grievance would be reinstated to the grievance procedure at the step where it was withdrawn. I never received any information about the reinstatement of my grievance after that until March 19, 2008, when President Presley informed me that the Company refused to reinstate my employment. I was informed by President Presley that the only way he could get the Company to reinstate my employment was for me to appeal to the IEB, which I did.

I provided the hearing officers for the IEB with evidence that the actions of the Detroit Heading Company were unjustified and that the Local Union failed in its responsibility to represent me. I pointed out that the Company had unjustly terminated me even though they knew that MetLife had not rendered a final decision on my disability claim. I also proved that I had never provided any false information to the Company as alleged by Ms. Carolyn Hampton.

I provided the hearing officers for the IEB with evidence that President Presley failed to process my grievance in accordance with the steps outlined in the grievance procedure. As a result of Presley's inaction on the grievance, Hampton notified him on August 27, 2007, that the Company was closing the grievance. I was not aware of the existence of Hampton's letter to Presley until September 2008. This was not the first time Presley had failed to process grievances in a timely manner. At the IEB hearing, I presented the arbitrator's decision in which Arbitrator Richard Allen stated that he could not grant me back pay because of Presley's untimely processing of my grievance.

In his letter to me dated August 31, 2007, Presley stated that he had conducted a thorough investigation into my grievance and made the decision to withdraw it. That letter was sent to me and only to me. Detroit Heading was not made aware of the Union's decision to withdraw my grievance until they received Presley's letter dated February 15, 2008. The evidence Presley relied on to make his decision was the false information provided by the Company. I showed the hearing officers the falsified documents provided by the Company that indicated my disability claim had been denied on June 26, 2007. I provided evidence from MetLife that showed my claim was never denied, and that Detroit Heading knew that the matter was still being investigated after June 26, 2007.

I pointed out to the hearing officers that I always kept Mr. Presley aware of any and all information provided to me from MetLife during the processing of my disability

claim, and I provided him with all documents from Henry Ford Hospital where I received treatment. In reading the conclusions of the hearing officers' report to the IEB, however, I get the impression that a lot of what I said was not heard and that the evidence I presented was not considered. I am asking the PRB to look at all of the evidence and evaluate it impartially. I am humbly asking you to right what I believe and know to be an injustice against me and every member who belongs to a Union.

B. International Union, UAW:

The issue in this case is whether the decision President Presley made in August 2007 to accept the Company's step two denial of Simpson's grievance decision was rational. With the benefit of hindsight it appears that the Union could have made a convincing argument that Simpson was unjustly discharged if it had all the evidence now available. The question how the Union ought to have proceeded in that case is not before the PRB however. At the time that the grievance was withdrawn, the only evidence available seemed to confirm the employer's claim that Simpson was not, as he alleged, unable to work during his two-week absence. Although Simpson disputed the employer's claim, he provided no proof to the contrary. Thus, when forced to decide how to proceed, Presley declined to arbitrate the case. The fact that Simpson later acquired persuasive evidence in support of his position does not undermine the reasonableness of Presley's decision.

Presley attempted to conduct a thorough investigation of Simpson's grievance. Presley reported that Simpson refused to provide information to the Local Union about his medical condition based on his interpretation of the HIPAA law. The Local Union was therefore forced to make a decision with only limited knowledge of the facts. The facts available to Presley in August 2007 were not favorable to Simpson. The Company maintained that he was not disabled between May 30 and June 12, 2007. Instead, it asserted that he was working for A.E.S. during this period. The evidence initially collected by MetLife seemed to support this accusation. A form submitted by A.E.S. indicated that Simpson had been paid during the period of his claimed disability.

When a representative of MetLife finally reached Simpson on July 2, 2007, the representative informed Simpson that the Company was claiming he was working for A.E.S. during the period of his disability. At that point, Simpson should have obtained proof from A.E.S. that he was not working there between May 30 and June 12. The Local could not obtain this information without a release from Simpson. Furthermore, it was not required to do so. The Union is entitled to rely on the grievant to supply it with documents to support his argument. On July 18, the MetLife representative told Simpson that they still needed confirmation of his last day worked at A.E.S. Yet, even after being discharged, Simpson failed to take the initiative to obtain documentary proof that he was not working at A.E.S. in early June.

