

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

APPEAL OF:

GREGORY GRIMSKE,

Appellant

-vs-

CASE NO. 1666

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

Appellee.

DECISION

(Issued November 23, 2011)

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

Gregory Grimske argues that Vice President Robert Hecker's decision not to submit his discharge grievance to arbitration lacked a rational basis.

FACTS

Gregory Grimske worked for Weldaloy Products Company in Warren, Michigan, in a bargaining unit represented by UAW Local Union 155. He was hired on July 21, 1999. On January 6, 2010, management issued Grimske a five day suspension for carelessness. The notice of disciplinary action describes the violation as follows:

"Employee showed a disregard for safety when he chose to run job #33188 on the Willis lathe without installing the Willis four jaw chuck that was available for use. The Willis lathe crashed causing significant damage to the machine."¹

¹ Record, p. 7.

The notice indicates that this was Grimske's fourth offense and that he should return to work on January 13. According to Grimske, on the same day, management issued him a disciplinary notice for failure to follow work instructions in connection with this same event. The notice for failure to follow work instructions indicated that it was for a third offense.²

On January 15, 2010, management terminated Grimske's employment. The disciplinary notice issued to Grimske on that day describes the violation as follows:

"Employee intentionally removed Weldaloy custom tooling from Company property."³

The notice indicates that this was Grimske's fifth offense and that he was being terminated. Local 155 filed a grievance protesting Grimske's termination on January 16, 2010. The grievance states:

"Greg received a phone call from the Company on 1/15/10 saying he was discharged. No facts or proof have been given to the Chief Steward or Greg other than it was for theft."⁴

The grievance protesting Grimske's termination was referred to mediation on February 17, 2010.⁵ On March 1, 2010, Local 155 Vice President Robert Hecker withdrew Grimske's grievance based on the following settlement agreement:

"Termination of employment on January 15, 2010 will stand; and

Greg Grimske will receive a one-time payment of \$2,000 issued in the pay period following the signing of this agreement. The one-time payment will not be taxed as payroll income, but rather reported on a 1099 form. Greg Grimske will assume any/all tax liability on this income; and

The Company will not proceed any further in contesting the unemployment benefits being pursued by Greg Grimske."⁶

Grimske appealed the decision to withdraw his grievance to the Local Union on March 3, 2010.⁷

² Record, p. 34.

³ Record, p. 11.

⁴ Record, p. 10.

⁵ Record, p. 13.

⁶ Record, p. 14.

⁷ Record, p. 15.

In the meantime, the Company appealed a determination by the Michigan Unemployment Insurance Agency (“MUIA”) that Grimske should not be disqualified for benefits pursuant to Section 29(1)(i) of the Michigan Employment Security Act (“MESA”). Section 29(1)(i) of the MESA provides that an employee will be disqualified if he was discharged for theft. Administrative Law Judge William D. Bond conducted a hearing on the appeal on May 20, 2010. Human Resource Generalist Cassandra Henderson appeared for Weldaloy.⁸

According to Judge Bond’s decision, Cassandra Henderson testified that Grimske had four prior disciplines when the alleged theft occurred and that he was terminated in accordance with the Company’s progressive discipline policy.⁹ Judge Bond described Henderson’s testimony regarding the alleged theft on January 13, 2010, as follows:

“As for the alleged theft of Company tooling, Ms. Henderson indicated there was a video showing claimant putting the tooling in his tool box, but she did not submit the video prior to the hearing. Ms. Henderson stated claimant told her he took it off the machine because it was not safe and put it in his tool box. Claimant took the item home and he personally returned it to her when terminated.”¹⁰

According to Judge Bond’s decision, Grimske argued that the discipline he received on January 5, 2010 was not justified, because the machine he was working on was already broken and he had turned in several requests to have it repaired. Grimske reported that management had advised him that they could not afford to repair the machine. With respect to the alleged theft, Judge Bond gave the following description of Grimske’s testimony:

“Claimant further stated he did not steal the tooling in question. It had been removed from a decommissioned machine several years ago. In order to make it work on the current machinery, he had to modify some bolts to make it fit properly. One of the other workers named Mario was using different bolts with the tooling. It was not safe that way so claimant took it off the machine and put it in his personal toolbox.

