

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

APPEAL OF:

JASON BAKER,

Appellant

-vs-

CASE NO. 1737

LOCAL UNION 1216, UAW
Sandusky, Ohio
REGION 2B
(THE UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA),

Appellee.

DECISION

(Issued February 1, 2016)

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

Jason Baker argues that he never violated company policy within the meaning of his last chance agreement and the union failed to notify him that a grievance protesting his termination had been withdrawn.

FACTS

Jason Baker worked at Ventra Plastics in Sandusky, Ohio, in a bargaining unit represented by UAW Local Union 1216. He had a seniority date of October 25, 2010.¹ Baker's employment was terminated on August 1, 2013 for using abusive or threatening language toward a co-worker.² Local 1216 grieved the discipline. The local parties settled Baker's grievance on September 13, 2013, based on the terms of a last chance

¹ Record, p. 8. Baker reports that he began working for Ventra in May 2007. He was placed on indefinite layoff in August 2008 and rehired on October 25, 2010. (Record, p. 37)

² Record, p. 9.

reinstatement agreement.³ The last chance agreement, dated September 20, 2013, provides as follows:

- “6. Jason Baker’s employment will be terminated under this agreement for:
 1. Any violation of company policy, work rule, or any single unauthorized absence for a period of twelve (12) months from the date of this Last Chance Agreement.”⁴

On Friday, December 13, 2013, Baker was terminated for violating the terms of his last chance agreement. The disciplinary notice explains the reason for the termination as follows:

“12/12/13, Jason has been identified as violating his last chance agreement. Jason has failed to follow company policies, and demonstrated disruptive actions deemed not to be in the best interest of the company. Effective 12/13/13, Jason Baker is terminated. He is not permitted on company property.”⁵

Baker’s supervisor, Aaron Voltz, provided the following statement regarding the incident that led to Baker’s termination:

“During the shift tonight, Jason Baker was assigned to be the MH on the LH side in A8. Issues arose as Crystal Kessinger was instructed by Jason Baker that he was not going to pull the tags off the empty palletainers she was pushing out. Crystal was working as an assembler at the reflector station. Jason Baker instructed her that it was her job. Crystal then told him she was not going to do it, as it was his job. 2 weeks ago, Jason Baker did the same thing to Brittany Hellinger when she was performing her assembler duties at the lens/bezel station. At that time, Jason refused to remove the lids from containers and the tags, telling her it was her job. Both times have involved heated discussions with him being the root cause in both. All other ee’s when performing MH/Stock handler duties complete these tasks. It keeps the line running with the assemblers continuously pushing parts. 2 weeks ago, I instructed Jason Baker to remove the tags and lids. During the shift tonight, I already made contact with Fritz and discussed Jason Baker’s situation getting into with another female on the line and making things difficult for the female assemblers. I then returned to instruct Jason Baker to remove the tags as it was what I expected from MH. Jason Baker told me he already checked with 3

³ Record, p. 10.

⁴ Record, p. 11.

⁵ Record, p. 20.

committeemen and he's been here 6 years. I told him that was irrelevant to me, as I was running the department and I was directing him to complete these duties. I also told him he could call any of the three committeemen he talked to down the line and we could handle this situation with them. I told him I would be reporting this to the front office, as this issue cannot continue to disrupt the good of the line. I also told him, (at minimum) I will not be assigning him MH duties any longer, as he is the only one getting into arguments with other employees as they work the line."⁶

Brittany Hellinger submitted a statement describing how she had to stop the line because Jason Baker refused to take the lids off of baskets.⁷ Crystal Kessinger submitted a statement confirming that she got into an argument with Jason Baker because he refused to remove the tickets from baskets.⁸

Baker was escorted to Labor Relations on December 13, 2013, for an interview prior to his termination. According to a statement submitted by Supervisor Loretta Branham, Baker could be heard outside the office shouting and that he continued speaking angrily until he was escorted from the building. Branham wrote:

