



REVIEW COMMITTEE

PACIFIC GAS AND ELECTRIC COMPANY
LABOR RELATIONS DEPARTMENT
MAIL CODE N2Z
P.O. BOX 770000
SAN FRANCISCO, CA 94177
(415) 973-6725

JOHN A. MOFFAT, CHAIRMAN
DECISION
LETTER DECISION
PRE-REVIEW REFERRAL

RECEIVED by LU 1245
September 2, 2010

CASE CLOSED
FILED & LOGGED



INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO
LOCAL UNION 1245, I.B.E.W.
P.O. BOX 2547
VACAVILLE, CALIFORNIA 94696
(707) 452-2700

BOB CHOATE, SECRETARY

Pre-Review Committee No. 19825 Customer Care – Gas Service – San Francisco

Michelle Roberts
Company Member
Local Investigating Committee

Bernard Smallwood
Union Member
Local Investigating Committee

Subject of the Grievance

The Company terminated a Gas Service Representative for a second DOT positive due to his failure to provide a specimen.

Facts of the Case

The grievant is a Gas Service Representative (GSR) three plus years of Service. He has been a GSR since 2007. The grievant was on an active Written Reminder in Work Performance for an automotive accident.

The grievant was terminated on December 10, 2009 as a result of a second DOT positive test. The positive test was the result of his failure to provide a specimen which constitutes a refusal, which in turn is considered a positive result.

The grievant's first positive test under the DOT program was on June 18, 2008 and the grievant signed a return to work agreement on July 24, 2008.

On August 31, 2009, the direct observation testing went into effect under the DOT Regulations. The Company sent letters to employees who were affected by the change in August 2008, November 2008, and July 2009 informing them if they have any concerns or questions to contact Kathy Barquero immediately. Ms. Barquero did not receive any concerns with the new testing requirement from the grievant. The grievant did contact Ms. Barquero in August 2009 and discussed billing issues but no discussion about the Direct Observation (DO) testing.

In September 2009 the grievant contacted EAP expressing his concerns over the observation process. The EAP counselor recommended that he needed a note from his doctor or psychiatrist be sent to the Company. The note would require a diagnosis of a medical condition which renders the grievant unable to produce an adequate sample, as well as a treatment plan for the condition. EAP also told the grievant that this would not exempt him from observed testing. The Company's DOT office and the MRO received a letter from a physician's assistant dated September 28, 2009. The letter did not include a diagnosis or a treatment plan. The grievant did not provide a medical release. Kathy Barquero received the letter but it did not contain a diagnosis of a medical condition and a treatment plan.

The grievant was tested on September 17, 2009, and October 6, 2009. The grievant alleged that he was not observed and thought that is was because he was being accommodated. The September 17, test was prior to the note from the doctor's office. The collector for the October 6 test stated that it was an observed test and the proper procedure was used.

On November 12, 2009 the grievant was tested but the box on the form stating it was an observed test was not checked and the MRO ruled the test cancelled and notified the Company that a recollection was required. On November 19, a retest took place.

The grievant was unable to provide a sufficient sample on November 19. The shy bladder process was administered as per Letter Agreement 04-16. The grievant was sent to a doctor for a shy bladder evaluation. The issue with the grievant was that a psychiatrist needed to evaluate him since there was nothing physical that prevented the grievant from providing a sample.

A letter from a psychiatrist was provided at the LIC dated, January 7, 2010, and confirmed that his shy bladder was the result of his past traumatic experiences.

The regulations state that there has to be medically documented pre-existing psychological disorders, but does not include unsupported assertions of "situational anxiety or dehydration". In other words the condition must be documented in advance of the providing a sample. In this case the acceptable documentation was not received prior to the testing.

The grievant on his own went to another facility the following day and produced a sample (unobserved) and had a blood test. The grievant stated these were negative. These tests are unacceptable under the program guidelines and regulations.

Discussion

The Union argued that the grievant had a bona fide diagnosis of a shy bladder and that the employee should be accommodated. The grievant had an issue of providing a specimen in front of the collector and this caused him to have a shy bladder and that the grievant had in fact provided a sample on other occasions when he was not observed.

Company argued that all of the DOT regulations were followed in this matter. Federal regulations do not take into account the grievant's report of a psychological condition for shy bladder, neither the Company nor MRO can arbitrarily modify the regulations and make an accommodation for the grievant. The grievant in this case needed a medically documented pre-existing psychological disorder, in order for the MRO to consider in making a determination on a refusal/positive test. The grievant understood even if a letter contained all the information required he still would need to have a DO test and if he was unable to produce a sample he would need to undergo a shy bladder procedure and the MRO will make a determination of his condition.

Decision

The PRC agrees that the guidelines and procedures were followed and there were no "fatal flaws" in the collection process.

This case is closed without adjustment.



John A. Moffat, Chairman
Review Committee

8/27/2010
Date



Bob Choate
Secretary
Review Committee

8/27/2010
Date