

CASE CLOSED
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MEMORANDUM OF DISPOSITION

VP&C GRIEVANCE 22-434-84-5, FACT FINDING FILE NO. 2990-84-86

VP&C GRIEVANCE 22-436-84-7, FACT FINDING FILE NO. 2991-84-87

The Fact Finding Committee, consisting of Luke Johnson, Supervisor of Industrial Relations, Erin Andre, Industrial Relations Representative for PGandE and Corb Wheeler, Assistant Business Manager and Dorothy Fortier, Business Representative, IBEW, Local 1245, met to discuss these cases on June 28, 1984. At the conclusion of discussions on that date, these grievances were referred directly to arbitration.

Grievance Issues:

Disciplinary letter of reprimand dated March 28, 1984 and subsequent discharge of grievant effective April 6, 1984.

Facts of the Case

Grievant was a Machine Operator B in the Payment Processing Center, Receivables Accounting Section and was hired on 9/13/78.

Grievant was issued a letter of reprimand on 3/28/84 for failure to manage flextime properly. The letter states grievant was short 1 1/2 hours for the week ending 3/16/84. The letter also states grievant had previously been counselled on 6/20/83 and 2/29/84 on the same subject.

Grievant stated that he had a dental appointment on the morning of 3/13/84 and that if his supervisor had properly recorded sick leave usage on that date, he would not have been short on the flextime clock for the week. Grievant further stated that he called in on the morning of 3/13/84 and told the supervisor he had a doctors appointment and would be late. Grievant further stated that the appointment had been prescheduled. He told the LIC that he arrived at the dentist office between 9:00am and 9:15am, that he received treatment, that his x-rays were reviewed, that he was there approximately a couple of hours, and that as part of the treatment received he had been given gas and a shot. Grievant also stated that he had received a bill for \$5.00 that was either in part or in total his portion of the charge for treatment on 3/13/84.

The supervisor told the LIC that the grievant called in at 8:20am on 3/13/84 and stated that he (grievant) would be late to work. The supervisor further stated that grievant called again at 9:00am and asked to take the day off as vacation, to which the supervisor answered "no". The supervisor indicated that the grievant did not mention a medical or dental appointment in either of these conversations on 3/13/84.

On the morning of 3/14/84, grievant called in and indicated he was ill and would not be in for work that day. The supervisor told grievant that because he had worked a "short" day on 3/13/84, he would not be able to work the required 37 1/2 hours during the week. The supervisor stated that at that

point, the grievant stated that he would bring a note to verify his absence although he (grievant) made no mention of going to a doctor or dentist.

On 3/20/84, grievant presented to his supervisor a letter which stated, in part, "Please be advised that (grievant) was in our office on the morning of March 13th for a dental appointment. Today, March 20th, (grievant) was also in this office. Upon reviewing his x rays with him (grievant) will be needing a series of dental appointments with us." The letter was signed and the signature was purported to be that of the dentist.

The record indicates that grievant's supervisor called the dentist's office on 3/20/84 and spoke with an employee there. That employee stated that grievant was in on both 3/13/84 and 3/20/84 for a teeth cleaning. She stated that grievant was a drop-in on 3/13, arriving at approximately 9:00am. The record further states that in subsequent calls on 3/23, 3/27, and 3/30, it was established that the dental chart for grievant reflected that grievant had his teeth cleaned on 3/19 and 3/20 and that there was no record of a visit or treatment recorded on the chart for 3/13/84. During the phone conversation on 3/27/84, Industrial Relations Representative Erin Andre spoke with Dr. Olsen. During that conversation, Andre read to Dr. Olsen the letter dated 3/20/84 and, in response to her question, commented to the effect that "if you have a letter, I must have signed it". On 4/4/84, Andre went to Dr. Olsen's office. During that visit, Andre showed Dr. Olsen a copy of the 3/20/84 letter. Dr. Olsen did not offer an explanation about the 3/20/84 letter. During this visit, Dr. Olsen provided to Andre a hand-written statement, indicating that treatment records showed grievant was in his office for a cleaning appointment on 3/19/84 and 3/20/84. The statement also indicates that neither visit would have been for more than one hour; that there is no record of a visit on 3/13/84 "although grievant could have come in to make an appointment or have his mouth looked at which would take less than one-half hour". The statement was signed by Dr. Olsen and witnessed by Andre.

The LIC Report states "It was established that Dr. Olsen signed the letter dated 3/20/84".

Grievant told the LIC that the 3/13 appointment had been scheduled in advance, that he did receive treatment, that his x-ray's were reviewed, that he received gas and a shot during the treatment, and that he had been in the dentist office approximately two hours on that date.

