

DETROIT REVOLUTIONARY MOVEMENT RECORDS

BOX 2 OF 16

FOLDER 37

JORDAN SIMS DISMISSAL

APPEAL CASE 5351

CHAIRMAN'S DECISION 1970

December 15, 1970

Appeal Board of the:

Chrysler Corporation

Case No. 5351-1970:9

and

Discipline: Leadership
Unauthorized Strikes

International Union, United Auto-
mobile, Aerospace and Agricultural
Implement Workers of America

DECISION BY GABRIEL N. ALEXANDER, IMPARTIAL CHAIRMAN

Original Grievance

Local Union: 961
Plant: Eldon Ave
Grievance No. 70-43

Date Presented: 5/13/70

"Grievance: On Wednesday 5/13/70, a Disposition relative to the Protest (Letter) presented by the Union, in behalf of Employee J.U. Sims, B.#27-3779, Sen. 4/24/48, Class #1956, A Plant Shop Committeeman, was received and the Union's request of reinstatement and Made Whole was denied, on the part of Mr. C.E. Polsgrove (Labor Relations Supv.) allegedly for violation Sect. #5, P. & M. Agreement, dated November 10, 1967.

"The Union's investigation finds that Management did Wilfully provoke, and Manufacture unbearable conditions, which stimulated the labor uprest, being alleged on the part of Management, as a work stoppage, in violation of Section #5, P. & M. Agreement, dated - November 10, 1967: The Union contends and Maintain that Management is totally aware of Management being the sole party, responsible for the work stoppage. Therefore, the Union requests, the immediate reinstatement of employee J.U. Sims, and that he be made whole."

Statement of the Case

At issue is the propriety of the discharge of Jordan Sims, Chairman of the Shop Committee at the Eldon Avenue Axle Plant. Grievant was discharged on May 6, 1970 for participating in and giving leadership to an unauthorized stoppage of work accompanied by picketing at that plant from Friday May 1 to Monday May 4, 1970 in violation of Section 5 of the National Agreement. In contending that Grievant's request for reinstatement be denied by the Chairman, the Corporation relies also on the fact that he engaged in similar misconduct in another stoppage which occurred at the plant on May 27 and 28, 1970 while his discharge grievance was pending.

(The Union does not deny the substance) of the Corporation's allegations of fact with respect to Grievant's violation of Section 5 of the Agreement. Rather it emphasizes that aside from his conduct in that respect he has a good record and long (22 years) seniority. In addition, the Union contends that the Management of the Eldon Avenue Axle Plant has itself so severely and repeatedly breached the National Agreement and local supplemental agreements as to mitigate the wrongfulness of Grievant's behavior. In its statement the Union asserts,

"The charges against Jordan Sims are no different than the practices or habits by the Eldon Avenue Axle Management. Eldon Axle Management has breached agreements many times over. The facts disclose ... that the Company has no intention of adhering to the terms of the National Agreement, the Local Agreements or Memorandum Agreements.

"Jordan Sims, at most, may be charged with following the example established or set by Eldon Axle Management ...

"We are asking the Chairman to consider the circumstances, the Company's attitude toward the established procedures, their failure to apply and implement the items of agreements and Eldon Avenue Axle Management's complete and total disregard for the welfare of employees..."

Elsewhere in its statement and in its oral argument the Union argues that Grievant's misbehavior ought to be judged in the light of the overall employment environment at the Eldon Axle Plant, which environment the Union characterizes as being so bad as to undermine the authority and influence of the officers of the Local Union, and to make inevitable the stoppages and picketing in which Grievant participated. In addition to contending that because

Management was severely at fault Grievant ought not be discharged, the Union argues that Grievant was only one of many Local Union representatives who violated Paragraph 5 at the times and places involved, and that he alone has been "singled out" for discharge by Management. In the Union's view, the Company has acted unfairly in that respect, and the Chairman should exercise his authority to remove the excessive portion of the discipline imposed on Grievant.

The Corporation takes issue with the Union's characterization of the employment environment at the Eldon Axle Plant. It contends that the Union's contentions are distortions originated by dissident militant employees who apparently are seeking to undermine traditional relations among employees, the Union and the Management. It argues that Grievant knowingly lent his prestige as Shop Committee Chairman to the furtherance of the goals of the dissident groups, blatantly and deliberately abandoned orderly procedures for the resolution of employees' complaints, and embarked on a disruptive course of conduct that resulted in work stoppages and picketing in violation of the National Agreement. The reason Grievant alone among other wrongdoers was discharged, the Corporation asserts, is that on all the available evidence he was the most serious offender. Citing various prior Chrysler Umpire Decisions and decisions by other arbitrators, the Corporation contends that ample reason exists for such discharge and that the Chairman should affirm it.

