



REVIEW COMMITTEE

601.1

7.1 - Just cause for discipline.
Demotion because of work performance problems.



SEP 14 1989

**CASE CLOSED
LOGGED AND FILED**

PACIFIC GAS AND ELECTRIC COMPANY
215 MARKET STREET, ROOM 916
SAN FRANCISCO, CALIFORNIA 94106
(415) 973-1125

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

D.J. BERGMAN, CHAIRMAN

RECEIVED SEP 13 1989

- DECISION
- LETTER DECISION
- PRE-REVIEW REFERRAL

San Francisco Division Grievance No. 2-1542-87-114
P-RC 1289

September 13, 1989

NANCY PETERSON, Company Member
San Francisco Division
Local Investigating Committee

ED CARUSO, Union Member
San Francisco Division
Local Investigating Committee

Subject of the Grievance

This case concerns a three-day disciplinary layoff and demotion received by a Gas Crew Foreman for safety related work performance problems.

Facts of the Case

On September 30, 1987, the grievant's crew was assigned to a job that had been in progress. According to the grievant, a little after 8:00 a.m. on that date he requested additional barricades that were not delivered until approximately 2:00 p.m. At approximately 12:25 p.m., while the grievant's crew was eating lunch at the job site, a young boy ran across the street and fell into the open trench.

The grievant's supervisor testified that he had driven by the job site the morning of the accident while the crew was trenching and found the site adequately protected with cones. When the plates were taken off of previously dug trench, however, more barricades should have been placed around the site to protect the public. As a result of this failure to protect the site, and previous disciplinary problems, the grievant received the time off and demotion.

The grievant had received a disciplinary letter on September 12, 1986, revised from a June 26, 1986 letter, that listed a number of instances back to January of 1983 of purportedly poor work performance. In addition, on September 3, 1987, a memo to file was written documenting an oral counseling of the grievant for poor workmanship.

Discussion

This case involved the Committee in a great deal of lengthy discussion and presented some particularly thorny issues. The Committee clearly recognizes that providing for the safety of the public and other crew members is of paramount importance for a Crew Foreman. In examining this case, however, the Committee had difficulty answering the question of how many barricades or cones are necessary to provide adequate protection and prevent an accident from occurring. The pat answer in hindsight is that if an accident occurred, the barricades and cones present were inadequate.

Does this then mean that the Crew Foreman lacks foresight and that all accidents are preventable? In the instant case, the grievant claims to have requested additional barricades that did not arrive until after the boy fell into the trench. Well after the fact, the person who receives such requests was asked to confirm or deny that the grievant made that call. Absent a log of those requests, recollection of such a call on a particular date, understandably, could not be made.

Examination of the Work Area Protection Guide provided to crews is of some help in trying to determine the protection necessary. The guide seems to indicate that cones are to be placed ten feet apart on streets with speed limits up to 35 miles per hour. In checking with the grievant's headquarters, they also have safety meetings two times a year that address work protection through the showing of slides. Sign up sheets for the meetings prior to the grievance were not kept.

Decision

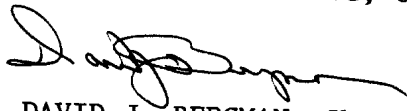
As indicated earlier, the Committee was troubled by this case. Although the prior discipline received by the grievant did not exceed a disciplinary letter, the previous work performance problems mentioned are concerning. In addition, even assuming the grievant did call for more barricades the morning of the accident, there appear to be other measures he could have taken. The supervisor could have been asked to speed up the delivery of the barricades, or other forms of protection could have been sought.

Under constructive discipline, it was unusual for an employee to progress from a disciplinary letter to the discipline meted out in this case. While the young boy falling into the trench is a serious safety issue, the lack of a clear rule violation on the part of the grievant causes the Committee to conclude that the discipline was too severe. In light of the grievant's performance history, however, the Committee believes that there is an onus on the grievant to demonstrate that he can perform satisfactorily. Accordingly, the following settlement was agreed to:

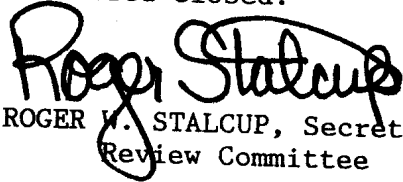
Two days of the disciplinary layoff will be restored to the grievant. The grievant will be upgraded to Gas Crew Foreman on a trial basis for six months. During the trial the grievant will be assigned the usual range of jobs customarily worked by gas crews. If the grievant's performance is satisfactory during the trial, the demotion will be rescinded and the loss of wages will be restored. If the grievant's performance is not satisfactory, the demotion will be sustained. Recognizing that the grievant currently has rights to return to the Gas Crew Foreman classification on a permanent basis through the bidding procedure, this decision will not preclude the grievant from being awarded a permanent position during the trial period. If the grievant is awarded a permanent position, any discipline meted out must be based on its own merits and cannot build on deactivated discipline. However, if an incident warrants discipline during the six month period, it would support the 1987 demotion to the extent that the grievant would not be owed backpay.

A determination of unsatisfactory performance during the six month trial is subject to review in the grievance procedure.

On the basis of the above, this case is considered closed.



DAVID J. BERGMAN, Chairman
Review Committee



ROGER W. STALCUP, Secretary
Review Committee

RRDoering(3-1124):dsv