

ISSUE:

Was the discharge of W. L. in violation of the physical Labor Agreement; if so, what is the remedy.

AGREEMENT PROVISION:

"TITLE 7. MANAGEMENT OF COMPANY

"7.1 MANAGEMENT OF COMPANY

"The management of the Company and its business and the direction of its working forces are vested exclusively in Company, and this includes, but is not limited to, the following: ... discharge employees for just cause; ..." (Jt. Ex. 1, p. 10)

BASIS FOR DISCHARGE:

The Grievant who was employed on December 23, 1968 was discharged February 3, 1981. The basis for his discharge was stated by the Company as follows:

"On January 26, 1981, you were suspended without pay because of your cumulative work record and your failure to meet the expected standards of performance after warnings and disciplinary action.

"After careful review the decision has been made to terminate your employment with Pacific Gas and Electric Company due to your failure to make the necessary improvements in your performance." (Jt. Ex. 3, p. 22)

GRIEVANT'S RECORD:

The Grievant joined the Army at age 17 and from June 1967 through June 1968 was in Vietnam. In the latter half of

his tour there he served as a Field Advisor to an ARVN Unit. He was subjected to ambushes and took part in general combat operations, including operations in which he came under fire from friendly units and aircraft. Two weeks after the Grievant's discharge from the Army he joined the Company as a Meter Reader.

The Grievant's career with the Company need not be spelled out in detail. It was characterized, in the Grievant's view, by Supervisors who were out to get him and from 1973 until 1979 by a work force hostile to him at San Mateo and Redwood City when he joined the Company's Electrical Department.

His disciplinary record included written notices of job deficiencies and two one day suspensions for absenteeism in 1974; a warning and a five day suspension in 1979, the latter for coming onto Company property and assaulting a fellow Employee; a counseling letter and a one day suspension regarding attendance and a five day suspension for insubordination, the latter involving name calling of a Foreman resulting from an injury accident to another Employee where the Grievant was critical of his Subforeman's safety record.

Throughout this period the Company had advised the Grievant of its Employee Assistance Program (EAP) and encouraged his use of it. The Grievant began drinking regularly in May 1973 and it became, according to him, "really radical"

(Tr. 129) around November 1979. He would drink all weekend long without leaving his trailer and not go out except to bars. He had been divorced twice in that time period, had no friends and would not talk to his parents. Professional help was not accepted either from the EAP or a psychiatrist, both believing the Grievant was an alcoholic which he did not accept (Tr. 129).

According to the Grievant, after August 1980 he had lost contact with reality and did not "give a shit" as to what was happening (Tr. 130). The Grievant stated that he did not know if he called EAP, but he eventually did contact them. He was given a test for alcoholism at which time he was labeled as an alcoholic (Tr. 132). He did call a counselor referred by the EAP at a time when he had been drinking. He was told that he was an alcoholic but he did not accept that view and after he exhibited his anger, the counselor hung up on him (Tr. 132). According to the Grievant, after that he did not care if he heard of the EAP, or anybody else, but felt disgusted that he was not getting any help from the EAP.

On December 31, 1980, the Grievant called in at 9:00 a.m. stating that he had overslept and he was advised to stay home (Jt. Ex. 3, p. 15). On January 16, 1981, the Grievant called in the morning and stated he needed the day off. After being told he was needed at work, the Grievant stated that his grandmother had had a stroke. The Grievant was granted the day

off in the form of a floating holiday. The Grievant then came to work the next day very angry but his Foreman apologized to him (Tr. 142). The Grievant felt that he was having the same type of problems with that Supervisor as he had had with supervision at Redwood City and San Mateo in the past.

On January 23, 1981, the Grievant called in sick stating that he was depressed because the Supervisor was on his back. (Jt. Ex. 3, pp. 3, 20, 20A, 21). The Foreman stated that he was concerned that the Grievant needed help. The Grievant responded that he was seeking the help of a counselor but the identity of the counselor was his business, although the counselor was a Company counselor. According to the Supervisor, the Grievant at the meeting did not seem ill or upset (Tr. 31). The Grievant testified he told the Supervisor that he was sick and the Supervisor said he had better see a doctor. The Grievant said that he would do so and left. He then went out with a Subforeman for a cup of coffee at which time that Subforeman advised the Grievant that he had to seek assistance that day and to let him know (Tr. 114).