The following is a chronological summary of principal events leading up to Grievant's discharge:

1. In local negotiations at this plant preceding the signing of the 1967 National Agreement, written memoranda were executed promising improvement in (a) cleanliness of restrooms, canteens, eating areas and drinking fountains, (b) cleanliness of floors in oily machining areas and (c) maintenance of the hi-lo trucks and work savers.
2. From time to time between June 1968 and January 1970 special conference Union Company meetings (see Paragraph 33) were held concerning alleged failure by Management to live up to its commitments regarding safety and cleanliness in the Eldon Avenue Plant.
3. On the third shift of April 15, 1970 a heated altercation occurred between Foreman Ashlock and employee Scott. Scott was suspended that night and was discharged the next day. An unauthorized stoppage broke out that evening and continued for several days, until April 19.

4. On Monday April 20, Management reinstated employee Scott and announced to the Local Union Officers and the Shop Committee that it intended to impose discipline on various "employees" (not then identified) for engaging in or furthering the work stoppage. In view of an impending U.A.W. meeting at Atlantic City, Management agreed to withhold such disciplinary action until after Local Union representatives returned from the meeting. ?

5. On Friday May 1, Management asked for a meeting with the Local Union Officers and Shop Committee. The Union was unable to muster the entire Committee because on that day there was held a regular monthly meeting of all Chrysler Local Committees in the Detroit area. However, Local President Richardson, Shop Chairman Sims and Committeeman Thornton met with Plant Management representatives that Friday afternoon beginning about 3:00 p.m. At such meeting Labor Relation Manager Anderson announced that Management intended to immediately impose the discipline which it had previously deferred. President Richardson asked that Management refrain from doing so until Monday. Anderson refused to wait until then. The Union representatives became upset and the meeting became heated. President Richardson protested that imposition of disciplinary penalties so late in the day would make it impossible for the Union to be held responsible for any action the employees might take. He also asked that all second shift Chief Stewards be excused from work to go to the Union Hall for a meeting. Management granted that request.

The second shift Stewards met at the Local Union Hall for a time between 5:30 and 8:30 p.m. Grievant was at that meeting. They voted unanimously to shut the plant down if Management disciplined any employees that night. Beginning at 10:00 p.m. Management notified five or six second shift Stewards and one Trustee that they were discharged for participating in the stoppage on April 15-19. Management also sent telegrams discharging five others. As soon as word of this got around, another work stoppage erupted. That one continued until early morning on Tuesday, May 5. It was marked by picketing which was enjoined by a court order issued on Sunday. Grievant Sims testified candidly that he engaged in such picketing on Saturday, Sunday and Monday and that the reason he did so was that he thought, "it was my share of the responsibility". He testified also that he continued to picket the plant even after he was served on Monday with the restraining order issued Sunday. ?

6. On Wednesday May 6, Management discharged Grievant and Chief Steward McKinnon for their activities during the May 1-4 stoppage.

7. In grievance discussions held on Thursday May 7, Management agreed to modify five of the twelve discharges it had imposed on May 1 for activity in the stoppage of April 15-19. The other seven grievances were not then resolved and were referred to the Appeal Board.

8. On May 8, protest letters, and on May 13, grievances, were filed protesting the discharges of Sims and McKinnon.

9. On May 26, 1970 while the grievances of Sims and others were pending in the grievance procedure a fatal accident befell a lift truck operator at the Eldon Avenue Plant.

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On the next day, Wednesday, May 27, various persons began to picket the plant entrances and a third work stoppage was attempted. Grievant Sims was among the pickets. He was photographed while carrying placards reciting "Death drives a jitney" and "Eldon kills, will you be next". About the same time handbills were circulated in the plant vicinity over the name of the "Eldon Workers Safety Committee". One of them indicates that such committee "has called this work stoppage to halt the abnormally dangerous conditions at Eldon". Grievant's name is recited on the handbills as a member of the Safety Committee.

No ?
Grievant testified that he picketed the plant on May 27 for "informational" purposes but not to stop employees from entering the plant, and that he did so pursuant to a program arranged by himself and William Sparks and Tony Moore. The names of Sparks and Moore also appear on the handbills as members of the "Eldon Workers Safety Committee". Grievant testified that while he consulted with and advised members of that "Safety Committee", he was not himself a member and did not authorize use of his name on the handbills. However, he testified that his reason for picketing on May 27 was his desire to add an indication of Union knowledge and interest in the protest demonstration arranged by that Committee.

10. On May 28, Management discharged four employees, Edwards, Chandler, Taylor and McKee who with Grievant engaged in picketing on the 27th and 28th.

11. In later Appeal Board proceedings the Corporation modified the discharge of McKinnon for his participation in the May 1-4 stoppage, and modified the discharges of some other employees for their participation in the April 15-19 stoppage. It refused to modify Sims's discharge.

