

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

APPEAL OF:

DEXTER OLIVE, Member,
UAW LOCAL UNION 249
(Pleasant Valley, Missouri),

Appellant

-vs-

CASE NO. 1774

UAW REGION 5
(THE UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA),

Appellee.

DECISION

(Issued June 4, 2018)

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

Whether International Representative Roger Snow's decision to withdraw a grievance protesting Dexter Olive's termination lacked a rational basis.

FACTS

Dexter Olive was employed at Ford Motor Company's Kansas City Assembly Plant in a bargaining unit represented by UAW Local Union 249. He had a seniority date of June 17, 2013.¹ On May 25, 2016, Olive was discharged for tardiness. The penalty was progressive. Olive's disciplinary record indicates that he had been assessed a one month disciplinary layoff on April 5, 2016.² Local 246 filed Grievance 30099 protesting the discipline on May 26, 2016. The union presented the following argument in support of the grievance:

"...The aggrieved states that he was not late and that he was training a utility on the job that was fully completing the operation. There is no down

¹ Record, p. 4.

² Record, p. 1.

time on the operation. The process coach has been marking people late and AWOL that have not been, and the process coach was not here to follow up with to see if we could get this corrected.”³

Olive was reinstated on July 27, 2016, on a “Reinstatement Waiver” that provides as follows:

“I shall be regarded, for disciplinary purposes, as being on probation for a period of twelve (12) months (excluding ALL time off) and understand that I will not have access to the grievance procedure to protest the reasonableness of any penalty, including discharge, I may receive during this period for an infraction of Company rules or misconduct; however, I am not prohibited from processing a grievance bearing on the question of guilt or innocence, if I believe I am innocent of the charge. I shall be regarded as ineligible for the Job Bid Procedure during the lifetime of this waiver.”⁴

On September 15, 2016, the Kansas City Plant issued an incident report with respect to Olive’s operation complaining about defects coming off the operation. On September 19, 2016, Ford discharged Olive for careless and poor workmanship and a violation of his Reinstatement Waiver. The Disciplinary Action Report issued to Olive states:

“Employee continues to have defects on 9-15-16 rotation #4596, 4602, 4635, 4637. The leaf screen was not seated causing a 3 inch gap. Also rotation #4637, 4638, the wiper arm was missing & not installed. Lastly, rotation #4645 RF & PR door bumper was missing. Employee failed to notify anyone.”⁵

Local 246 filed Grievance 30964 protesting the discipline. In support of Olive’s grievance, the union maintained that the defects Olive missed resulted from a lack of training. The union asserted that the process coach failed to provide additional training as promised.⁶ Olive was reinstated on a Reinstatement Waiver on October 20, 2016. The conditions of the reinstatement were identical to the Waiver Olive signed in July 2016.⁷

On June 26, 2017, the Kansas City Plant issued an incident report stating that Olive left his workstation unattended. The report states:

³ Record, p. 6.

⁴ Record, p. 14.

⁵ Record, p. 16.

⁶ Record, p. 18.

⁷ Record, p. 28.

“Mr. Olive was walking about 22 ft. away from the supervisor’s desk ‘mouthing words’ I could not hear and pointing in the direction of his workstation moments later the line went down from an operator’s error proofing that works across from him. When I arrived at his station it was unattended, no blue light and all of his components were shipped starting with rotation #3693 - #3701. Before Mr. Olive walked off the job approximately 4-6 minutes earlier he was instructed by the PC to put his safety glasses on at which time he did not have his blue light on and he did not mention anything to the PC about needing a bathroom break. A hearing is requested.”⁸

On June 28, 2017, Olive was discharged for being absent from his assigned work area in violation of his Reinstatement Waiver.⁹

Local 246 filed Grievance 32865 protesting the discipline. In support of the grievance, the union argued that Olive had turned on his blue light to signal that he needed a break. The grievance states:

