

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

APPEAL OF:

VAUGHN MOORADIAN,

Appellant

-vs-

CASE NO. 1702

LOCAL UNION 600, UAW
(Dearborn, Michigan)
REGION 1A
(THE UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA),

Appellee.

DECISION

(Issued August 12, 2014)

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

Vaughn Mooradian argues that Regional Representative Mike Thornton's decision to settle his grievances lacked a rational basis.

FACTS

Vaughn Mooradian worked at Ford Motor Company's Dearborn Engine and Fuel Tank Plant ("DEFTP") in a bargaining unit represented by the Maintenance, Construction, and Transportation Unit of UAW Local Union 600. He had a seniority date of August 27, 1969.¹ Mooradian had been classified as a plumber-pipefitter prior to the effective date of the 2007 UAW-Ford National Agreement.² In 2007, the parties agreed

* Professor Feinstein was a member of the panel that reviewed this appeal in April, and he joined in supporting the outcome. He was no longer a Board member by the time the decision was issued.

¹ Record, p. 13.

² Record, p. 53.

to consolidate skilled trades classifications.³ As a result of this consolidation, Mooradian's classification was merged with that of hydraulic repair.⁴

On June 24, 2010, Ford issued Mooradian a three-day disciplinary suspension for refusing his job assignment.⁵ The Local 600 M & C Unit filed Grievance MC 32225 protesting the discipline on June 24, 2010. The grievance states:

"The agg'd was charged with refusal of job assignment for failing to go to training. The agg'd informed Mike Kennedy both verbally and in writing that he was not interested in receiving the training. On neither occasion was the agg'd told that the training was mandatory. The agg'd reported to work on 6/21 and was assigned work. No mention was made at that time that agg'd was expected to be at training that day. He was also given jobs on 6/22 & 6/23. On 6/24, he was notified of pending discipline and the union was contacted. Due to the stated facts, the discipline is unjust."⁶

On December 14, 2010, Ford issued Mooradian a two-week disciplinary layoff for failing to do his job assignment. The disciplinary action report states:

"Employee failed to report to training during the week of 12/13/10.

Training was an intro course to Hydraulic Instrument Repair.

Any future similar charges will result in progressive discipline.

Starting date for penalty will be 12/14/10 through 12/23/10. Return to work on Monday, January 3rd 2011.

At the request of the union, additional details will be provided to the UAW, as it relates to this employee."⁷

The Local 600 M & C Unit filed Grievance MC 32311 protesting the discipline on December 14, 2010. The grievance states:

"Vaughn Mooradian has asked repeatedly not to be assigned to this training. Mr. Mooradian has over 41 years of seniority and has expressed his concerns verbally and through written correspondence. No response from the company has been received other than being told that training is

³ Record, pp. 2-4

⁴ Record, p. 9.

⁵ Record, p. 13.

⁶ Record, p. 14.

⁷ Record, p. 15.

a job assignment and he must attend. Mr. Mooradian feels harassed while being disciplined repeatedly without due process on the first discipline regarding this issue.”⁸

Grievance MC 32311 requests that Mooradian be paid all lost time and that the company cease assigning hydraulic training to him until the matter is resolved.

On June 7, 2011, Mooradian filed a complaint with the Michigan Occupational Safety and Health Administration (MIOSHA) describing an alleged safety hazard at the DEFTP. Mooradian stated that he was concerned about the company’s use of a product called Purifiber, which employees used to clean coolant systems. He reported that bags of the substance are ripped open and dumped into bins. As a result, the talc-like powder settles on everything around. Mooradian reported that Purifiber burns the eyes and coats the inside of employees’ nasal passages even when a mask is worn. In addition, Mooradian reported that the area around the bins is always oily and slick.⁹ MIOSHA conducted two inspections in response to Mooradian’s complaint. With respect to Mooradian’s complaint about Purifiber, the inspector reported as follows:

“During inspection employee interviews revealed that Purifiber did not burn the eyes or coat the insides of noses, mouths, and throats. Employees voluntarily wore 3MN95 dust masks when adding Purifiber to Systems F10 and 12.

No citation was issued in regard to this complaint item.”¹⁰

In response to Mooradian’s complaint about the area around the bins, the MIOSHA report states:

“During initial walkthrough activities, it was observed that the floor around System F10 had visible oil, absorption pads and mats. Employee interviews revealed that the system had leaked oil the previous night.

During a second visit to the establishment, it was noted that the floor around the System F10 had been cleaned up and showed no visible signs of oil.

During inspection activities, oil was not observed on the floor around System 12.

