

ISSUES:

The issues submitted for final and binding determination in this matter are:

"Did either the 1) disciplinary letter; or, 2) disciplinary suspension; or, 3) discharge violate the provisions of the Agreement? If so, as to any of them, what is the remedy?" (Jt. Ex. 2).

RELEVANT AGREEMENT PROVISIONS:

"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: to direct and supervise the work of its employees, to hire, promote, demote, transfer, suspend, and discipline or discharge employees for just cause; to plan, direct, and control operations; to lay off employees because of lack of work or for other legitimate reasons; to introduce new or improved methods or facilities, provided, however, that all of the foregoing shall be subject to the provisions of this Agreement, arbitration or Review Committee decisions, or letters of agreement, or memorandums of understanding clarifying or interpreting this Agreement.

" ...

"TITLE 112. SICK LEAVE

" ...

"112.8 ABUSE

"Company may require satisfactory evidence of an employee's illness or disability

before sick leave will be granted. If an employee abuses the sick leave provisions of this Agreement by misrepresentation or falsification, he shall restore to Company all sick leave payments he received as a result of such abuse. In case of recurring offenses by the employee, Company may cancel all or any part of his current and cumulative sick leave, and may treat the offense as if it would any other violation of a condition of employment. Charges of alleged discrimination in the application of this Section shall be investigated by the Local Investigating Committee described in Sections 102.3 or 102.8." (Jt Ex. 1, pp. 10, 75-76).

STATEMENT OF FACTS:

Background:

The Grievant, F , was first employed by the Company in 1973. In 1979, while F was employed as an Apprentice Electrician, he was terminated. The Company alleged that F had submitted a verification of medical treatment which was fraudulent. The Board of Arbitration which heard that case noted that Section 112.8 of the governing Agreement specifies that the response for any first submission of false medical verification shall be restoration of all sick leave payments to the Company (Jt. Ex. 1). Noting this provision, the Board of Arbitration directed that F be reinstated and made whole for all lost earnings and benefits (Co. Ex. 8). The Union contends that the Board of Arbitration also exonerated F , finding "insufficient record evidence" that he was guilty of any "forgery" (Co.

Ex. 8). The Company does not agree with this characterization. This difference is not critical because the discipline at issue in this case was not based on any accusations of falsification and no party has relied upon Section 112.8 of the Agreement in this case. The award rendered regarding F 's earlier termination has no impact regarding the separate accusations made in this proceeding.

The first event relevant to this case took place on June 3, 1983. On that date, the Company sent a letter to the Grievant. The Company's June 3, 1983 letter detailed F 's attendance record over the prior two and one-half years, explained several respects in which that record was found unsatisfactory, and stated that, "You must, in the future, provide proof of illness when you return to work following absence due to illness." (Co. Ex. 1). The propriety of the June 3, 1983 letter has not been challenged at any time. In this proceeding, it was agreed that F 's attendance record prior to issuance of the June 3, 1983 letter was a poor one (Tr. 16). And, it is clear that F accepted the "proof of illness" requirement.

This letter informed F that the Company has an Employee Assistance Program, existing for the purpose of helping Employees with personal or medical problems that might be adversely affecting their attendance, or other work responsibilities. The letter read as follows in this regard:

"The Company has available for your use a counselor with the Employee Assistance Program. Should you decide that employee assistance would be of benefit to you in resolving any personal or medical problems, I would be happy to set up an appointment for you, or if you prefer, a counselor can be contacted on Company local 22-1148." (Co. Ex. 1, p. 3).

As will be explained below, F ultimately accepted the Company's invitation to make some use of its Employee Assistance Program.

The Warning Letter:

During the year following issuance of the June 3, 1983 "proof of illness" letter to F, he had only three absences apart from vacation and holidays. Those three absences were on December 21, 1983 (Co. Ex. 5(a)), April 25, 1984 and May 29, 1984 (Co. Ex. 5(b)). There is a dispute regarding the nature of the Company's record keeping during the time of these absences and continuing thereafter.