“...The aggrieved had turned on his blue light and let the process coach know that he needed to go to the restroom. The aggrieved had waited over an hour; the operator across from him had walked off to go to the restroom, so the aggrieved took the opportunity to go for himself. No one should have to wait an hour to go use the restroom.”¹⁰

The company denied Grievance 32865 at the third stage on August 31, 2017. On September 11, 2017, UAW International Servicing Representative Roger Snow advised Olive that his grievance had been withdrawn.¹¹

Olive appealed the withdrawal of his grievance to the International Executive Board (IEB) on September 11, 2017. In his appeal, Olive argued that he did not stop the line to go to the restroom on June 26, 2017. He reported that the line was actually stopped by a high seniority employee named Larry. Olive wrote that after Larry stopped the line, he decided he might as well use the restroom too because Larry is older and it would take him longer. Olive reported that he was back at his station before Larry returned. His letter states:

“When Gary arrived at my section, I told him I have to poop bad. I have had my light on for some time now. He insisted he was not going to relieve us for bathroom breaks. So I continued to work after the fact that

⁸ Record, p. 30.

⁹ Record, p. 31.

¹⁰ Record, p. 33

¹¹ Record, p. 37.

he ignored any of our concerns. Keep in mind, before Gary our area never had any problems or miscommunication. Immediately after Gary left away, I guess Larry was fed up & walked off the line to go to the restroom. Larry being an elder isn't the fastest, so I figured since my job was caught up, no releases or trucks missed from the job, I figured I would run to go handle my emergency, just as quick as it took Larry to handle his issue in the restroom. I ended up beating Larry back to his job station. Any other time we get down time, or line stop, I get water or etc. In this case, the supervisors or Team lead decided to take in consideration that since I'm on a waiver, they can ding me for anything. I felt very harassed as well as discriminated in my situation."¹²

Olive argued that he was being targeted by management, labor relations and coordinators. He maintained that he was innocent of the violations that led to his previous terminations. He reported that his co-workers were in disbelief that something like this could happen, but Olive said he was not surprised. He complained that every time he was wrongfully terminated they reinstated him to the same area working for the same bosses who were conspiring to get him fired. Olive concluded his letter by claiming that employees in general were not being treated fairly at the Kansas City Assembly plant. His letter states:

"I figure me having to write out my issue in order to being heard or my fellow workers. But a lot of good people are targeted for wrong reasons in same area the plant. I have many examples in which I have encountered racism & or unfairness of work ethic. Dennis Williams, my job was a career to me since first time I accepted position. In every circumstance in which I was terminated, I have been innocent, sir. I can prove myself in every situation. I have been harassed, threatened and scared many times. But never speaking up to anyone because I'm a forgiving person. I have taken my concerns to committeemen, but never seem to get proper results. My family that is a part of the union have proudly served w/o any problems so it's mind blowing to see why I having job issues. People are not being treated fairly."¹³

Olive sent a second letter to Dennis Williams on September 27, 2017, with further information about his employment history. He argued that his attendance is not accurately reflected in the timekeeping records because no one was keeping track of his time. He maintained that he had been set up for termination. He once again asserted that he felt harassed, targeted, and conspired against.¹⁴

¹² Record, p. 39.

¹³ Record, p. 42.

¹⁴ Record, p. 44.

Representative Snow responded to Olive's appeal in a memorandum addressed to the International President's office on October 18 2017. Snow explained that the union was unable to persuade the company to give Olive another chance after his two previous terminations. Snow commented that Olive's poor attendance, work record, and previous opportunities to correct his behavior had exhausted the union's influence in attempting to negotiate a settlement.¹⁵ Snow maintained that there was no merit to Olive's claim that he was targeted and harassed. Snow wrote:

"...The complaint lacks merit due to the reasons stated above. Mr. Olive walked off the job to use the restroom. The grievant's AIS box shut the line down, and when asked why he was gone from his work area, he stated that he had to use the restroom. As for the allegations of harassment and the grievant being threatened, these allegations were never mentioned at any point during the many steps of the grievance procedure with this member, nor are there any statements or documentation to support these charges. As the International Representative, I feel that this is a last-minute attempt at redemption, as he was afforded many opportunities to work with his Local Union leadership at every step of the grievance procedure during his employment."¹⁶

