

REVIEW COMMITTEE**PG and E**

PACIFIC GAS AND ELECTRIC COMPANY
245 MARKET STREET, ROOM 444
SAN FRANCISCO, CALIFORNIA 94106
(415) 781-4211, EXTENSION 1125

ARBITRATION CASE NO. 103

(Settled short of arbitration)

D.J. BERGMAN, CHAIRMAN

REVIEW COMMITTEE DECISION**IBEW** 

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO
LOCAL UNION 1245, I.B.E.W.
P.O. BOX 4790
WALNUT CREEK, CALIFORNIA 94596
(415) 933-6060
R.W. STALCUP, SECRETARY

- DECISION
 LETTER DECISION
 PRE-REVIEW REFERRAL

East Bay Division Grievance No. 1-1109-80-203
Review Committee File No. 1529-81-13

Statement of the Case

This case concerns the discharge of a Gas Helper in Bay District, Gas T&D Department, East Bay Division. The grievant was discharged effective August 29, 1980 for alleged failure to accept a Utility Clerk position in the Richmond Customer Services Department. This job was offered to grievant after the determination by the Company that he was stationary and rateable following an industrial injury and precluded from performing the duties of a Gas Helper.

Facts of the Case

The grievant first became injured in May of 1973. He aggravated the same injury in May of 1975, December 1977 and again in December 1978. The nature of the injury was a lower back problem.

The grievant had been on Compensation Payroll continually since February of 1979. In November of 1979, Company's panel physician gave the grievant a permanent and stationary rating. In April of 1980, the Company's panel physician maintained that the grievant could perform Utility Clerk work. Also, in April of 1980, the grievant's own physician confirmed the stationary and rateable status but stated that the grievant could not perform Utility Clerk work. The Company panel doctor's diagnosis was subsequently confirmed by an agreed-to medical examiner in January of 1981 which maintained the permanent and stationary rating and that the employee was capable of performing the work of a Utility Clerk.

Following the Company panel doctor's evaluation in April, 1980, the Company offered the grievant a Utility Clerk job in May, 1980 which the grievant declined. On that basis, the grievant was sent a letter dated September 2, 1980 confirming his discharge effective August 29, 1980.

Discussion

This is not the first time the parties have addressed the issue present in this case. Specifically, in Pre-Review Committee Decision No. 471 and subsequent decisions, the parties have outlined the Company's obligation with respect to rehabilitation and compensation rights of industrially-injured employees.

The discussion in this case focused on the fact that the grievant was not informed of the consequences of declining the offer of the Utility Clerk position—that he might be terminated if he did not accept the position. Prior to the job

offer, in March of 1980, the grievant indicated to the Personnel Representative that he preferred outside work, that he was not interested in clerical work and that he could not sit or stand for long periods of time. On May 22, 1980, the Personnel Representative contacted the grievant and offered him a Utility Clerk job in the Richmond office, stating that it is the only job available that fits the physical restrictions. The grievant responded that he was declining this job offer as it did not provide enough money and because he has a phobia about working inside. According to the Local Investigating Committee report, the Personnel Representative did not advise the grievant that he might be terminated as a result of declining this job offer. By letter dated September 19, 1980, however, grievant was notified that he was being discharged because he refused the Utility Clerk job offer.

The Committee noted that by letter dated April 27, 1981, the grievant informed Company that he would accept a Utility Clerk position. However, another offer was not made because there were no vacancies at the time. The Committee also noted that the grievant filed an application for Long Term Disability on July 27, 1981 and that he was rejected for Long Term Disability by letter dated January 27, 1982 because he had refused the job offer of Utility Clerk on May 22, 1980.

The Committee also discussed the fact that Company chose to act on the basis of medical opinion submitted by a Company panel doctor who had examined the grievant while there was conflicting medical opinion from the grievant's personal treating physician. The panel doctor stated the grievant was physically able to perform the duties of a Utility Clerk while the personal physician stated that he could not perform those duties.

Union members of this Committee argued that Company is obligated to inform an employee of the possible consequences of declining a job offer under the circumstances that existed in this case; that Company is obligated to obtain an additional medical opinion when there is contradictory opinion between two physicians; and that Company is obligated to inform an employee about the Long Term Disability Plan prior to terminating a disabled employee.

Company Committee members responded that it is Company policy to inform an employee that declining an offer of placement into a classification which is commensurate with the employee's disability may result in termination. It is also Company policy to inform a disabled employee of his right to apply for Long Term Disability if the employee is a member of the Group Life Insurance Plan. With respect to obtaining an additional medical opinion when there are contradictory opinions, it is the position of the Company that it is not obligated to seek an additional opinion, but may do so.

Because this Committee could not agree to a disposition of this case, it was scheduled for an arbitration hearing.

In addition, the grievant was claiming through the Worker's Compensation Appeals Board that he was totally temporarily disabled from a psychiatric standpoint prior to November, 1979 and continuing.

On January 12, 1983, the Worker's Compensation Appeals Board ruled that the grievant's injury of December 7, 1978 resulted in psychiatric disability and that this new and further temporary disability commenced on June 12, 1979 and is continuing. The Board also found that the Company is liable for the expense of psychiatric treatment.

Decision

On the basis of this Worker's Compensation Appeals Board Award, the parties have agreed that the issue raised in this grievance is moot and have withdrawn the case from arbitration and returned it to the Review Committee for resolution. The grievant is to be reinstated as an employee on the Compensation Payroll with temporary disability benefits, supplemental benefits and all other benefits plus interest as provided in Subsection 102.4(a) of the Agreement retroactive to August 29, 1980. He is entitled to temporary disability payments and supplemental benefits retroactive to July 21, 1980.


This case is closed.

FOR THE COMPANY:

L. C. Beanland
F. C. Buchholz
J. B. Stoutamore
D. J. Bergman

By

Date

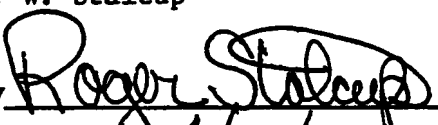

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FOR THE UNION:

G. W. Abrahamson
R. L. Choate
P. Pelucca
R. W. Stalcup

By

Date


4/29/83