

REVIEW COMMITTEE**PG and E**PACIFIC GAS AND ELECTRIC COMPANY
245 MARKET STREET, ROOM 444
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D.J. BERGMAN, CHAIRMAN

- DECISION
 LETTER DECISION
 PRE-REVIEW REFERRAL

**CASE CLOSED
LOGGED AND FILED****RECEIVED AUG 31 1987**General Construction Grievance Nos. 3-1521-86-29
and 3-1535-86-43
P-RC Nos. 1136 and 1138**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

August 28, 1987

RICHARD S. BAIN, Company Member
General Construction
Joint Grievance CommitteeBARRY J. HUMPHREY, Union Member
General Construction
Joint Grievance CommitteeSubject of the Grievances

These cases involve the discharge of two probationary Groundmen for unsuitability.

Facts of the Cases(P-RC 1136)

The grievant was hired as a Groundman on October 7, 1985 and discharged on March 13, 1986 for unsuitability. The termination was grieved alleging unjust and insufficient cause for discharge and further that the grievant had been subjected to discriminatory remarks and intimidating threats. Company denied the portion of the grievance dealing with the termination as an improper subject for the grievance procedure, and accepted that portion of the grievance concerning the alleged discriminatory remarks.

The grievant failed the Three-day Climbing School on February 5th and the Arithmetic Computation Test (ACT) on March 12, 1986. The grievant's supervisor testified that the grievant was a cooperative and willing employee who tried hard to do a good job. He also testified that "If she had passed the ACT, we probably would have kept her." There was no additional performance-related testimony presented.

With regard to the alleged discriminatory remarks, the Local Investigating Committee thoroughly examined these allegations and determined that the evidence was inconclusive; however, the grievant was rehired as a Helper in the Gas Construction on March 31, 1986.

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P-RC Nos. 1136 & 1138

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(P-RC 1138)

The grievant was hired as a Groundman on November 22, 1985. On February 3, 4, and 5, 1986, he attended the Three-day Climbing School and did not pass. The grievant had several periods of light duty in February and March due to an industrial injury and returned to full duty on March 26. On March 28, the grievant failed the Arithmetic Computation Test (ACT). On Tuesday, April 1, 1986, the grievant was terminated as unsuitable for continued employment.

The Pre-Review Committee requested that the Local Investigating Committee reconvene and take testimony from the grievant's supervisors. The additional testimony indicated that the grievant had some deficiencies with regard to knowledge of tools, equipment, ability and willingness to follow instructions.

Discussion

The Company took the position that these discharges were improper subject for the grievance procedure, inasmuch as they were for unsuitability during the probationary period and that Company has the right to determine the performance criteria a probationary employee must meet in order to become a regular employee, noting that the Three-Day Climbing School is a prerequisite to transfer to Groundman.

Company's position is based on the decisions in Arbitration Cases 15 and 15-A wherein probationary employees have limited rights to protest discharge in the grievance procedure. The arbitration decisions provide that if a probationary employee is discharged for violation of a rule, policy or practice, generally accepted as misconduct under the industrial common law in the absence of posted regulations, then the employee may properly utilize the grievance procedure. This is because discharge for such reasons reflect upon the person's character and may have adverse impact on the person's ability to obtain future employment. As a result, the discharged employee has a right to demand proof or to set the record straight.

Discharges for unsuitability, however, are predicated on the employee not meeting the Company's standards for regular status. The arbitrators noted that during the probationary period, the employee is "on trial" and during this time, is evaluated on such factors as, but not limited to:

"Knowledge of equipment and tools, attendance, safety, ability and willingness to follow instructions, performance on academic tests, etc. These aforementioned criteria are some of the elements during the trial period on which the Company must evaluate the probationary employee to determine whether or not the employee's performance upon attaining regular status, in the opinion of the Company, would be stable, reliable and competent."

With regard to Pre-Review Committee Case No. 1136, Union opined that the grievant was terminated during her probationary period on the day following her failure of the Arithmetic Computation Test and five weeks following her failure of the Three-Day Climbing School. Union asserted this was the basis for

her termination. In response to questions posed by the Local Investigating Committee, Company's supervisors stated the grievant was a cooperative and willing worker and offered no evidence that she was terminated for reasons other than failure of the tests.

Union opined that while the Three-Day Climbing School is a prerequisite to transfer to Groundman, it is not a prerequisite for qualifying for regular status for those hired into the Groundman classification, as is evidenced by facts reviewed by the Committee in conjunction with this case.

Union further opined that performance criteria more commonly referred to as conditions of employment or standards of achievement for both probationary and regular employees are subject to the collective employee bargaining process.

Company disagrees with this statement as it relates to probationary employees.

During the course of discussion, Company presented evidence which indicated other Groundmen hired about the same time as the grievants had failed the ACT and/or Three-day Climbing School and were not discharged. This then demonstrates that General Construction Line Department was not committed to discharging for unsuitability all probationary Groundmen who failed these two measures.

Decisions

(P-RC 1136)

As noted earlier, the grievant was rehired as a Helper for reasons unrelated to her failure of the ACT and Climbing School; therefore, the issue of the grievability of the discharge is rendered moot. However, given the circumstances presented in this case, the Committee agrees to an equity settlement without prejudice to either party's position, as follows:

1. Bridge grievant's service back to her original date of hire (October 7, 1985) and consider April 7, 1986 as the date she attained regular status.
2. Grievant will be paid as though she worked for March 14, 17, 18, 19, 20 and 21, 1986.
3. March 24, 25, 26, 27 and 28, 1986 will be personal business, with permission, without pay inasmuch as she had been offered the opportunity to return to work on March 24 but was not available until March 31, 1986.
4. Grievant will be entitled to appropriate per diem expenses under Title 301 in conjunction with her rehire March 31, 1986.

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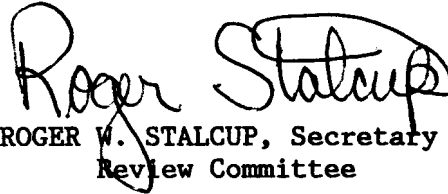
(P-RC 1138)

Based on the additional information obtained regarding the grievant's performance, the Committee agrees that the discharge falls within the parameters of Arbitration Case Nos. 15 and 15-A for unsuitability. Therefore, the grievant did not have a right to avail himself of the grievance procedure. This grievance is rejected as an improper subject for the grievance procedure.

These cases are considered closed on the basis of the foregoing, and such closure should be so noted by the Joint Grievance Committee.



DAVID J. BERGMAN, Chairman
Review Committee



ROGER W. STALCUP, Secretary
Review Committee

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