



REVIEW COMMITTEE

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CASE CLOSED
FILED & LOGGED

OCT 06 1994

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO
LOCAL UNION 1245, I.B.E.W
P.O. BOX 4790
WALNUT CREEK, CALIFORNIA 94596
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R.W. STALCUP, SECRETARY

RICK R. DOERING, CHAIRMAN

San Francisco Division Grievance No. SFO-94-02
P-RC 1770

- DECISION
- LETTER DECISION
- PRE-REVIEW REFERRAL

Deb Draznin, Company Member
San Francisco Division
Local Investigating Committee

Frank Saxsenmeier, Union Member
San Francisco Division
Local Investigating Committee

Subject of the Grievance:

This case concerns the discharge of an employee for testing positive for drugs a second time as part of the Company's ongoing testing of covered employees under the Department of Transportation's Drug Free Pipeline Program.

Facts of the Case:

The grievant is a Non-Welding Gas Crew Foreman in San Francisco Division with 26 years service who tested positive on a random drug test on November 5, 1992. He was notified of his positive test results according to standard procedure and signed a Return to Work Agreement on January 7, 1993. The Return to Work Agreement states,

"I understand that if I test positive for any prohibited drugs, including legal drugs for which I do not have a prescription, during the next sixty months, I am subject to immediate discharge."

On January 8, 1993, the grievant passed a "Return to Work" drug test.

From December 7, 1992 to August 31, 1993 the grievant underwent a Kaiser outpatient rehabilitation program. The grievant was not tested for drugs as part of the 9 month rehabilitation program, but was in compliance with the program as administered by Kaiser.

Upon completion of his rehabilitation program and in conjunction with post rehabilitation testing, the grievant tested positive for drugs a second time on December 7, 1993.

Discussion:

The Committee noted that an employee who tests positive for drugs is not included in the DOT drug testing pool while participating in an approved rehabilitation program.

The Union opined that the drug rehabilitation program prescribed by the MRO was inadequate in that it did not require in-program testing.

The Company believes that the Medical Review Officer (MRO) is the most appropriate person to prescribe a rehabilitation program. The Company noted that following the grievant's participation in the prescribed outpatient rehabilitation program, the grievant signed a "Return to Work" agreement indicating that a violation of the agreement in the next 60 months would result in discharge.

The Pre-Review Committee reviewed the negotiated guidelines for the DOT Drug Testing Program and found no requirement that testing be part of a rehabilitation program.

The Union noted that at least one member of the Union Bargaining Committee believes the Company agreed to ongoing employee testing as part of a rehabilitation program. While it is possible that there may have been discussions on this point, the Pre-Review Committee cannot find any reference or agreement to discussion on this point.

The Company has reviewed this issue with the MRO and it is his recommendation that the majority of rehabilitation programs include ongoing testing, however there may be some variation based on the clinical and therapeutic evaluation conducted by EAP and the MRO.

The Union concurs that drug testing during a rehabilitation program is not specifically required, however it is strongly recommended by the Union.

Decision:

The Committee determined that the discharge was for cause. This case is closed without adjustment and should be so noted by the Local Investigating Committee.



John A. Moffat, Chairman
Review Committee

10/6/94

SARayburn(583-4281):mh



Roger W. Stalcup, Secretary
Review Committee

10/6/94