

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

APPEAL OF:

WILLIAM O. MEDLEY, Member
LOCAL UNION 2488, UAW
(Bloomington, Illinois),

Appellant

-vs-

CASE NO. 1704

REGION 4, UAW
(THE UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA),

Appellee.

DECISION

(Issued October 6, 2014)

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

William Medley argues that Representative Rick Doty's decision to settle a grievance protesting his discharge lacked a rational basis.

FACTS

William Medley worked at Mitsubishi Motors North America ("MMNA") in Normal, Illinois, in a bargaining unit represented by UAW Local Union 2488. He had a seniority date of January 3, 1989.¹

The record contains notes from an interview of William Medley conducted by Employee Relations Representative Evan Finley on October 18, 2012.² The notes indicate that Finley informed Medley that another employee had reported statements he made about a third employee named Eric Coben. Finley asked Medley if he had talked about Coben. Medley replied:

¹ Record, p. 168.

² According to the report of the hearing officers who investigated Medley's appeal to the IEB, these notes were taken by Local 2488 Committeeperson Plesko and he read them over a speakerphone to participants in the hearing. (Record, p. 180)

“WM: Talked about racks. Eric and I got into it other day. Dispute who takes the racks. Got Bob (GL), told what he is doing. Bob talked to both, said have to work together. Had to do with paint load running. Didn’t talk to Eric yesterday, only when asked him about pizza on Friday. Did say something to Jerry one time, about he likes his guns. That’s about it.”³

Finley asked Medley if the conversation about the racks had upset him. Medley said no. Finley then asked Medley about specific things he was reported to have said. The notes from the interview state:

“EF: Any point did you say bust that cracker’s head open?

WM: No. Not stupid. Know Code of Conduct. Made no threats.

EF: Say anything about boys in Chicago?

WM: No. Only family in Chicago.”⁴

The notes indicate that Thelma Jones asked Medley if he knew why anyone would report that Medley had said these things. The following exchange took place:

“WM: No idea. Get along with everyone. Get jobs done. Talk to Bob. Only thing when got into it with him the other day.

TJ: Eric didn’t make report. Why would anyone else come forward?

WM: Someone thought I was time studying him.

TJ: Why?

WM: Took 10 minutes 36 seconds to mask fascia.

TJ: Who?

WM: Chuck Murray. Went by clock on the wall.”⁵

Jones then asked Medley if he had conversations with other employees. Plesko’s notes describe the following exchange:

³ Record, p. 7.

⁴ Record, p. 7.

⁵ Record, pp. 7-8.

- “WM: No. Don’t understand. Had issue with Chuck Murray in past. He’s a snake—got by it. Need to find out.
- TJ: Explain needs to find out. Find out what is going on?
- WM: No, feels attempt to get him terminated.
- TJ: You feel person who came forward is making this up?
- WM: Yes.
- TJ: Anyone who would want you terminated?
- WM: Eric and Chuck Murray. Brought Chuck upstairs about Sharon Collins years ago.
- TJ: How long ago?
- WM: More than 10 years.
- TJ: Is he a person that would retaliate 10 years later?
- WM: Questionable that he would.
- TJ: Do you think Chuck would do this?
- WM: Get along as far as work. Anything outside of work, nothing.
- TJ: What about Eric Coben. Why?
- WM: Got into it. Views are not the same. Books on table NRA—right wing. No politicians have come to his door to take his guns.”⁶

At this point Plesko’s notes indicate that Evan Finley put Medley on notice for discipline up to termination pending further investigation. Finley told Medley that he was suspended and that it had not been determined whether the suspension would be with or without pay. Medley commented that it was unfair that someone would do this.⁷

The record also contains notes of an interview with Chuck Murray conducted by Evan Finley and Thelma Jones on October 18, 2012. Finley asked Murray what he overheard around 9:30 the previous day. Murray responded:

⁶ Record, pp. 8-9.

⁷ Record, p. 9.

