



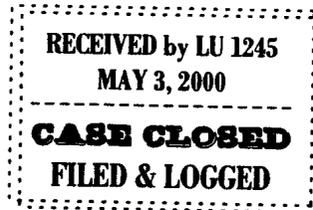
REVIEW COMMITTEE



PACIFIC GAS AND ELECTRIC COMPANY
2850 SHADELANDS DRIVE, SUITE 100
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MARGARET A. SHORT, CHAIRMAN

DECISION
LETTER DECISION
PRE-REVIEW REFERRAL



INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO
LOCAL UNION 1245, I.B.E.W.
P.O. BOX 4790
WALNUT CREEK, CALIFORNIA 94596
(925) 933-6060
BOB CHOATE, SECRETARY

San Jose Grievance No. SJO-99-20
Fact Finding No. 7003-99-161
Pre-Review Committee No. 2248

Gail Stenerson
Company Member
Local Investigating Committee

Kathy Maas
Union Member
Local Investigating Committee

Subject of the Grievance

This case concerns a Relief Service Operator off on unpaid sick leave who requested to return to work in a light duty capacity.

Facts of the Case

The grievant had foot surgery on February 12, 1999. She ran out of sick leave on March 12, 1999, which was the same date her doctor indicated she could return to work with restrictions. Those restrictions included work that allowed her to sit in a controlled environment and to wear open toed post operative surgical shoes. She was fully released to return to work on April 1, 1999. She returned to work on April 6.

Grievant testified that prior to going off work for surgery her supervisor told her she would not be able to return to work without a full medical release. A week or two after the surgery, she spoke with the Director and her former supervisor about returning on light duty. At that time she was offered to work in dispatch on days a dispatcher was needed, as well as, an offer to work a vacant graveyard shift two nights a week. The grievant declined that offer.

On March 30, the grievant contacted her former supervisor that she had a full release to return to work starting the week of April 4. The former supervisor notified the current supervisor. The current supervisor contacted the grievant the next day, Wednesday, March 31, and offered her a choice of shifts. She chose a swing shift schedule with Sunday and Monday RDO's. Her first day back was Tuesday, April 6.

There are two notes in the record from the grievant's doctor releasing her to normal work duties without restriction. One was received by the Company on April 1, prior to the grievant returning to work, and the other on June 15, based on a Company inquiry.

During the time the grievant was off work, the Company was attempting to fill two Service Operator vacancies.

Discussion

The grievant seeks reimbursement for sick leave used and pay for time not worked on the basis that Company would not allow her to work and had a Hiring Hall Relief Service Operator working while she was off. The record indicates the Hiring Hall employee was filling a different need and was already working when the grievant went off for surgery.

The Company opined that it was clear with the grievant prior to her going off for surgery that she would need a full release to return to work which she was allowed to do. Notwithstanding that position, when asked, the Director tried to accommodate the employee by offering the opportunity to work on an as needed basis, as well as, the opportunity to work two known days per week. Company did not want to make the commitment to allow her to return on a regular basis because she would not have been able to work as a Gas Service Representative when needed. Company acknowledged that such occasions are not frequent but do occur and the need isn't always known in advance.

The grievant chose not to return to work under those conditions. Even when the grievant was fully released to return to work, she did not do so as soon as possible. She could have returned to work on April 1, 2, 3 since she opted for the swing shift and it appears her conversation with the supervisor on March 31 was early in the day. During this time, the grievant was scheduled for a DOT return to work drug screen on April 2. It was later determined since the grievant had not been removed from the random testing pool the return to work test was not necessary. It is not clear from the record whether the April 6 return date was the grievant's choice or the agreed upon date due to the scheduling of the DOT test.

The Union opined that there was a vacant shift that the grievant could have been placed into that would accommodate her restrictions. Additionally, the Relief Classifications are to be utilized for vacant shifts. To fill the vacant shift piecemeal, the Union is of the opinion, violates the Labor Agreement.

The PRC reviewed Review Committee Decision 1454, which states in part: "The Clarification and Section 208.18 of the Physical Agreement are not intended as substitutes for renegotiating the existing schedule, and their long-term use in this regard is improper." This decision addressed whether Company's failure to fill vacant Servicemen's positions through the bidding procedure results in a violation of the Agreement and Labor Agreement Clarification dated April 1, 1965, regarding 202 - Hours. The Hours Clarification, Paragraph I.A.1. states: "...A plant or department schedule shall be planned to cover a twelve-month period and shall be subject to change only once in such period, except where the complement of the plant or department is changed."... This decision is consistent practice when the Company is in the process of evaluating a position to be filled.

While Company believes it may be appropriate to fill a work period within a vacant schedule without filling the entire schedule, Company does agree with Union that the department schedule in this case needs to be revised to reflect the current staffing complement and management's decision not to fill the vacant second Service Operator position on the graveyard schedule.

Decision

The PRC reviewed the record at great length. Between the time the grievant was released for limited duty and her actual return to work, there were eight occasions when she could have worked the weekend graveyard schedule. The grievant was given an opportunity to return to work prior to April 6, 1999, and she declined. As an equity settlement, and the understanding that the Company may not fill the vacant graveyard schedule, the PRC agrees to pay the grievant four day's pay at her current straight time rate.

This case is closed on the foregoing basis.



Margaret A. Short, Chairman
Review Committee

5/2/00

Date



Bob Choate, Secretary
Review Committee

5/2/00

Date