The grievance procedure in the collective bargaining agreement provides that demands for arbitration must be made within five days of the Company's final answer. Presley, therefore, did not have the ability to leave Simpson's grievance open

indefinitely. Although MetLife had not completed its investigation on August 31, appellant had had ample time to respond to the claim that he was working during the period of his disability. Given the facts available to Presley at that time, it was entirely reasonable for him to conclude that Simpson's grievance did not warrant further action.

What makes this case so unfortunate is that within days of Presley's decision to withdraw Simpson's grievance, MetLife reversed its denial of Simpson's claim and approved his claim for disability benefits. Simpson did not immediately inform Presley of MetLife's decision. Instead, he filed an unfair labor practice charge with the NLRB asserting that the Union had breached its duty of fair representation by withdrawing his grievance. In his charge, Simpson asserted that he had provided Presley with information about MetLife's decision to grant his claim for disability benefits on August 24. This assertion is demonstrably incorrect. According to the insurer's records, there was no action taken on the claim between July 24 and August 29. Simpson was not informed of MetLife's decision until September 4, so he could not have informed Presley about the decision on August 24. It was not until the IEB hearing conducted in December 2008 that Presley first saw a copy of MetLife's letter of September 4, 2007, granting Simpson's claim for disability benefits.

Finally, there is no basis in the record for appellant's assertion that Presley's investigation was perfunctory or that he was motivated by personal animosity. It was not the Local which sat on its hands, but Simpson himself. Over and over again, he rebuffed Presley's efforts to collect the facts needed to support the case. Indeed, Simpson failed to take the one step that would have entirely changed the Union's decision calculus, obtaining proof directly from A.E.S. that he did not work in early June.

C. Rebuttal by Ronald L. Simpson:

The IEB takes the position that President Presley's decision to withdraw my grievance on August 31, 2007, was rational based on what he knew at the time. The IEB's decision accepts as true Presley's claim that I refused to provide important information he requested while the grievance was still pending. Presley's account of what took place while my grievance was pending is not true.

I provided Presley with all of the information I had concerning my disability claim. I called Presley on the day that my grievance was filed, July 27, 2007, and he told me he would have to wait until he received the grievance before he could act. Days later, I went to the Local Union hall with my wife to present Presley with all of the information I had given the Company about my illness and he merely told me not to worry. I did not hear from Presley again until late August when I called him for a status report on my case. At that time, Presley informed me for the first time of the Company's accusation that I had provided false information about my disability. I told Mr. Presley that they were lying. He asked me if I had any additional information regarding my claim for short term disability benefits and I told him that I had been in contact with MetLife regarding my claim, and that the case was still open. I told Presley that the original case manager had been removed and that MetLife was expecting to receive verification from my

second employer within a couple of days that I had not worked during the period of my disability. Presley did not express any urgency about the matter during that conversation.

On August 31, 2007, I received the letter from Presley stating that the Union had decided to withdraw my grievance after having conducted a thorough investigation. In fact, the record reveals that the Company had already closed the grievance on August 27, 2007, because Presley failed to make a timely request for arbitration. I was not informed about the Company's August 27, 2007, letter to Presley until after the membership directed the Local to reinstate my grievance. When the Company refused to reinstate my grievance as a result of Presley's failure to pursue it in a timely fashion, Presley told me that I had to appeal to the IEB to direct the Company to reinstate the grievance. Both of Presley's letters to me indicating that the Union had decided to withdraw the grievance were written after the grievance had already been closed by the Company.

When Presley informed me on August 31, 2007, that the Union had decided to withdraw my grievance, he was aware that I had just won an arbitration requiring the Company to reinstate me and that the Company was unhappy about it. He knew what the time limits were under the grievance procedure and that he could request an extension of the time limits. He knew I had adequate medical documentation to support my short term disability claim. He also knew, because I had informed him, that MetLife had not denied my claim and that they were waiting for additional information from A.E.S. before issuing a formal approval of the claim.