- “CM: William came up to him and said don’t like the rumors cracker is saying about him. Something bout timing people. Rumors cracker is spreading, my boys in Chicago will kill him. Rant and rave about Eric.
- EF: Say anything else?
- CM: Rant and rave. Going on about how lazy Eric is. Said cracker several times.
- EF: Say anything about straightening cracker or bust head open?
- CM: Yes. Went on. Didn’t know who he was talking about till William mentioned Eric’s name later in the conversation.
- EF: Anything else?
- CM: No.”⁸

Finley and Jones also interviewed Eric Coben about his conversations with Medley. Coben said he did not recall anything particularly remarkable. The following exchange took place:

- EF: Any issues, inappropriate comments to you?
- EC: Nothing that hit me hard. Nothing hard enough to come up here to talk about it.
- EF: Need you to disclose what he said.
- EC: Can’t think of anything specific. Nothing outside of work department. Likes to talk about other people to him. Had a rack full of fascias. Put where staff engineer told him to put it. William got mad and told Bob.”⁹

Coben commented that Medley had been in the plant for a long time and that he likes things done a certain way and will talk to people who do things differently.¹⁰ Finley then asked Coben if he had any issues with Medley on politics or gun control. Coben and Finley had the following conversation about this topic:

- “EF: Has William taken issue with you on politics or gun control?

⁸ Record, p. 10.

⁹ Record, p. 11.

¹⁰ Record, p. 12.

- EC: Yes. He is a Democrat; I'm Republican. Not a serious issue. Asked me advice on 380 pistol last week. Politics and guns don't mix. Not issue on this subject.
- EF: Had a conflict or disagreement on this?
- EC: Politics. I'm for Republicans, he Democrat.
- EF: Any conflict or disagreement?
- EC: Nothing that would create problems. Disagree when it comes to politics. No different from anywhere else.
- EF: Have you heard Chuck or William use a phrase that is inappropriate?
- EC: I, myself, no.
- TJ: Have you heard rumors that one or the other said?
- EC: Yes.
- TJ: What?
- EC: Chuck said William came up to him. William supposedly said I was a lying cracker.
- TJ: When?
- EC: Yesterday morning. Still sat across from him at lunch."¹¹

Jones asked Coben how he responded to what Chuck Murray said about Medley's alleged comment. Coben responded that he did not know what to believe.

Medley returned from his suspension on October 24, 2012.¹² At that time management presented Medley with a twelve-month last chance agreement. The preface to the agreement states that its intent is to provide Medley with a last chance to correct his behavior. The first paragraph of the agreement describes the background of the agreement as follows:

¹¹ Record, pp. 12-13.

¹² Record, p. 46.

“Per witness testimony, on Wednesday, October 17, 2012, Plastics Associate William Medley made an inappropriate and threatening comment saying he would ‘bust that cracker’s head open’ as well as saying that he would get his ‘boys from Chicago and kill’ another associate. Associate Medley has denied making these statements despite witness testimony regarding the statements. These actions by Associate Medley constitute violations of the MMNA Associate Code of Conduct regarding violation of the Harassment Policy, Violence in the Workplace Policy, lying during a Company investigation and using threatening language and creating a hostile work environment.”¹³

The agreement states that Medley must refrain from using abusive or threatening language to or about other people or committing any other violations of the MMNA Zero Tolerance Policies. Medley refused to sign this agreement. As a result, his employment was terminated on October 24, 2012.¹⁴

The notice of termination indicates that it was issued pursuant to MMNA’s Zero Tolerance Policies aimed at harassment, discrimination, and violence in the workplace. Local 2488 filed Grievance No. U1112001 protesting Medley’s termination on November 2, 2012. The grievance states:

“On 10/24/12, William Medley was terminated for allegedly using abusive and threatening language about another associate (Zero Tolerance Policy). William denied these allegations. He was terminated even though the company had no proof. This allegation was brought forward by a 3rd party. After several interviews from several associates, the company could find no one to corroborate these allegations. The UAW feels William was wrongly terminated and should be reinstated immediately.”¹⁵

Grievance U1112001 was referred to the second step of the grievance procedure on November 8, 2012. The union filed the following statement in support of the grievance:

“U1112001 – William Medley was given a choice of a last chance agreement or termination. Because he didn’t want to admit to something he steadfastly refutes, the company terminated him. Where is the proof that William violated the Zero Tolerance Policy? Seven associates were interviewed and only one stated that William said anything. William should be reinstated immediately.”¹⁶

¹³ Record, p. 26.

