

REVIEW CASE #57 - HUMBOLDT DIVISION GRIEVANCE #20

ARBITRATION CASE #5

OPINION AND DECISION OF CHAIRMAN OF ARBITRATION BOARD.

DATE: JUNE 29, 1955

ISSUE: IS IT IN VIOLATION OF TITLE 6 OF THE CLERICAL WORKERS AGREEMENT FOR THE COMPANY TO STATE ON A LEAVE OF ABSENCE THAT THE CONDITIONS UNDER WHICH AN EMPLOYEE SHALL BE RESTORED TO EMPLOYMENT ON THE TERMINATION OF A LEAVE OF ABSENCE ARE:

"THAT HER JOB WILL BE FILLED AND EMPLOYEE GIVEN A POSITION UPON HER RETURN IF ONE IS AVAILABLE AND SHE IS PHYSICALLY ABLE TO PERFORM THE DUTIES OF THE JOB."

UNION'S POSITION:

THE PARTICULAR UNDERSTANDING WITH THE APPLICANT IN THIS CASE IS CONTRARY TO THE TERMS OF TITLE 6, THAT INHERENT IN A LEAVE OF ABSENCE IS THE RIGHT TO RESTORATION OR REINSTATEMENT OF EMPLOYMENT AND THAT TITLE 9 PRECLUDES THE COMPANY FROM IMPOSING PHYSICAL ABILITY AS A CONDITION TO REINSTATEMENT UPON EXPIRATION OF LEAVE OF ABSENCE.

COMPANY'S POSITION:

THE AGREEMENT ONLY REQUIRES THAT THE LEAVE OF ABSENCE PROVIDE FOR A CONDITIONAL RESTORATION OF EMPLOYMENT, THAT THE COMPANY NEED NOT MAKE IN ALL INSTANCES AN ABSOLUTE GUARANTEE TO REINSTATE AN EMPLOYEE IN HIS FORMER JOB, AND THAT PHYSICAL ABILITY TO PERFORM THE JOB UPON RETURN TO EMPLOYMENT IS A PROPER CONDITION.

OPINION: (EXCERPTS AND NOT EN TOTO)

WHEN THE AGREEMENT MEANS TO GUARANTEE THE RETURN OF EMPLOYMENT TO AN EMPLOYEE ON LEAVE, IT IS VERY SPECIFIC. FOR EXAMPLE, SECTION 6.8 PROVIDES THAT AN EMPLOYEE GRANTED A LEAVE OF ABSENCE FOR UNION BUSINESS "SHALL BE EMPLOYED IN HIS FORMER DIVISION OR DEPARTMENT AND CLASSIFICATION". IN THE CASE OF LEAVE OF ABSENCE FOR MILITARY SERVICE, THE EMPLOYEE IS ENTITLED TO HIS FORMER POSITION (TITLE 19).

THE DETAIL THAT APPEARS IN TITLE 6 IS INDICATIVE OF THE FACT THAT IF THE PARTIES HAD MEANT TO PROVIDE THAT ALL PERSONS TAKING LEAVES WERE TO BE GUARANTEED REEMPLOYMENT THEY COULD HAVE SAID SO.

IF MRS. B HAD BEEN REFUSED REINSTATEMENT AT THE END OF HER LEAVE SOLELY BECAUSE OF PHYSICAL INABILITY SHE COULD RESORT TO TITLE 9 (GRIEVANCE PROCEDURE).

SECTION 6.4 PROVIDES THAT AN EMPLOYEE'S STATUS AS A REGULAR EMPLOYEE SHALL NOT BE IMPAIRED BY A LEAVE OF ABSENCE. THIS MEANS THAT TITLE 9 IS STILL APPLICABLE TO EMPLOYEES ON LEAVE AS TO MATTERS PROPERLY REFERABLE TO THE GRIEVANCE PROCEDURE.

THUS THE INTERPRETATION AND APPLICATION OF THE CONDITIONS OF A LEAVE ARE PROPERLY REFERABLE TO TITLE 9. THE CONDITION OF A LEAVE IN EACH INSTANCE THAT A LEAVE IS GRANTED BECOMES A TERM OF THE AGREEMENT.

