

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

APPEAL OF:

KEITH KRESZOWSKI, Member,
UAW LOCAL UNION 12
(Toledo, Ohio), REGION 2B,

Appellant,

-vs-

CASE NO. 1814

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

Appellee.

DECISION

(Issued April 27, 2020)

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

We address whether the UAW FCA Department lacked a rational basis for its decision to withdraw Keith Kreszowski's grievance requesting that the Company investigate his hostile work environment claim.

FACTS

Keith Kreszowski is employed by FCA US LLC ("the Company") at its Toledo Assembly Complex (TAC) as a Production Operator. His seniority date is July 10, 2013. He works in a bargaining unit represented by UAW Local Union 12.

Kreszowski previously pursued an appeal before the Public Review Board (PRB), Case No. 1799, which was denied in a decision dated October 31, 2019. As set forth in that decision, in the fall of 2016, Kreszowski shut down the line due to safety concerns regarding a fellow employee. When management attempted to discipline him over the incident, Kreszowski responded in a manner that, according to the Company, raised concerns about his fitness for service. The Company placed Kreszowski on a medical

leave, but his treating psychiatrist subsequently deemed him fit for service and he returned to work. In April 2017, Kreszowski was laid off along with thousands of other employees during retooling at the plant. The Company alleges that during the layoff Kreszowski sent a large volume of troubling emails to FCA officers and managers. In October 2017, Senior Human Resources Manager, Roy Richie, met with Kreszowski and his Union representatives and advised that he would not be permitted to return from layoff without obtaining medical certification of fitness.

The Union filed two grievances on behalf of Kreszowski protesting the Company's refusal to return him to service. Initially, Kreszowski followed the steps outlined by the Company to obtain medical certification, but after his psychiatrist refused to continue to treat him, he did not select a new provider. By January 2018, Kreszowski's initial grievances had been forwarded to the International level. In June 2018, Kreszowski filed another grievance alleging that the Company had failed to respond adequately to the psychiatrist's refusal to treat him. This grievance was moved directly to the International level.

On July 3, 2018, Kreszowski filed the grievance which is the subject of this appeal, No. 18-295. The grievance form states:

"I am protesting the Dept. EEO and compliance (Vickie Patterson) due to the continuing refusal of (Vickie Patterson) [to] investigate my claims of hostile actions taken against me by Roy Richie (FCA)."¹

On the same date, Kreszowski wrote a letter to Local Chairman Mark Epley which he asked to be included as an attachment to his grievance. Kreszowski indicated that he had received a letter from FCA counsel dated June 23, 2018. Kreszowski wrote:

"FCA counsel has declared that the EEO and compliance office which Ms. Patterson is the director of that office cannot investigate my complaint due to the inability of FCA to 'safely and effectively continue to apply its normal internal investigative processes.' As a[n] employee of FCA and a member of the UAW[,] FCA cannot suspend the normal investigative process that any other employee has access to even if the circumstances would include litigation. This continued hostile condition of employment which includes all aforementioned hostile and adverse conditions of employment that I suffer from."²

As a remedy, Kreszowski asked "[t]o be reinstated and to be made whole."³

On July 20, 2018, the Company answered Grievance No. 18-295:

¹ Record, p. 4.

² Record, p. 8.

³ Record, p. 4.

“The UAW has not identified/noted any contractual language violations and although this is not a grievable issue the company reviewed it and the complaint is being handled appropriately. No contractual violation. Grievance denied.”⁴

On the same date, Chairman Epley moved the grievance directly to the next level in the process.⁵

In October 2018, the UAW FCA Department withdrew the three grievances filed by Kreszowski prior to No. 18-295. Kreszowski appealed the withdrawals to the International Executive Board (IEB), and then the PRB.