¹⁴ Record, p. 24.

¹⁵ Record, p. 30.

¹⁶ Record, p. 34.

Local 2488 Bargaining Chairman Roger Goodwin and International Representative Rick Doty met with management for a pre-arbitration discussion of Medley's grievance on February 6, 2013. Notes from that meeting indicate that the parties worked out the following agreement to have Medley reinstated:

"Bring back on 2-25-13

No LCA

Try to put him in equivalent area as what he came from.

Not to speak to anyone of his issue

No threats and not to speak to participants in his case."¹⁷

Based on these terms, International Representative Rick Doty settled Grievance U1112001 on February 7, 2013.¹⁸ A memorandum was drafted, dated February 25, 2013, describing the terms of Medley's reinstatement. The memorandum anticipates that the following conditions would be explained to Medley at the time of his reinstatement:

- "He will submit to a physical examination and drug screening with the understanding that his reinstatement is subject to his passing these tests.
- He will be assigned to a group with manpower issues (F-2).
- He will not be allowed to transfer for one year from the F-2 group.
- He will have 18 days PTO as his current PTO balance. (144 hours).
- He will receive no back pay or benefits between 10/24/12 (termination date) and 2/24/13 (last day prior to reinstatement).
- He will retain full seniority rights back to his original date of hire (March 6, 1989) and this date will be used in regard to pension benefits and all other applicable benefits.
- He will maintain strict confidentiality regarding the agreement and not discuss the agreement with anyone.
- Any form of retaliation (on-site or off-site) against any parties involved in the original case (whether known or unknown) will not be tolerated and would result in severe disciplinary action."¹⁹

¹⁷ Record, p. 39.

¹⁸ Record, p. 43.

¹⁹ Record, p. 45.

Medley met with Representative Doty and Chairperson Goodwin on February 12 and 13, 2013, regarding the terms of his reinstatement. In his appeal from the decision to withdraw his grievance, Medley described these meetings as follows:

“On February 12, 2013, I met with the International Representative Mr. Rick Doty and the Chairperson Mr. Roger Goodwin of Local 2488 and they ask me if I wanted an arbitrator. I told them yes and then I met with them again on February 13, 2013, and Mr. Doty told me that the company said if I didn’t return on February 25, 2013, that I will be considered missing. Since when do the company make demands. I felt they didn’t represent me properly according to Article 6, Section 16 of the UAW Constitution. And they let the company remove me from my job assignment in plastics. If that’s the case, remove the accuser also. He shouldn’t be in plastics either.”²⁰

Medley did not return to work on February 25, 2013.²¹ Medley appealed the settlement of his grievance to the International Executive Board (IEB) on March 10, 2013. In support of his appeal, Medley argued that he should not have received any discipline because he had done nothing wrong. His appeal states:

“...The union and the company completed their investigation and they couldn’t find no one to corroborate this allegation because it’s not true. All the years I been employed with this company I never made threats to no one. My record speaks for itself. This is all based on hearsay. ...”²²

International Representative Doty responded to an inquiry about Medley’s appeal on April 18, 2013. Doty stated that he settled Medley’s grievance based on his review of previous arbitration decisions involving workplace violence. He wrote:

“After reading the interviews of William Medley, Chuck Murray, and Eric Coben that took place on 10/18/2012, I was convinced that it would not be reasonable to believe that an arbitrator would reverse the termination of Mr. Medley. For this reason, I felt that getting Mr. Medley returned to work with time to stand was in his best interest. However, Mr. Medley chose not to return and the company separated Mr. Medley on *AWOL—Failure to Return*.”²³

Doty stated that he met with Medley on February 12, 2013, to explain the terms of the grievance settlement. Doty said he informed Medley that he did not think an arbitrator would reverse the company’s decision to terminate him. He reported that he returned to

²⁰ Record, p. 46.