On the morning of 3/26/84, grievant reported late for work. He presented to his supervisor a slip from Brookside Hospital which indicated that he (grievant) had received treatment for acute bronchitis in the hospital emergency room and had been released at 11:45am.

The record states that Company called Brookside Hospital and was told the slip was issued to grievant on 3/17/84 at 1:00am.

From 4/2/84 through 4/6/84, grievant was off on sick leave. On 4/9/84, grievant was discharged "for repeated abuse of sick leave".

Discussion

Grievant was issued a letter of reprimand on 3/28/84 for failure to work a full 37 1/2 hours during the week ending 3/16/84. The record established that had grievant been charged 1 1/2 hours sick leave on 3/13/84, he would not have been "short" for the week. If that were the case, there would be no grounds for discipline.

At the outset, the argument centered around the supervisor refusal to grant sick leave pay for 3/13/84 because, according to the supervisor, grievant did not indicate in either phone conversation on 3/13 that he planned to see a dentist that day. The grievant stated that he informed his supervisor of the dental appointment during one of the phone conversations during the morning of 3/13. The supervisor stated that grievant did not mention anything about a dental appointment during either conversation on 3/13 and that when grievant called in sick on 3/14 grievant said only that he would provide proof of illness for 3/13. The supervisor indicated that because there was no mention of sick leave or a dental appointment during the conversation on 3/13, that sick leave would not be granted even if proof of illness was provided at a later date. It was noted by the Fact Finding Committee that the letter of reprimand issued on 3/28/84 addressed only the subject of failure to work a full 37 1/2 hours during the week ending 3/16/84 and did not state that the document submitted was a falsification.

The LIC Report indicates that grievant presented the slip from Brookside Hospital upon his arrival for work on 3/26/84. The record also states that Company contacted Brookside Hospital and was told the slip in question had been issued to the grievant on 3/17/84 at 1:00am, although it does not indicate when this information was obtained. Grievant worked on 3/27-3/30 and was off sick 4/2-4/6. The record indicates Company contacted grievant on 4/6 and told him they wished to meet with him to discuss his sick leave. Two meetings were scheduled on 4/6, both of which grievant canceled. Two meetings were also scheduled on 4/9, and, again, both were canceled by grievant. After being told that a decision was going to be made regarding his employment without him being present, grievant did come in late for a meeting at about 3:30pm on the afternoon on 4/9. At this meeting, grievant was told that Dr. Olsen had indicated that dental charts reflected no record of grievant receiving dental treatment on 3/13 and that Brookside Hospital stated the slip presented on 3/26 had been issued on 3/17. Grievant again stated that he had been treated by Dr. Olsen on 3/13, that he had an appointment for 9:00am, and that he was in the office for 1 1/2 to 1 3/4 hours, and that he had called his supervisor and reported this during the morning of 3/13. Grievant also stated that he had been treated at Brookside Hospital on both 3/17 and 3/26 and that he must have turned in the wrong slip. Grievant stated that he had been treated for bronchitis on both dates. In response to a question, grievant stated that the slip had been handed to him by the receptionist and he didn't know who wrote the date or time on the slip. Grievant said he did not alter them.

During preparation for the arbitration hearing in this case, Company and Union conversed about the necessity of having Dr. Olsen present to testify relative to the letter dated 3/20/84. In an effort to clarify the issues in dispute, a Subcommittee was appointed to interview Dr. Olsen.

On 5/24/85, R. Doering, Industrial Relations Representative, PGandE and R. Stalcup, Assistant Business Manager, IBEW Local 1245, interviewed Dr. Olsen. The written report of the Subcommittee has been submitted as an addendum to the LIC Report.

Dr. Olsen told the Subcommittee that the dental chart for grievant reflects no dental work on 3/13/84. Dr. Olsen was asked to review the testimony of grievant in the LIC Report and asked to respond. Dr. Olsen stated that if grievant had been in his office for two hours, had x-rays reviewed, and had received both a shot and gas, there would be some record on the dental chart. In as much as there was no entry on the chart for 3/13, Dr. Olsen opined that grievant was not treated on that date. The Subcommittee was given copies of the dental chart.

Dr. Olsen was shown a copy of the letter dated 3/20/84 and asked to confirm his signature. Dr. Olsen stated that the signature was not his. Dr. Olsen also stated that he did not believe the letter was typed on a machine in his office, although he did confirm the letterhead to be his.

Dr. Olsen was asked to review the LIC Report wherein it states that an employee in his office confirmed by phone on 3/20/84 that grievant had been in for treatment on 3/13/84. Dr. Olsen stated that he had no knowledge of this statement and that the employee named in the LIC Report as supplying the information was no longer employed in his office. He did confirm that the named individual had been a receptionist in his office for a very short time.

