REVIEW COMMITTEE

CASE CLOSED
FILED & LOGGED

PACIFIC GAS AND ELECTRIC COMPANY
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MARGARET A. SHORT, CHAIRMAN

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

DECISION
LETTER DECISION
PRE-REVIEW REFERRAL

Pre-Review Committee No. 11649

Brenda Martinez
Company Member
Local Investigating Committee

Bernard Smallwood
Union Member
Local Investigating Committee

Subject of the Grievance

This case concerns the discharge of a Miscellaneous Equipment Operator for a second verified positive drug test.

Facts of the Case

The grievant is covered by the DOT Commercial Driver testing program. On January 28, 1998 the grievant had a verified positive drug test and successfully completed an MRO prescribed rehabilitation program prior to returning to work on February 19, 1998. At that time, the grievant signed the Return to Work Agreement which states in part:

> "I understand that if I test positive for any prohibited drugs, including legal drugs for which I do not have a prescription or test positive on a breath alcohol test, during the next sixty (60) months, I am subject to immediate discharge."

On March 31, 2000 at approximately 7:20 a.m. the grievant was notified by the temporary supervisor that he needed to be DOT tested that morning and he was to go to where the DOT Collector was. The grievant did report to the Collector but indicated he was experiencing "shy bladder" and asked to make a phone call. The Collector responded that the grievant should drink water and that he had a certain amount of time to give a specimen. During the test the grievant admitted that his urine would show positive. The grievant told the Collector his mother had been ill recently and he'd been stressed the last several days; that he should not have come to work that day; and that he had been tested earlier in the month. The prior testing comment proved to be untrue.

The Collector observed the grievant making several phone calls prior to the actual test. The grievant indicated he had spoken with EAP and the MRO and was told to give the specimen and not worry, he would have to go through rehabilitation again. The grievant said he was given an April 4, appointment to meet with EAP for assessment.

The grievant gave a specimen at 9:37 a.m. The specimen and the requested split test were both verified positive. The grievant was not in a rehabilitation program during the time of the testing.

Discussion

The Union cited The Items of Understanding, Item 5, of Letter Agreement 95-31 which is the parties' agreement as to how the DOT regulations for Commercial Drivers would be implemented. Item 5 states:

> "An employee in a covered position who tests positive the second time for illegal drugs or alcohol when there was no on-the-job impairment evident, will be given another opportunity for rehabilitation if they had previously self-referred to EAP and were following EAP's recommended course of treatment in the prior 30 days. A subsequent positive test on this employee will result in discharge."

Additionally, the grievant received a letter from the Drug-Free Pipeline Program Coordinator dated March 27, 1998 which advised the grievant that if he experienced a relapse and self-refer to EAP, follow their instructions, a positive test during the following 30 days will not result in discharge. Union opined that the employee contacted EAP before giving the specimen.

Company stated that language has always been communicated that its too late to call EAP or the MRO the day a test is to be administered. The intent of that provision was for employees who had been positive once and rehabilitated to recognize the warning signs of potential or real relapse and take the necessary steps to get treatment before having another positive test. The grievant was made aware of this policy on October 5, 1999 by EAP, and March 27, 1998 in a letter from the DOT Coordinator.

Further, had this employee declined to take the test, that would have been considered a second positive and he would have been discharged. Letter Agreement 95-31, Consequences of Prohibited Conduct, states:

> "An employee who refuses to provide a test specimen when required by the regulations or who refused to follow the specimen collection procedures will be suspended for insubordination and considered to have test positive."

It is evident by the grievant's actions and comments that he knew that his test would prove to be positive for a prohibited substance and that is what precipitated his call to EAP on the day of his test. Additionally, had the grievant not been on the list to be tested that day, he would of been operating company vehicles under the influence of prohibited substance, which is against the law.

It is also clear from the record that the EAP Counselor and the MRO misled the grievant. However, their misunderstanding of the Company-Union agreement has been clarified. They have also been reminded that it is not their role to decide or communicate decisions to employees concerning employment status. They are not PG&E employees.

The PRC is in agreement that if the grievant had followed the provisions of Letter of Agreement 95-31 and his post-rehabilitation letter, both relative to self-referrals, discharge may not have been considered.

Decision

The PRC is in agreement that the discharge of the grievant in this case, was for just and sufficient cause.

This case is considered closed.

Margaret A. Short, Chairman
Review Committee

9/29/00
Date

Bob Choate, Secretary
Review Committee

9/29/00
Date