DECISION:

IT IS NOT IN VIOLATION OF TITLE 6 OF THE CLERICAL WORKERS' AGREEMENT FOR THE COMPANY TO STATE ON A LEAVE OF ABSENCE THAT THE CONDITIONS UNDER WHICH AN EMPLOYEE SHALL BE RESTORED TO EMPLOYMENT ON THE TERMINATION OF A LEAVE OF ABSENCE ARE: THAT HER JOB WILL BE FILLED AND THE EMPLOYEE GIVEN A POSITION UPON HER RETURN IF ONE IS AVAILABLE AND SHE IS PHYSICALLY ABLE TO PERFORM THE DUTIES OF THE JOB.

/s/ SAM KAGEL
CHAIRMAN OF BOARD OF ARBITRATION

DISSENT

/s/ ELMER B. BUSHBY

/s/ L. L. MITCHELL

CONCUR

/s/ R. J. TILSON

/s/ EARL E. FOLEY

NOTE: FOR FULL CONTEXT OF DECISION SEE ARBITRATION CASE No. 5 IN OFFICE FILE.

R. C. FILE #57
ARBITRATION #5

In the Matter of a Controversy

between

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. 1245, AFL,

Complainant,

and

PACIFIC GAS AND ELECTRIC COMPANY,

Respondent

Case No. 5

OPINION AND DECISION
OF BOARD OF ARBITRATION

June 29, 1955

Involving determination of the question: Is it in violation of Title 6 of the clerical workers agreement for the Company to state on a leave of absence that the conditions under which an employee shall be restored to employment on the termination of a leave of absence are: That her job will be filled and employee be given a position upon her return if one is available and she is physically able to perform the duties of the job.

ISSUE:

"Is it in violation of Title 6 of the clerical workers agreement for the Company to state on a leave of absence that the conditions under which an employee shall be restored to employment on the termination of a leave of absence are:

"That her job will be filled and employee given a position upon her return if one is available and she is physically able to perform the duties of the job."

(Joint Exhibit 1, Tr. p. 4)

EVENTS LEADING UP TO THIS ARBITRATION:

Mrs. B requested a leave of absence because of pregnancy. Such request was made in accordance with Title 6 of the Agreement between the Company and the Union. Mrs. B was employed as a member of the clerical department of the Company. The Agreement which controlled her terms of employment is referred to as the "Clerical Agreement." It appears in this record as Joint Exhibit 1 (c).

The "Authorization for Leave of Absence" form requires that there be stated the "Understanding with Applicant." This meets the conditions of Section 6.3 of the Agreement.

In the case of Mrs. B, the form on this point reads: "That her job will be filled, and employees shall be given a position upon her return if one is available and she is physically able to perform the duties of the job." (Jt. Ex. 2)

THE UNION'S POSITION:

It is the Union's position that the particular understanding with the applicant in this case is contrary to

the terms of Title 6. That inherent in a leave of absence "is the right to restoration or reinstatement of employment." And that Title 9 "precludes the Company from imposing physical ability as a condition to reinstatement upon expiration of leave of absence.."

COMPANY'S POSITION:

It is the Company's position that the Agreement only requires that the leave of absence "provide for a conditional restoration of employment." That the Company need not make in all instances an absolute guarantee to reinstate an employee in his former job. And that physical ability to perform the job upon return to employment is a proper condition.

DISCUSSION

Agreement Provisions:

Title 6 of the Clerical Agreement (Joint Ex. 1-c) is entitled "Leave of Absence." Section 6.1 thereof reads in part:

"Leave of absence without pay shall be granted to regular employees under the conditions set forth in this Title for urgent or substantial personal reasons, provided that adequate arrangements can be made to take care of the employee's duties without undue interference with the normal routine of work. A leave will not be granted if the purpose for which it is requested may lead to the employee's resignation..."

Section 6.3 reads in part:

"...The conditions under which an employee shall be restored to employment on the termination of his leave of absence shall be clearly stated on the form on which application for the leave is made."

Are the Bolerjack "Conditions" Inconsistent with
and Contrary to Title 6?

The conditions placed on the B. leave of absence were two:

(1) That B. 's job would be filled and she would be given a position upon her return if one were available.

(2) That she would, upon reinstatement, be physically able to perform the duties of the job given her.

The Union contends that these conditions are violative of the Agreement between the parties.

