

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

APPEAL OF:

KARY CORBAT, Member
LOCAL UNION 212, UAW
(Sterling Heights, Michigan),

Appellant

-vs-

CASE NO. 1695

REGION 1, UAW
(THE UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA),

Appellee.

DECISION

(Issued March 26, 2014)

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

Kary Corbat argues that International Representative Kenny Kapa's decision to withdraw a grievance protesting the company's method of calculating his compensation was motivated by collusion and lacked a rational basis.

FACTS

Kary Corbat is a truck and tractor-trailer driver for Chrysler Group Transport LLC ("Chrysler Transport") in a bargaining unit represented by UAW Local 212. On April 25, 2012, Local Union 212 submitted Grievance 2012-04-05 asking management to review Corbat's claim that his pay was short \$74.10 for the week of April 9, 2012.¹ The grievance indicates that it was referred to payroll for review. On June 28, 2012, management responded to the grievance that Corbat had been paid correctly. Local Union 212 forwarded Corbat's grievance to Region 1 on October 12, 2012. International Representative Kenny Kapa met with representatives of management regarding the grievance on November 17, 2012. Following that meeting,

¹ Record, p. 12.

Representative Kapa withdrew Corbat's grievance.² Representative Kapa advised Corbat of the withdrawal of Grievance 2012-04-25 on November 27, 2012.³

Corbat appealed the decision to withdraw his grievance to the International Executive Board (IEB) on December 4, 2012. In support of his appeal, Corbat explained that drivers are compensated based on either hours or mileage. He reported that he works as a daily absentee replacement (AR) driver and that his compensation has always been based on the hours he worked rather than mileage. He stated that the company and the union recently began requiring replacement drivers to accept compensation based on mileage. He wrote:

"I had been a daily AR driver almost since its inception 10 years ago. I did a different job daily and I was on the city hours board, so Saturday I was never asked to run mileage runs and forfeit overtime pay. Until the week of April 8th when the Union-Company decided that even someone who worked hourly all week could be forced to work on Saturday for straight mileage pay. Therefore, a driver could work in excess of 60 hours without receiving overtime compensation. The next week is when my grievance occurred. It involved working mileage pay on a Friday then the company not paying all hours over 40 worked."⁴

Corbat's base hourly rate is \$29.67. During the week ending April 16, 2012, Corbat was paid gross wages of \$1,976.52.⁵ With his appeal to the IEB, Corbat submitted the following explanation of Chrysler's calculation of this amount based on his hours worked:

Monday	4/9	12 hours hourly x \$29.67	\$356.04
Tuesday	4/10	8 hours hourly x \$29.67	237.36
Wednesday	4/11	9.5 hours mileage	380.02
Thursday	4/12	9.0 hours hourly x \$29.67	267.04
Friday	4/13	9.7 hours mileage	380.02
Saturday	4/14	8.0 hours hourly x \$44.505	<u>356.04</u>
Gross wage			<u>\$1,976.52</u> ⁶

Corbat commented:

² Record, p. 19

³ Record, p. 52.

⁴ Record, p. 21.

⁵ Record, p. 25.

⁶ Record, p. 26.

“The question is simple, if you work 56.2 hours in a week, will the 12 hours worked on Monday and the 9 hours worked on Thursday on the hourly rate be used to compute toward the overtime to be paid. I think it should; the company doesn’t. I worked 56.2 hours and minus 40 hours equals 16.2 of overtime, yet I was only compensated for the 8 hours worked on Saturday.”⁷

Corbat argued that he should have been compensated at the overtime hourly rate of \$44.505 whenever he worked in excess of eight hours on a day when he was being compensated on an hourly basis. He provided the following calculations showing how he determined that his pay was short \$74.10 for the week ending April 15, 2012:

Monday	8 x \$29.67	\$237.36
	4 x \$44.505	<u>178.00</u>
		\$415.36
Tuesday	8 x \$29.67	\$237.36
Wednesday mileage		\$380.02
Thursday	8 x \$29.67	\$237.36
	1 x \$44.50	<u>44.50</u>
		\$281.86
Friday mileage		\$380.02
Saturday	8 x \$44.50	<u>\$356.00</u>
Gross wage	\$2,050.62	
Paid		<u>\$1,976.52</u>
Amount due	<u>\$74.10</u> ⁸	

Representative Kapa responded to an inquiry regarding Corbat’s appeal in a memorandum addressed to International President Bob King on January 2, 2013. He reported that he met with Chrysler Transport’s plant manager regarding the alleged pay discrepancy and reviewed the company’s payroll records. Kapa stated that the payroll records demonstrated that Corbat’s pay was calculated correctly in accordance with the terms of the local agreement governing compensation for road runs and hourly jobs. Kapa pointed out that the grievance procedure is designed to address violations of the

⁷ Record, p. 21.

