



# REVIEW COMMITTEE

Clerical  
24.1 -Just cause for discip  
line - Dischg of Mtr Rdr  
for curbing reads.

## IBEW



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OCT 19 1993

**CASE CLOSED  
LOGGED AND FILED**

INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, AFL-CIO  
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R.W. STALCUP, SECRETARY

RICK R. DOERING, CHAIRMAN

RECEIVED OCT 18 1993

- DECISION
- LETTER DECISION
- PRE-REVIEW REFERRAL

San Jose Division Grievance No. SJO-92-15  
Pre-Review Committee File No. 1698

PAM HERRLEIN, Company Member  
San Jose Division  
Local Investigating Committee

JANE BRUNNER, Union Member  
San Jose Division  
Local Investigating Committee

### Subject of the Grievance:

This grievance concerns the termination of a Meter Reader for allegedly curbing his assigned route.

### Facts of the Case:

The grievant was employed on April 1, 1991 as a Meter Reader in San Jose Division.

On June 22, 1993, the grievant began reading his assigned route at 8:40 a.m. and continued to read meters until 10:48 a.m.. He did not enter another reading until 12:30 p.m., leaving one hour and 41 minutes for which his time is unaccounted. After 12:30 p.m. each of the reads the grievant entered took a minimum of two entries, several took three entries and four entries and one read took nine entries. During the next forty minute period the grievant read 172 meters. Those same 172 meters took one hour and 40 minutes to read on July 22, 1992 and a similar amount of time in May, 1992.

During the investigatory meeting , the grievant could not explain why he entered multiple reads, nor could he remember where he was during the hour and 41 minute gap in time. When asked if there were any special circumstances that caused him difficulty on that day he could not remember, however he did recall going to work that day and reading the route. Finally, when asked if he could read 172 meters in 40

minutes he stated that no, he could not. At the Local Investigating Committee meeting, the grievant offered no explanation for his actions.

Two months after the LIC met, the grievant provided a medical report which stated that the grievant was:

"protected under the American Disabilities Act. He has a mental impairment which does substantially limit major life activity. He is qualified for his job which he could do with reasonable accommodations."

The report did not describe what major life activity was limited, what type of accommodations the grievant would need to perform the essential functions of a Meter Reader position nor did it clarify why the doctor believed that the grievant was protected under the ADA.

**Discussion:**

There is no dispute that the grievant curbed 172 meters on June 22. At issue is whether or not the grievant had a medical condition which prevented him from performing his duties as a Meter Reader on that day. Moreover, if the grievant's medical condition limited his ability to read meters, did it also substantially limit one or more major life activities thereby reaching the threshold of protection for the grievant under the ADA. Finally, if the grievant was a qualified individual with a disability, should a lower level of discipline been meted out.

The Committee reviewed the medical report provided by the grievant and noted its belated submission to the grievance process. The report was provided by the grievant three months after he was terminated. It was also noted that the grievant never discussed his medical condition at any time during the investigatory meeting, the termination meeting or the Local Investigating Committee meeting. Further, the report itself was vague and provided no basis for concluding that the grievant's medical condition "substantially limited one or more major life activities". Due to the tardiness and inconclusiveness of the medical report the Committee agreed to discount the medical report and focus on the grievant's actions.


While considering the grievant's ability to read meters, the Committee reviewed the Essential Job Functions for a Meter Reader and noted that the first function is to read dials accurately on electric and gas meters at varying locations. In this case, the grievant was apparently able to read meters without any problems up until 12:30 pm on June 22 when he curbed 172 meters. Subsequently, he was able to read meters without any further incidents of curbing, until his termination date. The only conclusion

the Committee could reach was that the grievant intentionally curbed the meters on that date for reasons other than his alleged mental impairment.

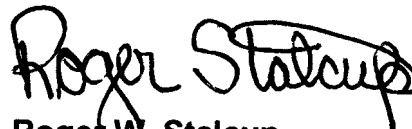
Finally, the Committee agreed that curbing has been treated as an automatically dischargeable offense throughout the company for a number of years. It was also agreed that employees with disabilities will not be given "special treatment" in the form of less severe discipline for this offense. Therefore, even if the grievant had qualified for protection under the ADA, the end result would still have been termination.

**Decision**

Based on the facts of this case the Committee agrees that the termination was for just and sufficient cause. This case is considered closed without adjustment, and such closure should be noted by the Local Investigating Committee.

  
**Rick Doering**  
Chairman  
Review Committee

Date: 10/12/93

  
**Roger W. Stalcup**  
Secretary  
Review Committee

Date: 10/8/93