

**Report of the
Appeals Committee
to the
78th Convention**

CWA

**Communications Workers of America
October 18-20, 2021**

INTRODUCTION

The Appeals Committee convened October 14, 2021, via Zoom, for the purpose of receiving and disposing of appeals in accordance with the CWA Constitution and the Internal Appeals Procedures of the Union, as established by prior Conventions and the Executive Board.

The Committee was available to meet with interested parties on October 16 and October 17, 2021, between the hours of 2:00 p.m. through 6:00 p.m. Outside of these hours, the Committee was available to meet by appointment with interested parties.

I would like to thank the Committee members – Kevin Sheil, President, CWA Local 1103; Gregg Bialek, Vice President, CWA Local 13000; Rodney Hughes, President, CWA Local 3607; David Skotarczyk, President, CWA Local 4050, and Barbara Tolbert, President, CWA Local 3250, for their hard work and the time they devoted to these appeals. Also, the Committee thanks John Dempsey, Staff Representative, CWA District 1, for his support and assistance.

APPEAL 1

On July 6, 2021, CWA Local 7800 President Arthur Clemens appealed the CWA Executive Board's decision not to arbitrate Fred Simposya's grievance alleging that MV Transportation did not have just cause to terminate him. This appeal is timely, but not properly before the 2021 Convention.

Section III of the CWA Internal Appeals Procedures does not give a member the right to move the appeal of an Executive Board's decision to the Convention (or Presidents' Meeting). That right is reserved to a Local or a Vice President. A Local's right to appeal to the Convention (or Presidents' Meeting) is extinguished if the Local does not appeal the Vice President's initial decision regarding whether to arbitrate. Section III of the CWA Internal Appeals Procedures states:

In the event the Local does not file the initial arbitration complaint of a Vice President's decision not to arbitrate a grievance, the Local's

right to file a complaint or to appeal at any level of the Internal Appeals Procedures shall be extinguished. (emphasis added)

Here, Member Simposya, not Local 7800, appealed the initial decision of Vice President Brenda Roberts not to arbitrate the grievance to President Shelton. Member Simposya also appealed President Shelton's decision to the Executive Board. Local 7800 did not attempt to appeal until the Executive Board denied Member Simposya's appeal. Because the CWA Internal Appeals Procedures extinguish the Local's right to file a complaint or appeal in instances where the Local has not appealed the Vice President's initial decision not to arbitrate, this appeal is not properly before this Convention.

Despite our determination that this appeal is not properly before this Convention, the Appeals Committee did review the case on the merits and found it lacking. The Appeals Committee, therefore, also recommends that the appeal be denied on its merits.

On January 31, 2020, Local 7800 Member Simposya, an MV Transportation driver in Redmond, Washington, filed a grievance alleging that his termination for exceeding the maximum amount of allowable safety points lacked just cause.

On January 24, 2020, while making a right-hand turn, Member Simposya struck a pedestrian in the cross walk with his company vehicle. The Company determined that this incident was a preventable collision and added six safety points to Member Simposya's record, which resulted in his discharge.

Article 13, Section 5 of the collective bargaining agreement states that "[i]n any rolling 18 month period of employment, receipt of six (6) or more points will result in termination." Article 13, Section 5 assigns six points to a "preventable incident or collision excess of \$25,000 in injuries and/or property damage." Therefore, the discharge did not violate the collective bargaining agreement.

In his appeal, President Clemens argued that the Company assessed more safety points than were warranted by the damage arising from the incident since the amount of damages at the time of the first and second step grievance meetings were under \$10,000. However, during the grievance procedure MV Transportation insisted that the damages connected to the pedestrian's injuries would exceed the \$25,000 threshold. Because the claim is still open, there is no final determination of the total damages. According to the MV Transportation, the estimate by the insurance company's Claims Manager was \$30,000 as of April 2021. This estimate is based on the injuries suffered by the pedestrian and the care that had already been provided. The Committee believes that an arbitrator would allow MV

Transportation, who has knowledge regarding insurance claims due to the line of business they are engaged in, to make a reasonable estimate as to the amount of damages an accident will incur. In this instance, MV Transportation's estimate that the damages would exceed the \$25,000 threshold appears valid. Since the collective bargaining agreement explicitly states that receiving six or more safety points results in termination and Member Simposya was properly assessed six safety points, the Union could not prevail in arbitration.

