

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

APPEAL OF:

BRANDEN M. PUGH, Member  
LOCAL UNION 7, UAW  
(Detroit, Michigan),

Appellant

-vs-

CASE NO. 1719

UAW-CHRYSLER DEPARTMENT  
(THE UNITED AUTOMOBILE, AEROSPACE  
AND AGRICULTURAL IMPLEMENT  
WORKERS OF AMERICA),

Appellee.

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**DECISION**

(Issued June 9, 2015)

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

Branden Pugh argues that his discharge grievance should be returned to the grievance procedure so that the union can attempt to negotiate a last chance reinstatement agreement.

**FACTS**

Branden Pugh was employed at Chrysler's Jefferson North Assembly Plant with a seniority date of June 9, 2010. He worked in a bargaining unit represented by UAW Local Union 7. On March 15, 2013, Chrysler terminated Pugh's employment effective March 5, 2013. The notice of termination cites the following violations of the company's standards of conduct as reason for the action:

- "(14) Threatening, intimidating, coercing, harassing, retaliating, or using abusive language to others.
- (15) Fighting, 'horseplay' or other disorderly, disruptive, or unruly conduct.

- (33) Unauthorized or inappropriate use of, or access to, computers, laptops, software, pagers, communication devices, cellular phones, ear phones, or other similar devices or electronics.”<sup>1</sup>

Local 7 filed Grievance No. 13-0111 protesting Pugh’s termination on March 18, 2013.<sup>2</sup>

The circumstances leading to Pugh’s termination were set in motion by a picture posted with Instagram. Pugh’s user name on the Instagram application is “koe\_kingovereverything.” Using this name, Pugh published a picture of the back of a co-worker’s head. Under the photograph, Pugh made a comment about the co-worker’s haircut. The visible portion of the comment is: “Why this nigga hair tapered in the back like this?????”<sup>3</sup> The co-worker, Jeffrey McDougal, was extremely offended by Pugh’s post and reported it to management. McDougal gave the following voluntary statement to management on March 5, 2013:

“It was brought to my attention on 3/5/13 that a fellow coworker had put my images on Instagram without me knowing the photos were taken of me from behind with derogatory comments. The person that took these images I do not know and has never spoken to before. Once I saw these images, I asked him what was his reasoning for doing such a thing. His reply was, ‘If I didn’t like it, we could handle it after work!’”<sup>4</sup>

There was an angry encounter between Pugh and McDougal about the Instagram picture. In a statement submitted with his grievance, Pugh described the encounter as follows:

“On March 5, 2013, at 8:03 a.m., I was approached by a young man in the plant (JNAP) on my way to the restroom on break. He stopped me by slapping my right bicep with the back of his left hand in a frustrated manner three times and asked, ‘Hey, mutha-fucka, you got a problem with me?’ I then looked him in his eyes and stated I don’t know what you’re talking about. He then said to me bitch nigga, you know what the fuck I’m talking about, the mutha-fuckin picture you took, bitch! I then asked him what picture are you talking about? This young man became irate and told me the one you put on Instagram. Old girl just showed me the muh-fucking pic. I then knew what he was referring to and acknowledged him by saying yes I took the picture and posted it to Instagram in a joking manner. I then tried to apologize for putting the picture up. He then said to me, ‘Naw, fuck that, that shit’s foul. Only bitches do shit like that. And

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<sup>1</sup> Record, p. 12.

<sup>2</sup> Record, p. 17.

<sup>3</sup> Record, p. 10.

<sup>4</sup> Record, p. 1.

that's what yo little ass is, a straight up bitch.' I then started to walk away and continue on to the restroom."<sup>5</sup>

The argument apparently continued after Pugh returned from the restroom. According to Pugh, McDougal then approached him in a threatening manner until several employees intervened.<sup>6</sup>

Pugh reported that he subsequently sent some posts to his fiancée, Krista Kennedy, about being under a lot of stress and wanting to go to the gun range. The record contains the following exchange between Pugh and Kennedy:

"koe\_kingovereverything\_ @kris\_kenn range this weekend??? Need to get some stress off! We both do! (emoticons showing a gun and three explosions)

kris\_kenn I'm down baby!!! It's been a min too! (three gun emoticons)  
@koe\_kingovereverything\_

koe\_kingovereverything \_ I'm like (emoticon of a hand) this close to poppin a nigga and not some paper. @kris\_kenn I need vacation and stress relief. You can be my 'stress' relief.

kris\_kenn Planning a trip now .... (emoticons of palm trees and cocktails etc.)"<sup>7</sup>

Pugh apparently also posted a picture of an actual gun, although the image is not visible in the copy of the post that is in the record.<sup>8</sup>

Human resources personnel interviewed both McDougal and the employees who witnessed his altercation with Pugh. Notes from the interview indicate that McDougal denied cursing at Pugh or threatening him.<sup>9</sup> In a subsequent interview, McDougal complained about the accusation that he threatened Pugh. McDougal reported that he felt violated and threatened by Pugh's post. The interview notes report that management advised McDougal to steer clear of Pugh and contact management if he felt uncomfortable.<sup>10</sup>

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<sup>5</sup> Record, p. 13.