⁸ Record, p. 28.

applicable contract provisions rather than an employee's dissatisfaction with those provisions.⁹

Acting on behalf of President King, Bob Kinkade and John Rucker conducted a hearing on Corbat's appeal on April 2, 2013. The hearing officers prepared a report to the IEB on the appeal based on documents provided by the local union and testimony given at the hearing.

According to the hearing officers' report, Local 212 President Jeff Jarema testified that absentee replacement drivers do not have the option to be compensated based on hours or mileage; the calculation of the driver's compensation depends on who the driver is replacing. Jarema added that an absentee replacement driver who worked all week at the hourly rate would not be paid overtime for replacing a mileage driver on Saturday; he would get the established mileage amount.¹⁰ The hearing officers reported that the committeeperson for the salaried bargaining unit, Michelle Derocco, testified that she worked closely with management on payroll issues and that Corbat was compensated in accordance with Chrysler's usual practices.¹¹ Representative Kapa reported that the company's human resources department reviewed Corbat's schedule for the week in question and determined that he had been correctly paid. Kapa also stated that he was familiar with the pay practices at this location because he had worked for Chrysler Transport as a truck driver and a dispatcher. He also served as a committeeperson and steward for UAW Local 212. Kapa testified that there was no contractual basis for challenging the company's calculation of Corbat's compensation and so nothing further could be accomplished by pursuing his grievance.¹²

The hearing officers concluded that Corbat had not established that there had been any violation of the National or local agreements. They noted his claim that the calculation of overtime violated Michigan law, but they concluded that issue was not before the IEB. They found that International Representative Kapa's decision to withdraw the grievance was not devoid of a rational basis or improperly motivated.¹³

The IEB adopted the hearing officers' report as its decision and notified Corbat on August 14, 2013. Corbat has now appealed the IEB's decision to the Public Review Board (PRB).

⁹ Record, p. 33.

¹⁰ Record, p. 47.

¹¹ Record, p. 47.

¹² Record, p. 49.

¹³ Record, p. 52.

ARGUMENT**A. Kary Corbat:**

Shortly after Representative Kapa withdrew my grievance, Chrysler Transport hired his son as a supervisor. This has the appearance of a conflict of interest. I tried to bring this up at the hearing on my appeal, but the hearing officers stated that I had to prove that my rights were violated.

The hearing officers allowed testimony of a witness while she was being paid by the company. I feel this also gives an appearance of bias. I was required to take a day off work to attend the appeals hearing. Committeeperson Michelle Derocco was allowed to leave her job as tool store manager and testify for Kenny Kapa's side of the pay discrepancy argument, all while remaining on the clock. I know she was getting paid for this time because I asked her.

The report of the hearing officers states Committeeperson Mark Hook testified that my gross pay for the week of April 9, 2012 through April 15, 2012, was correct. Committeeperson Hook did not say that I was paid correctly; he only reported that the company said I was paid correctly. The hearing officers' report states that President Jarema testified that a driver would not be paid overtime on Saturday when he replaces a mileage driver. He did not say that. In fact, the letter of understanding produced by the hearing officers confirms that this is not the rule. It states:

“(e) When a city driver is forced to an OTR job on a premium day, they will be paid the highest of the rates (mileage or overtime rate) based on Standard Running Times only.”¹⁴

The company is not giving the highest rate to the absentee replacement drivers. They are only receiving mileage pay.

The hearing officers did not report the testimony given at the hearing in an unbiased way. I spoke for at least an hour going over everything that I had submitted. Kenny Kapa spoke for five minutes. Yet he has twice as much testimony attributed to him. The hearing officers never addressed my calculations. I feel that if my appeal was going to be denied, they should have demonstrated why my calculations were wrong.

The reason the company is fighting the grievance over \$74.10 is that they have not been following the contract. We are talking about years of drivers being shorted overtime pay. I was shorted every week. I only filed a grievance when it got to be five hours of overtime in one week. I would like to see in writing where Chrysler Transport is exempt from paying overtime to AR or OTR [over-the-road mileage] drivers. The fact

¹⁴ Record, p. 2.

that the company has gotten away with this for years does not create a past practice. It just makes the union's involvement in this look worse.

B. International Union, UAW:

Under the established pay system at Chrysler Transport, if absentee drivers do a city route, they are paid an hourly rate, including overtime. If they drive a highway route, they are paid a set amount based on mileage. The mileage payment is the same regardless of the hours involved. Once a driver's hours exceed 40 for the week, the driver receives overtime pay for each additional hour driven on a city route.