The Grievant had not tried to get any professional advice since the counselor had hung up on him in August 1980. The Grievant did call on January 22, 1981 the EAP program and when counselor Shirlee Echelberry called him back the Grievant had been drinking to calm himself down. He then gave her "both barrels" and said that if the Supervisor did not get off his

ass that the Grievant was going to "waste him" (Tr. 147). Echelberry said she would call him back. The Grievant stated that he was extremely angry with the Supervisor; that the Supervisor "pushed him" and "set him up all the way down the line" and that the Grievant would not take it anymore (Tr. 147).

The Grievant was suspended on January 26 although there was no particular triggering event on that date, the Company referring to the fact that the Grievant left the work site, just walking out without permission (Tr. 35). After the suspension, the Yard got a call that the Grievant had threatened a Supervisor and the Supervisor was assigned guards at the Yard for one day (Tr. 47).

The Grievant in the meantime had learned that he had been suspended after a meeting with Company officials. He called Echelberry to tell her that he was suspended, that he needed help, and he needed the name of someone who could help him (Tr. 148). The Grievant was given the name of Dr. Jerry Solomon who was not available until January 29. On January 29 he saw Solomon and called Echelberry and told her that he related well to Solomon (Tr. 149).

On January 30, the Grievant received a notice from the Credit Union stating that a loan that he had outstanding was due because he was terminated on January 26. This was the first time, according to the Grievant, that he knew that he was

terminated and it was a shock to him. He called Echelberry and she told him that he had to call his Supervisor. On February 3, he was in fact discharged.

GRIEVANT'S MENTAL CONDITION:

On March 11, 1981, Dr. Solomon wrote to the Company stating that he had seen the Grievant weekly since January 29, 1981 and urged the Company to reconsider the Grievant's discharge on the grounds that the Grievant was suffering from Post-Traumatic Stress Disorder from his Vietnam service which the Grievant attempted to control by using alcohol and that with continued treatment along with the Grievant's discontinuance of alcohol which occurred as of January 29, 1981, that the discharge should be reconsidered.

Prior to this arbitration, the Grievant had a Workers Compensation claim which was submitted by attorneys for both parties to Dr. Kermit H. Gruberg, M.D., an Agreed Upon Medical Examiner (AME). The AME's function is to diagnose the Grievant to determine whether he was emotionally disabled as a result of work stress (Tr. 425). Dr. Gruber testified that he is familiar with Post-Traumatic Stress Disorder and, prior to his examination of the Grievant, he had diagnosed one patient as having that condition.

According to Dr. Gruberg, even though he knew that the Grievant had served in Vietnam, the Grievant would not discuss his experiences there in detail. Dr. Gruberg concluded that

the Grievant was an alcoholic. At the arbitration hearing, it was disclosed that the Grievant, after a period of abstinence which included the period from the time of the Grievant's job loss until his interviews with Dr. Gruberg had ended, had been drinking moderately once every week or every other week. Based on that information, Dr. Gruberg testified that he would not return the Grievant to Lineman work (Tr. 424, 438) on the grounds that an individual who is an alcoholic and is still drinking is too high a risk to send up a pole. Dr. Gruberg concluded:

"When I saw him, he had told me he had not had anything at all to drink since about three ... months before I saw him.

"If he still continues not drinking, you can make an argument for giving him another chance." (Tr. 438-439)

At that time Dr. Gruberg stated that the Grievant's experiences in Vietnam had nothing to do with his problems. But, after being asked that he read the Grievant's testimony in the arbitration case, which included detailed recitation of the Grievant's combat experiences there, Dr. Gruberg in an addendum to his views maintained that those he originally gave in November 1981 were those which he still adhered to. He added:

" ... However, after reading the details of Mr. L. 's Vietnam combat experience, as given in his transcribed testimony, I must admit that the possibility of a so-called delayed stress syndrome could be a factor in his present difficulties. ..." (Co. Ex. 9)

On April 29, 1982, the VA found that the Grievant had a 10% disability where "service connection is established for post-traumatic stress disorder." (Un. Ex. 9).

