

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

APPEAL OF:

REGINA HAYES, member,
LOCAL UNION 7777, UAW
(Detroit, Michigan), REGION 1

Appellant

-vs-

CASE NO. 1691

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

Appellee.

DECISION

(Issued November 25, 2013)

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

We consider whether International Representative Johnnie Dorsey's decision to withdraw Regina Hayes's grievance lacked a rational basis.

FACTS

Regina Hayes worked as a cashier at Greektown Casino in a bargaining unit represented by UAW Local Union 7777. She had a seniority date of October 16, 2000. Her employment was terminated on May 4, 2011, in accordance with the terms of the Casino's Variance Policy for Cage Cashiers.¹

The Variance Policy defines a variance as any overage or shortage in the cashier's cash drawer. Points are assessed for variances based on the amount. The point system is used to apply progressive disciplinary steps as follows:

¹ Record, p. 41.

<u>"Points</u>	<u>Action Taken</u>
1-6	Written Verbal
7-12	Written Warning
13-18	Final Warning with one (1) day suspension
19-20	Suspension Pending Investigation/Termination" ²

Points fall off the employee's record after one year. Points can also be reduced by avoiding significant variances. A cashier who maintains total variances of less than \$25.00 in a calendar month receives a commendation. After three consecutive calendar months of commendations the cashier loses one point from his or her oldest infraction.³

Hayes's variance log shows that she had 14 points at the beginning of 2011. She received additional points on January 19, February 2, February 8, March 4, and April 29, 2011, bringing her total to 20.⁴ On each occasion the Casino issued Hayes an Employee Counseling Report with the following note:

"To the employee: You are given this notice in order that you may have an opportunity to correct any further repetition of the incident noted. If you fail to correct your actions as above described, or engage in any other violation of established house rules and conduct, you will subject yourself to further disciplinary action, including discharge."⁵

There are no employee comments on the Counseling Reports until the final Report that resulted in Hayes's termination. On that form, the following comment is recorded in a box for employee comments:

"Ever since 10th yr anniversary variances pts have been issued. No year to date pts have fallen off. Rec'd 4 pts for a check made payable to Greektown in November. Pts issued December 18th. This issue is not per variance policy. Home telephone # 313-945-1963. Also issue with the check states a number was incorrectly entered. Keyboard numbers are very faint. Could not see numbers clearly."⁶

Local 7777 filed Grievance No. 6TC-1067-11 protesting Hayes's termination on May 6, 2011. Management denied the grievance at step 2 of the grievance procedure.⁷ On May 24, 2011, Greektown Casino Chair Thomas Estapa notified Hayes of

² Record, p. 3.

³ Record, pp. 1-2.

⁴ Record, p. 8.

⁵ Record, pp. 36-40.

⁶ Record, p. 40.

⁷ Record, pp. 42-43.

management's action and advised her that her grievance had been referred to step 3 for further consideration.⁸ On June 24, 2011, Chairperson Estapa informed Hayes that her grievance had been referred to Step 3.5 for review.⁹

The parties met on Hayes's grievance on August 26, 2011. On September 26, 2011, the company stated its position on the grievance in a letter addressed to Region 1 Representative Larry as follows:

"Ms. Hayes was terminated on 05/04/11 through the progressive discipline system for a violation of the Cage Operations Variance Policy. In the twelve months prior to this termination Ms. Hayes was disciplined fourteen times for similar infractions of the Variance Policy, including three disciplinary suspensions. The Variance Policy is well established and clearly known and understood by the Cage Operations personnel. Given the repeated violations and the more than fair application of progressive discipline with respect to the grievant, the company is unwilling to modify the termination decision. The grievance and the union's demands are denied."¹⁰

On October 24, 2011, International Representative Williams referred Hayes's grievance to Representative Johnnie Dorsey at the UAW Gaming Department for mediation and possible arbitration.¹¹ On August 23, 2012, Representative Dorsey advised Hayes that her grievance had been withdrawn.¹²

Hayes appealed the withdrawal of her grievance to the International Executive Board (IEB) on August 28, 2012. Hayes noted that 14 points were scheduled to drop off in 2011. She asked the union to re-evaluate its decision.¹³

On December 14, 2012, Representative Dorsey responded to an inquiry from President Bob King regarding his decision to withdraw Hayes's grievance. Dorsey explained that the union had carefully reviewed Hayes's variance log with management, but that the points assessed were correct. He reported that the mediators who reviewed the grievance on November 22, 2011 did not believe that the union would prevail if the grievance was submitted to arbitration. Nevertheless, he stated that the union referred the case to arbitration in the hopes that the company would be willing to return Hayes to work in lieu of arbitration. Dorsey reported that he had explained to Hayes that the referral was only a tactic. If it did not work, he would have no choice but

⁸ Record, p. 45.

