



## REVIEW COMMITTEE

**IBEW**



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INTERNATIONAL BROTHERHOOD OF  
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RECEIVED by LU 1245  
January 20, 2012

**CASE CLOSED  
FILED & LOGGED**

DOUG VEADER, CHAIRMAN  
 DECISION  
 LETTER DECISION  
 PRE-REVIEW REFERRAL

F.E. (ED) DWYER Jr, SECRETARY

### Pre-Review Committee Number 20811 Generation – Hydro – Pit 5

Robin Wix  
Company Member  
Local Investigating Committee

Kit Stice  
Union Member  
Local Investigating Committee

#### **Subject of the Grievance**

This case concerns a discharge of a Hydro Operator for being under the influence of alcohol while at work.

#### **Facts of the Case**

The grievant is a Hydro Operator with 28 years of service and no active discipline at the time of his discharge.

The grievant reported to work at approximately 6:30 pm and assumed his watch at 7:00 pm. A co-worker who was on shift when the grievant arrived, called the supervisor to report that the grievant had a strong odor which he appeared to be covering up with mouthwash, and he was not behaving as he normally did. During shift turnover he had to repeat information several times as the grievant was not able to comprehend what he was telling him. He couldn't grasp the discussion or direction. The employee also stated the grievant had previously reported in this condition and he told him he should contact the Employee Assistance Program and warned he would turn him in if it ever happened again.

The supervisor then called the other employee who had been at work when the grievant reported. This employee confirmed the same observations as the other co-worker. The supervisor then called his manager and drove to the Power House to observe the grievant. He arrived at the facility and completed a Fitness for Duty observation using the behavioral observation checklist. The supervisor's observations included the smell of alcohol from his breath, slurred speech, and confusion over basic duties. Based on his observation, the supervisor believed the grievant was under the influence of alcohol, relieved the grievant from his duties, and advised him that he would be taken to Redding's Shasta Regional Hospital for a Fitness for Duty examination.

According to the supervisor, on the way to the hospital, the grievant volunteered that he was sorry, that he screwed up, and would probably get fired. He indicated that he had been caught before for

not being fit for duty and had gone through EAP. At the LIC, the grievant had no recollection of having made these comments.

The supervisor and grievant arrived at the hospital and were joined by the manager and a shop steward. The manager observed the grievant and agreed with the supervisor's conclusion that he appeared to be under the influence. The hospital indicated it would not conduct a Fitness for Duty examination as they were not set up for that. The manager then made arrangements for an independent collector to meet them at the hospital. The grievant declined to submit to a body fluid test. The manager then drove the grievant home.

During the LIC, the grievant denied having been intoxicated when he arrived at work. He said he drank four beers in morning at approximately 8:00 am, however, slept most of the day and did not drink prior to coming to work. He said he believed he was fit to do his job on the day in question. Finally, he confirmed that his co-worker had given him the EAP phone number and that following this incident; he has completed a 30 day in-patient rehabilitation program.

**Discussion**

The Union argued that there is no conclusive evidence that the grievant was under the influence at work. A Fitness for Duty examination was not provided. The Union further argued that the first time offender policy under the DOT reasonable suspicion testing should be used and the Grievant would be subjected to a Written Reminder and a "Last Chance Agreement", not discharge. While the Company made arrangements for a collector, the parties have agreed that while an employee may not refuse an examination, an employee has the right to decline a collection of bodily fluids.

The Company responded that the evidence is overwhelming that the grievant was not fit for duty. The observations of all four witnesses are consistent and with each other and with a conclusion that the grievant was under the influence of alcohol and not fit for duty. The grievant's comments on the way to the hospital are an admission of his being under the influence. Additionally, the grievant offered no alternative explanation to account for his behavior and entered into a 30 day in-house rehabilitation program.

The key question in this case is whether or not the facts support the Company's conclusion that the preponderance of evidence demonstrates the grievant was under the influence of alcohol and not fit for duty.

The Committee does not find sufficient basis to overturn that conclusion.

**Decision**

The Committee agrees the discharge was for just cause and closes this case without adjustment.

  
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Doug Veader, Chairman  
Review Committee

1/19/12  
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Date

  
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F.E. (Ed) Dwyer Jr., Secretary  
Review Committee

1/19/2012  
\_\_\_\_\_  
Date