

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

MICHAEL COSTELLO,
Appellant

-vs-

CASE NO. 1638

LOCAL UNION 420, UAW
(Bedford, Ohio)
REGION 2B
(THE UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA),
Appellee.

DECISION

(Issued December 17, 2009)

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

Michael Costello argues that the handling of his grievance lacked a rational basis.

FACTS

Michael Costello worked in the Machine Repair classification at Ford Motor Company's Walton Hills Stamping Plant in Bedford, Ohio, in a bargaining unit represented by UAW Local Union 420. He had a seniority date of February 22, 1972.¹ He was assigned to the first shift which was scheduled to work from midnight until 6:30 a.m.

On September 24, 2001, the company announced that opportunities for transfer to operations at other Ford plants could arise in the future. The company's bulletin gives the following instructions to employees interested in transfer opportunities:

"Interested UAW represented employees who wish to apply for such a transfer may sign up in the Labor Relations office. Applications for each transfer opportunity will be made available as they occur and will remain

¹ Record, p. 10.

posted for ten (10) days. Employees who would like to request a formal transfer should check the Labor Relations Office or the Job Bid Posting Board weekly to review which opportunities are available. Employees who transfer under this agreement will be accorded seniority at the receiving location in accordance with the provisions of Article VIII, Section 24(b) of the Master Agreement.”²

In March 2002, the company conducted meetings with all three shifts at the Walton Hills Plant and distributed a list of placement opportunities.³ In addition, the company distributed a description of a Special Transfer Incentive that included relocation expenses as well as cash payments. The payments are described as follows:

“This incentive is available to employees who effect an out-of-zone transfer and

- i. Will include the Basic Relocation, including all eligibility and payment guidelines, as described in Article IX, 28, (a) and (b); and,
- ii. Will include an additional incentive, described below, subject to similar guidelines and restrictions as described in Article IX, 28, (a) and (b) and will be paid in three installments:
 1. \$10,000 to be paid after the employee begins work at the new location and successfully completes the Mutual Evaluation Period (30 working days).
 2. \$15,000 to be paid to active employees after the first annual anniversary of the successful relocation.
 3. \$20,000 to be paid to active employees after the second annual anniversary of the successful relocation.”⁴

Employees were required to submit their requests for transfer during the period from March 27 through April 12, 2002.⁵ On March 27, 2002, the company revised the list of placement opportunities to include a position in the Machine Repair classification at the Michigan Proving Grounds.⁶ According to Costello, the revised list was provided

² Record, p. 1.

³ Record, pp. 5-6.

⁴ Record, p. 2.

⁵ Record, p. 14.

⁶ Record, p. 8.

to employees on the second and third shift, but not to employees on the first shift. In addition, the revised list was not posted on the Job Bid Posting Board.⁷ Costello states that he did not learn about the opportunity to transfer to the Machine Repair classification at the Proving Grounds until April 17, 2002.⁸ When he approached the company about accepting transfer to the Machine Repair position at the Proving Grounds on April 17, he was told that it was too late to apply.⁹

The Local 420 Bargaining Committee filed Grievance BRJB-00032 protesting management's refusal to allow Costello to apply for transfer to the Proving Grounds. The grievance states:

"The above employee was denied the opportunity to sign and transfer to the Michigan Proving Grounds. The employee was not given the proper documentation to be eligible for this transfer. The employee did not know about this opportunity until 4-17-2002, and the company states it was too late to submit a form to transfer. The company is in violation here for they are accountable for proper documentation and notification to the employee."¹⁰

The grievance asks that Costello be allowed to transfer to the Proving Grounds and that he be paid the Special Transfer Incentive. A note on the grievance indicates that it was referred to the third step on August 14, 2002.¹¹

During the same period as the grievance was being processed internally, the Local Job Security, Operational Effectiveness and Sourcing (JSOES) Committee reviewed Costello's complaint that he was denied the opportunity to transfer to the Michigan Proving Grounds.¹² The Local JSOES Committee failed to reach an agreement resolving the issue raised by Costello so his complaint was referred to the National JSOES Committee on May 13, 2002. The referral states:

"The LJSOESC is appealing the company's transfer of a lower seniority employee, L. Brashear 268-68-0262, to Michigan Proving Grounds per the special programs granted to WHSP. A more senior employee, M. Costello 288-50-6092, was not afforded the opportunity to transfer because Michigan Proving Grounds was not on his list of opportunities. The job at the Proving Grounds was added after the original openings were given to employees and was never posted anywhere for the midnight shift to

⁷ Record, p. 28.