⁸ Record, p. 18.

⁹ Record, p. 20.

¹⁰ Record, p. 26.

A review of injury and illness logs from 2007 to 2011 and information obtained through employee interviews did not reveal any recordable injuries related to slippery floor conditions around System F10 or 12.

No citation was issued in regards to this complaint item.”¹¹

MIOSHA advised Ford Motor Company of its findings on August 31, 2011, and stated that the inspection was closed.¹²

On February 24, 2012, Ford issued Mooradian a 30-day disciplinary layoff for refusing a job assignment and failure to follow instructions. The disciplinary action report gives the following description of the incident:

“Employee was requested to visit the DEP/Gate 4 medical office by his supervisor on Thursday, February 23, 2012. In response to the request, the employee proclaimed that he would not go, stating (No, they had their chance.) Employee will serve 30 days off without pay. Penalty will begin on Friday, February 24, 2012, ending on Sunday, March 25, with an eligible return to work date on Monday, March 26th, 2012.”¹³

The Unit filed Grievance MC 04109 protesting the discipline on February 24, 2012. In support of the grievance the union explained that Mooradian had been to the company medical department numerous times for treatment of a rash. The company’s doctor told him he should consult his own doctor about the rash. Mooradian believed that the chemicals he worked with caused the rash and he asked for samples of the product to take to his doctor. Then on February 23, Mooradian received a text directing him to report to medical. The unit’s grievance states:

“When he was asked AGAIN, after already being told that an appointment was being set up to see a dermatologist at the last medical visit, to report to medical, Mr. Mooradian was frustrated and upset. He is currently in contact with MIOSHA who has a case pending because of the very chemicals he works with that allegedly caused the rash he is dealing with. He asked Mr. McGruther to have L/R issue a pass so he would have proof that this was something they were serious about.”¹⁴

The Unit argued that if Mooradian’s supervisor wanted him to report to medical he should have followed Ford protocol and issued him a pass to report to medical, rather than sending a text.

¹¹ Record, p. 26.

¹² Record, p. 29.

¹³ Record, p. 32.

¹⁴ Record, p. 34.

Mooradian also submitted a statement in support of his grievance. He pointed out that he had no job assignment in the company's medical department. He reported that he agreed to his supervisor's request to report to medical and asked for a pass explaining what the referral was for, which is the customary Ford procedure. He wrote:

"Aggrieved agreed to supervisor's request to report to medical and indeed requested a medical pass be issued to him with explanation on said pass as to what reason was aggrieved being sent to medical for. It is further claimed by aggrieved that a medical pass issuance is the usual procedure for all employees and is required for all who report to medical as indicated by the postings of that necessity on the window and wall of the Ford medical departments. The aggrieved did nothing more than to follow the rules required by the Ford medical department."¹⁵

Mooradian charged that the current discipline was just another effort on the part of his supervisor Scott McGruther and DEFTP Labor Relations Representatives Steve Clark and Anna Gedman to prevent him from evaluating his health concerns. He stated:

"...The aggrieved claims that the aforementioned people used their positions to assess this punishment against the aggrieved in order to have him removed from the plant in order to avoid providing all requests aggrieved had requested both in medical terms and informational requests. The aggrieved claims that since November of 2011 until the present that the aforementioned people have attempted to deny him his medical rights and have attempted to make difficult as an employee to obtain information that would enable the aggrieved to evaluate his job safety. Aggrieved claims that the aforementioned people hurriedly scheduled an appointment with medical for aggrieved in order to cover up their mishandling of the issues and have themselves put the aggrieved into the position he was forced to take."¹⁶

In accordance with the discipline assessed on February 24, 2012, Mooradian was suspended from February 24 until March 26, 2012.¹⁷ He was scheduled to retire on April 1, 2012. Nevertheless, Mooradian reported that he was informed by management that he would be assigned hydraulic training upon his return to work and that he would receive discipline if he failed to attend. Mooradian therefore took his accrued five vacation days prior to his retirement on April 1, 2012. He did not return to work.¹⁸

¹⁵ Record, p. 35.

¹⁶ Record, p. 35.

¹⁷ Record, p. 32.

¹⁸ Record, p. 115.

