

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

APPEAL OF:

IRMA FLORES, Member
LOCAL UNION 12, UAW
(Toledo, Ohio),

Appellant

-vs-

CASE NO. 1767

REGION 2B, UAW
(THE UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA),

Appellee.

DECISION

(Issued October 25, 2017)

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

Irma Flores argues that International Representative Brian Draper's decision to withdraw her discharge grievance lacked a rational basis.

FACTS

Irma Flores worked at Johnson Controls Battery Unit in Holland, Ohio, in a bargaining unit represented by UAW Local Union 12. She has a seniority date of December 6, 2010.¹ On August 30, 2016, Flores was suspended for failing to clean up her work area and leaving her work area. The Disciplinary Action Notice issued to Flores described the reason for her suspension as follows:

“On Saturday, Irma cleaned up and pulled up all the mats and did not put them back down. Irma also left debris on the floor that should have been cleaned and did not rotate the driver job with her teammate. On Sunday,

¹ Record, p. 11.

8/28/16, Irma was away from the line for 60 minutes causing a slowdown of production.”²

The Notice states that Flores was held out of service pending investigation to determine the appropriate discipline, which could result in termination.

On September 2, 2016, Flores signed a last chance agreement in lieu of discharge. The agreement states:

“On September 2, 2016, Flores received an “A” rule for leaving regular workplace or department without authorization from the supervisor. The accumulation of work rules is normally handled as discharge under Johnson Controls, Inc. Toledo Plant Employee Handbook.

In lieu of discharge, and in order to give Ms. Flores one last opportunity to salvage her employment, the parties agree to the following last chance agreement.”³

The agreement provides that Flores will be reinstated effective September 4, 2016, without back pay. It states that any violation of Company policies, plant rules or safety procedures by Flores during a period of one year following her reinstatement will be grounds for discharge. In addition, the agreement requires Flores to obtain counseling from the Employee Assistance Program to address her workplace issues. Paragraph 4 of the last chance agreement states:

“In order for you to be successful at your job, you must improve your interactions with your co-workers and supervisors by remaining professional, courteous, and following the work rules and guidelines at all times. You must refrain from being obstinate and having any further instances of altercations with others in the workplace. In order to assist you with this, you must contact Rick Carlson of the Employee Assistance Program (EAP), immediately at the conclusion of this meeting. He is going to help you positively address your workplace issues by connecting you with the appropriate resources.”⁴

On September 29, 2016, Flores was suspended for failing to clean up her work area and leaving the plant early. Johnson Controls issued Flores a Notice of Disciplinary Action on October 6, 2016. The Notice describes the violation that prompted Flores’s suspension as follows:

² Record, p. 1.

³ Record, p. 4.

⁴ Record, p. 4.

“On 9/28/16, Irma Flores did not complete cleanup of the work area she was assigned to. Irma also left the work area she was assigned to without receiving approval/authorization from her supervisor that she would/would not need her to be forced over.”⁵

The Notice describes the action taken in response to the violation as discharge with the following explanation:

“A-rule – negligence and inefficiency on the job and A-rule – leaving department without authorization from supervisor. On LCA – violation. Discharge immediately.”⁶

A discharge hearing was conducted on October 7, 2016. Johnson Controls Representative Melaletia Jones presented notes from the hearing in an email addressed to Local Union 12. Jones reported that Flores’s supervisor called over another supervisor and a union representative to view Flores’s work area and confirm that it had not been cleaned. Jones explained that it is an established practice in Flores’s department for the supervisor to let employees know whether they are needed to work over or whether they can leave. She stated that when the supervisor went to Flores’s work area at the end of the shift, she discovered that Flores had already left. Jones concluded:

“Based on our investigation of the facts above and the additional evidence brought forth in the discharge hearing, the Company maintains its position regarding the 2 rules that were issued to Ms. Flores and respectfully denies the Union’s request to bring her back as she is in clear violation of her last chance agreement that was only issued one month ago. At this time, it is the Company’s intent to uphold our decision to discharge Ms. Flores.”⁷

Local Union 12 filed Grievance 16-101 protesting Flores’s discharge on October 13, 2016. On October 27, Plant Manager Miguel Barajas wrote to UAW International Representative Brian Draper that the Company was unwilling to reinstate Flores. Barajas gave the following explanation for the Company’s position:

“Per the Union’s request to bring Ms. Flores back, the Company once again reviewed the evidence and documentation pertaining to the work rules violations issued to Ms. Flores on October 6, 2016. The Company further reviewed Ms. Flores’s prior workplace disciplines and maintains its position with respect to her discharge. The two (2) A-rules that Ms. Flores received for 1) negligence and inefficiency on the job and 2) leaving the

⁵ Record, p. 9.

