

REVIEW COMMITTEE DECISION

Review Committee File No. 1058

East Bay Division L.I.C. Grievances Nos. 1-70-43, 1-70-44 and 1-71-11

Statement of Facts

The grievant was employed in 1963 as a Clerk D in the Richmond office and later transferred to Berkeley. At all times concerned in this grievance she was a Clerk C in the Berkeley office and was primarily assigned as a customer telephone clerk. On January 11, 1971, the grievant was transferred to the Oakland office as a Clerk D and placed in a non-public-contact position.

This Decision first concerns a one-day disciplinary layoff imposed on the grievant on October 9, 1970. The disciplinary layoff resulted from her being tardy 44 times during the period of January 1, 1970 to October 9, 1970. It is also noted from the record that during this period of time the grievant was on a leave of absence from May 18 to August 18. The majority of tardiness varied from one to five minutes, in addition to which she was tardy six minutes on two occasions, 10 minutes on another, 15 minutes and 17 minutes on two other occasions.

Secondly, on October 16, 1970, the employee was instructed by the Lead Clerk in the office to provide assistance on the pending file to bring it up to date. She refused and after relaying her refusal to the office supervisor, Mr. Eaneman, the Lead Clerk again instructed her to perform the work and she refused a second time. Mr. Eaneman then approached her at her desk and again instructed her of the work assignment. Apparently a heated discussion followed, the grievant contending first that this was not her work and, secondly, at any rate, she had been told by Mr. Eaneman's supervisor, Mr. Dolan, that she need not follow Mr. Eaneman's instructions. After some period of time, the discussion was carried to Mr. Dolan, who, after clarifying the relationship that he expected between the grievant and Mr. Eaneman, again instructed her to do the work. Both supervisors testified at the hearing held by the Review Committee that the grievant was noticeably upset and each had suggested she go for a cup of coffee and calm down. She did not act on their suggestion. At the conclusion, the grievant was told to leave work and later, on October 20, was contacted by the office supervisor and told that her actions on the 16th were insubordinate and that she was being given a 10-day disciplinary layoff without pay starting October 16. The telephone conversation was later confirmed by a letter dated October 27.

The third incident concerned with in this Decision involves her demotion to Clerk D and transfer to the Oakland office on January 11, 1971. Subsequent to the incidents set forth above, the employee's doctor sent a letter to Company noting that the grievant suffers from "severe tension headaches." The doctor stated that she had been hospitalized during a portion of the last leave of absence for this reason. He then went on to conclude that the "work situation has an effect on her tension problem. I would recommend that she be placed in another position or office in order to reduce her tensions." The grievant would not authorize her doctor to discuss her problem with the Company nor would she agree to be examined by a Company physician. Following receipt of the doctor's letter, the grievant was absent from work on several occasions, apparently for this same reason, and on other days left her desk to lie down for periods of one hour to two and a half hours because of this.

At the Review Committee hearing the grievant attributed her actions, as well as her illness, to harassment by her supervisors.

### Discussion

The Review Committee is of the opinion that it is unnecessary to render a separate conclusion for each of the incidents referred to above. It is apparent to this Committee that the root problem here concerns the grievant's condition as described by her personal physician. Indeed, at the Review Committee hearing the grievant herself provided a further insight in this respect when she sought to excuse her acts of October 16 for this same reason. The reason given by the doctor for the employee's leave of absence, and her record of absences and periods of illness on the job since then, all point up that the grievant's physical and mental condition during much of the time involved by this Decision have more than a casual bearing on her conduct. At the same time, however, this Decision cannot be read to excuse the employee's tardiness nor the acts that occurred on October 16. Here, however, the Review Committee is of the opinion this is not a usual case to be considered on the common grounds for discipline. Indeed, the Division's later decision to remove her both from the scene of conflict and the demands of her job is further evidence that her conduct, at least on October 16, should be viewed in a different light.

### Decision

Taking all of this into account, the Review Committee finds that the grievant's allegations of harassment are not founded on fact. Rather, the evidence presented to the Review Committee in this regard, most notably the conclusion and recommendation of her physician, as well as her sick leave record before and after the October incidents, clearly evidence that her work and relations with her immediate supervisors in the Berkeley office have suffered as a result of her tension. For this reason, the Review Committee believes that placing the grievant in a position of lesser responsibility and in a different office are justified under these facts. We further decide that the question of the grievant's return to Berkeley or promotion to the position she held prior to January 11, 1971, will be dependent on the grievant's future work performance and evidence that she is capable of meeting these higher responsibilities without further adverse effect to her health. To this extent the Review Committee believes that a further period of six months should elapse before either a request for transfer to Berkeley or to promotion to a customer-contact Clerk C should be considered. Finally, the Review Committee is fully cognizant of the economic loss incurred by the grievant because of the change of location and classification and it is the Review Committee's decision to reinstate the wages lost by the grievant while suspended from October 16 to October 29 in the hopes that this action will alleviate the tense situation to which the grievant seemingly views her employment.

FOR UNION:

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By

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Date 3-2-71

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