Dr. Olsen was asked to review the item in the LIC Report that states the LIC established that Dr. Olsen signed the letter dated 3/20/84. Dr. Olsen stated that he had never previously seen the letter dated 3/20/84. He stated that sometime during mid-1984, he answered some questions related to the grievant by telephone but that he had not been shown a copy of the 3/20/84 letter and asked to confirm his signature upon it.

Dr. Olsen was asked to review the hand-written statement dated 4/4/84 and confirm that he had prepared it. He confirmed that he had prepared and signed the statement.

It was later determined that California Dental Service received an invoice from Dr. Olsen for services rendered on 3/19 and 3/20/84 but no invoice had ever been submitted for service on 3/13/84.

The LIC Report stated that Company contacted Brookside Hospital and determined that the slip submitted by the grievant on 3/26/84 had been issued by the hospital on 3/17/84. On 6/6/85, R. Stalcup, Assistant Business Manager, IBEW Local 1245 interviewed Janet Morrell, Supervisor of Records, Brookside Hospital. After presenting to Mrs. Morrell a written release provided by grievant, the medical file was reviewed. In the file was the original of the document grievant presented on 3/26/84. A review of the original indicated it was for emergency room treatment for bronchitis on 3/17/84, that the time of treatment was 1:00am, that grievant was discharged from the emergency room at 2:17am. It was also noted that there was no date recorded in the upper right hand corner of the portion of the form that is given to the patient. The date of 3/26/84 shown on the slip turned in by

grievant had been added at a later time. The "time discharged" on the original was 2:17am. The time shown on the copy turned in by grievant was 11:45am. It had, therefore, been changed prior to the time grievant turned the slip in to his supervisor on 3/26/84.

A further review of the medical file indicated grievant had received treatment at Brookside Hospital on no date during the month of March 1984 except on 3/17/84.

The record indicated grievant had previously been counseled about shortages on the flextime clock on 6/20/83 and on 2/29/84. He was issued a reprimand for continued failure to properly manage flextime on 3/28/84. The record also indicates grievant was counseled on 2/4/83 and 3/23/83 regarding his failure to call in prior to 8:00am on dates he was unable to report for work due to illness. On 1/4/84, grievant was given a non-disciplinary letter restating the policy on calling in by 8:00 am when unable to report for work. On 2/27/84, grievant was issued a formal disciplinary letter for continued failure to call in by 8:00am. On 3/23/84, grievant was given a non-disciplinary letter alleging excessive use of sick leave and put on notice that he must provide satisfactory evidence of illness before sick leave would be paid for future absences.

Decision

Based upon the statements of Dr. Olsen, the Committee concluded that grievant did not receive dental treatment on 3/13/84 and that the letter dated 3/20/84 which states he received treatment is a falsification. This conclusion was reached after a painstaking review of the record provided in this case. In large part, the controversy in this case revolves around the letter dated 3/20/84. At the conclusion of its investigation, the LIC believed that Dr. Olsen had confirmed that the signature on the letter was his. The LIC also noted that the statement signed in the presence of Erin Andre on 4/4/84 did not clear up the questions related to 3/13/84. However, when interviewed by a Subcommittee on 5/24/85, Dr. Olsen unequivocally denied that it was his signature on the 3/20/84 letter and, further, opined that the document was not typed on a machine in his office.

In as much as no treatment was received and no sick leave payment is due for that date, it must be concluded that the grievant was short on his flextime clock for the week ending 3/16/84. Additionally, the Committee must assume that grievant did not mention a dental appointment to his supervisor during either phone call during the morning of 3/13/84.

Further, based upon the information obtained from Brookside Hospital, it is clear to the Committee that grievant did not receive treatment for bronchitis at 11:45am on the morning of 3/26/84 and that the slip presented had been altered and was a falsification.

The Committee noted that grievant had 5 1/2 years of Service when discharged and that all formal disciplinary action in the record occurred during the last three months of his employment. Notwithstanding his Service and the fact the formal disciplinary history is compressed, the Committee is in

agreement that, on the basis of the totality of the grievants record, there is just cause for the discharge.

On the basis of the above, this case is closed without adjustment and without prejudice to the position of either party.

Erin Andre concur/dissent 6-13-85
Erin Andre, Company Member Date

Luke Johnson concur/dissent 6-11-85
Luke Johnson, Company Member Date

D. Fortier concur/dissent 6-11-85
Dorothy Fortier, Union Member Date

C. J. Wheeler concur/dissent 6-11-85
Corb Wheeler, Union Member Date