

REVIEW COMMITTEE**PG and E**

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

D.J. BERGMAN, CHAIRMAN

- DECISION
 LETTER DECISION
 PRE-REVIEW REFERRAL

SEP 12 1988

CASE CLOSED
LOGGED AND FILED

RECEIVED AUG 15 1988

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

REVIEW COMMITTEE DECISION

Arbitration No. 161
General Construction Grievance No. 3-1678-87-40
Review Committee File No. 1660-88-2

Subject of the Grievance

This case concerns Company's refusal to process a discharge grievance it considered to be untimely filed. It was referred to arbitration, however, was recalled by the Review Committee.

Facts of the Case

Below is a chronology of events:

- 1/14/87 Grievant discharged by General Construction.
- 1/19/87 G.C. Union Business Representative prepared a hand written grievance which he sent to the Walnut Creek Union office to be typed. In error, the Union mail room rerouted the grievance to the Business Representative in Stockton.
- 1/26/87 Stockton Business Representative contacted G.C. Business Representative to let him know that he had the grievance and ask what he wanted him to do with it. G.C. Business Representative asked Stockton Business Representative to please call it into the Walnut Creek office to be processed.
- 1/27/87 Stockton Business Representative phoned the grievance into East Bay Business Representative in the Walnut Creek Union office. East Bay Business Representative wrote the verbal grievance down and gave it to the Office Manager to be processed. An office employee typed an original grievance form, which was then inadvertently forwarded by certified mail to the grievant. The green certified signature card affixed to the back of this same envelope was addressed to Company's G.C. Human Resources Representative. According to the G.C. Union Business Representative, a copy of the grievance which normally would be mailed to the grievant was instead forwarded by regular U.S. mail to the Company. However, the envelope allegedly mailed to the Company containing a copy of the grievance was never delivered.

1/28/87 Time limits for filing discharge grievance expired.

Approximately 1/27/ - 29/87 G.C. Business Representative queries G.C. Human Resources Representative regarding setting Local Investigating Committee meeting date for discharge. Human Resources Representative responds that no grievance had been received.

1/30/87, 2/4/87, 2/14/87 Post office attempted to deliver envelope addressed to grievant.

2/9/87 Union Business Representative initiated action for post office to trace envelope addressed to Company's Human Resources Representative. Post office would not start a tracer until after 15 working days. Company informed of Union's action.

2/18/87 Envelope with original grievance which had been addressed to grievant was returned to Union's Walnut Creek office because after three notices, grievant/addressee had not claimed the envelope.

2/20/87 Grievant's returned envelope mailed from Union's Walnut Creek office to G.C. Business Representative. Union initiated tracer proceedings with post office for envelope allegedly mailed to Company.

2/20/87 Company received a second discharge grievance containing same information as on the original, undelivered grievance, including submission date of January 19, 1987. Company rejected grievance as untimely filed.

3/17/87 Company received grievance, which is the subject of this decision, concerning Company's rejection of the February 20, 1987 discharge grievance.

3/24/87 Local Investigating Committee meeting of this grievance.

Discussion

The Review Committee examined: the original grievance form noting that the submission date on it was January 19, 1987; the original envelope addressed to the grievant (which contained the grievance) noting that the post-mark date on it was January 28, 1987; and the original certified receipt with Union's date stamp for January 27, 1987.

The Committee also reviewed Pre-Review Committee Cases 347 and 989 and several other precedential decisions concerning the timeliness of filing grievances. The decision in Pre-Review Committee Case No. 989 states:

"...the timeliness of a grievance will be determined by the postmark date or the post office receipt date for certified mail. If the postmark date is not legible, the grievance is sent through Company mail, or if the grievance is hand-delivered, the date received in the Personnel office will be the governing date."

The Company argued that the determination of what end date to use to measure timeliness is predicated on Company's receipt of the grievance; and in this case, the grievance was not received by the Company until a duplicate grievance was received on February 20, 1987 which was clearly untimely. Union argued that the evidence presented indicated an intent and good faith effort to file a timely grievance challenging the discharge, that it was simply a clerical error which caused this situation.

Company agreed that it did appear that the Union intended to file a timely grievance but that the fact still remained that the grievance was not received by the Company. In addition, the Union was able to retrieve the original grievance because it had been misaddressed to the grievant, but what if it had never been recovered? Is the Company supposed to accept a duplicate, untimely grievance because the first one went astray, or perhaps was never mailed or completed?

The Union acknowledged that there is cause for the Company's concern but reiterated their position in this case, pointing to the hard evidence of: the original grievance with a submission date five days after the discharge; the original envelope with a timely postmark; and the certified receipt with a timely date stamp.

The parties described a hypothetical situation wherein a grievance was properly addressed to the Company and mailed. The post office loses, misdirects or otherwise mishandles the mailing, and it doesn't arrive for several months. When the mailing arrives, it does have a timely postmark. The Company agreed that it would have to process that grievance as timely filed.

The parties also agreed that the Company has been very diligent in the past about observing the filing time limits and not agreeing to waive them.

Decision

After much discussion, the Review Committee is in agreement that the evidence supports the position that the Union did in fact prepare and put into transmission a timely grievance; that they did make a good faith effort; and that a clerical rather than a procedural error caused the problem.

On the basis of the facts and evidence present in this case, the Review Committee agrees that the original grievance concerning the merits of the discharge will be processed pursuant to Title 102. This case is considered closed without prejudice on the basis of the foregoing adjustment.

FOR COMPANY:

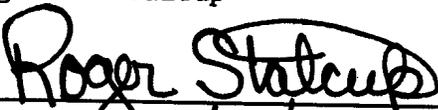
Rodney J. Maslowski
Ronald A. Morris
Robert C. Taylor
David J. Bergman

By 

Date 8-2-88

FOR UNION:

Art D. Murray
Patrick S. Nickeson
Fred H. Pedersen
Roger W. Stalcup

By 

Date 7/28/88