"...I heard loud voices coming from Labor Relations around 0650. They continued to get louder as the minutes went by. At 0657, I went over to Labor Relations and stood outside Brad Petracca's door. It was very evident that the ee inside was very angry and verbally confrontational. At that time, I had no idea who it was or that anyone else was in the office except Brad and the voice. At 0659, I was radioed by Gate 1 that Brad had requested I stand by at his door. I advised that I already was. Although I could hear loud voices, I could not understand everything being said by either party. At 0705, the door opened and I saw Brad exit followed by Jason Baker (the ee terminated) and the two UAW Reps, Guy Geiger and Josh Brown. Jason Baker was very agitated and kept demanding to talk to Aaron (Aaron Voltz is his supervisor). He wanted to go to the floor, but was instructed by Brad to exit the facility. He ranted all the way out the door, through the turnstiles, and while walking to his vehicle. ..."⁹

Local 1216 filed Grievance JDB000102 protesting Baker's termination on December 20, 2013.¹⁰ In support of Baker's grievance, the local union argued that

⁶ Record, p. 13.

⁷ Record, p. 14.

⁸ Record, pp. 15-16.

⁹ Record, p. 18.

¹⁰ Record, pp. 21-22.

Baker never violated his last chance agreement. The union reported that Baker asked to be transferred out of the material handling department because he believed the employees there were hostile towards him. He felt the other employees were deliberately targeting him because they knew about his last chance agreement with the company. Nevertheless, the union maintained that Baker never behaved in a manner inconsistent with the company plant rules. The grievance states:

“...Statements put in by coworkers against the aggrieved were used in the determination of the aggrieved’s employment during his hearing with HR. The aggrieved states the statements are absolutely false in every way and the aggrieved was never given a chance to have witness statements put in to support that the statements were false and made up to help the process of termination of the aggrieved. The aggrieved was never loud, out of line, profane or troublesome after his reinstatement date of 9/20/13 and went above and beyond for his supervisor, coworkers, and employer. ...”¹¹

Grievance JDB000102 was withdrawn by the local union on January 16, 2014, during a third stage grievance hearing.¹² First shift Committeeperson Josh Brown submitted a statement describing the reason why the local union withdrew Baker’s grievance. Brown reported that Baker had informed him of his conflict with employees in the material handling department over whose job it was to pull the tags off of baskets. Brown reported that he advised Baker to follow his supervisor’s instructions. He wrote:

“...The aggrieved had previously brought this to my attention as it had resulted in some conflict with a few coworkers on his shift in which I explained to him at that time, traditionally, this was the job of the operator on that station, but if your supervisor gives you a direct work instruction, it has to be performed unless it involves a health and safety concern. The job of pulling tags off of baskets is managed differently throughout the plant and the supervisor. ...”¹³

Brown reported that after Baker was directed to report to Labor Relations on December 13 over the tag pulling issue, he instructed Baker to keep a level head and be courteous during the hearing. Brown gave the following description of Baker’s behavior during the hearing in Labor Relations on December 13, 2013:

“...During the hearing Brad Petracca informed the aggrieved that he would be terminated for violating his last chance agreement for actions deemed not in the best interest of the company (disrupting the workforce.) At this time, the aggrieved stood up and became irate with Brad and his decision, turning over his chair and verbally became aggressive at that time. The

¹¹ Record, p. 21.

¹² Record, p. 21.

¹³ Record, p. 17.

complete opposite of how I asked the aggrieved to conduct himself during this hearing. Security was called down at that time and escorted the aggrieved off of the plant premises following the hearing. ...”¹⁴

Brown reported that he told the plant President Guy Geiger and International Servicing Representative Wayne Blanchard during the third stage grievance hearing that he did not feel the union had enough evidence to pursue Baker’s grievance to the fourth stage.¹⁵ Brown described the decision to withdraw Baker’s grievance as follows:

“...I was not the deciding factor in whether his grievance was pulled or not, but I did have some input on how I felt about the grievance and its chances through arbitration. At that time, I told my Plant Chairman Guy Geiger and International Servicing Representative Wayne Blanchard, I did not feel that we had enough evidence to advance the grievance to the 4th stage of the grievance procedure which is arbitration. After some discussion, it was decided by the union to pull the aggrieved’s grievance.
...”¹⁶

Jason Baker sent an undated letter to the International Union asserting that Union Representative Rick Fritz did not represent him properly in connection with the tag pulling controversy. Baker complained that the union never addressed the issue of whose responsibility it was to pull the tags from the baskets.¹⁷ On April 30, 2014, International President Dennis Williams’s Administrative Assistant Rick Isaacson sent Baker a letter acknowledging his correspondence postmarked March 31, 2014, and asking for information regarding the decision he was attempting to appeal.¹⁸