UAW Region 1A Representative Mike Thornton settled Mooradian's grievances at the third step based on the company's agreement to pay Mooradian forty hours pay in settlement of Grievance MC 04109. Grievances MC 32225 and MC 32311 were withdrawn. Thornton advised Mooradian of the settlement of his grievances on April 22, 2013.¹⁹ On April 28, 2013, Mooradian wrote to Region 1A Director Rory Gamble that he wanted to appeal the settlement of his grievances and have the matter referred to arbitration. Mooradian filed an appeal to the International Executive Board (IEB) regarding the settlement of his grievances on May 11, 2013.²⁰ In support of his appeal to the IEB, Mooradian argued that he repeatedly tried to resolve the issues that gave rise to his grievances. He reported that he requested to be sent back to his old job rather than being forced to work with the chemicals in hydraulics.

Representative Thornton responded to an inquiry regarding Mooradian's appeal in a memorandum addressed to Director Rory Gamble. Thornton reported that he met with Mooradian and Unit Chairperson Tom Schultz regarding Mooradian's grievances on December 10, 2012. Thornton described Mooradian's position at this meeting as follows:

"During our meeting, he stated he did not dispute that he refused to attend the hydraulic instrument repair training, but he believed he should not have been disciplined for it. His rationale was that there were safety concerns with the materials which he would have to come into contact with. He stated that he had developed a rash which he believed might have either been caused by some material at work or could possibly have been made worse by taking the training."²¹

With respect to Grievances MC 32225 and MC 32311, Thornton reported that he found no merit in Mooradian's argument that he should be excused from the mandatory training that all of the other employees attended. Thornton wrote:

"...Brother Mooradian did not have the right, barring a proven medical restriction, to refuse the mandatory training agreed to by the company and the union in the 2007 collective bargaining agreement. Although he had a rash, the company did not see fit to excuse him from his training obligations and he did not provide the union with any documentation from a personal doctor who would have restricted him from the training and none of his safety complaints were upheld by the MIOHSA inspector."²²

Thornton stated that he found no merit in Mooradian's insistence that he should have been issued a pass to the company's medical department on February 24, 2012,

¹⁹ Record, p. 45.

²⁰ Record, p. 47.

²¹ Record, pp. 53-54.

²² Record, pp. 55-56.

because a text message would have had the same effect. Nevertheless, he reported that he was able to get a monetary settlement from the company based on his argument that the situation could have been handled better. Thornton commented:

“Although I convinced the company to pay him the 40 hours for refusal to report to the medical office, I don’t believe my argument would have stood up to further scrutiny as the intent of the medical pass is to provide notice that an employee had permission from his supervisor to go to the medical center. In the union’s opinion, while the text message was not a written pass, it did serve as proof of excuse to be seen at the company’s medical office and should any refusal have occurred, it could have been easily resolved.”²³

Mooradian’s appeal was scheduled for a hearing before Bob Kinkade and John Rucker acting as hearing officers on behalf of International President Bob King. The hearing convened on October 18, 2013. The hearing officers’ report indicates that Mooradian brought a recording device to the hearing and refused multiple requests to turn it off. The hearing officers informed Mooradian that the hearing would be cancelled if he did not turn off the recorder and a decision would be written based upon the case record.²⁴

The hearing officers reviewed the correspondence in the record and found no reason to disagree with Representative Thornton’s rationale for settling Mooradian’s grievances. They found no evidence in the record that collusion with management, discrimination, or fraud improperly motivated Thornton’s decision. Based on these findings the hearing officers denied Mooradian’s appeal.²⁵

The IEB adopted the hearing officers’ report as its decision on December 20, 2013. Mooradian has now appealed the IEB’s decision to the Public Review Board (PRB).

ARGUMENT

A. Vaughn Mooradian:

I have not found any written prohibition against recording proceedings before the IEB. I believe the hearing officers exceeded their authority when they cancelled the hearing on my appeal because I would not turn off my recorder. A recording of a legitimate hearing would not prejudice any party as long as everyone involved was seeking the truth. Furthermore, I have a right to record all of my conversations public and private. I have a letter from the Michigan Attorney General confirming that right.

²³ Record, p. 56.

²⁴ Record, p. 75.

²⁵ Record, p. 92.

The record establishes that my dispute with Ford Motor Company began when they attempted to label me a hydraulic repairman. My grievances addressing this issue are entirely different and separate from the grievance concerning my alleged refusal to report to medical in February 2012. The grievances were two years apart and concerned completely different issues. The first grievances concerning the training in hydraulic repair should have been settled long before the issue about the pass to medical came up. Ford Motor Company should not have been allowed to assess progressive discipline against me because of the medical issue.

I do not believe Ford Motor Company had any right to discipline me on February 24, 2012. My union representatives should have intervened on my behalf to prevent the contrived hearings that took place on February 23 and 24, 2012. The record shows that management displayed a complete lack of concern about my health and safety. It is my position that Ford Motor Company chose to have me removed from my place of employment in order to cover up their denial of medical treatment and their indifference and missteps in response to my medical problems.

