



REVIEW COMMITTEE



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**CASE CLOSED
FILED & LOGGED**

INTERNATIONAL BROTHERHOOD OF
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R.W. STALCUP, SECRETARY

MARGARET A. SHORT, CHAIRMAN

- DECISION
- LETTER DECISION
- PRE-REVIEW REFERRAL

Diablo Canyon Power Plant Grievance No. NPG-656-94-089
Fact Finding Committee No. 6136-95-153
Pre-Review Committee File No. 1993

Subject of Case

This case involves the discharge of an employee at the Diablo Canyon Power Plant for loss of protected area access. The loss of protected area access was the result of a second confirmed positive test for illegal drugs under the NPG Fitness for Duty Program.

Facts of Case

The grievant's first confirmed positive test for illegal drugs occurred on July 9, 1991. He attended drug rehabilitation and was returned to work. On October 25, 1994, the grievant received a second confirmed positive test for illegal drugs. Both tests were the result of random drug/alcohol screens.

The grievant appealed the second confirmed positive test result under Subsection 5.14 of the NPG Fitness for Duty Program. The appeal also resulted in a confirmed positive test result.

NRC guidelines (10 CFR 26) requires a three year suspension of protected area access for any individual who tests confirmed positive on two occasions. As the grievant's access was suspended for three years, he was discharged.

The grievant maintained that he must have unknowingly and unwillingly ingested illegal drugs. He testified to having consumed several alcoholic drinks at a party he attended two days before the random drug/alcohol test. The grievant submitted statements from two friends who had also attended the party. One friend provided a statement that she heard "someone was spiking drinks with illegal drugs." The other friend provided a statement that she observed two men "putting white powder in their drinks." There was no testimony that anyone observed something being put into the grievant's drink.

The grievant met with the MRO prior to the test being confirmed positive. The MRO also reviewed the statements from the grievant's two friends. The MRO testified that he considered the grievant's explanation, and the statements from his two friends, prior to confirming the positive test result.

Discussion

The committee reviewed the decision of Arbitration Case No. 202, which is similar in some respects to this case. In that Arbitration Case, an employee was discharged for testing positive a second time under the Company's DOT drug screening program. The employee was reinstated because the arbitrator did not believe the employee had knowingly ingested the illegal drug.

In Arbitration Case No. 202, the employee denied any illegal drug use and he was initially unable to explain the confirmed positive test result. Several days after meeting with the MRO, a third party contacted the Company and maintained that she may have been responsible for the employee testing positive. She testified to being a regular user of methamphetamines and to having stopped by the employee's house several days before his random drug screen. She maintains that she had dissolved a quantity of methamphetamines in a can of coke, drank half of the coke, and left the remainder on the employee's table. The employee testified that he consumed the remainder of the coke having no knowledge that it had been mixed with methamphetamines.

The Company's MRO concluded that he found the employee's denial of drug use to be credible and the version of the events which lead to the positive test result to be acceptable and believable.

In reaching his decision to order reinstatement of the employee, the arbitrator established some principles which are useful in reviewing this case. He states that,

" A second verified positive drug test, obtained in conformity with the requirements of the Drug-Free Pipeline Agreement, establishes a prima facie case for just cause discharge. Where...the Union argues that discharge is not appropriate in spite of a second verified positive test, the burden shifts to the Union to establish that there is not just cause for discharge. ...that burden is a heavy one...and it will be the rare case in which sufficient evidence is adduced to meet that burden."

The arbitrator reached the conclusion that employee did not knowingly ingest the illegal drug because the third party's testimony was consistent, she reported what she believed had happened to the Company before discussing it with the employee, and the Company's MRO found the explanation of the event to be plausible and credible.

Turning now to the issue in this case, the committee reviewed the two statements provided by third parties and notes that neither individual attested to having witnessed anything being added to the grievant's drink. One individual stated that she heard someone was spiking drinks. The other individual stated that she witnessed two people putting a white powder into their own personal drinks. Further, the MRO examined the record, considered his assertions and those of the two third parties, and confirmed the positive test result.

Decision

The committee agrees that the evidence is not sufficient to demonstrate that the grievant unknowingly ingested the illegal drug. Therefore, the committee agrees that the discharge was appropriate and the case is closed without adjustment.

Margaret A. Short
Margaret A. Short, Chairman
Review Committee

10/19/95

Date

Roger W. Stalcup
Roger W. Stalcup, Secretary
Review Committee

10/19/95

Date