It appears that Baker also filed a complaint with the Ohio Civil Rights Commission charging Ventra with discrimination. On April 24, 2014, the Commission issued a letter of determination dismissing the complaint.¹⁹ On August 13, 2014, the U.S. Equal Employment Opportunity Commission (EEOC) issued a letter adopting the findings of the Ohio Civil Rights Commission.²⁰

Baker apparently responded to Administrative Assistant Isaacson’s inquiry on August 18, 2014.²¹ Baker stated that he was unjustly terminated for an alleged violation

¹⁴ Record, p. 17.

¹⁵ Guy Geiger was president of Local Union 1216 at this time. The local union’s letterhead indicates that the president is also the local union chairperson.

¹⁶ Record, p. 17.

¹⁷ Record, p. 24.

¹⁸ Record, p. 25.

¹⁹ Record, p. 28.

²⁰ Record, p. 26.

²¹ Baker’s letter is date-stamped by the President’s Office August 18, 2014. (Record, p. 29)

of his reinstatement agreement. Baker stated Local 1216 President Guy Geiger and Union Committeepersons Rick Fritz and Josh Brown failed to represent him properly. Baker insisted that Supervisor Aaron Voltz had no reason to put him on notice on December 12, 2013. He reported that neither Fritz nor Brown could explain to him why he had been placed on notice. Baker further pointed out that no one had ever resolved the question of whose job it was to pull the tags from the baskets.²² On September 2, 2014, Administrative Assistant Isaacson sent Baker a letter acknowledging receipt of his response. Isaacson pointed out, however, that Baker's answers were insufficient to determine the status of his appeal under Article 33 of the UAW Constitution. Isaacson instructed Baker to indicate whether a grievance had been filed on his behalf, and if so, who settled the grievance. Isaacson asked Baker whether he had ever appealed the settlement of his grievance to the local union membership. Isaacson further instructed Baker to submit his response by September 19, 2014.²³

The record contains a letter addressed to Baker from Local 1216 President/Chairperson Gary Marvicsin dated September 9, 2014. Marvicsin's letter provides responses to Administrative Assistant Isaacson's questions. The letter indicates that Grievance JDB000102 was withdrawn by the union on January 16, 2014. In response to the question whether Baker had appealed that decision to the local union membership, the letter states "unknown."²⁴ On September 18, 2014, Baker forwarded Marvicsin's letter to the International Union.²⁵ Administrative Assistant Isaacson responded to Baker's submission on October 9, 2014. Once again, Isaacson pointed out that Baker's responses were insufficient to determine the status of his appeal under Article 33 of the Constitution. Isaacson wrote:

"In our letter to you dated September 2, 2014, Question #4 asks: 'Was your grievance settled: If so, who settled it? The response provided by Chairman Marvicsin does not provide a complete answer. The answer does not address who settled the grievance; the local union or the International Union.

Also, Chairman Marvicsin's response to Question #5: 'Did you appeal to your local union membership prior to appeal to this office,' is also confusing. The answer we are looking for is: 'Yes' or 'No,' not 'unknown.'"²⁶

Baker responded to this inquiry by writing on Isaacson's letter that his grievance was settled by Local 1216 President Guy Geiger. Baker indicated that he did not appeal the

²² Record, pp. 29-31.

²³ Record, p. 35.

²⁴ Record, p. 36.

²⁵ Record, pp. 36-39.

²⁶ Record, p. 40.

settlement of his grievance to the local union.²⁷ On October 20, 2014, Isaacson advised Baker that pursuant to Article 33, §2, of the International Constitution, he must first appeal the decision to withdraw his grievance to the local union membership before he can appeal to the International Executive Board (IEB).²⁸

Minutes of a Local 1216 Executive Board meeting on November 5, 2014 report that Jason Baker's appeal was presented. The minutes report the following action on the appeal:

"Terminated employee failed to follow proper procedures and timelines in regards to his appeal. The executive board came to the conclusion that the appeal had no merit. Motion made by S. McFarlin for the executive board to make a recommendation to the membership regarding this appeal. 2nd – K. Coleman. M/C.

