

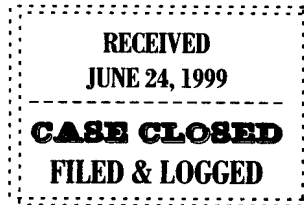


# REVIEW COMMITTEE

**IBEW**



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MARGARET A. SHORT, CHAIRMAN

- DECISION
- LETTER DECISION
- PRE-REVIEW REFERRAL

San Jose Grievance No. SJO-98-49  
Fact Finding No. 6876-99-034  
Pre-Review Committee No. 2215

PAM COEN  
Company Member  
Local Investigating Committee

KATHY MAAS  
Company Member  
Local Investigating Committee

### Subject of the Grievance

This case concerns the discharge of an Apprentice Lineman for a second DOT verified positive drug test.

### Facts of the Case

The grievant was covered by the Commercial Driver's DOT regulations. He first tested positive on a random test collected on May 19, 1997. He completed the prescribed treatment program, had a negative return-to-work test, and reported for work on June 19, 1997. Upon returning to work the grievant signed the Return to Work Agreement which contains the admonition that a second verified positive test result within five years would result in his discharge. He was then subject to aftercare which included unannounced post rehab testing for five years.

On November 5, 1998 a post rehab collection was made resulting in a second verified positive for a prohibited drug. The positive results of the split test were received on November 16, 1998. The grievant was discharged effective November 23, 1998. The drug identified in the 1997 collection was different than the drug identified in the 1998 collection.

Following his termination, the grievant solicited four drug tests from two different collection facilities. One test involved a urine specimen and the other three involved hair specimens. The dates of collection were November 25, 1998, December 14, 1998, and December 28, 1998 (hair from two areas of the body). All were negative. Non-DOT Chain of Custody forms were submitted for the December 28 hair samples. No Chain of Custody forms were submitted for the other two collections.

The grievant submitted a written statement as to his daily activities for the three days prior to the DOT collection and the morning of the collection. On the morning of November 5, 1998 he describes sitting his backpack and thermos of coffee on top of the trailer fender attached to a truck that he drove in the yard to a dumpster and then to the warehouse to load a transformer and other materials. When he was ready to head to the job site he went to retrieve his backpack and thermos from the fender. He stated the backpack was still on the fender but he found the thermos was right side up down inside the trailer. The grievant later drank the coffee prior to giving a specimen. The grievant was called back from the work site to give the specimen; the supervisor forgot to notify the employees to be tested that morning.

The grievant denied using hard drugs and alleged someone must have set him up, inferring someone spiked his coffee.

Discussion

At the outset, the Pre-Review Committee notes that employee solicited tests cannot be substituted for DOT collected test results and further that the DOT regulations for drug testing address specifically and only urine collections. Hair samples are not acceptable.

With regard to the grievant's allegation of "set up", the PRC concludes that the coffee thermos was within his view and/or proximity at all times. Were someone to have disturbed it, he would surely have observed that person. In addition, several employees who worked on the crew with the grievant or who observed him on the morning of the collection were interviewed by the LIC. All of them testified that he was a hard worker; none of them seemed to have any animosity toward the grievant such that anyone would want to "set him up".

DECISION

The discharge of the grievant for a second verified positive DOT drug test was for just and sufficient cause. This case is closed without adjustment.

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

Perry Zimmerman  
Perry Zimmerman, Secretary  
Review Committee

6/23/99  
Date

6-23-99  
Date