

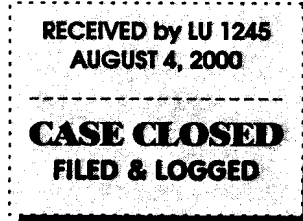


REVIEW COMMITTEE

IBEW



PACIFIC GAS AND ELECTRIC COMPANY
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INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO
LOCAL UNION 1245, I.B.E.W.
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BOB CHOATE, SECRETARY

MARGARET A. SHORT, CHAIRMAN

DECISION
LETTER DECISION
PRE-REVIEW REFERRAL

Pre-Review Committee No. 10572

Bill Meyer
Company Member
Local Investigating Committee

Dan Lockwood
Union Member
Local Investigating Committee

Subject of the Grievance

This case concerns the discharge of a Morro Bay Power Plant Control Operator for refusing to attend a DOT post rehabilitation follow-up test.

Facts of the Case

The grievant tested positive for drugs on a DOT reasonable cause test February 5, 1997. Upon his return to work, he signed the DOT Return to Work Agreement on June 13, 1997.

Under the terms of that agreement, the grievant was subject to five years of unannounced post rehabilitation drug and/or alcohol testing and that a positive test result during that five year period would subject him to immediate discharge. The grievant was scheduled to have a follow up test in December of 1999. Further, the grievant was follow-up tested on three occasions prior to his termination.

On December 23, 1999 the grievant's supervisor was notified that he was to take the grievant for a follow-up drug test. The grievant arrived late for work. The supervisor informed him of the need to go to the clinic that would perform the follow up test. The grievant picked up his backpack and preceded the supervisor out of the room and down the stairs. The grievant then took his car keys from his pocket and said he was going home sick. The supervisor informed the grievant that if he did not go for the test, it would be considered a positive test and that the grievant had no options. The grievant left work anyway. The grievant did indicate that he was contacting his doctor.

The grievant's treating doctor wrote a note dated December 27, 1999 indicating that "due to a lot of current holiday stressors and the stress ..encountered due to his marked increase in work hours,...developed a worsening of symptoms.....could have lead him to act impulsively and make an irrational decision which could have led him to walk out from the job..."

The grievant was discharged effective December 29, 1999 for failure to complete a follow-up drug/alcohol test.

Discussion

The Union alleged it was inappropriate for the grievant to continue to be required to take a rehabilitation follow-up test as, in their opinion, Morro Bay should not be a covered facility based on an agreement between Company and Duke (owner of Plant) effective September 1, 1998. This agreement provided that Duke had no responsibility to respond to an emergency at gas facilities upstream of the plant (master meter or primary regulators), that such matters are to be communicated to the San Jose Gas Control Center. The agreement also stated, "In case of a sudden and rapid decay of main gas pressure, the operator is to act in their own best judgment to protect the station and advise the DETM and SJGCC as quickly as possible."

At the PRC step of the grievance procedure Company submitted documentation of four incidents subsequent to the September 1, 1998 agreement with Duke in which Morro Bay Power Plant Operators responded to problems involving gas pressure or gas leaks within the Plant. Further Company referenced Operating Procedure L-3A, Primary Gas Pressure emergency operation which is still in effect.

Also, reviewed at the PRC step was the grievant's DOT testing history. The record shows the grievant submitted to three follow-up tests since his return to work following the first positive test. All three were after the September 1, 1998 agreement with Duke referenced above.

Company noted the grievant resorted to self-help on December 23, 1999. He should have gone for the follow-up test, then grieved the issue of whether the test was appropriate. Additionally, if this was a bonified issue, it should have been raised prior to the December 23, 1999 date. This appears to be an argument of convenience since there were three other occasions post September 1, 1998 when he was tested without protest.

The Union argues that Morro Bay was not a DOT covered facility at the time the grievant was being tested. There is some question if the plant is covered by the State Fire Marshall relative to the empty fuel tanks and associated lines into the plant.

Decision

Without prejudice to the position of the parties as to whether Morro Bay is a DOT covered facility, the PRC is in agreement that just cause, based on the grievant resorting to self help, existed for the termination.

This case is considered closed.

Margaret Short

Margaret A. Short, Chairman
Review Committee

8/3/00

Date

Bob Choate

Bob Choate, Secretary
Review Committee

8/3/00

Date