Motion made by B. Lynn to recommend to the membership to deny appeal request. 2nd – K. Coleman. M/C."²⁹

The local union membership considered Baker's appeal at a meeting on November 9, 2014. According to the minutes of that meeting, Chairperson Marvicsin provided background on Baker's appeal and explained that Baker was asking to have his grievance reinstated. In support of this motion, Baker read the letter he had sent to Administrative Assistant Isaacson on August 18, 2014. The minutes report the following actions with respect to Baker's grievance:

"December 20, 2013, a grievance was filed. It was heard in 3rd stage but denied by the company.

January 16, 2014, the grievance was withdrawn.

March 31, 2014, J. Baker was notified by G. Geiger that the grievance was withdrawn.

G. Marvicsin reiterated that this was J. Baker's appeal and that no previous attempt was made to appeal.

S. McFarlin read Article 33, Section 4, Paragraph C of the UAW Constitution. (60 days from notification of withdrawal to appeal.)³⁰

²⁷ Record, p. 42.

²⁸ Record, p. 43-44.

²⁹ Record, p. 45.

³⁰ Record, p. 51.

At this point, the minutes report that a motion was made to accept the appeal and grant reinstatement of Jason Baker's grievance. Member T. Sims-Blake asked for clarification of the motion. The minutes report the following exchange between Sims-Blake and Chairperson Marvicsin:

"T. Sims-Blake wanted clarification on what we would actually be voting on. G. Marvicsin explained that the motion on the floor was to either grant reinstatement of the appeal or not grant it. He made it clear that the vote was not about trying to get J. Baker his job back, as he had violated his LCA with the company. Article 33, Section 4 of the UAW Constitution was quoted and the membership was reminded that we are basically asking if the appeal has merit and if it was done in a timely manner according to the Constitution."³¹

Member B. Delk asked whether Baker was actually notified when his grievance was withdrawn. The minutes report Delk's inquiry as follows:

"B. Delk asked if J. Baker was actually notified of his grievance being withdrawn. G. Marvicsin stated yes, he was notified on March 31, 2014. B. Delk said, 'Oh, really?' and rolled her eyes."³²

Another member wanted to know why the matter was not previously presented to the membership. The minutes give the following description of this question:

"D. Payne wants to know why the case was never brought to the floor by the union. G. Marvicsin states that better communication is always a goal of Local 1216, but Article 33 of the UAW Constitution clearly lays out the guidelines for an appeal. He says the ultimate responsibility for filing an appeal rested on J. Baker's shoulders. He also reminded the membership that UAW Constitutions are always available for members and they are kept at the hall."³³

Once again, a member asked if Baker was actually notified of the withdrawal of his grievance. The minutes report:

"B. Hill wanted to know if J. Baker was actually notified. G. Marvicsin said that yes, he was notified of the grievance withdrawal on March 31, 2014."³⁴

³¹ Record, p. 52.

³² Record, p. 52.

³³ Record, p. 52.

³⁴ Record, p. 52.

Another member reported that J. Baker telephoned her for information regarding the status of his grievance. The minutes state:

“T. Randleman says she received numerous phone calls from J. Baker asking her to ask the union to call J. Baker and update him on the status of his grievance.”³⁵

At this point, member J. Taylor is reported as stating that Baker’s appeal should be rejected as untimely. Taylor’s comment is reported as follows:

“J. Taylor stated that if J. Baker was notified on March 31, 2014 of the withdrawal of his grievance, then his appeal is dead in the water and has no merit. He stated that there is nothing we could do with it and nothing the International would do with it because the time limits expired a long time ago.”³⁶

Following this discussion, the minutes report that there was a vote on the motion to grant reinstatement of Baker’s grievance. The results of that vote are reported as follows:

“G. Marvicsin called for a vote on the motion to reinstate J. Baker’s grievance. Vote was called orally at first but was not overwhelmingly clear one way or the other. G. Marvicsin then asked all those in favor to accept the appeal and reinstate the grievance to stand up. The count was 17 in favor. G. Marvicsin then asked all opposed to accepting the appeal for reinstatement of the grievance to stand up. The count was 19 opposed.”³⁷

Based on these actions, the minutes report that the motion to accept J. Baker’s appeal and grant reinstatement of his grievance was denied.³⁸

Baker appealed the membership’s decision on his appeal to the IEB on December 4, 2014.³⁹ Local Union 1216 provided a statement in response to an inquiry from the President’s office regarding Baker’s appeal. Local Union 1216 stated that Baker’s appeal was considered untimely because he was notified of the decision to withdraw his grievance on March 31, 2014, and he did not appeal that decision to the membership until November 9, 2014. The local union described the sequence of events in Baker’s appeal as follows:

³⁵ Record, p. 52.