Dr. Chris DiMaio, M.D., is the Grievant's treating psychiatrist who followed Dr. Solomon's counseling with respect to the Grievant's treatment. He concluded that the Grievant's difficulties on the job, in terms of getting along with Supervisors, others and his attendance stemmed from post-traumatic stress, secondary to his Vietnam experiences, which condition was exacerbated by problems that he encountered at the Company.

Dr. DiMaio testified that alcohol abuse and absenteeism from the job are very common for a person with Post-Traumatic Stress Disorder. Nonetheless, Dr. DiMaio would release the Grievant to work and would have done so approximately the first of 1982. He characterized the disagreement with respect to diagnosis as an honest disagreement between Dr. Gruberg and himself, Solomon and Dr. Klaus W. Berblinger, another psychiatrist who reached a similar conclusion to DiMaio's concerning the Grievant (Un. Ex. 6).

Some of the problems that the Grievant had on the job, according to Dr. DiMaio, were caused by alcoholism (Tr. 279). He testified that the Grievant's alcoholism was probably only in remission and he was going to have to be aware of it for the rest of his life (Tr. 298). He referred the Grievant to a Vietnam Vet Alcoholic Anonymous group as part of his treatment

of the Grievant. Part of the difficulty that the Grievant maintained that he experienced was that he was having difficulty finding persons to help him to relate to his experiences in Vietnam. The Vietnam Vet A.A. group is specifically designed to aid that situation (Tr. 289). Dr. DiMaio stated that even though alcoholism was not considered by him to be the Grievant's major problem (Tr. 289) that nonetheless he recommended total abstinence. The following took place at the hearing:

"THE CHAIRMAN: Is there still an alcohol problem?

"THE WITNESS: I tend to be conservative and feel that, if you have an alcohol problem at any one time, this problem is only in remission rather than completely gone.

"So that this is something that I feel that B L is going to have to be very aware of for the rest of his life.

"If that answers your question.

"It's something that just doesn't come and go.

"THE CHAIRMAN: I take it because of your view that he could be released to work, that that would not be work inhibiting, at least, as it currently is?

"THE WITNESS: No.

"THE CHAIRMAN: To what extent did your treatment of B L curtail or eliminate the alcohol problem?

"THE WITNESS: We spent time on it at every session, and I believe also referred him to the Vietnam Veteran A.A. group. And this was also discussed as part of the whole -- this part of the treatment.

"THE CHAIRMAN: Well, is the Veterans A.A. group different from the Sandman rap group [a Vietnam Vet rap group]?

"THE WITNESS: Yes.

"THE CHAIRMAN: Has B to your knowledge gone to the A.A. Veterans group?

"THE WITNESS: Yeah, also his drinking has decreased tremendously. I am not convinced -- this is offered as an option: I am not convinced that this will be something he will be needing on an on-going basis. And this is something that he is going to have to come to a conclusion on himself as far as when he goes and how often he goes and what he does with this.

"THE CHAIRMAN: Is your prescription, so to speak, total abstinence?

"THE WITNESS: Once again I am conservative there, and I would prefer that. But that's me.

"THE CHAIRMAN: Have you told B that's what you would recommend?

"THE WITNESS: As I said, that's what I recommend.

"But if he can drink in moderation from time to time, that could be okay.

"Basically, if he can drink and functions, that's the main thing.

" ...

"And if he had like a major -- my concept of, let's say, a -- someone addicted to alcohol is that they can't drink. Alcohol abuse I feel is on the borderline.