²¹ Record, p. 168.

²² Record, p. 46.

²³ Record, p. 50.

the company following his meeting with Medley to discuss Medley's request for arbitration, but the company insisted that Medley should return to work on February 25, 2013 or he would be considered AWOL. Doty reported that he met with Medley again on February 13 and explained that he should return to work on February 25, 2013, or he would be terminated.²⁴

Acting on behalf of President Bob King, Bob Kinkade and John Rucker conducted a hearing on Medley's appeal on September 26, 2013. Kinkade and Rucker prepared a report to the IEB on the appeal based on information provided by the parties and testimony given at the hearing.

Hearing officers Kinkade and Rucker reported Medley's testimony that he never had any problems with Eric Coben and that he made no threats regarding Eric Coben. They recorded Medley's statement that the interview notes incorrectly reflected his response to the question whether anyone would want him terminated. He testified that he did not say Eric as recorded in the notes, but that he did say Chuck Murray wanted him terminated. Medley stated that employee Chuck Murray had a vendetta against him that dated back fifteen years.²⁵

The hearing officers reported that Medley acknowledged Representative Doty told him he should return to work on February 25, 2013, and advised him that he could appeal the terms of the settlement after he returned. According to the hearing officers' report, Medley insisted that he was innocent of the charge against him. He stated that he would only return to work after being paid for all the time lost and having his record cleared.²⁶

The hearing officers described Representative Doty's testimony that he had reviewed numerous arbitration decisions regarding the use of threatening language in the workplace and he concluded based on those decisions that nothing would be gained by proceeding to arbitration. Doty explained that as a result of Medley's refusal to return to work on February 25, 2013, he lost his seniority pursuant to Article X, Section 3 of the collective bargaining agreement.²⁷ The hearing officers commented:

"It is unfortunate the appellant, who had a seniority date of January 3, 1989, declined two chances to return to work, the last of which was a settled grievance that Doty fully explained to him. Doty was successful in returning appellant to work, but appellant failed to report back to work."²⁸

²⁴ Record, p. 51.

²⁵ Record, p. 175.

²⁶ Record, p. 175.

²⁷ Record, p. 180.

²⁸ Record, p. 181.

The hearing officers held that Representative Doty's decision to settle Medley's grievance and not pursue arbitration was proper and not devoid of a rational basis. They found no evidence that discrimination, fraud, or collusion with management motivated the decision.

The hearing officers denied Medley's appeal. The IEB adopted the hearing officers' report as its decision in a letter dated February 10, 2014.²⁹ Medley has now appealed the IEB's decision to the Public Review Board (PRB).

ARGUMENT

A. William Medley:

I feel I was not represented properly by a union that I believed in and paid dues to for nearly 24 years. I do not think I was treated fairly in the decision making process. The union denied me the right to have my grievance arbitrated based on some decisions from the 1980s that were not applicable to my situation.

I understand the MMNA Violence in the Workplace Policy. I understand that any abusive or threatening language to or about other people is forbidden. But all of the accusations against me were completely false. There was no evidence to support them. I refused to sign the last chance agreement on October 24, 2012, because I had done nothing wrong. Why should I be penalized for something that never happened?

I felt I was the victim in this situation. I told the truth over and over again but no one would listen to me. I have been taught to stand up for what I believe. I cannot understand why I am being treated like a criminal.

When I met with Representative Doty on February 12 and 13, 2013, I told him I wanted my case to go to arbitration. Doty did advise me that I should return to work on February 25, 2013, and that I could file an appeal. He never told me, however, that if I refused the terms of the February 25 reinstatement memorandum, I would lose the support of my union. I was not told that my employment would be terminated if I did not return to work on February 25, 2013.

The terms of the reinstatement were totally unfair. I was removed from my department as if I were guilty, totally degrading me among my co-workers. I have done nothing wrong. I should get my good name back as well as my seniority. I am a hard worker and I should be treated with dignity and respect.

