



REVIEW COMMITTEE



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CASE CLOSED
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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. 11358

Carol Quinney
Company Member
Local Investigating Committee

Hunter Stern
Union Member
Local Investigating Committee

Subject of the Grievance

This grievance challenges the results of a Department of Transportation (DOT) drug test and alleges violation of Letter Agreement 90-86, Drug Free Pipeline. The correction requested is to cease and desist utilizing the Employee Assistance Program (EAP) counselors as Substance Abuse Professionals (SAP) and functioning as the Medical Review Officer (MRO).

Facts of the Case

The grievant is a Gas Service Representative which is a DOT covered classification. The grievant had been on leave of absence which began April 20, 1999. On June 18, the grievant contacted the supervisor indicating he was ready to return to work. Because he had been off in excess of 30 workdays, he needed a return to work test. The specimen was collected on June 21, 1999. On June 24, the grievant was contacted by the MRO, who is not an EAP counselor, and was informed that the specimen was positive for THC. After discussing with the grievant whether there was any medically acceptable explanation for the test result and finding that there was not, the MRO ruled the test result a verified positive. The MRO instructed the grievant to contact EAP for assessment.

Following the discussion with the MRO, the grievant contacted his personal physician and made an appointment for another drug screen. He gave a specimen on June 25 and was informed on June 30 that it was negative.

Also on June 25, the grievant called EAP. After some delay and several phone calls, the grievant did speak with an EAP counselor that day and an appointment for assessment was scheduled for July 2. The EAP counselor referred the grievant to a medical center for evaluation and recommendation. The LIC report goes into detail of the grievant's account of events with the primary complaint being that the rehabilitation program

prescribed for the grievant was excessive - too long. There is also testimony from the grievant about his attempts to get the quantitative results of his test from the MRO. He did receive this information by letters dated July 2 and 9, 1999. The grievant also complained about the After Care program prescribed for him.

Payroll records indicated the grievant returned to work on June 28, 1999. As is provided for in Letter Agreement 90-86, he was given a Written Reminder and is subject to five years of follow-up testing in addition to the random testing. Neither of these conditions is the subject of this grievance.

Discussion

At the outset, Company reminded Union that the procedures used by PG&E to administer the requirements of the Department of Transportation were negotiated with the Union. These procedures have been in place for a decade and have been consistently followed. This grievance does not challenge the Written Reminder issued the grievant but rather the negotiated process.

Further, Company wants to point out that the LIC testimony is not balanced as apparently no Release was executed by the grievant to allow Company to explore the confidential records of the grievant's interactions with the service providers. In situations like this, it is not uncommon for employees to initially resist treatment or attempt to minimize the extent of their habits.

What we do know and was confirmed by the EAP Coordinator is that all DOT related treatment plans are prescribed by the MRO as was the case in this instance. The changes to his treatment and After Care plan were prescribed by the MRO after consultation with the EAP counselors who directly interfaced with the grievant. That is the negotiated procedure as outlined in Appendix H, Item 4, Paragraphs H, I, J, K and Item 5, Paragraphs A, B, C, and D.

At the PRC step of the grievance procedure a letter was received by the MRO which states:

"....the criteria utilized by our MRO/SAP/EAP for treatment is the national ASAM Patient Placement and Assessment Criteria. These criteria are diagnosis driven, therefore treatment is tailored to the individual rather than standardized treatment based on a drug test.

The ASAM assessment criteria uses the positive drug test as part of the overall evaluation, but this is considered just a part of the clinical evaluation. Since under the PG&E plan the first time positive individual gets treatment but the second time positive gets terminated, it is crucial that they get adequate treatment tailored to their individual needs since treatment failure can result in termination."

Company opined that there has been no demonstration that the negotiated procedures were not followed, that there is no demonstration that the grievant's return to work was unduly delayed. In fact, based on Company records, it appears the grievant returned to work within two workdays of communication of the test result.

In addition, only test results that have been administered under the DOT guidelines and processed by a NIDA certified laboratory are acceptable; employee solicited tests are not acceptable. This issue has been addressed before in PRC 2215.

Notwithstanding the fact that there has been no such demonstration, the parties agree that the only purpose of treatment is rehabilitation, and that it should not be punitive. Further, the parties agree that treatment should be designed recognizing its economic effect on the employee. With these considerations in mind, the parties accept the MRO's explanation that treatment is tailored to the individual rather than standardized treatment based on a drug test, and they find no abuse of discretion in the design of the treatment program here.

Decision

There is no violation of the agreement in this case and it is closed without adjustment.

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

2/20/01
Date

Sam Tamimi
Sam Tamimi, Secretary
Review Committee

Feb. 20-2001
Date