This is how Corbat's pay for the week of April 9, 2012 was calculated. He received his base rate for the hours he drove a city route on Monday, Tuesday, and Thursday. He drove a highway route on Wednesday and Friday. If he had been driving a city route on Friday, he would have received 1.5 hours overtime pay for that day, because his total hours for the week exceeded 40 hours by 1.5. He was not driving a city route on Friday, however, so he just received the mileage amount. Corbat drove a city route on Saturday and received eight hours overtime pay.

Corbat argues that he was entitled to an additional \$74.10 based on his own calculations. The company rejected this argument because the payment system at this location has been well established. Corbat has not cited any contractual provisions to support his calculations. It is worth noting that his pay under the hourly/set mileage pay system in place at Chrysler Transport was greater than it would have been based on his base rate for forty hours plus the overtime rate for the 16.2 hours in excess of forty. Corbat was paid \$1,976.52 for the week. Forty hours at his base rate plus 16.2 hours overtime would have yielded \$1,907.78.

Corbat has not identified any violation of the collective bargaining agreement. The union was entirely within the range of its reasonable discretion when it concluded that the company had not violated the established method for compensating its drivers. Under the circumstances the decision to withdraw Corbat's grievance did not lack a rational basis.

C. Rebuttal by Kary Corbat:

The International Union argues that I was paid in accordance with an established pay system for AR drivers at Chrysler Transport. That is not true. Until the week of April 8, 2012, AR drivers were paid an hourly rate on Saturdays. After I agreed to work the Saturday that week, I heard rumors that AR drivers were going to be paid the flat mileage rate for Saturday, so I asked my supervisor what method would be used to calculate pay for the Saturday. He said pay would be based on mileage and that the union had agreed to it. I told my supervisor that I was not willing to work Saturday for mileage, but he advised me that I should talk to my union representative before refusing to work. I contacted Committeeperson Mark Hook and he confirmed that compensation would be based on mileage. He tried to tell me that it had always been done this way. I

told him that you can lie to the new drivers if you want, but I have been an AR driver for longer than you have been a committeeperson, and I have never been paid this way on a Saturday. I chose to work that Saturday for the flat rate rather than incur my first disciplinary action after working at Chrysler Transport for 13 years with a perfect attendance and disciplinary record.

The report of the IEB states that Local 212 President Jeff Jarema testified that AR drivers do not have an option whether to be compensated at the hourly rate or based on miles because it depends on who the driver is replacing. An AR replacement driver can refuse Saturday overtime if it is a mileage job. To call a driver and say they will be working hourly and then change the method of compensation after the driver commits to working Saturday is just wrong. I asked for a grievance the following week after I determined that I had been shorted \$74.10 because of working mileage on a Friday.

In his response to my appeal to the IEB, Representative Kenny Kappa stated that the local agreement describes the pay system for hourly and mileage jobs. He argued that my dissatisfaction with the terms of the National and local agreement could not be addressed by means of a grievance. I agree the National and local agreements govern how drivers should be compensated, but those agreements do not state what Representative Kappa has described. AR drivers are on the city hours board and they have always been treated as city drivers. In accordance with the letter of understanding found on page 2 of the record, when a city driver is forced to an OTR on a premium day, the driver is paid the highest of the mileage or overtime rate.

There is no language in the local agreement that supports the method used to calculate my compensation for the week ending April 15, 2012. We have always been told that the OTR drivers were exempt from the overtime provisions of the National Agreement. I now find that there is nothing in the National Agreement exempting OTR drivers from receiving overtime. The Production, Maintenance and Parts Agreement between Chrysler Group LLC and the UAW dated October 12, 2011, page 82, provides as follows:

“(86) Time and One-Half

Time and one-half will be paid as follows, except as provided in Section (88):

Time and one-half will be paid after forty (40) compensated hours in the work week. Credit towards the forty (40) compensated hours will be provided for verified hours on an approved Union Leave of Absence. Premium payments in accordance with Sections (86) and (87) will be paid for time worked on Saturday or Sunday provided the employee has otherwise worked at least forty (40) compensated hours during the work week in which the Saturday or Sunday occurs.”

The union and the company are trying to justify ignoring the language of the National Agreement by creating the idea of an accepted pay practice. In fact, the way OTR drivers are compensated violates their right to overtime pay, shift premium, holiday pay, and the right to refuse overtime in excess of nine hours. Just recently, the company added seniority rights to the list of exemptions applicable to OTR drivers. Matt Nanys who is an AR driver was told to work Friday OTR. He pointed out that there were two lower seniority AR drivers available. He was told that the seniority is not used to fill AR jobs.