³⁶ Record, p. 53.

³⁷ Record, p. 53.

³⁸ Record, p. 53.

³⁹ Record, pp. 55-56.

“Jason Baker was notified on March 31, 2014 that his grievance was withdrawn. He was notified by then President/Chairman Guy Geiger during a telephone conversation. Jason Baker then proceeded to file discrimination charges with the U. S. Equal Employment Opportunity Commission and the Ohio Civil Rights Commission. It was only after these claims were dismissed/denied that he appealed to the local union membership in November 2014.”⁴⁰

Acting on behalf of President Williams, Rick Hoffman and Max Jeffrey conducted a hearing on April 30, 2015, to investigate the basis for Baker’s appeal. The hearing officers reviewed Baker’s disciplinary record leading up to his reinstatement under the terms of a last chance agreement. The hearing officers reported that Grievance JDB000102 protesting Baker’s termination was filed on December 20, 2013, and subsequently withdrawn by the local union. According to the hearing officer’s report, Baker was notified of the decision to withdraw his grievance in a text message sent by President Guy Geiger on January 13, 2014. The hearing officers’ report states:

“The appellant was notified of the settlement of Grievance No. JDB000203 on January 13, 2014, by text from Shop Chair Geiger. The text was followed up with a phone conversation with Geiger wherein the appellant was advised to contact his International Union Region 2B Servicing Representative, Wayne Blanchard, to discuss his appeal rights. The appellant, by his testimony, contacted Wayne Blanchard on, he thought, January 16th or 17th, but was sure it was shortly after the Martin Luther King Jr. holiday. During this phone call, Blanchard advised him of his appeal rights.”⁴¹

The hearing officers reported that Baker filed his appeal with the International President’s office in the letter postmarked March 31 2014.⁴²

According to the hearing officers’ report, Baker testified that he was placed in the material handling department following his reinstatement and the operation of the department was unfamiliar to him. Furthermore, Baker reported that the department was particularly hectic because several employees were on leave and they were short-handed. Baker acknowledged his disagreement with coworkers Crystal Kessinger and Brittany Hellinger, as well as Supervisor Aaron Voltz, over whose job it was to pull the tags off empty containers. Baker maintained, however, that this disagreement never rose to the level of abusive behavior.⁴³ The hearing officers’ report states:

⁴⁰ Record, p. 63.

⁴¹ Record, p. 73.

⁴² Record, p. 73.

⁴³ Record, p. 75.

“The appellant states he was never threatening, abusive or insubordinate. He never refused a work order.”⁴⁴

The hearing officers reported the union’s explanation for its decision to withdraw Baker’s grievance as follows:

“Regardless of the initial claims made on the grievance, a thorough investigation of the matter led the union to conclude they could not prevail in arbitration and, therefore, withdrew the grievance. The union believed they could not prevail due to appellant’s poor work record, short length of service, “Last Chance Agreement,” and the fact that a supervisor and two coworkers formally complained that his behavior was abusive.”⁴⁵

The hearing officers described Baker’s correspondence with Administrative Assistant Isaacson seeking to determine the status of his appeal.⁴⁶ They observed that Baker did not actually appeal to the local union membership regarding the decision to withdraw his grievance until sometime between October 20, 2014 and November 5, 2014.⁴⁷ The hearing officers concluded that Baker’s appeal to the membership was untimely based on their previous determination that he had been notified of the decision to withdraw the grievance on January 13, 2014. They concluded that even if Baker’s undated letter to the International President’s office, postmarked March 31, 2014, were considered an appeal, the submission would still be outside of the 60-day time limit set in the UAW Constitution for appeals to a local union.⁴⁸ The hearing officers concluded that Baker’s appeal to the membership was untimely so that it was unnecessary for the IEB to address the merits of his grievance.⁴⁹

The IEB adopted the hearing officers’ report as its decision in accordance with the procedure described in Article 33, §3(d) of the UAW Constitution. President Williams provided Baker with a copy of the IEB’s decision on August 17, 2015. Baker has now appealed the IEB’s decision to the Public Review Board (PRB).