⁹ Record, p. 46.

¹⁰ Record, pp. 50-51.

¹¹ Record, p. 52.

¹² Record, p. 56.

¹³ Record, p. 57.

to withdraw the grievance. Dorsey provided the following summary of the facts that led to his decision to withdraw Hayes's grievance:

"Mrs. Hayes was terminated for violation of the company's variance policy. During my discussions with her, she did not dispute her variance points. She was disappointed that the company would not consider her for a last chance agreement, as they have for other cashiers in the past. Mrs. Hayes was terminated on May 4, 2011 for a variance that occurred on April 29, 2011. In the grievant's appeal letter, the 'year-to date point fall-off' chart shows points that would have fallen off her record, preventing termination. Unfortunately, the variance point fall-off dates all occurred after her termination."¹⁴

Dorsey stated that there is an unpublished reinstatement agreement between the parties.

Acting on behalf of President King, Toffie Abbasse and Bob Kinkade conducted a hearing on Hayes's appeal on May 9, 2013. Hearing officers Abbasse and Kinkade prepared a report to the IEB on the appeal based on documents provided by the Region and testimony given at the hearing.

The hearing officers reported that Hayes argued she should not have been charged with the four points she received on November 10, 2010, which brought her total points to 19. The report states:

"On November 10, 2011, the appellant received four (4) points for cashing a check for a guest in the amount of \$250.00. She ran the account information through the system and the system approved the check and she gave the guest the \$250.00

On December 18, 2011, she was told that the check was not honored and the company claimed appellant had punched in the wrong account number. The wrong person was charged on their account and the company stopped payment.

The appellant stated that she doesn't see how she could have transposed the number incorrectly."¹⁵

Hayes further stated that she should not have been assessed a point for the \$49.99 overage on July 7, 2010, because another cashier reported a shortage in the exact same amount. In addition, Hayes testified that the cashier's cage where she worked

¹⁴ Record, p. 64.

¹⁵ Record, pp. 66-67.

was one of the busiest in the casino. She said the company refused her request to go to a less busy area because she had too many points.¹⁶

The hearing officers reported that they asked Hayes why she did not call a union representative about these complaints when they occurred and she replied that she did not believe anything would happen if she asked for union representation. The hearing officers noted that not one grievance had been filed protesting any of the points assessed against Hayes prior to her termination.¹⁷

The hearing officers reported that Representative Dorsey testified that he was also disappointed that the company would not agree to reinstate Hayes on a last chance basis as they have done for other employees. International Representative Lynda Taylor-Lewis testified that the union consistently loses cases on the variance policy. She pointed out that disparate treatment or discrimination cannot be established when no grievances are filed and the claims are not raised until the time of discharge.¹⁸

The hearing officers determined that the handling of Hayes's grievance by the UAW National Gaming Department was reasonable and not devoid of a rational basis. They found no evidence that discrimination, fraud, or collusion with management influenced the decision not to arbitrate the grievance.¹⁹ The IEB adopted the hearing officers' report as its decision. The decision was mailed to Hayes on July 17, 2013. Hayes has now appealed the IEB's decision to the Public Review Board (PRB).

ARGUMENT

A. Regina Hayes:

During the processing of my appeal, there was an offer to reinstate me. The offer was not made public and I was not informed of it. A person at the Greentown Casino told me that he would be retiring in two weeks so that some information might be missing from my file. Perhaps this reinstatement offer is what is missing.

When I attended a meeting on my grievance, my steward told me only to answer direct questions and not to mention names or blame anyone. Two other discharged employees, Loretta Henry and Janine Carter, also attended this meeting. They were both reinstated. Similarly, at the appeal hearing, I was told to be quiet and listen. But the hearing officers never asked me to provide the names of any employees whose variances were handled differently than mine. The two employees involved were Peggy Wilkins and Valerie Johnson.