President Clemens further argued that the Company solicited an email from Microsoft requesting that Member Simposya be removed from its account. The Company did not solicit the request. Instead, the Company demanded that a verbal request from Microsoft be written. This is not improper. Further, Article 4, Section 2 of the collective bargaining agreement titled "Client Contract to Prevail" permits the Company to "implement the change required by the client." Here, the client requested that the Company not assign Member Simposya to handle work under its account. Article 4, Section 2 permits the Company to accede to this request.

The Union has no basis upon which to prevail in arbitration. For these reasons, the Appeals Committee recommends that the Executive Board's decision be affirmed and the appeal of President Clemens be denied.

APPEAL 2

On September 7, 2021, CWA Local 7800 President Arthur Clemens appealed the Executive Board's decision not to arbitrate the Local's grievance alleging that MV Transportation violated the collective bargaining agreement by treating Member Robert Reyes as constructively resigned. This appeal is timely, but not properly before the 2021 Convention.

Section III of the CWA Internal Appeals Procedures does not give a member the right to move the appeal of an Executive Board's decision to the Convention (or Presidents' Meeting). That right is reserved to a Local or a Vice President. A Local's right to appeal to the Convention (or Presidents' Meeting) is extinguished if the Local does not appeal the Vice President's initial decision regarding whether to arbitrate. Section III of the CWA Internal Appeals Procedures states:

In the event the Local does not file the initial arbitration complaint of a Vice President's decision not to arbitrate a grievance, the Local's right to file a

complaint or to appeal at any level of the Internal Appeals Procedures shall be extinguished. (emphasis added)

Here, Member Reyes, not Local 7800, appealed the decision of Vice President Brenda Roberts not to arbitrate the grievance to President Shelton. Local 7800 appealed to the Executive Board only after President Shelton denied Member Reyes' appeal. Because the CWA Internal Appeals Procedures extinguishes the Local's right to file a complaint or appeal in instances where the Local has not appealed the Vice President's initial decision not to arbitrate, this appeal is not properly before this Convention.

Despite our determination that this appeal is not properly before this Convention, the Appeals Committee did review the case on the merits and found it lacking. The Appeals Committee, therefore, also recommends that the appeal be denied on its merits.

Member Reyes was employed by MV Transportation (“Company”), which contracted his services to its clients. On February 7, 2020, client Microsoft asked that Member Reyes be removed from its account because he had driven onto their lawn causing damage. Member Reyes was given the option of selecting a position with a different client. He did not do so. Instead, Local 7800 filed a grievance. Pursuant to Article 23, Section 4 of the collective bargaining agreement, Member Reyes received payment for unused paid time off, because the Company treated Member Reyes as having resigned. Employees who are discharged are not entitled to be paid for unused paid time off under this provision.

In his appeal, President Clemens argued that the collective bargaining agreement required that Member Reyes be given progressive discipline and that discharge was not the appropriate disciplinary step for his driving infraction. However, progressive discipline does not apply in this case because Member Reyes was not discharged, he was treated as having resigned.

President Clemens further argued that the jobs offered to Member Reyes required a longer commute, paid lower wages, and were in positions represented by a different union. Article 4, Section 2, titled “Client Contract to Prevail,” permits the Company to remove an employee from one customer and does not require that the employee be offered a substantially similar position. That Member Reyes did not accept either position offered by the Company does not cause the offer of the positions to be a contract violation.

