



REVIEW COMMITTEE



IBEW

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INTERNATIONAL BROTHERHOOD OF
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R.W. STALCUP, SECRETARY

**CASE CLOSED
FILED & LOGGED**

MARGARET A. SHORT, CHAIRMAN

- DECISION
- LETTER DECISION
- PRE-REVIEW REFERRAL

Steam Generation Grievance No. MLP-97-03
Fact Finding No. 6666-98-041
Pre-Review Committee No. 2149

SHARON ENCALLADO
Company Member
Local Investigating Committee

ED CARUSO
Union Member
Local Investigating Committee

Subject of the Grievance

This case concerns the discharge of a Moss Landing Traveling Control Technician for continued unavailability and being under the influence of alcohol while at work.

Facts of the Case

The grievant was hired in 1978 and discharged September 12, 1997. He was placed on a DML December 3, 1996 for an extended absence between October 15 and November 14, 1996. During this period, he used eight days of sick leave, one day of vacation, and 19 days of no-call, no-show. Subsequent to the DML, he had five coaching and counseling sessions, all in the attendance category. According to the LIC Report, the grievant was coached and counseled regarding continuing attendance problems on 12/04/96, 1/23/97, 1/30/97, 2/3/97 and 7/10/97. Following the DML he was absent 30 times for full or partial days including the day prior to being taken for the Fitness For Duty examination which led to his discharge. He was required to provide proof of illness starting January 23, 1997. Prior to the DML, the grievant had no active discipline.

The grievant was offered EAP during the DML discussion, and during the January 23 and February 3, 1997 counseling sessions. He declined indicating he was seeing his own counselor.

On September 9, 1997 during a safety training meeting the grievant's behavior was loud and boisterous and he interjected into the discussion issues that were out of context from the subject being addressed during the meeting, according to his supervisor. His supervisor sought out another supervisor to confirm his observations. Both supervisors stated that they

The grievant declined to undergo blood, urine, or breath testing for alcohol or drugs. On September 9, 1997, the examining physician returned to PG&E the Fitness for Duty Determination form on which he indicated that the grievant was unfit for duty, with an expected date when able to perform job duties as 9/10/97. On 9/19/97, the doctor forwarded to PG&E a handwritten note further detailing his findings. According to this note, the doctor observed the grievant to be "minimally euphoric, talkative, loud, slightly aggressive. A very strong smell of alcohol was present." "I believe he is under the influence of alcohol and not fit for work." In a report date 10/2/97, the doctor provided a more detailed typewritten report of his findings and conclusions, reaffirming his conclusion that the grievant was under the influence of alcohol and was unfit for work on September 9, 1997.

Between September 9 and 12, the grievant's time was recorded as follows:

September 10	8.0 hours	without permission, without pay
September 11	6.5 hours	without permission, without pay - 1.5 hours paid for investigative interview
September 12	6.0 hours	without permission, without pay - 2.0 hours paid clean locker, final check

Discussion

The Pre-Review Committee noted that the grievant's attendance was unsatisfactory following the DML and followed the same pattern as prior years, using well in excess of 80 hours, exhausting sick leave by mid-year, and covering illness with unscheduled vacation and Floating Holidays. The Pre-Review Committee noted that many prior cases reviewed at this level of the grievance procedure and at lower steps, where an employee has been placed at the DML level of Positive Discipline for attendance related issues, and continues to be excessively absent from work usually is coached and counseled a couple of times before discharge occurs if there is little or no improvement in the rate of absences. It is unusual to coach and counsel an employee who is at the DML level of PD five times following the DML, without moving to discharge.

The Committee also noted that the procedure for taking an employee for a Fitness For Duty examination who is suspected of being under the influence of alcohol or drugs was followed. The grievant was afforded and exercised his right to decline to provide bodily fluids. The doctor conducted examination and testing and gave his opinion based on his findings that the grievant was under the influence of alcohol and unfit. However, the Company noted that the grievant was in a DOT covered classification and as such should have been taken to the doctor for examination and testing under the Reasonable Suspicion provisions of the DOT Pipeline Safety Program. Under that procedure, the grievant does not have the right to decline to provide a urine or breath specimen. A DOT covered employee who, declines to provide urine or breath is considered to have a positive result. In addition, a positive result

subjects the employee to five years of individual random follow-up testing in addition to continuation in the random testing pool.

The Union stated the grievant was exercising his right as a Shop Steward to engage in vigorous debate (Arbitration 143) during the September 9 safety training meeting and that activity is not in and of itself cause for discipline or reason to suspect an employee to be under the influence of alcohol or drugs. The Company agreed, however, noted that the supervisors observed this behavior to be abnormal for the grievant and further that his comments and questions were not in context with the meeting discussion.

The Union also expressed concern with keeping the grievant off work beyond September 9 as the doctor indicated the grievant could return to work on September 10. Company responded that given that the grievant was on a DML, it was decided to suspend the grievant while conducting an investigation which could and did, in fact, lead to his discharge. It is Company's belief that such suspensions are allowed under Positive Discipline. Union strongly disagreed with Company's interpretation and, in this case, application of the Positive Discipline Crisis Suspension procedure. However, the Committee agreed that this dispute need not be resolved in order to resolve the overriding issue present in this grievance.

DECISION

The Pre-Review Committee notes that the grievant was discharged for continued unavailability (he was unfit to work and was therefore unavailable on September 9, 1997) and for being under the influence of alcohol at work. In and of itself, being found unfit for duty as a result of Fitness For Duty Examination does not generally result in discharge. However, in this case, the grievant was already on a DML related to attendance, had been coached and counseled five times following issuance of the DML, and was further unavailable on the day the fitness for duty exam was conducted. Based upon these considerations, the Pre-Review Committee agreed that the discharge was for just and sufficient cause. This case is closed without adjustment.

Margaret A. Short

Margaret A. Short, Chairman
Review Committee

7/22/98

Date

Roger W. Stalcup

Roger W. Stalcup, Secretary
Review Committee

7/22/98

Date