"On the other hand Vietnam veterans do in general, once treatment specifically has begun for stress syndrome, they tend to show that they can get over problems such as alcohol

addiction and other addictions much easier than the general population." (Tr. 298-300)

DISCUSSION:

Cause for Discharge:

The Employer maintains that standing alone the Grievant's absentee record as well as his record showing his inability to get along with co-employees and management provides ample cause for discharge. Standing alone, such a record might in fact do so, putting aside the fact that there is a dispute in the record as to whether or not there was in fact a triggering event for his suspension on January 23, 1982, an event in factual dispute.

But the Grievant's disciplinary and absentee record does not stand alone in this case. The Grievant had been advised, as the Company maintains, since 1974 that professional assistance was either required or available through the Company's Employee Assistance Program. The Grievant due to his mental and emotional condition, either by alcohol or by Post-Traumatic Stress Disorder, or both, could not or would not take advantage of such opportunities. But, at the last moment, on January 23, 1981, prior to his discharge, the Grievant at the specific request of a Company Subforeman, Will Thomas, made a final effort to contact the EPA counselor and through the counselor was put in touch with Dr. Solomon who ultimately was able to provide the Grievant with the professional assistance

which had long been sought by the Company but which had not been forthcoming theretofore. Contrary to the Company's position the Grievant had seen Dr. Solomon prior to his termination, and through him began to receive the professional assistance that the Company had long urged.

The question that is then presented in this case is whether or not that course of treatment of Doctors Solomon and DiMaio as well as the Grievant's participation in a Vietnam Veteran rap group is sufficient to overturn the Company's discharge. As the Company points out, it has shown a great deal of patience towards the Grievant's job behavior. The Company maintains that at some point, however, it has an obligation to its other Employees and the proper conduct of its business to determine whether or not the conduct such as that demonstrated by the Grievant can result in discharge.

Professional Views of Grievant's Treatment:

Factually, however, that point has not been reached in this particular case under its specific facts and circumstances. Taking the evidence as a whole, it is unnecessary in this case to determine whether or not the primary thrust of the Grievant's mental condition is based on Post-Traumatic Stress Disorder or based upon alcoholism. When the testimony of Dr. Gruberg and Dr. DiMaio is compared, each has ultimately concluded that both conditions either did or could have contributed to the Grievant's mental state.

And, of greater importance, both have also concurred that the Grievant with proper treatment may return to his employment. Dr. DiMaio is more unqualified stating that at the beginning of 1982 that the Grievant could be released to work. However, Dr. DiMaio's testimony, taken as a whole, shows that in his opinion the Grievant should be receiving treatment for what he considered to be alcoholism or alcohol abuse and that that condition would be a lifelong one which would have to be treated on such a basis. The Grievant clearly did not follow Dr. DiMaio's course of treatment where Dr. DiMaio sought that part of the Grievant's treatment for Post-Traumatic Stress Disorder would be to continue in Alcoholics Anonymous. Dr. DiMaio's partial condonation of the Grievant's deviation from abstinence at the time of the hearing was overshadowed by his prescribed course of treatment of abstinence on a lifelong basis. Dr. Solomon's initial presentation to the Company, it should be noted, emphasized continued alcohol abstinence also.

On the other hand, Dr. Gruberg clearly emphasized that in his view alcoholism was the Grievant's problem and that in his view the Grievant could not be released to return to work because the Grievant was drinking again. In Dr. Gruberg's view, proper alcoholic treatment could provide to the Grievant another chance at his job even taking into account the hot wire work that might be involved in it.

Employee Assistance Program:

Thus, both expert witnesses in this matter have views which are substantively parallel. The Company itself

recognized that "There is certainly sufficient agreement in the medical testimony received in evidence in this case to consider that the grievant's aberrant conduct on the job was at least aggravated by his combat experiences." (Br., p. 9). Given these factors, as well as the fact that both experts agree that with proper continued treatment the Grievant can overcome his job difficulties, the Employer in this case demonstrated that it went almost as far as it needed to go to discharge the Grievant, but that just before the Grievant's discharge there was, in effect, a coincidence of the decision to discharge with the Grievant getting the professional help that he needed through the EAP. Clearly at that point the Grievant was near the end of his rope which included threatening his Supervisor through his telephone call to the Employee Program Assistance counselor.