I do not believe that Representative Thornton represented me fully and with all of the available information.

B. International Union, UAW:

Appellant argues that his refusal to attend the hydraulic repair training and his refusal to report to medical on February 24, 2012, were unrelated and should not have been the basis for progressive discipline. However, the common thread in these grievances is appellant's continuing refusal to comply with company instructions. That refusal led to the progressive discipline that was the subject of his grievances.

There was no contractual basis for appellant's refusal to attend the hydraulic repair training along with his co-workers. His safety concerns were unsubstantiated. Those same concerns were the subject of a MIOSHA complaint and investigation. The investigation resulted in no citation and no finding of any safety violations. The results of the investigations undercut appellant's argument that his repeated refusals to attend the training were justified.

There is no dispute that appellant refused to report to medical as directed on February 24, 2012. He admits that he told the company representatives that he would not report to medical and they should talk to his attorneys. Faced with these circumstances, International Representative Thornton reasonably concluded that an Umpire would not grant Mooradian's grievance. Representative Thornton therefore attempted to achieve the best settlement possible for Mooradian. The IEB found Thornton's reasoning to be rational and upheld his decision.

C. Rebuttal by Vaughn Mooradian:

The International Union continues to ignore the fact that I tried to resolve my issues with Ford Motor Company about the hydraulic repair training from the very beginning. I informed representatives from the International Union and Ford Motor Company that although the union and Ford might have come to an agreement that certain trades would be consolidated, I have the right to decide what I am comfortable with in terms of a healthy environment. After 40 years of service and after being exposed to countless chemicals, including asbestos, I stated that I would rather give up my trade than take on more risk at this point in my service for Ford.

I provided the parties with several letters supporting my position, including a list of pipefitters who contracted cancer while at DEFTP and a list of those who died while working at DEFTP or shortly after leaving the building. I explained that the high incidence of death among pipefitters at DEFTP was a deep concern. My request to be moved from the pipefitter classification rather than incur additional risk was rejected by the Union and Ford Motor Company and not acted upon by either party.

Had my original grievance been properly resolved or if my request for a transfer out of skilled trades had been honored, there would not have been the need for any further action against me. The two representatives from labor relations at DEFTP, Mr. Clark and Ms. Gedman, had a set agenda under which there could be only one solution to the hydraulic training issue and that was that Mr. Mooradian was going to take the hydraulic training or be fired.

The International Union's response to my appeal creates the impression that the rash I developed in 2012 was connected to the hydraulic repair training issue. The rash is not linked to the training. The rash was the result of an aluminum chip that became embedded in my abdomen. The complications from that incident are what led to the medical problems in 2012 and the unwarranted disciplinary action that was issued in connection with them.

The International Union states that no citations were issued in response to my complaint to MIOSHA about safety conditions in the plant. It is true that no violations were found during the second inspection of the plant, because between June 23 and August 10, 2011, the DEFTP worked feverishly to clean the area and locate all of the oil leaks and remove the blanket of powder from the beams and floor. Just prior to the second inspection, there was a massive cleanup of the area.

The International Union's summary of the events in February 2012 gives the impression that this all took place in a short period of time and that I refused to go to medical simply because my supervisor did not issue a written pass. The International Representatives involved were well aware of a series of events that led to my refusal to report to medical on February 24, 2012. They know how long the medical issue had been needlessly dragged out. I did everything that was asked of me to resolve the medical issue. The events on February 24, 2012, were the final straw.

I informed Representative Thornton that I would not settle for anything less than full compensation in connection with the 30-day suspension I received for refusing to report to medical. I informed Thornton that I would forego all the other grievances related to the hydraulic repair training, but that I was adamant that the last grievance should be processed completely. I do not believe it was Representative Thornton's place to decide to accept a partial settlement of my grievance under the circumstances.

DISCUSSION

Mooradian expressed serious health and safety concerns about participating in training for the hydraulic repair classification. Mooradian's refusal to report to the hydraulic training program in 2010 was the result of his concerns for his own personal well being rather than any dereliction of duty. His unit representative duly grieved the discipline assessed against Mooradian in connection with this dispute. Grievance MC 32311 specifically requests that the company stop assigning Mooradian to the hydraulic training until the safety issue was resolved. Although there was no formal settlement of the grievance along these lines, there are no further disciplinary actions in connection with the training after the two-week disciplinary layoff in December in 2010, until the incident over the medical pass led to the 30-day suspension on February 24, 2012.