On December 4, 2018, the Regional Office forwarded Grievance No. 18-295 to the Appeal Board level.⁶ At that point, International Representative Mark Dickow assumed responsibility for the grievance. On May 28, 2019, the Appeal Board issued its disposition, stating: “The Union withdrew this grievance without precedent and the Company consented to the withdrawal.”⁷

On June 3, 2019, Dickow advised Kreszowski by phone that he had withdrawn Grievance No. 18-295.⁸ Dickow subsequently sent a letter on June 19, 2019 stating that he “made the decision not to arbitrate this grievance because the grievance lacked merit because it was not based upon a grievable contractual provision or recognized past practice.”⁹

By letter dated June 11, 2019, Kreszowski appealed the withdrawal of Grievance No. 18-295 to the IEB.¹⁰ Kreszowski complained that FCA had violated his rights as a UAW member and a person covered by the Americans with Disabilities Act (ADA) by refusing to investigate his harassment claim. He also cited Letter (117) from the UAW-FCA Production, Maintenance and Parts Agreement (“National Agreement”), entitled “Discrimination and Harassment Prevention.” He emphasized that Letter (117) states that “FCA US LLC will investigate all discrimination and harassment complaints in a timely and impartial manner.”¹¹ He also generally alleged corruption and deceit on the part of UAW officers.

The International President’s office requested information from the UAW FCA Department regarding Kreszowski’s appeal.¹² The Department explained that Dickow decided to withdraw Grievance No. 18-295 because Kreszowski had never provided any

⁴ Record, p. 4.

⁵ Record, p. 4.

⁶ Record, pp. 11-12.

⁷ Record, p. 13.

⁸ Record, p. 14.

⁹ Record, p. 19.

¹⁰ Record, pp. 15-17.

¹¹ Record, pp. 2-3.

¹² Record, p. 21.

evidence to substantiate his claims of harassment and hostile work environment.¹³ The Department cited Section (4) of the National Agreement, entitled “Equal Application of Agreement” which prohibits the discriminatory application of agreement terms. In particular, the Department emphasized that Section (4) requires that a claim of unequal treatment “when presented in writing, pursuant to Step 1 (d) of the grievance procedure, must contain a full statement of the facts giving rise to the claim and the reasons why the employee believes he has been discriminated against.”

The International President’s staff determined that a hearing on Kreszowski’s appeal was unnecessary.¹⁴ Acting on behalf of the President, staff prepared a report denying the appeal.¹⁵ Staff found that Kreszowski failed to provide evidence to support his allegation that Richie had engaged in hostile actions toward him and provided no specifics to explain how FCA had violated Letter (117).¹⁶ Staff also reviewed Kreszowski’s letter attached to Grievance No. 18-295, noting that he alleged hostile actions by Richie on October 16, 2017, the date of the meeting at which Richie advised Kreszowski and his Union representatives that he could not return to work without medical certification. Staff analyzed the description of the meeting contained in the report prepared in connection with Kreszowski’s earlier appeal. Staff concluded that there was no indication of hostile actions taken by Richie against Kreszowski at this meeting.¹⁷

The IEB adopted staff’s report as its decision. The International President’s office sent a copy to Kreszowski on November 22, 2019.¹⁸ Kreszowski filed an appeal to the PRB, post-marked December 17, 2019.¹⁹ The International Union forwarded the appeal to the PRB on January 3, 2020.²⁰

ARGUMENT

A. Keith Kreszowski:

I am appealing the IEB’s decision affirming the withdrawal of Grievance No. 18-295 challenging FCA’s refusal to investigate the hostile conditions that Roy Richie had forced upon me. I provided specific facts in my appeal to the IEB which were ignored. Instead, the IEB chose to accept Representative Dickow’s determination.

B. International Union, UAW:

On appeal to the IEB, the International President’s office determined that Appellant did not provide any evidence that Richie took “hostile actions” towards him, nor did

¹³ Record, pp. 25-26.

¹⁴ Record, p. 28.

¹⁵ Record, p. 31.

¹⁶ Record, p. 29.

¹⁷ Record, p. 30.

¹⁸ Record, p. 27.

