



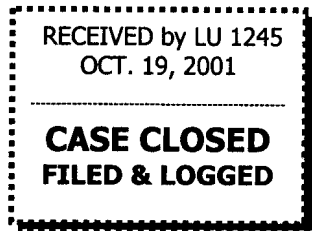
REVIEW COMMITTEE



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
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SALIM A. TAMIMI, SECRETARY

PRE-REVIEW COMMITTEE DECISION NO. 12553 General Construction – Gas – Petaluma

Shawn Hoover
Company Member
Local Investigating Committee

Larry Pierce
Union Member
Local Investigating Committee

Subject of the Grievance

This case concerns the demotion of a Working Foreman A to Backhoe Operator and the permanent preclusion from temporary or regular assignment to Foreman.

Facts of the Case

The grievant was hired in 1966 and has worked at various Working Foreman levels (C, B, A) intermittently from 1972 to 1991. On July 25, 1991 grievant became a regular Working Foreman B and on September 2, 1996 a regular Working Foreman A.

On December 2, 2000 the grievant instructed a Hiring Hall employee to enter a storm drain to repair a damaged pipe. This assignment violated Code of Safe Practices, Section 1, Item 20, Confined Spaces and put the HH employee in an unsafe working condition. Shortly before the assignment, the grievant had been informed by another Foreman on the job, who is also the Area 7 Gas Safety Coordinator, that it would be unsafe for anyone to work inside the storm drain. The grievant was given a Decision Making Leave (DML) on December 19 for this rule violation. Grievant had no active discipline or coaching and counselings at the time of the DML. No grievance was filed.

On January 8, 2001 the grievant was involved in a backing accident while attempting to turn his truck around. He damaged the left rear of a third party vehicle. Given his long service and the short time elapsed since the DML, the grievant received a coaching and counseling for this accident.

The grievant's supervisor testified that he realized the grievant was working under a tremendous amount of stress due to his status on a DML. Given that he had already had one automotive incident, and not wanting to lose a productive employee, the supervisor notified the grievant on the morning of February 13, 2001 that he was being assigned to

work on another Working Foreman's job for a period of time. The supervisor informed the grievant he was making this change in an effort to help him get through his disciplinary period. The supervisor reminded the grievant of how important it is to act with safety as a number one priority.

That evening about 5 p.m. the grievant was involved in another automotive incident. The truck driven by the grievant was loaded with conduit which was not properly secured. The conduit fell from the truck, struck, and damaged a third party vehicle. Accident Prevention Rule 1-34(d) states, "Before proceeding, drivers shall make certain that all loads are properly secured...."

As a result of this incident, grievant was given a Mitigation to Discharge Letter and permanently demoted.

The supervisor also testified that prior to the DML incident, he received several complaints from employees on the grievant's crew about his unsafe work practices and his command and control style. The supervisor visited the grievant at various work sites to address these concerns, but never gave him a formal coaching and counseling. The grievant stated he thought these were tailboards, not discipline or reprimands.

The supervisor further testified that the grievant is a hard working, dedicated employee who focuses heavily on productivity, and that this appears to be a priority over safety.

Discussion

Union opined that a permanent demotion is too severe and violates the Positive Discipline Agreement. Union believes the grievant should be eligible to return to a lead classification. Union notes that Section 205.11 of the Physical Agreement allows for the bypass of employees demoted for cause to higher level positions and that this has been applied as a 12 month preclusion.

Company responded that the grievant was not discharged even though he had three disciplinable events within a short period so the discipline taken was not as severe as it could have been. Company notes that there is no language in Title 305 similar to that in Title 205, which is not applicable to this case. The PD Agreement simply says that demotion is an option to discipline in certain cases involving work performance, but it does not give any active time frame as it does with each of the disciplinary steps. Therefore, Company does not believe that a permanent preclusion from lead classifications is prohibited.

The PRC reviewed Arbitration Case 107 which involved a ten-day disciplinary lay-off and a demotion of a Gas Crew Foreman. The arbitrator in that case upheld the lay-off and the demotion but stated that the grievant could again be eligible to bid to the Crew Foreman classification after approximately 18 months. The PRC agreed that permanent demotions have occurred when an employee is being demoted from the same classification a second time.

Finally, the PRC agreed that a Mitigation to Discharge Letter is not discipline and therefore not subject to the grievance procedure except to determine its accuracy.

Decision

The PRC agrees that the demotion was for just and sufficient cause, but that the grievant may be considered for temporary or regular assignment to Working Foreman after February 27, 2002, a year from the date of demotion consistent with the provisions of Subsection 305.5. The PRC notes that the purpose of temporary upgrades is to train an employee for promotion or document their inability to perform the higher level position so that bypass is supportable.

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

10/18/01
Date

Sam Tamimi
Sam Tamimi, Secretary
Review Committee

10-18-01
Date