

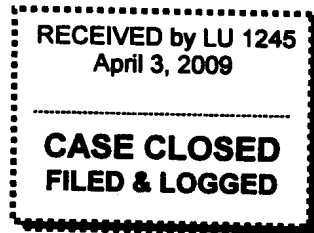


REVIEW COMMITTEE



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INTERNATIONAL BROTHERHOOD OF
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JOHN MOFFAT, CHAIRMAN

BOB CHOATE, SECRETARY

- DECISION
- LETTER DECISION
- PRE-REVIEW REFERRAL

Pre-Review Committee No. 18389 Energy Delivery – Gas T & D – Marysville

Jeff Neeley
Company Member
Local investigating Committee

Phil Carter
Union Member
Local Investigating Committee

Grievance Issue:

The case concerns the Company terminating a Utility Worker for conduct and attendance issues while on a DML.

Facts of the Case:

On July 27, 2007 the employee was placed on a DML for conduct.

On February 19, 2008, the supervisor coached and counseled the grievant for a no-call no-show on Friday February 15, the day before President's Day weekend. The supervisor stated that the grievant called in at 7:15 a.m. and informed him that he would be at work, but would be a little late. The grievant told the supervisor that his wife was having medical complications and that he needed to wait for his mother-in law (who was in route) to care for her. The supervisor stated he then attempted to call the grievant at 9:00 a.m. as this was holding up the crew. However, there was no answer and no further communication from the grievant. The supervisor stated he then went to the grievant's residence at 2:00 p.m. and his wife answered the door and told him the grievant was in bed sleeping. The supervisor stated that grievant's wife told him that there was nothing wrong with her and appeared surprised about the situation. During the coaching and counseling meeting, the supervisor informed grievant that any subsequent time off request he needed from work needed to be approved from him.

The grievant reported sick from March 11 to March 14. The Company received a faxed medical slip from Urgent Care stating that the grievant was not to return to work until March 18, 2008. The Leave Management sent the grievant an FMLA/Leave of Absence packet on March 25, 2008 that the grievant never returned. The grievant's last day of sick leave was March 26, 2008.

On May 9, 2008, the grievant failed to properly notify his supervisor's replacement that he would be off work.

On May 14, 2008 the grievant was coached and counseled for attendance and his failure to complete the required forms.

On June 5, 2008, the grievant called in at 6:58 a.m. and told his supervisor that his alarm didn't go off and didn't arrive to work until 7:25 a.m.

On June 6, 2008, Garcia stated that Eubanks was working at a job site with two Crew Foremen. The grievant left the job site early for a doctor's appointment without his supervisor's permission or knowledge. One of the Crew Foreman stated that the grievant mentioned the appointment to him right after lunch and left for the appointment between 1:45 p.m. to 2:00 p.m. The Crew Foremen assumed that the grievant had received permission from the supervisor for the appointment prior. That's the normal procedure that he follows as do others on the crews and stated that "he would figure that a guy in the grievant's position would be sure to inform his supervisor of any time off". The supervisor stated that as a result of these issues the grievant was terminated on June 11, 2008. Subsequent to the termination the grievant supplied two letters from doctors indicating that the grievant had a medical condition. One letter references an exam by the doctor on September 10, 2008 and the second letter was in early 2009.

Discussion

The Union believes that the grievant's undiagnosed medical condition caused his attendance related problems and that his situation should be treated as a medical issue, not a disciplinary issue. The September 23, 2008 letter from his doctor confirms that the grievant has severe congestive heart failure which "made it impossible for him to perform his normal work for at least the past year".

The Company believes that discharge is appropriate given his record since the DML was issued. The grievant committed no-call no-shows, left work without permission, and was 25 minutes late into work. He had been provided feedback through coaching and discussion that his behavior was not acceptable. Furthermore, the record shows that the grievant lied to his supervisor regarding the reason for one of his absences. The grievant was not discharged for failing to perform his work and as such, the post-discharge letter from his doctor is not relevant. His doctor does not indicate that the grievant's condition would cause him to fail to follow the proper call in procedure, to leave work without getting permission, or to lie to his supervisor. In short, the doctor's letter does not medically excuse the grievant's behavior. Additionally, the grievant failed to complete and return the FMLA/CFRA paperwork which the Company provided to him in March of 2008, thereby failing to indicate that he had any medical issues or concerns.

Decision

The discharge was for his conduct and attendance while on a DML. He failed to follow call in procedures, complete required paperwork and was not truthful with his supervisor. Nothing provided subsequent to discharge explains any of that away. This case is closed without adjustment.



John A. Moffat, Chairman
Review Committee

3/10/09

Date



Bob Choate, Secretary
Review Committee

3/10/09

Date