



REVIEW COMMITTEE

IBEW



PACIFIC GAS AND ELECTRIC COMPANY
2850 SHADELANDS DRIVE, SUITE 100
WALNUT CREEK, CALIFORNIA 94598
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MARGARET A. SHORT, CHAIRMAN

DECISION
LETTER DECISION
PRE-REVIEW REFERRAL

RECEIVED by LU 1245
JUNE 1, 2000

**CASE CLOSED
FILED & LOGGED**

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

Mission Division Grievance No. HAY-99-109
Fact Finding No. 7070-99-228
Pre-Review Committee No. 2251

Pat Medrano
Company Member
Local Investigating Committee

Bernard Smallwood
Union Member
Local Investigating Committee

Subject of Grievance

The grievant was given a Decision Making Leave for being under the influence of alcohol while on duty and taking a company vehicle out of the assigned area while on call.

Facts of the Case

The grievant was the on call Troublemaker during a call out of a car pole accident in Pleasanton. At the time of the call the grievant was in Fremont at a friend's home for dinner. Fremont is not in the grievant's assigned area. The grievant arrived at the scene of the accident at approximately 9:30 p.m. At approximately 11:00pm a CHP officer approached the grievant and stated that he had a report that there was alcohol on his breath. The CHP officer then performed a Field Sobriety Test and Breathalyzer Test. The grievant tested .065 % and a second test of .063%. Both were below the unlawful limit of .08% for the class of vehicle he was driving.

The supervisor arrived at the scene soon after the CHP test and was advised by the officer that the grievant should be taken home, he had been drinking and tested above .06%, if not, he would be arrested. The supervisor took the grievant home and could smell alcohol.

Discussion

The PRC reviewed the facts of the case very carefully, noting that the grievant was out of his assigned area while on call and that the CHP officer and the supervisor smelled alcohol on the grievant. Additionally, the grievant possesses a commercial driver's license and he would be guilty of driving under the influence of alcohol, if he had been driving a commercial vehicle.

The Union opined that based on the law and the CHP report, that the grievant could legally operate a motor vehicle. Further, Union opined the company should have sent the grievant for a Fitness for Duty exam to determine his fitness. Finally, the level of discipline was too severe for this long term employee with a good work record.

The Company opined that the grievant drove his vehicle out of his assigned territory, operated a company vehicle while under the influence of alcoholic beverages, which is in violation of APR P13, OM&C Policy and Standard Practice 735.6-1, Employee Conduct. The grievant would have been arrested if the supervisor had not come to the scene of the accident. To have a company employee perform a Field Sobriety Test and Breathalyzer Test in front of the public, tarnishes the image of the company. The grievant could have been taken for a Fitness for Duty examination, but there was sufficient information based on the CHP's tests to conclude the grievant should not continue working

At the Local Investigating Committee meeting, the grievant testified, "...at the time he was called, he felt that he wasn't under the influence. He was not aware that being the first Troubleman on-call he shouldn't have a drink with dinner. He is aware of APR P-13 and Standard Practice 735.6-1 and didn't think it applied to him because he didn't drink while on the job. He is also aware that being legally drunk is .04 while riving a Class A vehicle and .08 if driving a noncommercial vehicle."

Company noted that subsequent to this incident involving the grievant, the Senior Vice President of Utility Operations issued the following statement: "It is never appropriate to drink alcoholic beverages of any kind during work hours, or at any time, if you are driving a company vehicle. To avoid confusion, I want to make it clear that this applies to everyone, regardless of your job." This statement is clear and unequivocal. Union, of course, has the right to challenge Company's rules in the grievance procedure; employees are obligated to follow the rules. For employees to do otherwise is resorting to "self help" and could be considered insubordinate.

The PRC wrote to the CHP Department of Enforcement for Commercial Drivers and asked the following questions:

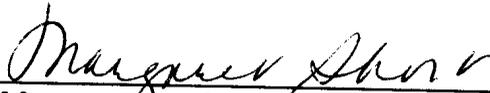
- Are the alcohol measures consistent with the number of drinks and timing stated by the employee? Please refer to the alcohol Impairment Chart (DMV/CHP).
- Since the employee holds a commercial license but was not operating a commercial vehicle at the time, are there any DMV penalties or actions to be taken for driving with a BAC of .065 or above?
- If the Officer had arrested the employee, what would be the charge?

To date the Department of Enforcement has not responded to our questions.

Decision

The PRC is in agreement that this was a very serious event and that just cause exists for discipline, however, the parties do not agree on the level of discipline. The incident occurred on May 29, 1999; the DML was issued June 16, 1999. The grievant has very long service and has never been disciplined before; there was possible confusion as to the rules around alcohol consumption; and most importantly, there has been no post DML incidents of any kind. Giving consideration to these facts and without prejudice to other cases or to the Positive Discipline agreement, the PRC agrees to deactivate the DML as of the date of the signing of this decision. As there will be no active discipline on the grievant's Performance Log, it should be removed from the supervisor's file and forwarded to the historical files.

This case is considered closed.



Margaret A. Short, Chairman
Review Committee

5/26/00
Date



Bob Choate, Secretary
Review Committee

5/26/00
Date