



REVIEW COMMITTEE

IBEW



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MARGARET A. SHORT, CHAIRMAN

- DECISION
- LETTER DECISION
- PRE-REVIEW REFERRAL

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CASE CLOSED
FILED & LOGGED

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

Diablo Division Grievance Nos. CON-95-58 & CON-95-59
Fact Finding Committee No. 6271-95-288 & 6272-95-289
Pre-Review Committee File No. 2051

PAT MEDRANO
Company Member
Local Investigating Company

FRANK SAXSENMEIER
Union Member
Local Investigating Company

Subject of the Grievance

These cases concern a Decision Making Leave and subsequent discharge of a Meter Reader.

Facts of the Case

The grievant had continuous service from April 24, 1981 in Steam Generation progressing to Unassigned Traveling Machinist until August 1, 1995 when he was displaced pursuant to Title 206 to Meter Reader in Concord. Up to that point the grievant's active disciplinary record included:

1/10/95	Written Reminder	Work Performance	Sleeping on the Job
4/11/95	Coach & Counsel	Attendance	Absenteeism
4/26/95	Coach & Counsel	Attendance	Late to Work
5/9/95	Coach & Counsel	Work Performance	Away From Work Area
5/31/95	Oral Reminder	Attendance	Unavailability

On August 10 & 11, 1995 the grievant was scheduled to attend Meter Reader classroom training. After the morning session on the first day, the grievant was released because he had been sleeping in class. The grievant called for his supervisor to ask to go home. He was instructed to return to the headquarters for a brief meeting with the Customer Field Services Director after which he went home sick. The grievant was given a Decision Making Leave on August 18 for the sleeping incident.

On August 16, the supervisor made a call to Employee Assistance to discuss concerns he had about the grievant based on the sleeping incident. The grievant contacted EAP on August 17 but did not speak with a counselor even though attempts were made to contact the grievant via pager. The grievant met with an EAP counselor on August 22 as a result of the supervisory referral.

In June 1995 a doctor prescribed post surgery therapy for an industrial shoulder injury. The grievant was to attend therapy daily for two weeks and then three times a week for four weeks. On August 8 the doctor authorized two more weeks of therapy three times per week. On August 22, the supervisor called the therapist's office and was informed that the grievant had missed four therapy sessions: August 11, 14, 21, and 22. The grievant was usually released at 1:00 p.m., two and one-half hours before the end of his workday, for his 3:00 p.m. appointments. He continued to be paid for this time. These four missed appointments formed the basis for discharge effective August 25, 1995.

During the period between August 1 and 25, the grievant was sick a total of 27 hours covering three non-consecutive dates; on vacation 16 hours, on a DML for 7 hours , trained in the office two days, trained in the field two days, and finally read alone five days.

Discussion

The LIC determined that two of the appointments (August 14 and 21) were missed for excusable reasons. On August 14, the grievant had car trouble while reading his route, his first time alone. He called the supervisor about 2:00 p.m. to inform him of the problem and did not get back to the office until approximately 3:30 p.m. too late to attend therapy.

On August 21, the grievant left early but instead of going to therapy went to his personal doctor to get a note to cover his absence of August 17. He called in sick on the 17th due to his shoulder hurting. When he called in sick, he was told to report the next day August 18. When he did, he was sent back home on the DML. The grievant did provide a note from his doctor dated August 21

The grievant testified that on August 11, a traffic jam prevented him from the therapy appointment and on August 22, he was in an upset emotional state after attending the EAP appointment earlier in the day. Of these two remaining dates, August 11 was prior to the issuance of the DML and August 22 was one work day after the DML. Had the August 11 events been known at the time of the DML, in all likelihood, that would not have been justification to increase the discipline to discharge. Similarly, with the failure to report for therapy on the 22nd, the more usual course of action is to conduct a post DML coaching and counseling rather than discharge, especially in light of the grievant's efforts to address some of his problems by meeting with EAP on that date.

The grievant was given no instruction by his supervisor, the Safety Health & Claims representative authorizing the therapy, or prior supervisors involved in disciplinary discussions related to attendance about reporting his failure to attend therapy.

Additionally, the grievant stated the therapist told him he could exercise at home if he was unable to keep his appointment. In follow-up discussion with the therapist, the therapist indicated he told the grievant that if he wasn't going to work out at the facility, he should at least work out at home, but that he didn't mean to imply that the grievant didn't need to come in for therapy.

DECISION

The Pre-Review Committee agreed that there was sufficient testimony to support the contention that the grievant was sleeping in class and given the active Written Reminder for sleeping agreed there was just cause for the DML. However, with respect to the discharge, there were several mitigating factors to this discharge: a more thorough investigation prior to discharge would have revealed two dates, not four were involved; the grievant was recently displaced into a new and unrelated work environment requiring substantial adjustment; he'd been given no direction about obligation to report missed sessions; he was experiencing some personal problems off the job as well as those on the job and did meet with EAP to address them; and finally, he may have been confused by the alternative suggestion for exercise given by the therapist.

For all of these reasons the grievant is to be reinstated as a Meter Reader in Concord with backpay less any outside earnings and/or unemployment insurance. He will return at the DML step of discipline which will be active for 51 weeks following his return to work. The grievant should be coached and counseled about his responsibility to keep supervision informed as to his whereabouts at all times during working hours. Further, it is evident from the record that the grievant's attendance has been less than satisfactory and immediate attention needs to be given to establishing and maintaining an acceptable level of attendance and if there are medical-behavioral issues contributing to his unavailability, he is strongly encouraged to continue meeting with EAP and follow their recommendations.

The grievant need not go for a physical examination or drug screen as Company has discontinued the requirement for physicals for hires; he is being returned to a non-DOT covered classification and the record does not evidence a concern that would warrant a fitness for duty examination.

This case is closed on the basis of the above and the adjustment contained herein.

Margaret A. Short

Margaret A. Short, Chairman
Review Committee

4/19/96

Date

Roger Stalcup

Roger W. Stalcup, Secretary
Review Committee

4/17/96

Date