The Company's records reflect that a notation "T" on attendance records indicates an authorized absence without pay. They also reflect that an entry of "W" should be used for an unauthorized absence without pay. Company Supervisors in the Grievant's department, however, testified that they were not aware of the distinction between W and T during the period of time relevant to this case. In reliance upon this testimony, the Company urges that entries of T on the Grievant's record should not be relied upon as an indication that his absences were authorized.

In response, the Union notes that the Grievant's certification of payroll records for the calendar year of 1983 contains a W on June 16, 1983 (Co. Ex. 5(a)). Hence, the Union urges there is concrete evidence that some responsible person understood the distinction between W and T as early as that date. It also places reliance upon the testimony of S , who was the clerk responsible for most entries on attendance records during the period relevant to this case. S testified that he has always understood the distinction between W and T, and that he always asked questions of Supervisors until he was satisfied as to which entry should be made on any Employee's record (Tr. 124). In light of this evidence, the Union urges that whenever a T is shown on the Grievant's records, it should be accepted that the absence reflected occurred with Company authorization.

The three absences listed above, namely, those occurring on December 21, 1983, April 25, 1984 and May 29, 1984 were all recorded with the entry "T" in the Company's records. As will be seen, however, the difference between the Parties over the reliability of T and W entries is not dispositive in this case. The Company did not seek to issue disciplinary action in response to the December 21, 1983, April 25, 1984 or May 29, 1984 absences.

The absence that indirectly led to issuance of the warning letter in this matter occurred on June 11, 1984.

This was a Monday. On the prior Saturday, F was suffering from stomach flu. He reported this to his Sub-Foreman, C (Tr. 140). C asked F to remain and perform whatever work he could. F completed the overtime shift but continued to be ill through Monday, and he did not return to work until Tuesday, June 12, 1984 (Tr. 140).

F had not sought any medical attention for his stomach flu and he did not have a medical verification for his illness when he returned to work on Tuesday. He testified that supervision did not, in actuality, require proof of illness from him during the first twelve months after issuance of the June 3, 1983 "proof of illness" letter. Hence, F did not think it critical that he see a medical professional for this problem. During the work day on Tuesday, T, the Grievant's Foreman, gave him a handwritten letter which noted that F was required to furnish proof of illness. It then continued as follows:

"In the year of 1984 you have been absent from work on the following days without authorization and no pay:

"April 25, 1984

"May 29, 1984

"June 11, 1984

"If you do not meet the above conditions it will result in disciplinary action as stated in your letter of June 3, 1984 [sic], attached." (Un. Ex. 8).

At this point, F asked T what would be accepted by the Company as acceptable proof of illness. T could

not give any complete explanation. F asked to meet with someone who could (Tr. 141). As a result, T and F went upstairs to meet with H, the General Foreman responsible for the Grievant's department (Tr. 19). Although his testimony under direct examination was confused, H agreed under cross-examination that this meeting took place because of F's request for clarification regarding what would be acceptable to the Company as proof of illness (Tr. 38). A total of four persons were present at this meeting, those being H, T, F, and a Union Shop Steward, C (Tr. 107).

Most of what took place during the June 12, 1984 meeting is not in dispute. The testimony offered by both parties is in agreement that F asked H what the Company would accept as sufficient proof of illness; that F and/or C mentioned instances involving other Employees for whom some proof other than a Doctor's verification was accepted (Tr. 100); that H took the position each absence has to be judged according to its own circumstances (Tr. 39); that F became very angry and felt he was being treated differently from other Employees; that F accused H of harassment and discrimination; that F was speaking loudly and was very animated; and, that H concluded the meeting by telling F to leave, after putting his keys and identification card on the desk, and to await word regarding his employment status (Tr. 26-27).