Coincidentally, claimant decided he was going to take his toolbox home that day and mistakenly left the tooling in the box when he took it home. Claimant had asked the shift manager Don Connor to check his toolbox before he took it home to make sure he wasn’t taking anything home he

⁸ Record, p. 22.

⁹ Record, p. 22

¹⁰ Record, p. 23.

shouldn't, but Mr. Connor apparently declined to do so saying he trusted claimant."¹¹

Judge Bond concluded that the employer had failed to meet its burden of showing that Grimske was discharged for theft. He observed that the employer's witness had no personal knowledge regarding the circumstances giving rise to Grimske's prior discipline. The video which she relied on had not been properly offered as evidence during the hearing. Judge Bond observed that Grimske had not denied that the tools were in the toolbox that he took home but he provided a credible explanation for this fact showing that he did not intend to steal or keep the tools.¹² Judge Bond determined that Grimske was entitled to benefits if otherwise eligible and qualified.

The Local 155 Executive Board denied Grimske's appeal of the withdrawal of his grievance on May 20, 2010. The Local notified Grimske of the Executive Board's decision on June 3, 2010.¹³ Grimske appealed the Local Executive Board's decision to the Local 155 Joint Council on June 18, 2010. In support of his appeal, Grimske reported that he had an open grievance at the time of his termination protesting the two disciplinary notices issued on January 6, 2010, and that he had never received any information regarding the resolution of that grievance. Grimske stated that he did not realize the Company's tools were in his toolbox when he left work on January 13, 2010. He reported that he had asked Manager Dan Connors to check his toolbox when he left work that day, but that Connors said that was not necessary. Grimske explained that the tools were jaws which had been taken from a machine that was being scrapped and that he had reworked them to use on his machine. Grimske pointed out that the Administrative Law Judge for the MUIA had concluded that he gave a credible explanation for having the jaws in his toolbox.¹⁴

The Local 155 Joint Council considered Grimske's appeal at a meeting on April 19, 2010. The minutes of the Joint Council meeting report Grimske's testimony that he was accused of stealing a set of lathe chuck jaws that were being scrapped in 2002. Grimske stated that he had asked his supervisor if he could have the jaws and the supervisor said he could. Grimske explained that he did not intend to keep the jaws, but that he considered them his to work with.

The jaws were also being used by another Weldaloy employee on the day shift and Grimske believed that employee was not using them properly. The Joint Council meeting minutes report:

¹¹ Record, p. 23.

¹² Record, p. 24.

¹³ Record, p. 26.

¹⁴ Record, p. 27.

“Grimske went on to say that his opposite number on the day shift (Grimske worked afternoons) was misusing the jaws in an unsafe manner. Grimske claims an engineer named Alan Densmore had instructed him to set the jaws aside in his toolbox and turn them over to engineering if the issue continued. According to Grimske, Alan now denies saying this, but is lying.”¹⁵

Grimske went on to explain that he could not take the jaws to engineering as he had been told to do because two members of management had told him to stop coming into that department. Grimske acknowledged that there was a video of him putting the jaws in his toolbox, although he said he had not seen it. He stated that he put the jaws in his toolbox for safety reasons to prevent their misuse. He complained that he was not given an opportunity to explain to the mediator why he had put them there. He stated that he rejected the settlement agreement negotiated by Vice President Hecker because he felt he had done nothing wrong.

In any event, Grimske maintained that the discipline issued in connection with this incident should not have resulted in his termination, because there should only have been one reprimand issued in connection with the problem that occurred on January 5, 2010.¹⁶ The minutes of the Joint Council meeting indicate that members of the Council questioned Grimske about the incident on January 5, 2010. The minutes provide the following description of the Council’s questions and Grimke’s responses:

“When asked in regard to the machine crash of January 5, how he used the specified four-jaw chuck in the Willis 32, Grimske stated he ‘pinched’ it in the regular three-jaw chuck on the Willis 32. Grimske allowed that he was told by co-workers before and after the crash that this was a poor practice.