This is not the first time that I have been injured by Presley's failure to act. When the arbitrator ordered my reinstatement, he refused to order back pay because he could find no reasonable explanation for the Union's six months delay in requesting arbitration. I lost wages and benefits as a result of Presley's failure to represent me in a timely fashion, so I filed a complaint with the NLRB. As a result, Presley was still hostile towards me when the events leading to my second termination occurred. I believe his hostility influenced his handling of my grievance in this case.

I have done nothing wrong to deserve any discipline. I find the Union's refusal to act on my behalf hard to understand in light of the evidence. The IEB ignored the letter of August 27, 2007, which makes plain that Presley did not make any reasoned decision to withdraw my grievance but instead simply failed to pursue it in a timely fashion. When Presley sent the letter to me on August 31, 2007, stating that the Union had decided to withdraw my grievance, he did not send a copy of that letter to the Company. The letter to me was merely an attempt to hide his failure to represent me in a timely fashion. The International Union's failure to address the letter of August 27, 2007, leads me to believe that the Company's position regarding the effect of Presley's delay was contractually sound. This would explain the Union's repeated attempts to silence me and prevent this matter from proceeding even though there is persuasive and compelling evidence for taking the case to arbitration.

The IEB's decision attempts to paint me in a bad light by making the claim that I had been terminated by three UAW plants. I have attached letters from two of the three Company's cited by the IEB to disprove the suggestion that I was terminated for misconduct. The evidence in this record clearly outweighs the unsupported suggestions relied on by the IEB. I am requesting this Board to review the facts and find a remedy that will restore dignity and integrity to the grievance and appellate processes.

DISCUSSION

It is not the function of this Board to conduct an independent evaluation of the evidence. Our jurisdiction to consider appeals related to the handling of a grievance is limited to claims that the handling of the matter was influenced by impermissible factors such as fraud, discrimination, or collusion with management, or that the decision was devoid of any rational basis.⁴⁷ There is no credible evidence in this record that President Presley harbored any hostility toward Simpson as a result of the earlier NLRB charge. Presley's communications with Simpson about the Union's decisions with respect to Grievance D-50-A are professional and courteous. The mere fact that Simpson filed such a charge is not evidence of hostility. Furthermore, the record shows that Presley had represented Simpson well in connection with his previous grievance. He took the case all the way to arbitration and obtained Simpson's reinstatement. The fact that the arbitrator was reluctant to award back pay because the Union delayed its decision to arbitrate does not suggest that Presley's handling of that prior grievance was dilatory. The Union will generally attempt to negotiate a settlement before incurring the expense of arbitrating a case. The only question presented by this appeal, therefore, is whether Presley's conclusion that the Union could not successfully arbitrate Simpson's second discharge grievance lacked a rational basis.

It appears from the record that the Company's representative Carolyn Hampton was pressuring President Presley to make a decision on Simpson's grievance toward the end of August 2007. At this point, Presley apparently concluded that no further action was warranted. When he did not pursue the grievance to the third step or request an extension, Hampton invoked the steps of the grievance procedure to declare the matter closed. At this point, President Presley advised Simpson that his grievance had been withdrawn. We agree with the decision of the IEB that Presley's decision not to pursue the grievance beyond the second step of the grievance procedure was rational based on what he knew in August 2007.

The reason given to Simpson for his discharge during the disciplinary interview on July 27, 2007, was that he had provided false information to the Company concerning his disability during the period from May 30, 2007, through June 11, 2007. Although the Company's answer to Grievance D-50-A refers to its attendance policy, Simpson's absence during this period would have been excused if his disability claim had been approved, so the attendance policy is not really the issue. Essentially, the

⁴⁷ International Constitution, Article 33, §4(i).

Company was accusing Simpson of making a fraudulent claim for disability benefits. That accusation appears to be completely baseless. Simpson's medical records establish that he was suffering from a severe medical condition which prevented him from working during the period of his absence. In light of this fact, Simpson's failure to provide the Company and the Union with clear evidence of his innocence is difficult to understand.