Thereafter, the warning letter disputed in this case was issued (Co. Ex. 2). It placed reliance solely upon the Grievant's conduct during the June 12, 1984 meeting and stated the following to support disciplinary action, "You were loud and abusive in your language and I felt personally threatened and intimidated by your behavior." (Co. Ex. 2).

No contention has been made that F. made threats of physical harm against H. in the June 12, 1984 meeting. It is also agreed that no profanity was used by F. during that meeting apart from possibly the word "damn" (Tr. 38-39). H.'s summary of the conduct found objectionable during that meeting, given during direct examination, was as follows:

"At that point again he was using abusive behavior, words that I am harassing him and discrimination and et cetera, et cetera. And he got pretty loud. And he was getting off of his chair and getting towards around the corner and pointing the finger to my nose and was loud and abusive as witnesses around the office can testify to.

"Q. How far was his finger from your face at that point in time?

"A. About a foot or so.

"Q. Did you feel threatened by -- or intimidated by his action?

"A. Yes, I did." (Tr. 26, lines 12 - 23).

Following the June 12 meeting, T and/or H spoke to C, the Sub-Foreman who had worked with

F on the Saturday before his Monday absence caused by stomach flu. C confirmed that F had been suffering from stomach flu on Saturday. In reliance upon this confirmation, the Company paid sick leave to F for his Monday absence (Tr. 41). T also added clarification to his handwritten note earlier delivered to F, explaining that C's confirmation had been accepted as proof of illness (Un. Ex. 8). This was consistent with the Company's handling of prior cases, in which a Supervisor's confirmation of illness on the job had been accepted as sufficient proof of illness.

The Suspension:

The Grievant had an absence on July 3, 1984, which was recorded with a "T," standing for authorized absence, no pay (Co. Ex. 5(b)). He was also absent for a routine dental appointment on July 6, 1984. These absences did not produce any disciplinary response.

The next absence indirectly causing discipline occurred in August of 1984. As earlier noted, the Company's June 1983 "proof of illness" letter invited F to seek help from the Company's Employee Assistance Program. F did this on a confidential basis. F testified that as a result of consultations arranged through the Employee Assistance Program he was advised to take approximately seven days off work (Tr. 145). He also testified that he cleared this absence with

Dennis Cook, the Sub-Station Superintendent and Haraldsen's superior (Tr. 146-147). Dennis Cook confirmed the accuracy of this testimony in a statement given to the Local Investigating Committee (Jt. Ex. 5, 7). Cook thanked Ford for informing him in advance of the need to be away from work and reminded Ford that "proof of illness" would be required (Jt. Ex. 5, p. 7).

In tracing the developments that occurred in August of 1984, principal reliance is placed upon the testimony of Ford. Haraldsen's recollection regarding the sequence of events proved poor. Initially, he testified that a meeting took place in August for the purpose of discussing Ford's behavior during the June 12, 1984 meeting, namely, the meeting that produced the warning letter (Tr. 28). This recollection was completely inaccurate. Ultimately, Haraldsen agreed that he had been confused on this point (Tr. 44, lines 9-13).

The following events occurred in August of 1984. Ford was absent for the reasons explained to Cook, between August 2 and August 10 (Co. Ex. 5(b)). This absence began on a Thursday and concluded on the following Friday, spanning one weekend. The following Monday, August 13, Ford returned to work. He brought with him a visit verification from Kaiser (Un. Ex. 4). Ford's consultations through the Employee Assistance Program had led him to seek help at both

Kaiser and at French Hospital (Tr. 145). The Kaiser slip which F initially furnished to the Company indicated that he had been seen there on August 3, 1984 and that he was unable to work between August 2, 1984 and August 13, 1984 (Un. Ex. 4). Although it was signed on the line reading "provider's signature," it did not contain F 's name nor any other identifying information regarding the patient treated (Un. Ex. 4).