¹⁹ Record, pp. 67-69.

²⁰ Record, p. 71.

Appellant provide any specifics regarding how the Company or Union violated the collective bargaining agreement. Further, although Appellant made numerous allegations of fraud, collusion, and discrimination, he did not substantiate these claims with specific facts or evidence. Therefore, the appeal was denied.

On appeal to the PRB, Appellant raises no new facts or arguments. He instead relies on his appeal to the IEB and states that the IEB ignored the facts that he raised. He does not specify which facts were ignored by the IEB. As the IEB explained in its decision, the Record does not contain specific facts or evidence to substantiate Appellant's claims. Therefore, this appeal should be denied for the reasons asserted by the IEB.

C: Rebuttal by Keith Kreszowski:

In my case, the Union was charged with ensuring that FCA enforced the applicable contract. Letter (117) is entitled "Discrimination and Harassment Prevention." This provision spells out a detailed procedure. It does not put the onus on the person reporting the harassment to provide evidence. Rather, FCA is charged with conducting the investigation. I contend that the International Union and UAW FCA Department had the duty to fairly represent me to be sure that the Company observed its contractual duty to conduct a fair investigation of my complaint, as well as to ensure that I was not subjected to retaliation. The Union's inaction frustrated the purpose of the contract provision.

The International Union also refers to the PRB decision in my previous appeal. However, as my submission in that case shows, the Union made false statements regarding the underlying facts during that proceeding. The Board should review my prior submission for details.

DISCUSSION

The PRB's jurisdiction to review appeals concerning grievance handling is limited to allegations that the disposition of the matter was devoid of any rational basis or that the matter was improperly dealt with due to fraud, discrimination, or collusion with management.²¹ The UAW FCA Department's decision to withdraw Kreszowski's grievance was not devoid of a rational basis. Instead, the UAW FCA Department made its determination based upon a reasonable construction of the applicable collective bargaining agreement.

Kreszowski argues that the Company was obligated to investigate his claim of workplace harassment. He further contends that this obligation is not contingent upon whether the complainant provides factual details to support the harassment claim. He cites the language of Letter (117) to support his assertion that the Company must investigate all harassment complaints submitted by employees.

²¹ UAW International Constitution, Article 33, §4(i).

The UAW FCA Department, however, has taken the position that Letter (117) should be read in conjunction with Section (4) of the National Agreement. Section (4) requires that discrimination claims submitted through the grievance process “must contain a full statement of the facts giving rise to the claim.” The International Union found that Kreszowski failed to adequately explain the basis for his belief that he had been subjected to discriminatory conduct and, therefore, the requirements of Section (4) were not satisfied.

As the PRB has held in numerous past decisions, the Board will not overturn the grievance-handler’s interpretation of applicable agreement terms, provided the interpretation rests upon a rational basis.²² Here, the UAW FCA Department reasonably construes the collective bargaining agreement to require that grievances alleging workplace discrimination be supported by a full statement of the reasons why the employee believes he or she has been discriminated against. Based upon this interpretation, the Union rationally concluded that it was unlikely to prevail in arbitration because it lacked a factual basis to argue that the Company’s refusal to investigate allowed discriminatory conduct to go unremedied.

As in his earlier appeal to the PRB, Kreszowski also makes general allegations that Union and Company officials have conspired to subject him to hostility and retaliation. However, he offers no specific facts from which to conclude that the decision to withdraw Grievance No. 18-295 was improperly motivated.

The decision of the IEB is affirmed.

²² Where it “has not been demonstrated that the Union’s interpretation of [a contractual] provision is irrational or unfair,” the PRB will not second-guess the interpretation. *Harmon v. Region 1A*, 13 PRB 334, 339 (2006). See also *Butler v. UAW Region 1*, PRB Case No. 1806 (Dec. 16, 2019); *Gaskin, et al. v. UAW FCA Department*, PRB Case No. 1802 (Oct. 29, 2019).