⁸ Record, p. 5.

⁹ Record, p. 10.

¹⁰ Record, p. 10.

¹¹ Record, p. 15.

¹² Record, p. 13.

respond to. Mr. Costello did not find out that an opportunity existed until after the deadline had passed, therefore could not sign the request form. The union is stating that Mr. Costello be given the opportunity to transfer to the Michigan Proving Grounds under the special programs given to WHSP."¹³

The National JSOES Committee responded to Costello's complaint on June 17, 2002, in a letter addressed to the former president of Local Union 402, Howard Joyner. The National Committee noted that the revised list of placement opportunities was made available in the Labor Relations Office, placed on the mezzanine, and given to the local union's officers. The Committee members concluded that Costello had an adequate opportunity to discover the existence of the Machine Repair position during the period for accepting transfer. The National JSOES Committee's letter states:

"The National JSOES Committee believes, given the fluidity of the situation, reasonable efforts were made to provide information to as many employees as possible, and all employees had more than adequate access to the information during the open window period. Therefore, based on the information, no further action will be taken. Mr. Costello retains his contractual rights to apply for future openings provided he is eligible to do so and the opportunities are present. The appeal is closed."¹⁴

On November 3, 2008, Costello filed a charge against UAW Local Union 420 with the National Labor Relations Board (NLRB) charging that the union failed to respond to his requests for information regarding the status of his grievance protesting Ford Motor Company's refusal to allow him to bid on a position at another plant.¹⁵ On November 11, 2008, Local 420 President Kevin Kalinowski forwarded a copy of the National JSOES Committee's decision of June 17, 2002, to Costello.¹⁶ In addition, Kalinowski advised Costello that former Local 420 President Howard Joyner had settled and closed Grievance BRJB-00032 at the third step after receiving the decision of the National JSOES Committee.¹⁷

Costello appealed the decision to settle his grievance to the local union membership on December 5, 2008.¹⁸ The Local 420 Executive Board adopted a recommendation that Costello's appeal should be denied at a meeting on January 11,

¹³ Record, p. 13.

¹⁴ Record, p. 14.

¹⁵ Record, p. 16.

¹⁶ Record, pp. 17-19.

¹⁷ Record, p. 17.

¹⁸ Record, p. 23.

2009.¹⁹ At a meeting on the same day, the membership adopted the recommendation of the local executive board.²⁰ President Kalinowski advised Costello of the membership's decision in a letter dated February 9, 2009.²¹ Costello appealed the membership's action to the International Executive Board (IEB) on March 7, 2009.²²

In his appeal to the IEB, Costello stated that he had inquired at least four times a year regarding the status of his grievance. He reported that Bargaining Chairperson Kevin Kalinowski and Committeeperson Brian Goff told him that the grievance was at the Umpire level. He explained that he did not receive information regarding the status of his grievance until November 2008. He asked the IEB to rule that he had been wrongfully denied the opportunity to bid on the position at the Michigan Proving Grounds. He pointed out that the company had the opportunity to correct the situation before anyone was relocated to Michigan and chose not to do so.²³

In support of his appeal, Costello argued that the company violated its contractual obligation to post all available job openings. He stated that the documents distributed to his shift did not list the opening in the Machine Repair classification. When the company added this position to the list, they failed to provide a copy of the revised list to people on the first shift. Costello stated that he did not learn about the opening in the Machine Repair classification until the company posted a list of who got the jobs. Costello reported that he immediately contacted management by telephone at that point, but he was told that it was too late to bid on the job. Costello acknowledged that it is now too late for him to accept the job at the Proving Grounds, but he argued that he should be entitled to the other benefits provided by the Special Transfer Incentive program, because he would have been the highest seniority bidder if he had been allowed to bid.²⁴