On Tuesday, August 14, F was told that this Kaiser slip would not be accepted as sufficient proof of illness (Tr. 148). F was absent again on Wednesday and Thursday of this week, August 15 and 16 (Co. Ex. 5(b)). During this second absence, F did two things. He had his original Kaiser slip stamped with his patient identification card. He also secured a second slip from Kaiser to verify the reasons for his second period of absence, beginning on August 15, 1984 (Un. Ex. 6). This final slip was also stamped with F 's patient identification card. It was complete in all other respects as well, containing dates and information regarding the diagnosis responsible for the second absence (Un. Ex. 6). F supplied both of these further Kaiser slips to the Company.

On Tuesday, August 21, 1984, a meeting took place between H , T , F and O'D ,

attending as Union Shop Steward, for the purpose of discussing the Kaiser slips furnished by F . H. explained at the beginning of the meeting that F had not furnished proof of illness acceptable to the Company. The record does not make clear precisely what problems the Company had with the proofs of illness furnished. According to T , the original Kaiser slip furnished, Union Exhibit 4, was deficient because it did not have F 's Kaiser card imprinted upon it (Tr. 100, lines 9-13). By the time of this meeting, however, F had furnished Union Exhibit 5, which did reflect that his Kaiser card had been imprinted. H was not able to provide any testimony helpful in establishing what problems the Company had with the proofs of illness in its possession as of August 21, 1984. His testimony on this issue, given during cross-examination, was as follows:

"A. As far as I recall it was two incidents. He mailed in a blank slip, no name, then he brought in his stamp on it with no date pertaining to it.

"And again we went round the robin. That was not acceptable. So it's a round robin of him not just wanting to give us the evidence we were asking from him.

"Q. Mr. H , you are completely changing your testimony from prior. I will point out to you what I think happened and you tell me if this helps you.

"Mr. F initially provided a slip for the first seven days that he was off, the 2nd through the 10th. It did not have his

name on it, didn't have that stamp. You told him this wasn't sufficient?

"A. That sounds right.

"Q. He was then off an additional two days or three days after an intervening couple days back on the job?

"A. That's about right.

"Q. There were two periods, seven days and three days?

"A. Yes.

"Q. He came back in with a modified slip for the first stretch of days and had a stamp on it, the second slip for the second three days, does that sound right?

"A. That's about right.

"Q. You still told him this is still not good enough. Is that what happened at the August 21st meeting?

"A. I don't recall the details on that."
(Tr. 46, lines 13-25, Tr. 47, lines 1-14).

According to F , the information given to him during the August 21, 1984 meeting itself was not any more clear. He did not feel that he was receiving any clear explanation as to how he might provide a satisfactory proof of illness. He became frustrated and again claimed harassment by H (Tr. 29). O'D recalled the conversation as follows:

"A. Well, I said to P , 'We are not going to' -- I cannot recall if it was day or days, they said, 'We are not going to pay you until there is proof.'

"P says, 'I gave you what the doctor gave me.'

"And they said, 'That is not enough.'

"And P said, 'What do you want?'

"They said, 'Satisfactory proof.'

"And P says, 'Well, you call the doctor.' And this was to T, between him and T was the conversation.

"T said, 'You call the doctor.' And T says, 'It's up to you, you know what you're supposed to have. It's up to you to produce the proof of illness.'

"And P says, 'I have given you proof of illness.'

"And T again said, 'It's not satisfactory.'

"P says, 'If you can call the doctor,' he says, 'and he will give you what you want.' But he says he gave me what is just cause -- if I remember P used the word said I think the doctor is cautious of what he gives out because of my civil rights being violated." (Tr. 117-118).

After F claimed harassment, H again concluded the meeting by directing F to turn in his keys and identification badge (Tr. 118).