Grimske was asked why he chose to use the secondary work center (the Willis 32) when he had previously documented his concerns over its safety and accuracy. Grimske did not reply to this question.”¹⁷

Vice President Hecker testified at the Joint Council meeting that Grimske was terminated for theft, not because it was his fifth offense. He explained that under the Weldaloy plant rules, theft is not subject to progressive discipline but results in termination for the first offense. Hecker reported that the Company’s video clearly showed Grimske putting the jaws in his personal toolbox. Hecker stated that the jaws were used on several different machines within the plant. The Company stated that they were valued at \$3,000.¹⁸

¹⁵ Record, p. 34.

¹⁶ Record, pp. 34-35.

¹⁷ Record, p. 35.

¹⁸ Record, pp. 35-36.

Hecker reported that when the parties met with Federal Mediator Mike Nowakowski on February 17, 2010, the Company would not agree to a last chance letter for Grimske. Mediator Nowakowski informed Hecker that he felt the Union's case was weak and would be unlikely to result in Grimske's reinstatement. Hecker stated that the jaws Grimske put in his toolbox had been in continuous use on multiple jobs in the plant since 2000. Hecker reported that there was no witness or documentary evidence to corroborate Grimske's claim that the jaws had been given to him. Hecker testified that he did not think he could win Grimske's case before an arbitrator based on these facts, so he negotiated a termination agreement for Grimske, but Grimske declined it.¹⁹

The minutes of the Joint Council meeting indicate that the Council members thoroughly discussed Grimske's appeal and then voted to deny it.²⁰ Local 155 notified Grimske of the Joint Council's decision on August 27, 2010. Grimske appealed the decision of the Local 155 Joint Council to the International Executive Board (IEB) on September 30, 2010.

Local Union 155 Recording Secretary Stephen Cunnings responded to an inquiry from International President King's staff regarding Grimske's appeal on November 3, 2010. Cunnings described Vice President Hecker's handling of Grimske's grievance prior to the settlement as follows:

"Additionally, Brother Hecker met with the Company in regard to Grimske's grievance on January 25, 2010. Brother Hecker then met with Brother Grimske at the offices of Local 155 on February 2, 2010. Federal Mediation was held February 17, 2010, with the Honorable Michael Nowakowski presiding. Brother Hecker spoke to Brother Grimske on or about February 19, 2010, about the proposed settlement agreement. Brother Hecker advised Brother Grimske to take time to consider it."²¹

Cunnings explained that the Joint Council concluded that Vice President Hecker acted reasonably in making the decision to withdraw Grimske's grievance and that he was not influenced by prejudice or malice.²² Recording Secretary Cunnings also informed President King that there is no reinstatement of grievance language in the contract between UAW Local 155 and Weldaloy Products.²³

Acting on behalf of President King, Gary Bryner and John Rucker conducted a hearing on Grimske's appeal on April 8, 2011. Bryner and Rucker prepared a report to

¹⁹ Record, p. 36.

²⁰ Record, p. 36.

²¹ Record, p. 43.

²² Record, p. 41

²³ Record, p. 43.

the IEB on the appeal based on testimony given at that hearing. Vice President Hecker explained at the hearing that the Local had filed a grievance protesting the fact that Grimske had been issued two reprimands for the same incident on January 5, 2010, but he stated that Grimske was not terminated under the progressive discipline procedure. Hecker reported that the Company shop rules allow discharge for theft as a first offense. Hecker further reported that the Company's video showed Grimske putting the lathe chuck jaws in his toolbox and covering them up with paper.²⁴

The hearing officers observed that Grimske's behavior was inconsistent with his claim that the jaws had been given to him. They wrote:

"During the hearing and in the written record, the appellant is adamant that in 2002 a supervisor gave him the lathe chuck jaws. However, when the Company asked him where the jaws were, appellant explained that he forgot they were in his toolbox that he took home. We are left to wonder if the lathe chuck jaws were given to the appellant, why he would explain he took them home by mistake."²⁵

Similarly, the hearing officers found Grimske's claim that he asked a supervisor to check his toolbox before he left the plant unconvincing. They commented:

"Appellant made it clear that he asked his supervisor to check his toolbox three times before he left the plant. This begs the question why the appellant did not check his own toolbox prior to taking it home?"²⁶