Acting on behalf of President Gettelfinger, Administrative Assistant Bahati Jaha conducted a hearing on Costello's appeal on June 18, 2009. Jaha prepared a report to the IEB on the appeal based on information provided by Local Union 420 and testimony given at the hearing. According to Jaha's report, Costello testified at the hearing that he lost \$45,000 as a result of not being given the opportunity to bid on the opening in the Machine Repair classification at the Proving Grounds.²⁵ Costello informed Jaha that he has since retired and accepted a retirement package of \$70,000. Costello's co-worker Charles Austin confirmed that the company had failed to notify employees on the first

¹⁹ Record, p. 24.

²⁰ Record, p. 26.

²¹ Record, p. 27.

²² Record, pp. 28-29.

²³ Record, p. 28.

²⁴ Record, p. 28

²⁵ Record, p. 70.

shift of the transfer opportunity in the Machine Repair classification. Jaha's report describes Austin's testimony as follows:

"The appellant's co-worker, Charles Austin, who also works on the midnight #1 shift, testified that the company failed to give the revised copy for transfers to the #1 shift Machine Repairmen. He testified that at the time the job transfer opening was offered he had some health problems and, if it wasn't for that, he would have been the one filing a grievance."²⁶

Costello argued that the local union was aware of the revised transfer opportunity list and should have notified the employees on the first shift about it. Costello pointed out that the company's bulletin informing its employees about the upcoming transfer opportunities states that they should check weekly with the Labor Relations office or the Job Bid Postings Board. Costello stated that he should have been able to rely on the Job Bid Posting Board for information about transfer opportunities based on the company's bulletin.²⁷

Administrative Assistant Jaha concluded that a grievance should never have been written regarding Costello's complaint because the issue was properly before the National JSOES Committee and the Committee made the decision to deny the complaint. He reported that the local bargaining committee was not aware of the appellate process described in the Memorandum of Understanding on Job Security in 2002 and mistakenly filed a grievance for Costello.²⁸ Jaha determined that the decision to refer Costello's complaint to the National JSOES Committee for resolution was rational. He found no evidence that Costello's grievance was handled improperly because of fraud, discrimination, or collusion with management.²⁹

Jaha denied Costello's appeal and the IEB adopted his report as its decision on July 20, 2009. Costello has now appealed the IEB's decision to the Public Review Board (PRB).

ARGUMENT

A. Michael Costello:

The National JSOES Committee together with Ford Motor Company agreed to make job opportunities available to all Walton Hills employees. The company posted a bulletin advising employees that they should check the Labor Relations office or the Job Bid Posting Board weekly to review which opportunities are available. The usual and contractual means of offering jobs is to post the job openings on the Job Bid Posting

²⁶ Record, p. 71.

²⁷ Record, pp. 71-72.

²⁸ Record, p. 73.

²⁹ Record, p. 74.

Board. The company may have had information about available jobs at other locations, but there was no posting about the Machine Repair job in the locked, secured, specified Job Bid Posting Board, as required by contractual agreement.

I would have been the successful bidder for the Machine Repair job at the Michigan Proving Grounds if I had known about the position. The company and the union had ample time to correct the situation after I brought it to the company's attention on April 17, 2002. I am appealing to the PRB to correct this injustice by awarding me all the money I lost because of the company's and the union's failure to correct this situation in a timely fashion.

B. International Union, UAW:

The company and the union took reasonable steps to keep the employees at Walton Hills informed about transfer opportunities to other locations. Although the list provided to the employees on the first shift did not include the Machine Repair position, appellant had the entire period from March 27, 2002, through April 12, 2002, to investigate and discover the opportunities available.