On August 23, 1984, H issued a three day suspension to F (Co. Ex. 3). It cited two grounds for disciplinary action. First, the letter stated, "You were suspended because of your repeated loud and abusive behavior while in my office." (Co. Ex. 3). The letter further cited continuing poor attendance in its final paragraph. H's testimony regarding the reasons for issuance

of this suspension, given during direct examination, was as follows:

"MR. BROWN: Q. Prior to the meeting of August 21st had Mr. F 's attendance improved?

"A. No.

"Q. Was that discussed with him on August 21st?

"A. Yes.

"Q. Describe Mr. F 's behavior as you saw it at least on the meeting of August 21st.

"A. His behavior at that time when he was given the three days off was discussed and he as he was still being harassed.

"Q. Explain his behavior relative to the behavior you have testified to during the meeting after June 12th.

"A. I don't recall at this point in time.

"Q. What was the reason for giving him three days off?

"A. Number one, being abusive when in a meeting in my office and basically that was also a warning again that his sick leave and availability for work was not acceptable. And that he was still required proof of illness.

"Those were the items discussed that led to the disciplinary action, abusive language, reaffirming that his sick leave record was not satisfactory and that he is required proof of illness." (Tr. 29-30).

However, when H was asked to review F 's attendance records during his cross-examination, he was forced to conclude that F 's attendance had actually improved between

issuance of the June, 1983 "proof of illness" letter and the issuance of the August suspension. With reference to the period between June, 1983 and June, 1984, H. [redacted]'s testimony was as follows:

"Q. Looking at the records at least it appears that between June of '83 and '84 there had been improvement, fair to say?

"A. Fair, looking at this." (Tr. 36).

With reference to the period between June, 1984 and the date of F [redacted]'s suspension, H [redacted]'s testimony was as follows:

"Q. Directing your attention to Company Exhibit 5B., it appears that on June 11 there was a sick leave day and then the Grievant worked without missing a day through the end of June aside from his regular day off, correct?

"A. Correct.

"Q. It then appears he was given permission to be off without pay on July 3rd, a T?

"A. Yes.

"Q. You see that?

"A. I see that.

"Q. Do you recall giving him permission?

"A. No.

"Q. Do you think this might be one of the instances where you didn't know the difference between T and W?

"A. I believe that is a fact.

"Q. Then it appears for the rest of July other than the routine dental examination and the holiday on July 4th the Grievant again did not miss a single day.

"A. Correct.

"Q. It would appear that in June and July his attendance did improve, fair?

"A. Fair." (Tr. 43).

After suspending F , H and other Company representatives took the Kaiser slips at issue to Kaiser in order to verify their validity. At the time of this visit, Company representatives were informed that the Kaiser slips furnished by F had in fact been issued by Kaiser. They were not given any specific information beyond that reflected on the slips. The visit only served to verify their authenticity. After this visit, the Company determined to accept the slips as adequate proofs of illness and it authorized sick pay for the dates of F 's absences in August (Tr. 47-48; 102-106).

The Termination:

The Grievant's attendance records reflect that he was absent for several partial and whole days between the time of his suspension and an incident in March of 1985, leading to the termination contested in this case. These absences, however, did not produce any immediate counseling or discipline.

The absence that produced Ford's termination began on Monday, March 11, 1986, and continued through the following

Tuesday, March 19, 1986. There is some disagreement regarding events that took place during this absence, but the facts agreed upon are sufficient to control the outcome in this case. During most or all of the days he was absent, F called the Company and spoke with L, Sub-Station Maintenance Foreman. For a number of days, F informed L that he was ill, suffering from a sore throat. On more than one occasion, L reminded F that he would need to furnish some proof of illness upon his return. F acknowledged in his testimony that he was reminded of this requirement on more than one occasion by L. (Tr. 156).

On one morning during this absence, F explained to L that he was no longer ill, but did need to be away from work for some personal problem. L testified that this first occurred on Friday, March 15, 1985 (Tr. 70). F recalled that this did not occur until the following Monday, March 18, 1985 (Tr. 157). In any event, both Parties agreed that L asked what the problem was and F informed him that he would discuss it when he returned to work (Tr. 70; 157-158).