The hearing officers found that Vice President Hecker had thoroughly investigated Grimske's grievance. He withdrew the grievance based on his investigation and the advice of the federal mediator. When Hecker became convinced that he could not prevail before an arbitrator on Grimske's grievance, he negotiated a settlement on Grimske's behalf. The hearing officers concluded that Vice President Hecker's handling of the grievance was not devoid of a rational basis, nor was there any evidence that collusion with management, discrimination, or fraud motivated his decision with respect to it.²⁷ The hearing officers pointed out that the standards of review used by the MUIA are quite different than those applied by a Union representative when evaluating the likelihood of prevailing in arbitration.

The hearing officers denied Grimske's appeal and their report was adopted by the IEB as its decision. Grimske was informed of the IEB's decision on June 22, 2011. He has now appealed the IEB's decision to the Public Review Board (PRB).

²⁴ Record, p. 49.

²⁵ Record, p. 50.

²⁶ Record, p. 50.

²⁷ Record, pp. 50-51.

ARGUMENT

A. Gregory Grimske:

When I was awarded unemployment compensation, the Company appealed it. The case eventually went to federal court. The judge caught the employer trying to pass off lies. He stopped the employer and granted me unemployment compensation because he saw no evidence of the alleged theft. None of the representatives of Local 155 or the IEB would take this ruling into account or review the transcripts of the courtroom proceedings. Those transcripts reveal that the employer was willing to deceive a court of law concerning the allegation of theft made against me.

The Union representative told me that it does not matter if the employer's representative is caught lying under oath by a federal judge. It has no bearing on the Union's ability to win the case before an arbitrator. The Union claimed the Administrative Law Judge's report is not admissible as evidence. The IEB supported the decision not to take my grievance to arbitration because the Union representatives said they only had a fifty percent chance of winning. I think they should have taken that chance.

B. International Union, UAW:

In his appeal from the decision to withdraw his grievance, Grimske has asserted inconsistent arguments about his removal of the lathe chuck jaws from Company property. He admits to removing the jaws in his toolbox, but claims that he did so by mistake because he forgot that he put them there. On the other hand, he claims that the tool belonged to him because a supervisor had given it to him in 2002. There is nothing in writing to support Grimske's claim to ownership of the jaws, nor any witness to corroborate his understanding of what took place in 2002. There is a video of Grimske placing the tool in his personal toolbox. Vice President Hecker made a determination that Grimske's grievance was unlikely to succeed at arbitration based on this record.

The appellant's award of unemployment compensation does not diminish the reasonableness of Hecker's decision to withdraw Grimske's grievance. Hecker made that determination based on his experience and in light of the evidence that the Company could present. The Administrative Law Judge for the MUIA upheld appellant's award of unemployment compensation because the Judge found that the Company failed to meet its burden of proving that Grimske was discharged for theft. The Company failed to present a copy of its video into evidence and the Company's witness had no personal knowledge regarding Grimske's previous discipline. The fact that the Company did not present its case properly at the unemployment hearing would not preclude it from presenting this evidence to the arbitrator, however. The decision to withdraw appellant's grievance was entirely reasonable given the facts. The decision was not influenced by fraud, discrimination, or collusion with management. The decision of the IEB should, therefore, be affirmed.

C. Rebuttal by Gregory Grimske:

The International Union claims that I made inconsistent arguments about the tool that I was alleged to have stolen. I do not see any inconsistency. The lathe chuck jaws in question were taken from a scrap pile in 2002. My supervisor at the time, Mickey Pilarski, authorized me to try and customize the jaws to work on another machine, one which I used regularly. The jaws were important to me because I could use them to do two or three jobs in one setup versus doing a whole new setup for each job. I never said that Pilarski gave the tool to me to keep. I did not intend to take the jaws home and I brought them back immediately. Why would I steal a tool that had no other use than to work on a particular machine at Weldaloy?