But the Company's conduct at the same time, in addition to the questionable triggering event of the discharge decision, showed that it did not follow its own procedures with respect to the Grievant's termination. Clearly an Employee does not have to learn of his termination through a letter from a credit union before he learns of it personally from his own Supervisors. More importantly, the Company's own EAP procedures, while leaving job performance problems to supervision, nonetheless appeared to require a "formal" reference to the Employee Assistance Program when there is serious consideration of removing an Employee from a job "and it appears that a medical/behavioral problem may be a substantial contributing

factor ..." (Co. Ex. 8, p. 5) prior to a discharge. Here, even though past efforts to have the Employee Assistance Program assist the Grievant had not been successful, it is clear through Will Thomas' effort that on January 23 the Grievant made an ultimate effort to get such help and a counselor who could do so was found. The Company having adopted policies that such a formal and required referral be made prior to a discharge did not adhere to them here prior to the discharge. As matters turned out, had such a formal reference been made prior to discharge, the reference to Dr. Solomon under this record shows that the professional advice sought could have led to a medical leave of absence and preservation of the Grievant's job as the Company EAP policies contemplate.

All of these factors establish that there was not cause for the Grievant's discharge as disclosed from this record (see Mobile Oil Corp. v. Oil Workers Local 8-831, 110 LRRM 2620 (3d Cir. 1982)). The fact of the matter is that professional assistance established that the Grievant's condition was treatable and if he follows such treatment, he could return to his job.

Remedy:

The Union seeks as remedy in this matter that the Grievant be reinstated with full back pay. Such a remedy is not appropriate in this case under its facts. It is clear whether either Dr. DiMaio's or Dr. Gruberg's testimony is accepted that alcohol treatment in the form of abstinence and

positive counseling such as the Vietnam Vet A.A. Group is a required course of treatment. It is an integral part of Dr. DiMaio's treatment even though he found that alcoholism was an adjunct to what he found the Grievant's primary mental condition to be. Dr. Gruberg makes clear that such treatment is absolutely necessary. Given the fact that the Grievant sought his reinstatement based upon Dr. DiMaio's treatment of him but had not followed that treatment fully with reference to alcohol establishes that the Grievant even under his own physician's program was not then able to return to work. Clearly with respect to Dr. Gruberg's evaluation, such on-going treatment would be a continued condition for such return.

Accordingly, the record does not establish that back pay would be appropriate, but it does establish that the Grievant could return to work on the condition that he continue his treatment for Post-Traumatic Stress Disorder and as part thereof that he participate in an Alcoholics Anonymous program on a regular basis to establish and continue his abstinence as a condition for returning to work.

DECISION:

The discharge of the Grievant was not for just cause. A suspension is for just cause on the following conditions:

1. The Grievant shall be returned to his former position with the Company with full rights including but not limited to seniority, but without back pay or other financial

benefits from the date of his discharge to the date of his return to work.

2. The Grievant's return to work shall be conditioned upon his providing to the Company and the Union continued evidence of treatment for Post-Traumatic Stress Disorder and as part thereof that he provide evidence at the time that he seeks to return to work and at regular intervals thereafter as agreed upon by the Union and the Company that he is participating in and meeting the requirements of an A.A. program.

3. The Board of Arbitration retains jurisdiction if there is any dispute over the interpretation or application of the requirements of the Grievant's reinstatement herein, or over the need to continue or modify the requirements of paragraph 2 above.



JOHN KAGEL, Chairman

Concur

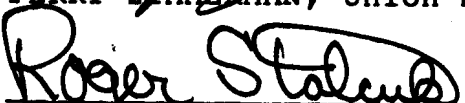
4/15/83
Dated



PERRY ZIMMERMAN, Union Member

Concur/except
as to denial
of back pay

4/15/83
Dated



ROGER STALCUP, Union Member

Concur/except
as to denial
of back pay

4/15/83
Dated



DANIEL J. COYNE, Employer Member

Concur

4/15/83
Dated



WAYLAND BONBRIGHT, Employer Member

Concur

4/15/83
Dated