F returned to work on Wednesday, March 20, 1985. He did not have a verification with him at that time to cover any portion of his absence. F testified as follows during his direct examination regarding his efforts to secure such a verification, at least for the portion of the absence during which he was ill:

"A. No, I called in for verification. I just called them and told them I would be in. And they, well, they could immediately look at your medical record. I called my personal physician.

"Q. At Kaiser?

"A. Yeah, at Kaiser.

"Q. Had you gone in at all during the week of the 11 through the 15?

"A. No.

"Q. You called Kaiser Advice?

"A. Yes, and asked them to refer me to my doctor. And they told me, 'When you think that the problem is over' -- because I still had the medication that he had given me. So there was no need.

"Q. When you returned to work on March 20th had you obtained the verification from Kaiser about the week earlier?

"A. No, I hadn't.

"Q. Did you have an appointment at Kaiser at any time to obtain the verification?

"A. Why yes, the following evening I think it was.

"Q. The 21st?

"A. Yeah." (Tr. 158-159).

When F appeared at work on March 20, L asked him if he had a doctor slip. According to L, F responded by stating that he did not have a doctor slip, that he knew he was pressing his luck, but that he wanted to talk to H about it (Tr. 73, lines 7-11). F testified that after acknowledging he did not have a doctor

slip, he asked to come in early at 3:30 p.m. for the purpose of talking about it (Tr. 159).

F was not given an opportunity to "talk about it." He was called in at 2:30 p.m. by H who immediately terminated him. The notice of termination, drafted March 20, 1985, and signed by L , read as follows:

"This letter will confirm our meeting on Wednesday, March 20, 1985. Also present were Mr. Mc , shop steward and Mr. H. , Superintendent of Substations.

"On August 24, 1984, you received a disciplinary letter warning you that unless you maintained a satisfactory level of attendance you would be discharged. You have not done so.

"You have been off on sick leave or unauthorized personal business for 15 of the 55 work days thus far in 1985. Most recently you were off seven days of which you claimed to be sick on five days. No proof of illness was provided, however, as required in the August 23, 1984 letter and in a previous letter dated June 3, 1983.

"You have been given every opportunity to improve your performance and have been offered the services of the Employee Assistance Program. You have failed to take advantage of these opportunities and, therefore, you are discharged." (Co. Ex. 4).

DISCUSSION:

The Warning:

The sole basis for the June 15, 1984 warning letter was F 's conduct during the meeting of June 12, 1984. This meeting was requested because F wanted some clarification

from the Company as to what kind of verification he could provide regarding his illness of June 11, 1984. In the specific testimony offered by H. . . . to support the warning letter, he alleged that F . . . claimed harassment and discrimination, was loud, and shook his finger in H. . . . 's face (Tr. 26).

It is an accepted principle of collective bargaining, supported by federal law, that all participants in any meeting affecting employment rights must be entitled to express their views vigorously. This does not mean that insubordination must be tolerated. No policy protects an individual who makes threats against a Supervisor's well-being or directs profanity against a Supervisor. However, on June 12, 1984, F . . . did not cross the line between vigorous debate and insubordination.

H. . . . 's principal complaint is that F . . . accused him of harassment and/or discrimination. The record confirms that such an accusation was made. All Employees, however, are entitled to claim disparate treatment and to properly pursue their complaints. It does not constitute insubordination for such a claim to be made loudly, nor does it constitute insubordination for such a claim to be accompanied by gestures. No gestures were made by F . . . which might be reasonably construed as a threat against H. . . . 's well-being.