It is amazing that the person I was supposed to have made these threatening remarks about never said I did this horrible thing. Eric Coben and I had our moments, but never to the extent alleged by Chuck Murray. Murray's statement to management

²⁹ Record, p. 166.

was a complete lie. You can say the accusations were not racially motivated, but are you certain of that? I cannot understand why I am being treated like a criminal while the employee who told these lies feels no pain. I have paid dues to this local union for 24 years, and they appear to have taken the side of the company. I thought I had the right to rely on my union and the International Executive Board in this matter.

I want to have my case reviewed by the Public Review Board. I hope you will give me a fair chance to recover my job after 24 years with Mitsubishi.

B. International Union, UAW:

During the hearing on Medley's appeal to the IEB, Medley acknowledged that he met with International Representative Doty on February 12, and February 13, 2013, to discuss the terms of his reinstatement. Doty explained that he had persuaded the company to remove the last chance agreement from any settlement. Medley agreed that Doty had advised him to return to work on February 25, 2013, and to appeal Doty's decision *after* he was back at work. At the hearing, Medley testified that he was innocent and would only return to work if the company paid him all lost time and cleared his record.

In his appeal to the PRB, Medley reasserts his innocence of the charges that led to his termination. He claims that it was not made clear to him that he would lose his seniority and receive no support from the UAW if he did not report back to work in accordance with the terms of his settlement agreement.

As the IEB observed, it is indeed unfortunate that appellant declined two opportunities to return to work. The union made good faith efforts on behalf of appellant, but he forfeited his employment by his insistence on an "all or nothing" resolution. The IEB's decision to uphold the settlement of Medley's grievance was rational and reasonable in light of this record. The resolution of the matter was not influenced by fraud, discrimination, or collusion with management. Accordingly the decision of the IEB should be affirmed.

C. Rebuttal by William O. Medley:

I was NEVER told that I would lose my job if I did not return to work on February 25, 2013. I had requested arbitration of my grievance and I was told that I could seek arbitration by appealing the settlement of my grievance. After paying dues for over 23 years, when I faced a crisis and needed my union's support, my union pushed me away.

I was the victim of a meritless, unfounded accusation. Representative Doty denied me proper representation. Doty concluded that my case did not warrant arbitration based on his review of some arbitration cases from 15 years ago. How can this be? This is my life at stake. Does the truth matter at all? I thought if the union and the company could not reach an agreement that the grievance would go to arbitration. I

appeal again for my case to be reviewed by the Public Review Board. I am seeking truth and justice. My name, my life, and my livelihood have been tarnished. The case against me was based entirely on one person's word.

DISCUSSION

We agree with Medley that the company discharged him based on highly contested versions of the facts. There is no convincing evidence in this record that Medley ever used abusive or threatening language in the workplace. It is not our function, however, to determine whether Medley was guilty of the offense for which he was discharged. Our role in reviewing appeals concerning the handling of grievances is limited to claims 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.³⁰ There is no element of bad faith or discrimination presented by this appeal. Representative Doty withdrew Medley's grievance based on his conclusion that settlement was in Medley's best interest because the risk of an unsuccessful arbitration was too great. The question presented by this appeal is whether Doty's conclusion was rational under the circumstances. We find that it was.

As a high seniority employee with a good work record, Medley was entitled to have his discharge grievance submitted to arbitration unless there were clear and substantial reasons for withdrawing it.³¹ We have recognized, however, that a valuable negotiated settlement may provide a clear basis for withdrawing such a grievance even in those instances where the union has a strong case in favor of reinstatement, if the risk of an unsuccessful outcome before the Umpire is too great.³² The record indicates that Representative Doty carefully evaluated the prospects for a successful arbitration in Medley's case as part of his investigation of the grievance. In response to Medley's appeal, Doty provided copies of eleven arbitration decisions involving Caterpillar, Inc. and UAW Local Union 974, where the arbitrator upheld terminations based on reports of employees using threatening language in the plant.³³ Although the particular circumstances of each of these cases can be distinguished from Medley's, they demonstrate that in cases involving allegations of threats in the workplace, umpires in this jurisdiction consistently give substantial weight to the employer's conclusion that such allegations are credible. The umpires generally defer to the employer's assessment of the witnesses' credibility in recognition of the serious problem posed by workplace violence.³⁴ Based on his extensive research, Doty concluded that there was

³⁰ UAW Constitution, Article 33, §4(i).