Condition Re Availability of a Job:

The Union argues that, inherent in a leave of absence and Title 6, is the right of an employee to reinstatement upon expiration of a leave of absence. That therefore it is not proper to require an employee to relinquish her position and take a chance that a job will be available at the end of the leave of absence.

An examination of Title 6 does not sustain the Union's contentions. The Union rests its case not on any clearly expressed language in the Agreement, but on certain words appearing in Title 6. But even these fragments of language do not aid the Union.

For example, Section 6.3 of Title 6 reads:

"...The conditions under which an employee shall be restored to employment on the termination of his leave of absence shall be clearly stated on the form on which application for the leave is made."

The Union argues that this language means and must be interpreted to mean that the employee "shall be restored to employment on termination of his leave." (Union Br. p. 7)

The language of Section 6.3 may not be read in that manner. It does not state that an employee shall be restored to employment on termination of his leave. Section 6.3 only provides that the conditions under which an employee shall be restored to his employment shall be clearly stated on the form on which the application for leave is made. Nothing more can be read into the unambiguous language of this Section.

When the Agreement means to guarantee the return of employment to an employee on leave, it is very specific. For example, Section 6.8 of Title 6 provides that an employee granted a leave of absence for Union business "shall be employed in his former Division or Department and classification" when such employee returns to employment. And, so far as Title 6 is concerned, this is the only class of employees guaranteed a return of their employment.

In the case of leave of absence for military service, the employee is entitled to his former position (Title 19).

Other than these two classes of employees in the clerical department the guarantee sought by the Union simply is not provided for in the Clerical Agreement. Nor may it be read into the Agreement. The parties, when desiring to spell out such rights, did so in detail.

To find inherent in Title 6 a guarantee of return of employment of all employees taking leaves of absence would be to rewrite the Agreement between the parties. The Union recognizes that parties may by agreement set up the conditions surrounding the granting of leaves of absence. The detail that appears in Title 6 is indicative of the fact that if the parties had meant to provide that all persons taking leaves were to be guaranteed reemployment they could have said so.

It is not necessary to determine in this case the extent of "job security" granted by the present Title 6. This is not at issue in this arbitration. This Board of Arbitration is limited in its authority to determine whether the application of Title 6 was proper in the case of Mrs. B.

Condition Re Physical Ability to Perform Job:

Mrs. B.'s leave also provided that upon her return she would have to be physically able to perform the

duties of her job. Nothing in Title 6 prevents the requirement of such a condition.

But the Union argues that this condition deprives an employee of his rights under Title 9, the Grievance Procedure. For example, if an employee is discharged, and the discharge involves the employee's physical ability to perform his duties, he may resort to Title 9. The Union claims that if an employee on leave is not reinstated for physical reasons he may not resort to Title 9. Therefore the second condition in the Bolerjack leave of absence deprives the employee of rights under the Agreement.

The Union is incorrect. If Mrs. B had been refused reinstatement at the end of her leave solely because of physical inability she could resort to Title 9.

Section 6.4 provides that an employee's status as a regular employee shall not be impaired by a leave of absence. This means that Title 9 is still applicable to employees on leave as to matters properly referable to the Grievance Procedure.

Thus the interpretation and application of the conditions of a leave are properly referable to Title 9. The condition of a leave in each instance that a leave is granted becomes a term of the Agreement. Section 6.3 specifically provides that such conditions should be clearly

set forth.

Whether Mrs. B could or could not physically perform her duties, if this had been in question, could be settled through the machinery provided in Title 9. And the parties would be bound by the agreement or decision reached through such procedure.

Are the Conditions Inconsistent with the Principle
That the Company shall not Deal with Individual Em-
ployees?

The Union contends that the Company cannot enter into agreement with individual employees inconsistent with the terms of the Agreement. Of course this assumes that the conditions set forth in the B leave were inconsistent with the terms of the Agreement. This Board has not found them to be so.

DECISION:

It is not a violation of Title 6 of the Clerical Workers' Agreement for the Company to state on a leave of absence that the conditions under which an employee shall be restored to employment on the termination of a leave of absence are: That her job will be filled and the employee given a position upon her return if one is available and she is physically able to perform the duties of the job.

Sam Kagell
Chairman of Board of Arbitration

Dissent
Elmer B. Busley
L. L. Mitchell

Concur
W. J. Wilson
Earl E. Teley