President Williams's staff determined that a hearing was unnecessary on Olive's appeal. Acting on the International President's behalf, staff prepared a report to the IEB on the appeal based on information provided by Olive and Region 5. Staff reported that Representative Snow based his decision that Olive's grievance could not be successfully arbitrated on Olive's relatively low seniority and his poor disciplinary record. Staff observed that the union had successfully negotiated Olive's reinstatement on two prior occasions.¹⁷

Staff reported that Olive acknowledged he left his work area to use the restroom without permission. Olive's Reinstatement Waiver foreclosed the union from challenging the reasonableness of the penalty assessed by the company. Staff reported that Olive had not presented any direct evidence to support his claims of harassment and discrimination. Under the circumstances, staff concluded that Representative Snow's decision to withdraw Olive's grievance did not lack a rational basis. Staff found no evidence that the grievance was withdrawn for an impermissible reason such as fraud, discrimination, or collusion with management.¹⁸

¹⁵ Record, p. 47.

¹⁶ Record, pp. 47-48.

¹⁷ Record, pp. 64-66.

¹⁸ Record, pp. 67-69.

The IEB adopted staff's report as its decision. President Williams provided Olive with a copy of the IEB's decision on November 13, 2017. Olive has now appealed the IEB's decision to the Public Review Board (PRB).

ARGUMENT

A. Dexter Olive:

I feel that I was wrongfully terminated. I was not the cause of the line going down. Please investigate my case. If you speak with my co-workers, they will tell you I am innocent. Knowing that I was working on a Reinstatement Waiver, I would never have jeopardized my job by shutting down the line. The union has taken the company's word against mine and now my job is threatened. I am facing a divorce and losing all of my assets as a result of this situation.

B. International Union, UAW:

The International Representative's decision to withdraw Olive's grievance was rational. Olive was terminated for being absent from his assigned work area without permission while he was working under the terms of a Reinstatement Waiver. Olive has never disputed the fact that he was absent from his assigned work area without permission. The Waiver prevented the union from challenging the reasonableness of the penalty assessed for this violation. In addition, Olive's disciplinary history led the International Representative to conclude that the case could not be successfully arbitrated once the local union's attempts to resolve the grievance failed.

After his grievance was withdrawn, Olive asserted that the company had discriminated against him and harassed him. However, he provided no evidence of discrimination or harassment. Moreover, even if the company's actions were motivated by hostility or discrimination, Olive has not provided any basis for concluding that Representative's Snow's evaluation of his case was improperly motivated.

DISCUSSION

Dexter Olive does not deny that he left his work station without permission in violation of the company's rules. It does not matter who actually shut down the line at Olive's workstation; his correspondence reveals that he knew he should not walk off the job. In support of his appeal, Olive offers various justifications for the violations that led to multiple disciplinary actions, primarily blaming his supervisors for the deficiencies in his performance.

These arguments indicate that Olive may not yet comprehend his responsibilities as an employee. The union had already secured two reinstatements for a relatively junior employee following his multiple infractions stemming from tardiness and poor workmanship. The union had no further rational recourse when Olive eventually exhausted the patience of his supervisors.

Our jurisdiction over claims arising from the disposition of collective bargaining grievances is limited to the question whether the matter was improperly handled because of fraud, discrimination, or collusion with management or whether the disposition was devoid of a rational basis.¹⁹ Olive has not asserted any arguments in support of his appeal over which we have jurisdiction. The decision to withdraw Olive's grievance did not lack a rational basis. Olive's reinstatement agreement denied him access to the grievance procedure to protest the reasonableness of any penalty. In addition, Olive's low seniority and poor work record did not provide any basis for the union to try to negotiate a lesser penalty.

The decision of the IEB is affirmed.

¹⁹ UAW International Constitution, Article 33, §4(i).