³¹ *Dailey v. Region 2B UAW*, PRB Case No. 1681 (2013), at 15.

³² *Ayres v. Local Union 1112, UAW*, PRB Case No. 1220, 10 PRB 126, (1998)

³³ Record, pp. 54-161.

³⁴ Arbitrator William P. Daniel's observation introducing his discussion of the discharge of Donald Holtman in February 16, 2000, is typical. He wrote:

serious risk of an unsuccessful outcome in Medley's case if his case were presented to the umpire.

Furthermore, the settlement that Representative Doty ultimately negotiated for Medley was a good and valuable one. First and foremost, it restored Medley to his employment. After Medley rejected the first settlement agreement because it required him to admit he was guilty of the charge against him, Representative Doty went back to the bargaining table and obtained an agreement that did not involve an admission of guilt or probationary terms. Under the terms of this second settlement, Medley lost the income for the period of his disciplinary layoff, but he was otherwise restored to a position equivalent to the one held prior to his discharge. It was reasonable for Doty to conclude that he should not risk Medley's reinstatement in order to pursue compensation where the likelihood of success was so doubtful.

In his appeal, Medley reports that he made it clear to Representative Doty that he wanted his grievance submitted to arbitration during his meetings February 12 and 13, 2013. A member is not entitled to dictate to his union representative how a grievance should be resolved, however. The representative is required to use his or her expertise to evaluate the likelihood of a successful arbitration and act in the member's best interest.³⁵ The record supports Representative Doty's conclusion that settlement was in Medley's best interest despite his objection to it. With the exception of his claim for back pay, Medley's objections to the second settlement agreement are not matters that could have been addressed through the grievance procedure. Medley claimed his reassignment degraded him among his co-workers, but the employer is entitled to make assignments, particularly where the goal is to maintain workplace harmony. Medley's reassignment was not a violation of the collective bargaining agreement that could be corrected through arbitration. Medley argued that his accuser should suffer some consequence for his actions, but the grievance procedure is not designed to provide the kind of moral vindication Medley claimed he was due.³⁶

Medley now claims that he did not understand the union would abandon his grievance if he failed to comply with the terms of the settlement. That consequence is inherent in the concept of a settlement; both parties to the agreement must comply with its terms. The record demonstrates that Representative Doty met with Medley prior to February 25, 2013, and explained the terms of his grievance settlement. He advised Medley that the settlement required him to report to work on February 25, 2013. Medley

"Every person who is involved with employment, whether on the management or the union side, recognizes the crisis that exists in terms of violence in the workplace. There is proper concern with providing a safe work environment and the company perceives correctly that it has a legal obligation to do everything within reason to carry out that goal." (Record, p. 102)

³⁵ *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); *Mooradian v. Local Union 600, UAW*, PRB Case No. 1702 (2014).

³⁶ *Thiel v. Region 1, UAW*, PRB Case 1682 (2013), at 18.

does not disagree that Representative Doty attempted to persuade him to return to work on February 25, 2013. There was nothing further Doty could do to compel Medley to honor the terms of his settlement agreement.

By failing to return to work, Medley refused the settlement and rejected the benefits obtained for him under its terms. Medley's seniority was terminated pursuant to the "loss of seniority" provision in the collective bargaining agreement after he failed to report to work on February 25, 2013. His termination in February 2013 had nothing to do with his guilt or innocence of the original charge against him. Representative Doty's resolution of Medley's grievance protesting his discharge on October 24, 2012 was consistent with the elevated standards set by the UAW for processing the grievances of high seniority employees.

The decision of the IEB is affirmed.