<sup>6</sup> Record, p. 13.

<sup>7</sup> Record, p. 7.

<sup>8</sup> Record, p. 8.

<sup>9</sup> Record, pp. 3-4.

<sup>10</sup> Record, pp. 5-6.

Pugh prepared a statement in support of his grievance describing the events that led to his discharge. Pugh reported that he was called to the human resources department and questioned about his posts on Instagram. Pugh described the interview as follows:

“...I went about my day. I used my cellular device to post things on Instagram and spoke with my fiancée (Krista Kennedy) about being stressed out and wanted to go to the gun range. In doing so I posted two pictures of my brother-in-law’s (Jermaine Young) handguns to my Instagram page as a way to spark of conversation with my fiancée (Krista) in hopes that her seeing this she would know I was serious about going. I in no way meant that as a threat to the young man I had earlier got into a conversational argument with, seeing as how he does not have an Instagram page. I didn’t think that anyone would take offense or take my actions as some sort of threat directed towards that individual. I was then brought upstairs 3-4 hrs later for my attendance, then asked at the end of the meeting, have I posted pictures to Instagram? I replied to Kuwana, head HR rep, yes I have. She then explained the situation at hand and told me I would be terminated for usage of my cell phone in the workplace. I was then discharged from work that day under an indefinite suspension for violating company rules, then terminated the following week nine days later on March 14, 2013.”<sup>11</sup>

The company denied Pugh’s grievance on March 21, 2013.<sup>12</sup> On June 13, 2013, the company advised the Local Union representatives that they could not settle Pugh’s grievance at the third step because of the threat of workplace violence involved. The parties referred Grievance 13-0111 to the 4<sup>th</sup> step of the grievance procedure on June 13, 2013.<sup>13</sup> The grievance was referred to the Appeal Board for review on August 19, 2013.<sup>14</sup> On September 13, 2013, the union withdrew the grievance.<sup>15</sup>

Pugh appealed the decision to withdraw his grievance to the International Executive Board (IEB) on October 11, 2013.<sup>16</sup> In support of his appeal, Pugh explained that he had suffered a series of misfortunes prior to his termination, which put him under a great deal of stress. He reported that his fiancée had lost their first child in October 2012. Following this traumatic event, his house was broken into right before Christmas. As a result of the break-in, Pugh incurred unexpected expenses and his electricity was shut off. Then, in February 2013, his house was broken into again. Pugh explained

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<sup>11</sup> Record, p. 13.

<sup>12</sup> Record, p. 17.

<sup>13</sup> Record, p. 23.

<sup>14</sup> Record, p. 29.

<sup>15</sup> Record, p. 33.

<sup>16</sup> Record, p. 36.

how his state of mind led him to post the messages on a social network that led to his termination by the Jefferson Assembly Plant. He wrote:

“...I was very frustrated and was mad at the world because such bad things were happening to me and my family. I was not able to talk my frustrations and anger out with anyone, so it remained built up and I was working nonstop to make up for expenses needed to keep my household functioning while my fiancée was out of work. In an effort to relieve some of my stress and frustration, I made comments on social networks about needing a vacation and going to the gun range with my family and friends.

”<sup>17</sup>  
...

Pugh reported that he had started attending anger management classes to deal with his problem-solving skills. He acknowledged that his comments on Instagram were inappropriate, and he asked to be given a second chance. His appeal letter states:

“...I now realize that my comments were inappropriate and should have never been said or written. I take full responsibility for my actions and in turn would like to be given a second chance with the corporation, accepting any restrictions or requirements bargained with it. I recognize that my well-being rides on my actions and I have learned the hard way that being without employment hinders you in every axis of life. Please consider my case for reinstatement to the Chrysler Corporation, and thank you for reviewing my case.”<sup>18</sup>

UAW-Chrysler Department Representative Mark Taylor responded to an inquiry from International President Bob King’s staff regarding Pugh’s appeal on January 9, 2014. Taylor explained that he withdrew Pugh’s grievance because the company had copies of the pictures and comments Pugh had posted on Instagram. In addition, the company provided statements from witnesses who observed the altercation between Pugh and McDougal. Taylor explained that the company’s evidence was too strong and there was no substantial evidence in Pugh’s record to establish his character. Taylor acknowledged Pugh’s explanation about his personal problems, but responded that it was Pugh’s responsibility to control his actions in the workplace. Taylor said that Pugh’s grievance was withdrawn because the company had sustained the basis for his termination.<sup>19</sup>

Acting on behalf of International President Bob King, Gary Bryner and John Rucker conducted a hearing on Pugh’s appeal on February 24, 2014. Hearing officers Bryner and Rucker prepared a report to the IEB on Pugh’s appeal based on documents in the record and testimony given at the hearing.