The discharges of Edwards, Chandler, Taylor and McKee for picketing on May 27-28 were pending unresolved at the Appeal Board when this case was presented to the Chairman.

Discussion and Conclusions

Upon consideration of the facts and arguments submitted I constrained to hold that the discharge of Mr. Sims should be affirmed and the instant grievance denied. My reasoning may be explained as follows:

1.

It is undisputed that Grievant engaged in an unauthorized work stoppage and personally picketed the plant entrance on May 1-4, 1970. It is undisputed that on May 27 he again picketed the plant pursuant to a plan of concerted action at a time when a stoppage was called by a dissident group and that he did so, as he admits, for the purpose of indicating Union knowledge and interest in that stoppage.

Section 5 of the National Agreement states:

"The Union will not cause or permit its members to cause, nor will any member of the Union take part in, any sit-down, stay-in or slow-down in any plant of the Corporation, or any curtailment of work or restriction of production or interference with production of the Corporation. The Union will not cause or permit its members to cause nor will any member of the Union take part in any strike or stoppage of any of the Corporation's operations or picket any of the Corporation's plants or premises until all the grievance procedure as outlined in this agreement has been exhausted and in no case over a matter on which the Appeal Board has power and authority to rule, and in no other case until the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, within sixty (60) days after receiving the Plant Manager's decision, has notified the Manager of Labor Relations of the Corporation in writing that it has authorized a strike, specifying the grievances that are involved in the proposed strike, and negotiations have been continued for at least seven (7) separate days on which meetings have been held after the Corporation has received such notice."

Section 7 states:

"The Corporation reserves the right to discipline any employee taking part in any violation of Section (5) of this agreement."

The Union's obligation not to "cause" the conduct prohibited by Section 5 can only be fulfilled by proper conduct on the part of the Union's Officers and Representatives. Accordingly it must be reasoned that such conduct by such Officers or Representatives which positively "causes" or affirmatively results in such prohibited conduct is a serious breach of contract for which, by force of Section 7, the Company may impose discipline. The facts of this case do not reveal that Grievant, the Chairman of the Shop Committee, was merely passive in face of the active causation of prohibited misconduct by others. Such inaction or passiveness is occasionally defined as "negative leadership". That concept is not here relevant because Grievant was not discharged for failing merely to act affirmatively to prevent or terminate a wrongful stoppage or picketing by other employees. Rather the Corporation contends and the evidence proves that Grievant actively promoted stoppages and picketing. It is admitted by Grievant and the Union that not only did Grievant on May 1 cast his vote with the second shift Stewards to shut the plant down if Management exercised its power to invoke discipline, but also that he picketed the plant on May 1-4 and again on May 27. Clearly his behavior constituted an example to others and constituted affirmative leadership of prohibited misconduct. Clearly also Grievant's behavior was not briefly impulsive. The evidence convinces me that he was well aware of his responsibilities under the Agreement, but that because of considerations which to him are more important than compliance with Agreement terms, he purportedly elected to disrupt orderly operation of the plant and to defy established procedures for resolving grievances.

2.

It is widely recognized that affirmative leadership of a work stoppage which violates the terms of a collective bargaining agreement is misconduct of a grave nature. Whether an employee who commits such misconduct thereby establishes cause for discharge is a question which must be decided on the facts and circumstances of each case, particularly where the extent of discipline is subject to modification in the discretion of the Arbitrator. The Chrysler - United Automobile Workers National Agreement grants to the Appeal Board the power and authority to,

" - in proper cases, modifying penalties assessed by the management in disciplinary discharges and layoffs." (Section (42) (c)).

The Union contends, in effect, that this is a proper case for modification of the subject discharge for two principal reasons. One is that the Management of the Eldon Avenue Plant was itself seriously in violation of agreements and commitments made to the Union regarding safety and cleanliness in the factory. The other is that Grievant's discharge constituted disparate treatment compared with the lesser discipline imposed on other Union representatives who also engaged in improper actions in connection with the several work stoppages previously described.