¹⁶ Record, p. 67.

¹⁷ Record, p. 67.

¹⁸ Record, pp. 68-69.

¹⁹ Record, p. 69.

I feel the decision made by the UAW National Gaming Department was not reasonable or fair. I have been a faithful employee of the Greektown Casino for ten years. I ask for your consideration and attention because the effect of this on me has been devastating.

B. International Union, UAW:

The record does not support Hayes's arguments. Her variance log demonstrates that she exceeded the allowed number of variance points. She had at least four conversations with Representative Dorsey about her grievance. She reports that she was asked to be quiet and listen during grievance meetings and during the hearing conducted on behalf of the IEB, but the hearing officers' report indicates that she testified. Hayes had ample opportunity to raise the issue of discriminatory treatment during the processing of her grievance. There is no evidence that Representative Dorsey or any other UAW representative would have refused to consider such information.

In her appeal to this Board, appellant states for the first time that there was an offer to reinstate her. There is no evidence that such an offer was made by the company. On the contrary, the record shows that Representative Dorsey attempted to negotiate a last chance agreement for Hayes, but that he was unsuccessful.

This record supports a conclusion that the union conducted a thorough investigation of Hayes's grievance. There is no evidence of discrimination, fraud, or collusion with management, and the decision to withdraw the grievance was not devoid of a rational basis.

DISCUSSION

It appears that Hayes misunderstood Representative Dorsey's reference to the unpublished reinstatement of grievance agreement between the parties. She apparently believed that there was an unpublished offer to reinstate her. Representative Dorsey was referring to an understanding between the UAW and the casinos that a grievance may be reinstated into the grievance procedure where an appellate body has determined that its withdrawal was improper. There was clearly no offer to reinstate Hayes.

We previously considered the Detroit casinos' strict application of the variance policy which resulted in Hayes's discharge in *Quinnetta Lacey v. Region 1, UAW*, PRB Case No. 1577, 13 PRB 643 (2008). In the *Lacey* appeal, the hearing officers who investigated the appeal referred to a decision issued by Arbitrator John A. Lyons upholding the discharge of a high seniority employee with a clean work record based on the variance policy. In his decision, Lyons explained that the work rule and the penalties imposed for violations are clearly established at the casinos. He declined to disturb the employer's application of the policy in the absence of any evidence of bad faith. Although the hearing officers' report does not refer to Lyons's decision specifically,

it was apparently mentioned during the hearing as the basis for the union's conclusion that it could not successfully arbitrate Hayes's grievance. On June 3, 2013, Administrative Assistant Greg Drudi forwarded Lyons's decision to Hayes and identified it as the arbitration decision referred to during the appeal hearing. In *Lacey*, we noted that the union had challenged the casinos' application of the policy on two prior occasions without success. We ruled that the union's decision not to take a third grievance to arbitration over the application of this policy did not lack a rational basis.²⁰

Greektown Casino Chairperson Thomas Estapa recognized that the union could not successfully arbitrate Hayes's grievance in light of this history. He addressed a memorandum to the Region asking how he should proceed given these circumstances. The memorandum states:

"All the paperwork that I have on Regina is in order. Progressive discipline was followed. I'm not sure on a case like this if I should just wwp this case, or let you see it before I do that."²¹

In respect for appellant's high seniority, Chairperson Estapa referred Hayes's grievance to the third step for further consideration. The record demonstrates that the Regional representatives took every measure short of arbitration to try to secure Hayes's reinstatement. Representative Dorsey reviewed Hayes's variance record with management and argued for her reinstatement. When those efforts were unsuccessful, he referred Hayes's grievance to mediation. Dorsey kept Hayes advised of the union's strategy throughout this process, but he also let her know that arbitration was not a realistic option. This record provides a good example of how termination grievances of long-term employees should be handled. When management refused to reinstate Hayes, however, Dorsey had no reasonable alternative but to withdraw her grievance, because there had been no violation of the collective bargaining agreement. The Company had just cause to discharge Hayes, and the union rationally concluded that there was no contractual basis on which an arbitrator would order her reinstatement.

The decision of the IEB is affirmed.

²⁰ 13 PRB 643, at 646.

²¹ Record, p. 44.