The National Agreement provided appellant with an opportunity to appeal the company's decision to reject his application for transfer because it was submitted after the deadline. Appellant's claim was considered and denied. The integrity of that process is not in question and appellant's claim received a full and fair review. The grievance procedure was not the proper forum for resolution of this dispute. The union's withdrawal of appellant's grievance was reasonable based on the collective bargaining agreement and the underlying facts and circumstances of the case.

DISCUSSION

Costello reports that he made numerous inquiries regarding the status of his grievance, but there is no record of these inquiries. We cannot now determine to whom he addressed his inquiries or how he expressed them. There is no correspondence in the record acknowledging the inquiries or responding to them. There is no document in the record formally disposing of Grievance BRJB-00032. It is not clear if the local bargaining committee was even advised that the grievance had been settled and closed. It is surprising that someone, either Bargaining Chairperson Kalinowski or Costello himself, did not take the initiative to contact the UAW Ford Department to learn what had happened to the grievance if they really believed that it remained unresolved at the Umpire level during the entire period from 2002 until 2008. In the absence of any written memorial of Costello's inquires regarding the matter, however, we simply cannot determine the reason for the delay in informing him of the resolution of his complaint.

One thing is clear; the company made an error by failing to post the Machine Repair job opportunity on the Job Bid Posting Board and Costello was deprived of notice regarding an opportunity that he would have pursued. That missed opportunity could have yielded Costello an incentive payment of up to \$45,000 under the terms of

the Special Transfer Incentive program adopted in 2002, but for the company's error. Costello had a right to expect his local union representatives to pursue his claim in this matter. The record shows that the local union did pursue his claim in the manner provided for in the UAW/Ford National Agreement. The local union promptly referred Costello's complaint to the Local JSOES Committee for review. The Local JSOES Committee is a joint committee established pursuant to the Memorandum of Understanding Job Security Program – GEN that is attached to the UAW/Ford National Agreement as Appendix M. In accordance with Section IV, C, 12, of Appendix M, this Committee has authority to review any complaint regarding administration of the program. When the Local JSOES Committee could not resolve the issue presented by Costello's complaint, it referred that complaint to the National JSOES Committee. Only a limited number of specific issues may be appealed beyond National JSOES Committee to the Umpire. The Memorandum of Understanding on Job Security states that "all other unresolved complaints will be settled expeditiously between the parties at the national level."³⁰

This is the mechanism the parties have agreed to for resolving disputes arising under the Job Security Program. As observed by the International Union, the integrity of this appellate procedure is not in question in this case. The Local JSOES Committee's referral of the issue to the National Committee on May 13, 2002, very clearly summarized the facts and stated precisely the nature of Costello's complaint. These joint committees established to administer the Job Security Program were in the best position to evaluate the situation in the plant and the reasonableness of the company's efforts to keep its employees advised of the job opportunities elsewhere. The National JSOES Committee determined that the fluidity of the situation in 2002 excused the company's lapse and shifted some responsibility to the employees to keep themselves informed of opportunities that arose after the first list was distributed.

There is no evidence in this record to indicate that Costello had been informed about the proceedings before the Local JSOES committee when he filed Grievance BRJB-00032. He does not seem to have been aware of this process or its resolution prior to November 11, 2008. It was appropriate for Costello to file a grievance protesting what appeared to be inaction on his legitimate complaint. Nevertheless, the IEB's investigation into Costello's appeal of the withdrawal of his grievance revealed that the matter had been handled properly even though the union neglected to inform Costello of its outcome at the time. The numerous failures in communication that occurred during the appellate process are unfortunate, but they do not alter the outcome of the appeal. The National JSOES Committee decision of June 17, 2002, disposed of Costello's complaint and there was no contractual right to appeal that resolution. It was rational, therefore, for the local union president to withdraw Costello's grievance based on the decision rendered by the National JSOES Committee.

The decision of the IEB is affirmed.

³⁰ See 2003 UAW/Ford Motor Company Agreement, Volume I, page 208.