President Clemens additionally claimed that the Company must grant the grievance because it did not provide a written response to the first step grievance within fourteen (14) calendar days. Although Step 1(b) of Article 14 requires that

"[i]f the Company's decision is not provided within [fourteen (14) calendar days,] the local union will prevail," the parties had agreed to waive the time limits for all open grievances, including Member Reyes' grievance. The record does not support the claim that this extension was limited to the time allotted to meet for the grievance. The extension was "on all steps of all open grievances."

President Clemens also contended that the Company solicited an email from Microsoft requesting that Member Reyes be removed from its account. The Company did not solicit the request. Instead, it demanded that a verbal request from Microsoft be written. This is not improper. Further, Article 4, Section 2 of the collective bargaining agreement permits the Company to "implement the change required by the client." Here, the client requested that the Company not assign Member Reyes to handle work under its account. Article 4, Section 2 permits the Company to accede to this request.

For these reasons, the Appeals Committee recommends that the Executive Board's decision be affirmed, and the appeal of President Clemens be denied.

APPEAL 3

On October 3, 2021, CWA Local 4652 President Rob Boelk appealed the CWA Executive Board's decision not to arbitrate the Local's grievance. The grievance alleged that AT&T Midwest violated a binding past practice and Article 17 of the collective bargaining agreement by requiring employees to bid on five (5) week schedules instead of one (1) week schedules without first bargaining with Local 4652. This appeal is timely and properly before the 2021 Convention.

On February 27, 2018, AT&T notified CWA District 4 of its intent to change the length of schedules, which had been weekly in Local 4652 for a long period of time. The notice was provided before 2018 bargaining began and invited discussions during bargaining. The Union responded that the parties had a binding past practice which the Company could not unilaterally change. The parties did not address the length of schedules in 2018 bargaining.

After the 2018 collective bargaining agreement was ratified in August 2019, the company notified CWA District 4 that it would implement an eight (8) week schedule on February 2, 2020. CWA District 4 responded that weekly schedules were a binding past practice that could not be unilaterally changed by the Company. District 4 also advised the Company that Article 17-01, which states: "the length of the schedule may be determined locally," required the Company to

discuss the issue with the Locals. The Company disputes that a past practice existed in February 2020.

In January 2020, the Company's Area Field Operations Managers reached out to Local Presidents of the Wisconsin Locals. On January 28, 2020, a conference call was held with the Local Presidents and the Company to discuss schedule length. CWA Local 4652 President Boelk and his team met in person with the Company on February 7, 2020, for further discussions. The discussions resulted in the Company implementing a five (5) week schedule instead of the eight (8) week schedule it initially proposed in Local 4652's geographical area.

The Committee believes that the past practice argument would fail in arbitration because Article 17.01 addresses how the parties shall determine the length of schedules. An arbitrator does not have the authority to rule that a past practice exists if the parties' collective bargaining agreement contains a provision that addresses how to deal with the issue.

Additionally, the grievance alleges that the Company did not meet its obligation to determine schedules locally. This argument too must fail. Although Local 4652 did not retain weekly scheduling, the Company did meet with the Local and discuss its proposed scheduling change. Due to these discussions, the Company altered its position with regard to Wisconsin Locals, changing its scheduling length from eight (8) to five (5) weeks. Because the Company did determine schedule selection locally after discussion with Local 4652, it did not violate Article 17.01.

The CWA Executive Board, President Shelton, and Vice President Hinton, in their answers to the appeal, pointed out that arbitrating this dispute would likely require CWA to take positions that might not be consistent with the interests or preferences of other locals in District 4. The CWA Executive Board also observed that, even assuming CWA could establish that the Company's actions violated the past practice between the Company and CWA Local 4652 or Article 17.01, the result of the arguments advanced in this matter could be used against the Union in the future to the detriment of other Locals within District 4.

For these reasons, the Appeals Committee recommends that the Executive Board's decision be affirmed and the appeal of President Boelk be denied.