⁶ Record, p. 9.

⁷ Record, p. 10.

department without authorization from her supervisor were a direct violation of her last chance agreement, dated September 2, 2016. The Company feels that they were clear in their expectations and have been liberal in allowing Ms. Flores an opportunity to salvage her employment through the last chance agreement and respectfully denies the Union's request to bring her back and intends to uphold our discharge decision."⁸

On December 12, 2016, Representative Draper sent Flores a letter informing her that the Union had settled her grievance. Draper described the Union's efforts to obtain Flores's reinstatement through negotiations with the Company. He wrote:

"On October 24, 2016, a Step 3 meeting was held with representatives of the Company and Union regarding Grievance 16-101 that was filed on your behalf. Unfortunately, the employer steadfastly denied the grievance. In addition to the Step 3 meeting, we have had additional discussions with the Company in an attempt to change their position, but were unsuccessful."⁹

Draper explained that the Union reviewed the facts of the case and concluded that it could not prevail in arbitration. He maintained that further pursuit of the grievance would be futile.

Flores appealed the decision to withdraw her grievance to the International Executive Board (IEB) on January 10, 2017. In support of her appeal, Flores stated that being forced to sign a last chance agreement caused her extreme anxiety. She said the anxiety started some time ago as a result of harassment by her supervisor. Flores argued that the charge that she did not clean her work area was untrue. She maintained that her termination was in retaliation for having reported her supervisor's harassment to the Company Hotline. Flores's appeal states:

"...My supervisor subjected me to continued harassment and ridicule. On another occasion not long ago, I was sent home with high blood pressure. I was accused of leaving a mess and leaving the floor early. This was not true. I had brought to the attention of supervision that the 2nd and 3rd shifts weren't cleaning before they left their shift. I was the only one written up. I also believe that I was retaliated against for making a report to the Hotline of the Company because the supervisor would constantly stand around and watch me. ..."¹⁰

Flores provided copies of the complaints that she posted on the Company's Hotline. A report dated September 20, 2016, describes the following complaint

⁸ Record, p. 13.

⁹ Record, p. 16.

¹⁰ Record, p. 21.

submitted by Flores against her supervisor Bryan Smith in connection with the incident that led to her suspension on August 30, 2016:

“The caller says employees were not cleaning their areas, and he/she had reported it several times, but the issue was not addressed. On August 27, 2016, the caller got on his/her hands and knees, and cleaned up the area. The caller says he/she moved some mats that were heavy, and he/she left those and a small pile he/she forget to clean up. The caller returned to work on August 28, and there was a note on the pile of trash saying to leave it for first shift. The caller found this upsetting as it was the other shift’s mess too. The caller reported the issue to Bryan and Bryan yelled at the caller again. The caller says he/she was upset and went out to the floor and Bryan continued yelling at him/her. The caller says this has caused him/her to have an anxiety attack and the caller went to get his/her medication and Bryan claims the caller was gone for an hour. On August 30, the caller was given a five-day suspension for what the caller considers an anxiety attack Bryan caused.”¹¹

Flores posted another complaint on the Hotline after she was terminated. On October 11, 2016, Flores wrote:

“So my Union called me today and the Company does not want to give me my job back. They are so unfair in the way they handle matters there. They don’t care what you have to say. You are wrong no matter what. Monica Perez used to talk to me like I was a criminal. She had even given me a write up without ever talking to me or my Union. Another time she was writing me up and I had to ask her what I had done. Nonchalantly, she said, you were rude. Through the years, I used the Employee Assistance Program for the same issues over and over. On my last day, my supervisor was watching me all day, just waiting to pounce, make his attack, and it wasn’t the first time. I had to sign a last chance agreement because he says I disappeared for sixty minutes, and if I did it was because of an anxiety panic attack that he’s been causing.”¹²

On October 17, 2016, the Hotline posted the following response to Flores:

“Thank you for your patience while this investigation was underway. In addition, it is appreciated that you brought forth these concerns through the use of the Ethics Hotline so coaching opportunities could occur.

