

3 cys returned to Co. 12/29/58
1 cy ea to Benes &
Stevenson. do

REVIEW COMMITTEE DECISION

Review Committee File Number 176

General Construction Department Grievance No. 45 - Discharge of Epifanio Melendez

Subject of Grievance:

The grievant, an employee in the Gas Division of the General Construction Department, worked as a hand pipe wrapper in the area of the San Leandro Gas Construction office. At times his work has been considered not up to Company's standards. Criticism from his Sub-Foreman, as a result of the employee's poor workmanship, apparently developed a feeling of resentment which contributed to the incident involving the employee's discharge. This incident took place on November 7, 1958, when Melendez came into the office of the Foreman in charge and sought a transfer to another crew. During the discussion with the Foreman, Melendez displayed great emotion and used threatening language indicative of intended serious assault on his Sub-Foreman if a transfer were not granted. The decision to discharge him was based on his conduct during this incident. November 17, 1958, was his last day of work.

Pursuant to the provisions of the Labor Agreement, the appropriate local investigation of the grievance was made but no agreement was reached. The case then went to the Department's Joint Grievance Committee, following which it was referred to Review.

Statement and Decision:

In the interest of saving time in determining the disposition of this grievance the Review Committee met in a special session on December 17, 1958, to discuss this case. At that meeting the Union members argued that Melendez had some provocation for his conduct owing to the Sub-Foreman's attitude on the job and that in any event the statements made by Melendez at the time of the incident could be construed under the circumstances to be the rash declarations of an emotionally upset and excited employee, rather than serious threats. The Company members argued that no employee's action would be condoned and protection against discharge be given in cases where threats are made to seriously assault a Foreman of the Company. It was agreed, however, that the real intentions of Melendez during the incident cited are difficult to determine. He speaks only broken English, and for such reason does not express himself in a manner similar to others who have a better command of the language. Furthermore, he was emotionally upset at the time of the incident. These conditions present, it is possible that in pleading with the Foreman for a transfer his statements were intended only to indicate that to him a transfer was important and not trivial in nature.

Reviewing all of the possibilities and relating them to the grievant's employment record of approximately 13 years in the General Construction Department, this Committee believes that the discharge of Melendez should be rescinded. On the other hand, to denote that the Committee is in accord that threats on Company's Supervisors cannot be condoned when there are provisions set forth in the Labor Agreement to settle disputes, a disciplinary lay-off without pay is recommended.

This case is therefore settled on the basis of the following:

1. The discharge of Melendez on November 17, 1958 is to be rescinded.
2. The period of time in which he was off the payroll, from the date of this incident to 12/21/58, inclusive, is to be considered as a disciplinary lay-off without pay.
3. Effective December 22, 1958, he is to be reinstated and he will be transferred to a new location (Walnut Creek) where he will resume his work as a pipe wrapper.
4. He will not be entitled to an expense allowance because of his transfer to the Walnut Creek location.

FOR UNION:

Kenneth Stevenson
Robert D. Bevers
L. L. Mitchell

FOR COMPANY:

E. F. Sibley
C. L. Yager
V. J. Thompson

By L. L. Mitchell

Date Dec 24, 1958

By V. J. Thompson

Date December 22, 1958