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<sup>17</sup> Record, p. 36.

<sup>18</sup> Record, p. 36.

<sup>19</sup> Record, pp. 44-45.

At the hearing, Pugh admitted that his actions were inappropriate, and he stated that the union had represented him properly, but he felt that the union could have negotiated his reinstatement without pay or with other stipulations.<sup>20</sup> In response, Representative Taylor acknowledged that Pugh may not have understood how seriously his actions would be taken, because he was a relatively new employee. According to the hearing officers' report, Taylor testified that he did propose a long-term penalty with a last chance agreement for Pugh, but the company refused to consider it.<sup>21</sup>

The hearing officers concluded that nothing would be accomplished by reinstating Pugh's grievance. They observed that Pugh admitted he did the things for which he was terminated. They pointed out that nothing in the contract requires the company to give an employee a second chance, regardless of his personal circumstances, so there was no contractual violation. They held that Representative Taylor's conclusion that he could not persuade an arbitrator to order Pugh's reinstatement did not lack a rational basis. They found no evidence that the decision was influenced by discrimination, fraud, or collusion with management.<sup>22</sup>

The IEB adopted the report of the hearing officers as its decision. Pugh has now appealed the IEB's decision to the Public Review Board (PRB).

### ARGUMENT

#### **A. Branden M. Pugh:**

I have found evidence of cases similar to mine where the member was reinstated. I am asking that my grievance be returned to the procedure so that the union can negotiate an agreement to have me reinstated to my job.

#### **B. International Union, UAW:**

The record contains statements from witnesses and copies of social media posts that support the allegations leading to Pugh's discharge. Pugh admitted to the conduct for which he was discharged. Pugh submitted three letters in support of his grievance while his appeal was pending. He did not raise the issue of disparate treatment in any of these letters and there is no evidence to support such a claim.

Pugh admitted his actions and admitted knowing they were wrong. Pugh's personal issues would not mitigate the fact that he violated the company's work rules. Therefore, the decision of the IEB should be affirmed.

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<sup>20</sup> Record, p. 52.

<sup>21</sup> Record, pp. 52-53.

<sup>22</sup> Record, p. 53.

## DISCUSSION

Pugh is not the first person to receive an expensive lesson in the reach of social media as the result of an ill-considered post on a website such as Instagram. Texts and tweeting have become such an integral part of communication today that users may forget these posts are not private conversations. They are not private, however, and some thoughts and images are not suitable for public discourse. As Pugh has discovered, comments making fun of co-workers are inappropriate on websites such as Instagram. Applications such as Instagram, Twitter, and Facebook are designed to make comments and photographs easy to share. Photographs posted on Instagram can be passed along to a wide audience. In an environment such as an assembly plant, another Instagram user was bound to make McDougal aware of Pugh's comments about his haircut, just as if Pugh had declared his thoughts aloud to a gathering of employees. Pugh's post was rude and McDougal's reaction was understandable.

This breach of social media etiquette probably would not have led to the loss of Pugh's job, however. In the course of investigating McDougal's complaint, human resources personnel came across Pugh's conversation with his fiancée about plans to go to the firing range. The statement Pugh posted on the social website gave the impression that he had a gun and was on the verge of committing some violent act with it. At this point, management was no longer dealing with a simple violation of company standards of conduct. Human resources personnel were presented with evidence of a potentially violent situation. Management could not risk guessing whether Pugh's description of his mental state was serious or if he would actually follow through with his threat. The sad fact is that people who make such threats sometimes do follow through. Employers must be alert to warning signs of violence in order to ensure the safety of the working environment. Pugh has argued persuasively in this appeal that he intended no harm to anyone; he was just letting off steam in what he imagined was a personal conversation with his fiancée. That argument does not alter the merits of his appeal, however, because it cannot undo the events that justified management's decision to discharge him.

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.<sup>23</sup> There is no element of bad faith or discrimination presented by this appeal. Further, we find that the union's decision to withdraw Pugh's grievance at the Appeal Board step had a rational basis. Once Pugh posted the picture of the gun on Instagram and talked about using it to injure someone, there was really little the union could do to achieve his reinstatement. The union tried to negotiate a last chance reinstatement agreement for Pugh, but the situation provided little to support this effort. Pugh was a relatively low seniority employee. The company's response to Pugh's post

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<sup>23</sup> UAW Constitution, Article 33, §4(i).

was reasonable in this situation. An arbitrator would almost certainly refuse to order Pugh's reinstatement under these circumstances, and it was rational for the union to so conclude.

The decision of the IEB is affirmed.