A thorough investigation has been conducted locally as well as reviewed at a secondary level at Corporate to review this situation for violations of

¹¹ Record, p. 6.

¹² Record, p. 7.

the organization Ethics policies as it relates to harassment. As a result of the investigation, it was not substantiated that there was a violation of the Ethics policy. However, the concerns remain and although not rising to a formal ethics violation, it does provide a coaching opportunity with leadership on continuous improvement on management skills and employee engagement.”¹³

On January 23, 2017, Representative Draper responded to an inquiry from International President Dennis Williams’s staff regarding Flores’s appeal. Draper reported that after the Company denied Flores’s grievance at Step 3 of the grievance procedure, he scheduled a meeting with the plant manager to see if he would reconsider the decision to discharge Flores. Draper stated that the plant manager would not change his position. Draper stated that the violations issued to Flores were consistent with the Employee Handbook. Draper went on to address the claims asserted by Flores in her appeal to the IEB. He wrote:

“Sister Flores alleges that she ‘had to sign a last chance letter under duress.’ She never mentioned this until she was discharged for violating the LCA. We found no evidence of harassment or ridicule during our investigation, and this too was never raised with the Union until after her termination. She states that the mess was from another shift. The Union Rep that was first notified on the date in question verified the trash was from work Flores performed during her shift. He also investigated and verified that she had left her work area approximately a ½ hour before the end of her shift without notifying her supervisor.”¹⁴

Draper reported that the collective bargaining agreement between the UAW and Johnson Controls does not contain grievance reinstatement language.¹⁵

Acting on behalf of President Dennis Williams, Administrative Assistant Mark Stolle conducted a hearing on Flores’s appeal on March 15, 2017. Stolle prepared a report to the IEB on the appeal based on testimony given at the hearing and documents provided by the parties. Stolle reported that Representative Draper described the following standard applicable to cases involving last chance agreements:

“In considering whether to take the grievance before an arbitrator, UAW International Representative Brian Draper consulted Elkouri and Elkouri’s *How Arbitration Works*. He discovered that there are two important standards when considering a discharge case as a result of violating a LCA. First, the time period of the LCA has to have a reasonable end date. Secondly, the LCA needs to have clear statements that outline the

¹³ Record, p. 12.

¹⁴ Record, p. 28.

¹⁵ Record, p. 28.

requirements. Additionally, Mr. Draper reviewed some arbitration decisions that involved LCA's."¹⁶

Draper also provided the following testimony about the Union's successful use of last chance agreements:

"Last chance agreements are not in our labor agreements or in the employee handbook. We have had success with them. Despite all the attempts, we think we acted in good faith and there was a rational basis for our decision to withdraw the grievance."¹⁷

Stolle observed that Flores had not filed any grievance in connection with her claim that she was being harassed by Supervisor Smith. Although Flores reported her concerns to the Company Hotline, the Company found no basis for action. Stolle acknowledged Flores's argument that she was subject to discipline for the same behavior that other employees engaged in, but he noted that she had not produced any evidence to support this claim. Stolle wrote:

"The appellant's claim of disparate treatment would be more credible if there was a corroborating witness. The lack of witnesses would make the case a difficult one to win at arbitration."¹⁸

Stolle stated that Flores had not asserted that the decision to withdraw her grievance was motivated by impermissible factors such as fraud, discrimination, or collusion with management. He found that the Union made a good faith effort at each step of the grievance procedure. He concluded that the Union had a rational basis for the decision to withdraw Flores's grievance.¹⁹

Stolle denied Flores's appeal. The IEB adopted Stolle's report as its decision. President Williams provided Flores with a copy of the IEB's decision on May 10, 2017. Flores has now appealed the IEB's decision to the Public Review Board (PRB).

