

REVIEW COMMITTEE**PG and E****IBEW** 

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CASE CLOSED NOV 19 1980
LOGGED AND FILED

INTERNATIONAL BROTHERHOOD OF
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D.J. BERGMAN, CHAIRMAN

General Construction Grievance No. 3-613-79-102 and

3-635-79-124

 DECISION LETTER DECISION PRE-REVIEW REFERRAL

Pre-Review Committee No. 557

Suspension and Ultimate Discharge of a Heavy Truck Driver

R.W. STALCUP, SECRETARY

November 17, 1980

MR. R. S. BAIN, Chairman
 General Construction
 Joint Grievance Committee

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Statement of the Case

This grievance concerns the suspension and discharge of a General Construction employee, a Heavy Truck Driver, for misuse of a Company issued Gasoline Credit Card. Specifically, that he used the Company credit card to purchase gasoline on more than one occasion for his personal pickup.

The grievant was employed October 4, 1966 and discharged effective August 2, 1979. The gasoline purchases in question were reported by the Operator of a service station in Roseville upon information received by him from his employee attendant. The attendant alleged that on June 29, July 3 and July 20, 1979, the grievant purchased gasoline for his personal vehicle and then told the station attendant to hold the charge tags open. Later, he returned with a Company vehicle and purchased additional gasoline. It was reported that he then told the attendant to put both purchases on the same charge tags which he "paid" for with a Company credit card.

Discussion

The suspension and discharge grievances were timely filed and submitted to the Local Investigating Committee (LIC) for report. On November 13, 1979 the LIC issued a Joint Statement of Facts which included, among other things, the above facts. The LIC could not agree on a settlement of the case.

The LIC also noted in their report that while the grievant denied the allegations *in toto*, he conceded that he may have charged one purchase for his personal vehicle. Further, in the course of the investigation, he inquired as to what would happen if he paid all of the charges in question.

A supplemental LIC report was submitted to the Review Committee on June 18, 1980. In the course of the latter investigation, the station attendant was interviewed by the LIC as to his recollection of the events set forth in his sworn affidavit dated August 17, 1979.

A short review of the attendant's affidavit, his later testimony, and the charge slips reveal the following:

1. The attendant was on duty at the times when the grievant was alleged to have received gasoline for his personal vehicle.

2. The charge tags for the dates in question each evidence two entries; one of which corresponds to the attendant's sworn statement to the amount of gasoline the attendant put into the tank of the grievant's personal pickup.

Conclusions of Fact

On the record before the Review Committee, the grievant's ascertions of innocence are not credible for the following reasons:

1. The service station attendant's sworn statement was made within a couple of weeks from the latest alleged purchase. There is no dispute that the grievant owned a pickup. Whether the vehicle was recalled as a "Gray 1960-1970 pickup" or a "silver satin 1970 pickup" is not a critical factor in this instance. What is crucial is the fact that the grievant was identified by the attendant as having filled the gas tank of a non PGandE vehicle and charging that purchase on a Company issued credit card issued for his Company truck.

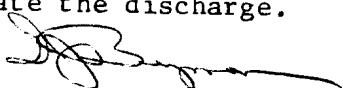
2. The grievant's admission that he might have filled his personal pickup once and charged the purchase to the Company discredits his overall protestations of innocence. To the same effect was his later inquiry as to what effect it might have if he made a restitution of the total amount charged.


3. The Committee also takes note of the fact that the record does not reveal any reason why the station attendant and the station operator would have furnished false information in their sworn statements. Indeed, the opposite is true. The attendant's participation in the grievant's fraudulent act could well have resulted in the loss of Company's business. Thus, to the extent that the attendant's affidavit and testimony are in conflict with that of the grievant, it is more reasonable to discredit the grievant's testimony.

Decision

Defalcations of the nature present here have been severely dealt with and upheld by this Committee in the past under the provisions of Title 102 of the Physical Labor Agreement. Where, as here, the alleged misconduct is specifically proscribed by the Company's written policy, the discharge must be sustained absent strong mitigating factors drawn from the circumstances and/or the grievant's past work record.

While the employee had thirteen years of service, the allegations which this Committee accept as factual, are of a serious nature. It is the Review Committee's decision that the facts supporting a finding that the grievant willfully misappropriated Company property. Therefore, the Committee is not in a position to mitigate the discharge.


D. J. BERGMAN, Chairman
Review Committee


R. W. STALCUP, Secretary
Review Committee

LVBrown(1165):ml

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- LCBeanland
- IWBonbright
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