Simpson knew as early as July 2, 2007, that the Company was claiming that he worked during the period of his disability. On that day, the MetLife case manager informed Simpson that they needed his second employer to verify that he did not work during the period from May 30 to June 11, 2007. Simpson could have resolved the entire issue regarding his absence and claim for disability on July 2 with a simple telephone call to his second employer. He has never given any explanation for his failure to take this step. On the day he was discharged, Simpson apparently did not challenge the Company's accusation that he had provided false information, even though by this time he had had several conversations with the MetLife claims manager about his claim, and he knew what the issue was. The grievance protesting his discharge does not assert that Simpson was innocent of the charge against him. In fact, it raises the unsustainable excuse that Simpson was unaware of the Company's attendance policy. By Simpson's own account, this statement is untrue. In the statement he presented to the hearing officers for the IEB, Simpson reported that when he returned to work Carolyn Hampton informed him that if his claim for disability were denied, he would be terminated under the attendance policy. Yet, the grievance bears Simpson's signature. Simpson's acquiescence in the Union's weak presentation of his case, when all the while he knew that the Company's charge could easily be refuted raised doubts about his entire story. One would expect a person falsely accused of serious misconduct to be more forceful in his denials. The oddness of Simpson's reticence on the subject of his innocence reasonably led the Local Union representatives to suspect that the Company's allegations might be true.

We think it can be fairly stated that MetLife mismanaged its investigation of Simpson's claim for short term disability. The case manager relied on Carolyn Hampton to inform Simpson that he needed to contact his second employer and authorize a release of information to MetLife. There is no record of Hampton having contacted Simpson. The MetLife case manager then closed his investigation and denied Simpson's claim on June 26, 2007, without ever having spoken with Simpson directly. MetLife needed Simpson's authorization to contact A.E.S. before it could resolve the Company's claim that Simpson worked during the period he claimed to be disabled, but this does not explain its long delay in approving Simpson's claim after it received that authorization. Simpson's case was reopened after the MetLife investigator spoke with him on July 2, 2007, and it appears from the MetLife diary that the case manager had received the necessary authorization to contact Simpson's second employer by July 18, 2007, before Simpson's employment was terminated. The case manager informed Simpson on this date that the information provided by A.E.S. was inadequate in that it did not state his last day worked. There is no explanation in the record for why MetLife left its investigation open from July 18 until August 31, 2007, without clearing up this

simple point, even though it had the medical records proving that Simpson was entitled to disability benefits. Nevertheless, despite this record of mismanagement by MetLife, all President Presley knew in August 2007 was that the matter had not been resolved in Simpson's favor.

The hearing officers for the IEB who investigated Simpson's appeal reported conflicting testimony about what Simpson actually did communicate to Presley in August. Presley testified that he specifically asked Simpson to bring in evidence to resolve his disability claim and that Simpson cited the HIPAA law and insisted that he did not have to supply any additional documents to the Company. Simpson denied having invoked the HIPAA law and insisted that he never refused to provide any information requested by Presley. Nevertheless, Simpson's description of what he communicated to Presley remains vague, particularly in light of the serious charge against him and the ease with which it could have been addressed. Significantly, Simpson did not provide Presley with certification from A.E.S. that he did not work during the period that he claimed to be disabled. The hearing officers who personally observed and evaluated the testimony of Presley and Simpson credited Presley's account that Simpson's responses were evasive and that he claimed the HIPAA statute had some relevance to his case. There is no basis in this record for rejecting the credibility determinations made by the hearing officers. Simpson's reference to the HIPAA law would have suggested to Presley that Simpson was withholding some kind of medical information needed to resolve his disability claim.

In addition to this, Simpson's short and apparently less than satisfactory work history with Detroit Heading, LLC, did not provide the Local Union with any basis for requesting leniency from this employer. If the Union were going to pursue Simpson's grievance in August 2007, it had to have a sound contractual basis for taking the case to arbitration and insisting on his reinstatement. The Union reasonably concluded that it did not have such a case, because at the time the Union had to decide, it appeared that Simpson was not cooperating with the disability provider's investigation of his claim, and that there was, in fact, some problem with the information he had submitted.

The decision of the IEB is affirmed.