During the intervening period, Mooradian initiated procedures to prove the legitimacy of his concerns. He filed a complaint with MIOSHA, which conducted two separate inspections. MIOSHA's investigator's found no violations and issued no citations. The company's cleanup prior to the inspection may have given a false impression of the plant's actual daily condition, as Mooradian asserts, but the fact remains that his allegations were not substantiated. In addition, management was apparently unwilling to concede any legitimacy to Mooradian's allegations by allowing him to transfer out of his skilled trades classification in order to avoid exposure to what he considered toxic substances. Mooradian does not appear to have submitted any personal medical documentation that would justify his insistence that he be excused from the training required of all the other employees in his classification. The union could not insist on Mooradian's exemption from the training, despite his many years of service, without that kind of supporting documentation.²⁶

It is unfortunate that Mooradian's insistence on recording the hearing conducted on behalf of the IEB prevented a more complete development of the record in this case.²⁷ Nevertheless, we do believe it is possible to understand what took place in

²⁶ See *Dolan v. Local Union 22, UAW*, PRB Case No. 1644 (2010).

²⁷ It is the policy of the union not to allow recordings of Investigative hearings on appeals submitted pursuant to Article 33 of the UAW Constitution. We expect appellants and their witnesses, local union officials, and International Representatives to describe the relevant events honestly to the best of their ability and understanding. It is the responsibility of the hearing officers to resolve any conflicts in the testimony based on evaluation of the parties' responses to their inquiries. Similarly, when we conduct hearings on appeals to the PRB, we do not employ any recording devices. Apparent conflicts in any participant's understanding of the facts can almost always be resolved through these proceedings. On

2012 based on the documents in the record. The dispute over the medical pass in 2012 occurred in the context of Mooradian's efforts to prove that the chemicals being used by the company were harmful. Mooradian's immediate supervisors had apparently lost patience with these efforts. The fact that the company was going to insist that Mooradian attend training during his final week of employment prior to his retirement on April 1, 2012, reveals that the controversy had become personal. As International Representative Thornton observed in response to Mooradian's appeal, the supervisor involved in this argument could have handled the issue over the medical pass more professionally.

In his appeal to this Board, Mooradian reports he informed Representative Thornton that he wanted this final grievance over his 30-day suspension to go all the way through the procedure. He argues that it was improper for Thornton to accept a partial settlement of his grievance under these circumstances. That is not correct. Thornton was not precluded by these instructions from settling Mooradian's grievance. A member has no right to dictate to the union the terms for resolving a grievance.²⁸ The International Representative handling the grievance must assess the likelihood of a successful arbitration and—following a rational, non-arbitrary analysis--must act in the best interest of the grievant, even where the result is at odds with the grievant's evaluation of the merits of his case. The record supports Representative Thornton's evaluation of the merits of Mooradian's final grievance. As the International Union has observed, an arbitrator would have been unlikely to overturn the discipline assessed for Mooradian's refusal to report to medical; the record clearly established that he did refuse to report to medical.

Our role in reviewing decisions made by Union representatives with respect to grievances is limited to allegations 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 any rational basis.²⁹ The record shows that Representative Thornton met with Mooradian in December 2012 and reviewed the entire controversy between Mooradian and his supervisors over the hydraulic repair training issue. The history of this controversy suggests that in 2012 Mooradian still hoped to achieve vindication of his claims about the health hazards associated with chemicals used in the hydraulic repair operation, but Representative Thornton's conclusion that this could not be achieved through the arbitration of his disciplinary grievance appears entirely reasonable. An arbitrator would be unlikely to address a health and safety issue that had already been investigated and closed by MIOSHA in the context of ruling on the merits of a disciplinary grievance. Under the circumstances, Thornton did a good job of

the other hand, recordings produced by participants using various types of personal devices can be difficult to interpret. Statements may be taken out of context and it may be difficult and time-consuming to clarify the identity of the speaker.

²⁸ *Gardner v. UAW Local Union 653 Executive Board*, PRB Case No. 1292, 10 PRB 584, (2000); *Thiel v. Region 1, UAW*, PRB Case 1682, (2013).

²⁹ UAW Constitution, Article 33, §4(i).

handling the dispute between Mooradian and the company in a manner that protected Mooradian's seniority and retirement benefits. Thornton's decision to withdraw all three grievances associated with the dispute and to accept a monetary settlement was rational, because no further remedy could likely have been obtained through arbitration.

The decision of the IEB is affirmed.