In the context of this case, F had some cause to make a vigorous claim of discrimination. He understood that other Employees had been able to verify their illness through means other than doctor slips. He sought, but did not receive, an explanation from his Supervisors as to what proofs of illness could be accepted. Questions were not asked which could have helped to determine whether F 's absence of June 11, 1984 could be verified. All this occurred, despite the fact that Sub-Foreman C was in a position to verify F 's illness and ultimately did so.

For all of the foregoing reasons, just cause did not exist for the June 15, 1984 warning letter.

The Suspension:

Two causes were cited for suspension of the Grievant in August, 1984. Those were: 1) his conduct during the meeting of August 21, 1984; and 2) continuing poor attendance.

The comments already made regarding F 's conduct during the earlier June 1984 meeting apply with greater force to this meeting. As noted above, when H was asked during his direct examination to explain what was "abusive" about F 's behavior during this meeting, he testified, "I don't recall at this point in time" (Tr. 29, lines 14-16). It does not appear from the record that F did anything worse on this occasion than he had done on the

prior occasion. Once again he became frustrated with his inability to secure any guidance as to what would constitute an acceptable proof of illness and he made claims of harassment and discrimination.

On this occasion, F 's frustration was particularly warranted. He furnished a Kaiser slip (Un. Ex. 4) which was, according to T , rejected because it had not been imprinted with F 's Kaiser card. By the date of the August 21, 1984 meeting, F had cured this defect by having Kaiser imprint the original slip (Un. Ex. 5). He was not receiving any indication as to what he might do to further satisfy the Company. It now appears that he could not have done anything to further satisfy the Company. H was not satisfied with the slips until he personally took them to Kaiser and verified their authenticity. If what H wanted was direct assurance of authenticity, this was necessarily something he had to accomplish himself. F could not do it for him; and, F had already provided all that was within his power to provide. F had reason to challenge the guidance, or lack of guidance, he was receiving from the Company and there is no indication that he did so during this meeting in an insubordinate or improper manner.

As noted above, continuing poor attendance was additionally cited as a basis for discipline in the notice of suspension (Co. Ex. 3). As already indicated, however,

during his cross-examination, H _____ agreed that F 's attendance improved between the June 1983 "proof of illness" letter and the absence commencing August 2, 1984 (Tr. 36; 43, lines 4-25).

The absence that commenced on August 2, 1984 cannot be relied upon as a basis for discipline. The June 1983 "proof of illness" letter invited F to seek help through the Company's Employee Assistance Program. F accepted that invitation and as a result of his acceptance, he was advised to pursue help that would require him to be away from work starting on August 2, 1984. He cleared this absence with

Co , H 's superior (Jt. Ex. 5, p. 7). When he did so, Co thanked him for giving the Company prior notification and reminded him that he would need to provide proof of illness. F complied with these terms. He provided the Kaiser slips which were ultimately accepted, after H personally confirmed their authenticity. Disciplinary action can hardly be supported on the basis of an absence which was essentially invited, approved and accepted by the Company.

For all of the foregoing reasons, just cause did not exist for the suspension at issue in this case.

The Termination:

The termination issued on March 20, 1985 placed reliance upon the Grievant's earlier suspension. As has just been concluded, just cause did not exist for that suspension.

The specific absence which produced F 's termination is the absence which began on March 11, 1985. That absence had two distinct parts. F has explained the first portion of the absence as necessitated by illness and the second portion of the absence as necessitated by personal problems. It is clear that F is wholly responsible for mishandling the first half of the absence and the Company is wholly responsible for mishandling the second half of the absence.

F agrees that when he called in sick, L repeatedly reminded him that he would need to furnish proof of illness upon his return. The Union notes that on occasion, the Company allegedly did not enforce the proof of illness requirement. Assuming this to be true, it is beside the point. As to the absence beginning March 11, 1985, Ford was clearly placed on notice that he should expect strict enforcement. Nonetheless, according to his own account, F did absolutely nothing during the period of his illness to secure appropriate verification. Rather, he testified that he used old medication and made an appointment to secure a release from Kaiser on August 21, 1985 after he had fully recovered and returned to work. No one at Kaiser could have authentically verified anything on August 21, 1986 about F 's prior illness because, once again, by his own account, he had fully recovered as of that date. Given the prior difficulties F had encountered in securing reliable

verification from Kaiser, he had a responsibility to make certain he was seen and evaluated when ill. His total failure to do that, despite the fact that he was under a valid "proof of illness" requirement, warranted disciplinary action.