ARGUMENT

A. Jason Baker:

I was not notified when my grievance was withdrawn. The grievance should not have been withdrawn because I never violated company policy.

⁴⁴ Record, p. 76.

⁴⁵ Record, p. 76.

⁴⁶ Record, pp. 73-74.

⁴⁷ Record, p. 77.

⁴⁸ Record, p. 77.

⁴⁹ Record, p. 77.

B. International Union, UAW:

During the hearing on his appeal, Baker admitted that President Geiger notified him on January 13, 2014, that his grievance had been withdrawn. It is undisputed that he did not attempt to appeal that decision until his letter to the International President's office postmarked March 31, 2014. Based on these facts, the IEB concluded that the appeal was untimely and denied it on that basis without addressing the merits of the local union's handling of Baker's grievance.

Baker now claims that he was not notified that his grievance was withdrawn. That claim is without merit. Both appellant Baker and former President Geiger testified at the IEB hearing that Geiger notified Baker of the withdrawal of his grievance on January 13, 2014. Baker's new claim that he was not so notified is directly at odds with his hearing testimony and must be rejected. Baker failed to appeal the decision to withdraw his grievance within 60 days as required by Article 33 of the UAW Constitution. The IEB appropriately declined to consider the merits of Baker's appeal because he failed to file it on time.

C. Rebuttal by Jason Baker:

On February 11, 2014, I received a call from Local President Guy Geiger telling me to go to the guard shack to obtain information about my grievance so that I could appeal. The guard shack provided me with the statement submitted by my immediate supervisor Aaron Voltz. I did not receive the other witness statements. When I contacted President Geiger for more information, he told me to call International Representative Wayne Blanchard. I received the additional statements in connection with my grievance on March 21, 2014.

The written statements show that there was no basis for my termination. Aaron Voltz's statement is inconsistent with Brittany Hellinger's and Crystal Kessinger's. Josh Brown's statement does not coincide with Supervisor Loretta Branham's statement.

DISCUSSION

The time limits stated in Article 33 are not mere technical hurdles in the path of a potential appellant; time limits play a significant role in the UAW internal appeals procedure. The sixty-day time limit applicable to appeals to a local union sets the date when local officers may regard a matter as concluded. A complaint by a member that he was not represented fairly in connection with a disciplinary grievance may expose the local to liability for losses incurred as a result of the local union's disposition of the matter. The time limit established by the Constitution sets the final date for asserting such complaints and thus confines the local union's exposure to claims for losses resulting from disciplinary actions. The time limit compels a dissatisfied grievant to give the local union notice of his or her intent to challenge a decision to settle or withdraw a grievance during a time frame that allows the union to have the grievance reinstated

where authorized by the contract or else to address and possibly correct errors that occurred in connection with the handling of the grievance.

In recognition of the importance of Constitutional time limits, we would generally regard the rejection of an appeal by the IEB for failure to comply with the applicable time limits as a bar to our review of the merits of the underlying complaint. In this case, the IEB adopted a report rejecting Baker's complaint as untimely; however, the record does not adequately support the factual basis for the hearing officers' application of the time limit to reject Baker's appeal. In particular, the record does not persuasively support the hearing officers' claim that Baker received a text message from Local Union President Guy Geiger on January 13, 2014, notifying him that his grievance had been withdrawn. Baker denies this claim. There is no written statement or other document in the record from President Geiger describing any such January 13 communication. In fact, the grievance record signed by Committeeperson Josh Brown and Supervisor Brad Petracca indicates that Baker's grievance was not withdrawn until January 16, 2014, during a third step grievance hearing, so he cannot have been notified of its withdrawal on January 13, 2014.⁵⁰ A statement signed by Committeeperson Josh Brown reports that President Geiger consulted with Brown on January 16, 2014, before making the decision to withdraw Baker's grievance.⁵¹

The only basis for the hearing officers' report about a text message sent on January 13, 2014, appears to be some very confused testimony given by Baker himself during the hearing on his appeal. Whatever Baker may have said at the hearing cannot cancel or contradict what is in the written record, at least not without some further explanation of the conflict. The officers of Local Union 1216 reported to the membership during the meeting on Baker's appeal, several times, that Baker was notified of the decision to withdraw his grievance by President Guy Geiger on March 31, 2014. The Local Union repeated this information in writing when responding to Baker's appeal to the IEB. The record in this case establishes that Local 1216 informed Baker of the decision to withdraw his grievance on March 31, 2014, and Baker filed his letter with the International Union protesting the decision that same day.