Addressing myself to the first of these two arguments, I reject it for the following reasons. Assuming, without holding, that Eldon Avenue Management was violating its agreements with the Union, the National Agreement affords procedures for the obtaining of relief without resort to prohibited disruptions of production and employment. Indeed, as the evidence shows, the Union invoked certain of those procedures by calling and participating in Special Conferences as contemplated by Section (33) concerning complaints that Management was not living up to its promises. It was within the power of the Union to pursue more forceful avenues in support of such complaints if it deemed advisable. I take it from the fact that the Union did not seek relief from the Appeal Board and did not resort to legitimate strike action within the limits permitted by the Agreement, that the Union did not at the time think that the behavior of the Eldon Avenue Plant Management was as derelict as the Union "now" contends. Viewed in this light the argument now being discussed amounts to a contention that Grievant should be excused or dealt with lightly for engaging in prohibited strike activity because of conduct on Management's part which the Union itself regarded as properly a matter which could be resolved by negotiation. During the hearing before the Chairman the Union suggested that its course of dealing with Management was overly restrained and that it should have gone the "strike route" rather than the Special Conference Route. (But it may not reasonably be argued that Grievant as Chairman of the Shop Committee was in a better or stronger position to instigate, further, or participate in a prohibited stoppage simply because in retrospect the International Union thinks that it should have moved to invoke a permissible stoppage.) To reason in that vein is to condone a disruption of the structure of authority within the Union itself. While it is not within the province of the Appeal Board or the Chairman to pass judgement on Grievant's fulfillment or dereliction of his responsibility to the Union as an Officer of the Union, in judging his conduct as related to his responsibilities under the National Agreement the Chairman is not disposed to accord to his actions in furthering an unauthorized stoppage any of the considerations which might fairly be accorded to a Union representative who plans or aids in a legitimate work stoppage.

I emphasize, in this connection, that Grievant is not charged merely with acts of brief impulsiveness. As I have already noted, his defiance of orderly procedures as required by the Agreement was, by his own admission, calculated, carried out according to plans made by him with others, and repeated over a span of weeks.

The other reason advanced by the Union for a finding that this is a "proper case" for modification of the discharge, is that other employees who also were Union representatives and who also engaged in prohibited activity in connection with the mentioned work stoppages were only suspended for various periods of time, and were not discharged. The principle is relevant: that is, the Appeal Board and the Chairman ought not permit Management to impose disparate penalties on employees who engage in substantially identical misconduct under the same general circumstances, and were I convinced that there was insufficient justification in the circumstances for differentiating between Grievant and others referred to by the Union, I would modify the discharge. But I am not persuaded that such a finding is justified by the facts.

Some Got No Penalty
At All!!

In the first place there is no claim or proof that Management bore any personal animus towards Grievant. He, himself, testified that while he believed that Management at the Eldon Avenue Plant resented the Union, he did not believe that Management bore any dislike for him personally. Additionally, as the Corporation emphasizes in its Statement, there is no evidence that any of the other Union representatives with whom the Union makes comparisons engaged in prohibited activity over as long a period of time as Grievant did, or held as high an office in the Local Union as Grievant did. Finally, it must be noted that the Chairman in all his experience has not previously had submitted to him such a clear cut and admitted case of repeated intentional and aggravated violation of a no strike clause by an experienced elected Union Officer. On the presentations made I constrained to conclude that this is not a proper case for modification of the discharge.

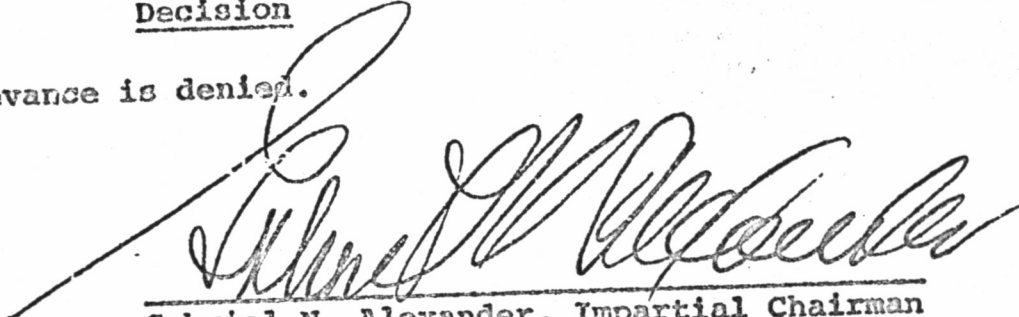
3.

I have considered the other matters called to my attention, but deem it unnecessary to discuss them. The Union has made a diligent defense on behalf of Mr. Sims, and I am not insensitive to the severity of the discipline imposed on him in face of his substantial seniority. But I think it is an inescapable conclusion on all the evidence that he knew what he was doing, why he was doing it, and that he was motivated by considerations which lie over and beyond respect for the Agreement. The Chairman's power and authority,

however, is created by the Agreement, and it is to adherence to that Agreement that he owes his greatest official responsibility. The Chairman cannot sympathize with or condone the deliberate and repeated flaunting of the prohibition against unauthorized stoppages and picketing revealed by the evidence in this case. Being convinced that the penalty imposed, although ultimate in the industrial relations sense, was not invidious or unfair, the Chairman is constrained to deny the Grievance.

Decision

The Grievance is denied.



Gabriel N. Alexander, Impartial Chairman

December 15, 1970