It did not, however, warrant termination. This is true not only because the prior discipline relied upon in the notice of termination was invalid, but moreover because the Company was responsible for mishandling the second portion of the March 1985 absence directly precipitating the termination. As has already been indicated, F^o was invited and encouraged to utilize the Company's Employee Assistance Program. When F^o returned to work on March 20, 1985, supervision knew that he claimed a portion of his absence had been required by "personal reasons." Upon his return to work, F^o requested an opportunity to discuss those personal reasons with supervision at the conclusion of the day. The Company fired him before asking him what it was he wanted to talk about, and indeed, never asked him what it was he wanted to talk about.

It is universally accepted that one of the things a Company must do in order to support disciplinary action is conduct a reasonable investigation, inquiring into all sides of the story before discipline is issued. See Koven and Smith, Just Cause, The Seven Tests (1985), page 139. There

is sound reason for this universally accepted policy. If disciplinary action is taken and then an investigation is conducted, there is a natural tendency for that investigation to become a search for evidence supporting the initial decision made. It is desirable to all concerned for investigation to occur when it can be impartial. This reduces the prospect that unwarranted disciplinary action will be taken.

When the Company fired F on March 20, 1986, it completely ignored this policy. No effort was made to find out what F wished to discuss concerning his "personal problems." Good collective bargaining practice required the Company to at least find out what it was F wanted to say before terminating him. The Company's response to F's request on March 20, 1986 worked at complete cross purposes with its announced Employee Assistance Program.

For all of the foregoing reasons, just cause is not found for the termination at issue in this case. As has already been concluded, F was wholly responsible for mishandling the first portion of the absence that caused that termination and the Company was wholly responsible for mishandling the second portion of the absence producing that termination. The remedy stated below reflects this shared responsibility.

DECISION:

1. Just cause did not exist for the warning letter issued to the Grievant on June 15, 1984. The Company shall forthwith remove all evidence of it from his records.

2. Just cause did not exist for the suspension issued to the Grievant by letter dated August 23, 1984. The Company shall forthwith remove all evidence of it from his records. The Company shall further make the Grievant whole for all losses of earnings and benefits suffered as a result of this suspension.

3. Just cause did not exist for termination of the Grievant on March 20, 1985. The Company shall forthwith reinstate him to his prior employment with no loss of seniority.

4. The period between the date of his termination and December 20, 1985 shall be reflected in the Grievant's records as a disciplinary suspension. ^{see pg. 26} He shall receive no pay or benefits for that period of time.

5. The Company shall immediately provide the Grievant with all pay and benefits which he would have received had he returned to his employment on December 23, 1985, rather than the actual date of his reinstatement, less interim earnings received during that period.

6. Jurisdiction is retained for the purpose of resolving any dispute that may arise regarding interpretation or application of this decision.

<u>Kathy Kelly</u> KATHY KELLY, Chairman	Concur/Dissent	9/5/86 Dated
<u>Joe Valentino</u> JOE VALENTINO, Union Member	Concur/Dissent	9-5-86 Dated
<u>Roger Stalcup</u> ROGER STALCUP, Union Member	Concur/ Dissent	9/5/86 Dated
<u>I. Wayland Bonbright</u> I. WAYLAND BONBRIGHT, Employer Member	Concur /Dissent	9/5/86 Dated
<u>Kent H. Anderson</u> KENT H. ANDERSON, Employer Member	Concur/Dissent	9-5-86 Dated