Nevertheless, we agree with the conclusion of the Local 1216 Executive Board, as stated in their recommendation to the membership, that Baker failed to pursue his appeal in a timely fashion. The record shows that President Williams's Administrative Assistant Rick Isaacson responded promptly to Baker's attempt to appeal the decision to withdraw his grievance to the International Union. On April 30, 2014, Isaacson requested information necessary to determine whether Baker's appeal was properly before the IEB. Baker did not answer Isaacson's inquiry until August 18, 2014, more than three months later. Even then, Baker did not provide the information requested. It was not until October 17, 2014, that Baker informed the International Union that his grievance had been withdrawn by the local union president and that he had not

⁵⁰ Record, p. 22.

⁵¹ Record, p. 17.

appealed the president's decision to the local union membership. Baker did not actually appeal the withdrawal of his grievance to his local union membership until November 9, 2014.

Baker's response to Administrative Assistant Isaacson in August was apparently prompted by a letter from the EEOC dismissing his complaint before that governmental agency. Baker's attempt to obtain relief from a governmental agency did not stay proceedings on his appeal to the UAW. In fact, Baker's pursuit of a remedy from the Ohio Civil Rights Commission and the EEOC prior to exhausting his internal union appeals runs counter to the clearly expressed policy of the UAW.⁵² After Baker had submitted no appeal to the membership of Local Union 1216 during the 60-day period following notice to him of the withdrawal of his grievance, the officers of Local Union 1216 had a right to assume that Baker was reconciled to their disposition of his grievance so that their representational duties with respect to his termination were concluded. It would be inconsistent with the purpose of the time limits set forth in the UAW Constitution to allow Baker to reopen his grievance seven months after he was notified of its disposition based on a claim that the local union failed to represent him properly in some respect.

Although we agree that Baker did not pursue his claims in a timely fashion, it is not entirely clear that the IEB was justified in refusing to address the merits of his appeal. An argument could be made that Baker's correspondence, postmarked March 31, 2014, constituted a timely appeal regardless of subsequent delays.⁵³ Even if such an argument were accepted, however, it would only entitle Baker to further review by the IEB. Given the record before us now, we do not believe it is necessary to determine whether Baker's dilatory response to the International Union's inquiries precluded IEB review of the merits of his appeal.

The IEB's decision on Baker's appeal reports that representatives from Local Union 1216 were present at the hearing on Baker's appeal and explained the basis for their decision to withdraw his grievance. The union's investigation revealed that Baker had a poor work record and low seniority. Two co-workers and a supervisor had submitted written statements describing his disruptive behavior in the workplace. In addition, a security guard in the plant submitted a statement describing his inappropriate behavior during his disciplinary interview. Baker was already working under the terms of a last chance reinstatement agreement at the time of his termination. Given these circumstances, the officers of Local Union 1216 concluded that the union could not

⁵² Article 33, §5 of the International Constitution states as follows:

"OBLIGATION TO EXHAUST INTERNAL UNION REMEDIES. It shall be the duty of any individual or body, if aggrieved by any action, decision or penalty imposed, to exhaust fully the individual or body's remedy and all appeals under this Constitution and the rules of this Union before going to a civil court or governmental agency for redress."

⁵³ We reviewed such a claim in *Sonnier et al. v. International President, UAW*, PRB Case No. 1548 II, 13 PRB 391 (2007). In that case, we held that the appellants had perfected a timely appeal, although there are a number of distinguishing circumstances between that case and Baker's situation.

achieve any remedy for Baker through arbitration of his grievance. The only argument Baker has asserted in defense of his behavior is his insistence that it was not his job to pull tags off the baskets. But as Baker's committee person wisely advised him, if the supervisor instructs you to do a job then that is your job unless it involves a health and safety concern. Baker's quarrel with the supervisor's position would be highly unlikely to persuade an arbitrator that he was entitled to any relief. The union's decision to withdraw Baker's grievance was clearly rational based on this record. Nothing would be accomplished by any further review of the matter.

The appeal is denied.