



REVIEW COMMITTEE

108.2 Refusal to allow
emp. to return to
work from Comp P/R.



PACIFIC GAS AND ELECTRIC COMPANY
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JUN 21 1989

**CASE CLOSED
LOGGED AND FILED**

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO
LOCAL UNION 1245, I.B.E.W.
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R.W. STALCUP, SECRETARY

D.J. BERGMAN, CHAIRMAN

RECEIVED JUN 16 1989

- DECISION
- LETTER DECISION
- PRE-REVIEW REFERRAL

General Construction Grievance No. 3-1809-88-46
P-RC 1299

June 13, 1989

BYRON TOMLINSON, Chairman
General Construction
Joint Grievance Committee

BARRY HUMPHREY, Chairman
General Construction
Joint Grievance Committee

Subject of Grievance

Failure to return employee to work after release from industrial injury.

Facts of the Case

On January 13, 1988, the grievant was referred to a panel physician for an industrial injury which was diagnosed as a muscle pull of the chest area. On February 26, 1988, the panel physician suggested to the grievant's supervisor that the grievant undergo a formal psychological evaluation and testing. This referral was based on the fact that the grievant had been off work approximately one-half of his Service for minor industrial and non-industrial disabilities. The grievant was hired May 5, 1971 and has been a Miscellaneous Operator B and Heavy or Special Truck Driver most of his career. Through April 19, 1988, 17 years of Service, the grievant had been off work approximately 9.5 years. It appears that the panel physician released the grievant regarding his chest injury but that he did not release him for work pending the outcome of the psychological evaluation.

On March 17, 1988, the grievant was given a psychological evaluation. The doctor's report dated April 28, 1988 stated:

"While (grievant) certainly seems at this point physically capable of returning to this usual position as a truck operator with PG&E, I believe the weight of evidence raises very high the probability that (grievant) would again, in the not too distant future, become physically injured, perhaps more seriously than he has in the past. There is, of course, the possibility, because of the nature of his work, that others could be injured as well. I believe the psychological testing that he has undergone further supports the concern that (grievant) is at an increased risk of injury because of the inner psychological turmoil he is currently experiencing that is impairing to some degree his cognitive functioning and particularly his ability to concentrate and pay attention."

June 13, 1989

"I would recommend that (grievant) return to work on limited duty for one to three months at the end of which time a psychological and work re-evaluation be performed. The clear purpose of limited duty is to attempt to return (grievant) to work under safer conditions and to basically see how well he can handle that. If this is not possible I would recommend that (grievant) be considered for another position in the company, a lateral transfer where his exposure to heavy equipment and machinery could be minimized. I recognize the potential difficulties in making such a move but I believe the risk factors for further injury are great enough to warrant such concern and action. I would expect (grievant) to have little if any appreciation of the necessity for such a move but in fact, such a move would seem the only prudent thing to do to attempt to prevent further injury and disability."

Based on this report, the Company chose not to return the grievant to work. From January 13 through April 4, grievant was on Workers Compensation Payroll, from April 5 through 18 on sick pay, and on April 19, the Company's Safety, Health and Claims Department put the grievant back on Workers' Compensation. The grievant returned to work November 9, 1988 based on an agreed-to medical examiner's report. This medical examination was agreed to between the Safety, Health and Claims Department and the grievant's attorney.

Discussion

Union's position in this case is the Company's decision not to return the grievant to work while the April 28 doctor's report clearly recommends the grievant be "returned to work on limited duty for one to three months at which time a psychological and work re-evaluation be performed," was in violation of the Agreement. The Union argued that the Company should have immediately returned the grievant to work, and the Company should have determined what "limited" duty meant. The Local Investigating Committee (LIC) does not give any information on whether the term, "limited duty" was clarified. Based on the foregoing, it is the Union's opinion that the Company inappropriately denied the grievant from returning to work.

Company argued that a full reading of the doctor's report is unambiguous and that "limited duty" meant "safer condition." It was not possible to place the grievant in another position where his exposure to heavy equipment and machinery could be minimized.

The department reviewed its operation and determined it did not have any work available based on the conditions set forth by the doctors. Also, the department stated that the grievant's condition was a personal medical condition, and it was the obligation and responsibility of the grievant to seek treatment to resolve his condition or obtain a psychological evaluation which disputes the Company physicians' report. The grievant chose to retain an attorney to pursue his return to work or disability status in a workers' compensation forum. Further complicating the situation, the Safety, Health and Claims Department decided to place the grievant on the compensation payroll prior to any determination of medical/psychological evidence indicating if the grievant's condition after April 18 was work related.

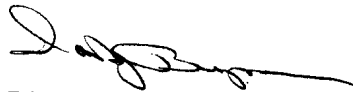
June 13, 1989

Decision

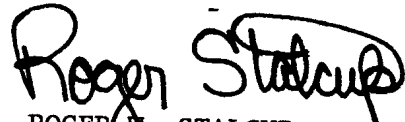
Because of the unusual circumstances in this case, the Committee agreed on the following equity settlement.

In cases where restrictions placed upon an employee being returned to work is unclear, such limitations should be clarified, if still unclear to send the employee to another physician to determine whether the employee is capable of returning to work with or without restrictions. Further, the Committee agrees to credit the grievant's sick leave account with 80 hours sick pay for the dates April 5 through April 18. The Union reserves the right to make the same arguments on future cases. The Committee also agreed that grievant would not be penalized per Section 111.5(a) vacation adjustment for his time off work from April 4, 1988 through November 9, 1988.

Based on the above, this case is closed and such closure is to be noted in the minutes of the Joint Grievance Committee.



DAVID J. BERGMAN, Chairman
Review Committee



ROGER W. STALCUP, Secretary
Review Committee

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