The company now wants to extend the exemptions it has claimed for OTR drivers to AR and low seniority drivers. I can understand the company wanting to invent exemptions from the overtime and premium pay provisions of the National Agreement, but why would the International Union want to do this? There is no established practice exempting AR drivers from the overtime and premium pay provisions of the National Agreement. Other drivers filed grievances as soon as the change in compensation was implemented. Art Lydick, seniority date August 17, 1998, and Gerald Sullivan, seniority date August 24, 1998, filed grievances protesting the new pay system. They contacted me when they heard that I was trying to get this fixed. We do not know what happened to their grievances and I am requesting the PRB to investigate what happened to them. How long does it take for rules to be ignored and grievances to be dismissed before the violation of the rule becomes an established pay system?

The hearing officers' report to the IEB indicates that all of the local representatives testified that I was paid correctly. That is not accurate. Committeeperson Mark Hook may have said this, but he resigned soon after. President Jarema never said this. Michelle Derocco stated that I was "paid correctly in accordance with how Chrysler pays," which is not the same as saying I was paid correctly. There has been no change to the negotiated language in the National Agreement. Is the IEB saying that an established pay system can override the National Agreement?

No elected official would get re-elected if he or she endorsed ignoring our National Agreement. My grievance went through every elected official until it got to an appointed one. Representative Kenny Kappa said I was paid correctly. Immediately after he made this decision, his son was hired as my supervisor. The decision of the IEB does not address this apparent conflict of interest.

DISCUSSION

Corbat's theory of compensation is at odds with the agreements between the local parties at Chrysler Transport regarding how absentee replacement drivers will be paid. Testimony given at the hearing conducted by the president's staff confirmed that Corbat was compensated in accordance with Chrysler's customary practices. Corbat essentially conceded this point when he argued that Chrysler has been violating the National Agreement for years by its method of calculating overtime pay for absentee replacement and over-the-road mileage drivers. In addition, Corbat argued that

Chrysler has recently extended its violation of absentee replacement drivers' right to overtime pay by requiring them to drive flat mileage routes on a Saturday. He acknowledged, however, that the local union had agreed to this method of determining the compensation due to absentee replacement drivers. We have frequently observed that local union representatives have the authority to apply applicable collective bargaining agreements and to determine how conflicts should be resolved in order to achieve the desired objectives of their constituents.¹⁵ We are not authorized to interfere with a local union's judgment on a matter of contract interpretation unless the decision was improperly motivated or devoid of a rational basis.¹⁶

Corbat has made no credible claim of improper motivation on the part of Representative Kapa. Kapa withdrew Corbat's grievance because local agreements were being applied in accordance with the local parties' longstanding practice regarding the compensation of drivers. There is nothing in the record to suggest that Chrysler Transport's employment of Kapa's son had any connection to Corbat's dispute about the compensation he received for the week of April 9, 2012. In fact, Corbat has not identified any deficiency in the handling of his grievance. The grievance was promptly presented and resolved. It was withdrawn because it had no merit.

Upon receipt of Corbat's appeal from the withdrawal of his grievance, we issued our customary Notification of Pending Appeal advising the parties as to their rights and responsibilities with respect to appeals before the PRB. Corbat responded to our notice by requesting notification to all drivers of the pendency of his appeal. He wanted all drivers affected by the company's method of calculating pay to be invited to participate in this appeal. We decline to do so. Corbat's attempt to include all of the company's drivers in his appeal suggests that he wants the membership to take up this compensation issue with the local union leadership and change the local union's policy at the bargaining table. While it is appropriate for any local union member to pursue issues of collective bargaining policy with the local union leaders, it is outside of our jurisdiction.¹⁷ Questions of local union policy should be addressed to the membership in the form of a motion at a membership meeting.

¹⁵ *Patterson v. UAW Local Union 848*, PRB Case No. 1509, 13 PRB 74 (2005); *Breckenridge v. Region 1A, UAW*, PRB Case No. 1596, 13 PRB 842 (2008); and *Beddoes v. UAW Local Union 1219*, PRB Case No. 1680 (2012).

¹⁶ Article 33, §4(i) of the International Constitution states as follows:

"GRIEVANCE AND RELATED APPEALS

In any appeal to the Public Review Board, under Section 3(f) of this Article, concerning the handling of a grievance or other issue involving a collective bargaining agreement, the Public Review Board shall not have jurisdiction unless the appellant has alleged before the International Executive Board that the matter was improperly handled because of fraud, discrimination, or collusion with management, or that the disposition or handling of the matter was devoid of a rational basis."

¹⁷ Article 33, §4(f) states, in pertinent part, as follows:

The decision of the IEB is affirmed.

“Limitation. In no event shall the Public Review Board, under this or any other article, have jurisdiction to review in any way an official collective bargaining policy of the International Union.