The jaws were not used on numerous jobs in the plant because they only worked on two machines and I was the only operator in the area where these machines were located until 2006. I trained the dayshift operator in the use of these machines in 2009. I subsequently became aware that the dayshift operator was misusing the jaws and other equipment. After I reworked these jaws to use on my machine, they needed special bolts made specifically for them or they were unsafe. I informed the dayshift operator of the problem he was creating but he continued to use these tools in an unsafe manner. I asked engineer Allen Densmore how I should address this reoccurring safety issue. Densmore suggested that I lock the jaws in my toolbox and get back to him about it. I did not put the jaws in my toolbox to steal them. I put them in my box because the dayshift operator did not install them with the specific bolts I trained him to use.

The reason I asked my supervisor to check my toolbox was because he is supposed to check personal toolboxes that are removed from the premises to make certain there are no Company tools in there. He did not ask to check the box, so I asked him to check it. If this had been done, the jaws would have been seen and taken out. There are three or four other sets of jaws that can be used on those machines as well. I do not know what the source could be for estimating the value of these old beat up jaws at \$3,000.

I do not understand why a different standard of review should be used by the Union than that applied by the State when considering a claim for unemployment insurance. I assume the Company representatives told the Union the same things they told the Administrative Law Judge for the MUIA. The Judge caught the Company's witness changing the facts. I believe an arbitrator would be swayed by the fact that the Company's witness gave false testimony under oath to an Administrative Law Judge.

DISCUSSION

Our jurisdiction to review decisions regarding the handling of grievances is limited to claims that the decision was improperly motivated or lacked a rational basis.²⁸

²⁸ UAW Constitution, Article 33, §4(i).

There has been no allegation of improper motivation on the part of the Union in negotiating the settlement of Grimske's grievance. Grimske argues that the Union's decision to settle his grievance rather than seek his reinstatement through arbitration lacked a rational basis. In making this argument Grimske relies primarily on the finding of the Administrative Law Judge for the MUIA that the Company failed to establish he was guilty of theft within the meaning of Section 29(1)(i) of the MESA.

The Administrative Law Judge determined that Grimske had provided a credible explanation for having the Company's tool in his personal toolbox, so that he should not be disqualified for benefits on the grounds that he had been discharged for theft. The fact remains, however, that Grimske did remove the tools from Company property as charged in his discharge notice. The question presented to the Union representative in this situation is what he can reasonably expect to achieve for the discharged employee through the grievance process. When the Company refused to reinstate Grimske, Vice President Hecker had to decide whether he could compel Grimske's reinstatement through arbitration. Hecker concluded that there was little likelihood that an arbitrator would order the Company to reinstate Grimske. He therefore, negotiated the best settlement for Grimske that he could achieve.

We find that Hecker's handling of Grimske's grievance was rational based on this record. We understand that Grimske never claimed outright ownership of the lathe chuck jaws, but his actions implied a greater claim to possession of them than appears to have been justified. Grimske may not have intended to take the tool home in his toolbox, but he certainly intended to put the tool in his toolbox. His testimony before the Local 155 Joint Council and his arguments to this Board makes that plain. He put the tool in his toolbox in order to prevent other employees from using it. In fact, he may very well have intended to remove the tool from the plant in order to prevent the dayshift operator from using it, although he denies that now. Whether this act would constitute theft of Company property justifying his discharge for a first offense would be a question for the arbitrator to decide. However, as the federal mediator observed, the Union's case on this point was weak because there was no evidence to support Grimske's claim that he had been granted any special right to use the jaws or to prevent others in the plant from using them.

Furthermore, even if the Union convinced an arbitrator that Grimske's actions did not constitute theft because he intended to return the jaws to the plant to use himself, the Union would still have had to overcome the fact that this was Grimske's fifth disciplinary action so that he could be terminated in accordance with the Company's progressive disciplinary policy. Grimske maintains that he should not have received two separate disciplinary notices for the incident on January 5, 2010, but the arbitrator might well have rejected that position. The minutes of the Local 155 Joint Council meeting suggest that Grimske acknowledged he used an alternative machine to run a job against the advice of his co-workers and that he severely damaged the machine in the process. The argument that the Company could not discipline Grimske twice for this same incident is not overly convincing. We find that President Hecker acted reasonably

and in Grimske's best interest when he negotiated a settlement for him instead of submitting his grievance to arbitration with little likelihood of a successful outcome.

The decision of the IEB is affirmed.