ARGUMENT

A. Irma Flores:

My Local never assisted me in the past in my attempts to stop the harassment directed against me. This led to my being confronted with a last chance agreement. The last chance agreement caused me to experience continued anxiety. This anxiety

¹⁶ Record, p. 38.

¹⁷ Record, p. 38.

¹⁸ Record, p. 39

¹⁹ Record, p. 40.

started some time ago. My anxiety was the result of my supervisor subjecting me to harassment and ridicule. On another occasion, I was sent home with high blood pressure. I was accused of leaving a mess and leaving the floor early. This was not true. I had brought to the attention of the supervision that the 2nd and 3rd shifts were not cleaning before they left. I was the only one written up. I also believe that I was retaliated against for making a report to the Hotline of the Company, because this supervisor would constantly stand around and watch me.

B. International Union, UAW:

Flores claims that the discipline she received was the result of disparate treatment and retaliation. However, at the hearing to investigate her appeal, Flores did not provide any concrete examples of disparate treatment nor any witnesses to support her allegations. In addition, Flores's conduct on September 28 was the exact same behavior that resulted in her reinstatement on a last chance basis. She was on notice that leaving her department without authorization and negligence about cleanup would be grounds for further discipline.

The International Representative who handled Flores's grievance thoroughly researched the issues and determined that the grievance had little likelihood of success on the merits. The last chance agreement Flores signed had clearly outlined requirements and a reasonable end date. Flores violated the agreement less than three weeks after she signed it by repeating the same violations of the employer's work rules. The International Representative's withdrawal of the grievance was rational. Flores has not alleged – and there is no evidence to suggest – that the International Representative's decision was a result of fraud, discrimination, or collusion with management.

C. Rebuttal by Attorney Francis J. Landry on behalf of Irma Flores:

Flores should not have been in the position of having to accept a last chance agreement on September 2, 2016. She was never given the opportunity to submit grievances to protest her previous disciplinary actions. She disputed the charge that led to her last chance agreement and wanted to pursue her grievance further. Flores's union representative should not have forced her to sign the last chance agreement in order to be reinstated. The Union should have challenged the discipline as unjust.

DISCUSSION

In her appeal to the IEB, Flores complained that her supervisor harassed and ridiculed her, but she does not give specific details about the supervisor's activities. Flores reported her feelings to the Company's Hotline, but it does not appear that she ever requested a grievance addressing the supervisor's behavior. In any event, the Hotline investigated her complaint and found no violation. In her appeal to the PRB, Flores argues that she was not given an opportunity to submit grievances protesting her previous disciplinary actions, but she has not provided any evidence that she had

requested a grievance or appealed a refusal by her committeeperson to file a grievance on her behalf.

It appears from our record that the local union was actively working with Flores to assist her in fulfilling the requirements of her job. The last chance agreement that Flores signed on September 2, 2016, reports a history of altercations and obstinate behavior. The agreement directed Flores to resources that would help her address these issues. Flores has not described any violations of the collective bargaining agreement that would have provided a basis for a successful grievance. The fact that Flores felt anxious in the presence of a particular supervisor would not entitle her to any specific relief through the grievance procedure.

Our jurisdiction over appeals related to 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.²⁰ International Representative Brian Draper clearly explained the basis for his conclusion that further pursuit of Flores's grievance would have been futile. Flores had previously been disciplined for failing to clean up her work area and causing the line to shut down by leaving her post. Less than one month after having been reinstated on a last chance agreement, Flores engaged in the exact same behavior in violation of the requirements clearly established by her reinstatement agreement. The company confirmed in the presence of a union representative that Flores's work area had not been cleaned. There does not seem to be any dispute that Flores left her work area without authorization. Representative Draper made several efforts to persuade management to reinstate Flores, but when the company refused, there was no contractual basis for the union to insist on any remedy for her. The IEB's investigator reviewed prior arbitration cases and reached the same conclusion.

The decision of the IEB is affirmed.

²⁰ UAW International Constitution, Article 33, §4(i).