

REVIEW COMMITTEE

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REVIEW COMMITTEE DECISION

- DECISION
 LETTER DECISION
 PRE-REVIEW REFERRAL

Coast Valleys Division Gr. No. 18-403-79-100
Review Committee File No. 1476-80-2

**CASE CLOSED
LOGGED AND FILED**

Statement of the Case

The grievances involved here concern seven Hollister District Line Department employees. The grievants protest the imposition of a six-hour disciplinary layoff of five employees and fourteen hours for two Subforemen for refusing to carry out a work order.

The case involves a job on a pole at Washington and 4th Streets, San Juan Bautista. The pole carries both PGandE conductors and PT&T cables. On July 10, 1979, a Subforeman, grievant, working at a different location in San Juan Bautista, field-checked the pole in question preparatory to doing certain PGandE work on it the following day, in the course of which he measured the distance between the inner surfaces of the telephone cables at 28½ inches. The acting General Foreman was unsure of whether or not the distance between the cables represented a GO 95 construction violation. However, in his judgement, it was still safe for the crew to climb between the cables to perform their work, notwithstanding the possibility of the PT&T construction being in technical violation of GO 95.

On the following morning, the acting General Foreman informed the Subforeman of the work to be performed and of the measurements taken the previous day and of his conclusion that the cables did not present a hazard to the climbers. The Subforeman initially stated that he would refuse the work order but after some counseling by the acting General Foreman the Subforeman agreed to do the work under protest. Shortly thereafter, he returned to the General Foreman's office and stated that he would not perform the assignment as, in his opinion, it would be unsafe to climb through the cables.

Several of the employees accepted the offer and were driven to the work site by the acting General Foreman and the Salinas District Electric Superintendent. The acting General Foreman, then called the remaining six Line Department employees into his office one at a time. Five of the employees who had not visited the job site on the previous day were offered the opportunity to do so and observe the pole prior to responding to the acting General Foreman's order to perform the work.

Following this, each in turn, refused to perform the assignment for the same reasons given by the Subforeman or refused to give an answer unless they were first provided with Union representation. One of the latter who refused to answer, was a Shop Steward.

The events culminated with the acting General Foreman consecutively informing each of the grievants that he was ordered to take the assignment and that this refusal would be considered insubordination. Each refused and was suspended.

Discussion

Obviously, this case concerns the consequence of the employees refusing an order of their supervisor. A similar, although not identical, situation was involved in Arbitration Case 65. That case was heard and decided by Arbitrator Burns in 1977. Arbitration Case 65 involved the disciplinary layoff of Bargaining Unit employees for refusing to perform an order to climb a joint pole, and to pass over a telephone cable attached to a pole. Evidence presented in that case also involved a second situation comparable to the one here. That is, the employees refused an order to climb between telephone cables fastened to crossarms, which measured about 27½ inches between the cables. That refusal took place some two weeks before the incident directly involved in Arbitration Case 65. The importance of the matter to the situation at hand is that following the earlier refusal the Hollister District General Foreman had stated at a special work procedure meeting with his line personnel, including some of the grievants involved here, that line crew personnel would climb over or through telephone company line infractions unless there was a safety hazard to the employee climbing the pole.

In ruling on the Arbitration Case 65 grievant's refusal, Arbitrator Burns stated:

"In directing the work, management has the right to direct the manner in which the work shall be performed. If the manner of performance involves a real and apparent hazard, then there is a basis for the employee's refusal."

Arbitrator Burns then went on to state:

"If there is a real and apparent hazard, the employee is excused from complying. If the employee honestly believes there is such a hazard, and it is objectively determined there is no real and apparent hazard, the employee is exposed to discipline as here. There is no formal answer for every case, except that the supervisors who, presumably are as experienced as the employee, should be able to recognize a clear and apparent hazard as well as the employee."

Finally, with reference to the central issue involved here, i.e., the climbing space controversy and the employee's work refusal, Arbitrator Burns in, another instance, Arbitration Case 81, makes it abundantly clear that the grievant's refusals were unwarranted:

"The work place is not a forum for debates. The employees have the option of refusing to work if a real and apparent hazard reasonably and objectively is present. There was only one question on July 11, 1979, and that was whether grievant and the other employees would climb the pole at San Juan Bautista. Grievant and the other employees had decided that the pole violated GO 95 because there was less than 30 inches between the telephone cables. The question which Mitchell wished to put to them was whether or not they would comply with the order."

* * * *

Arbitrator Burns then went on to state:

"An unimpeded climbing space of 28 inches is not a real and apparent danger or hazard. It is no danger or hazard at all. Less than 30 inches between telephone cables may be a violation of GO 95 by the telephone company, but it is not a real and apparent hazard to the linemen per se."

It should be noted at this point that the work involved in the present case was performed that same afternoon by a crew from Salinas who registered no objection to the order to climb between the telephone cables.

The rule of Arbitration Case 65 and Arbitration Case 81 govern the Review Committee's decision in the matter at hand. The evidence presented to the Review Committee does not support a conclusion that to have preformed the work would have subjected the employees to a real and apparent hazard. Thus, as Arbitrator Burns concluded the grievants placed themselves in a position where they would be exposed to discipline.

An additional question concerning the grievants' right to Union representation when confronted by Mitchell was addressed and answered by the Arbitrator. In short: "The purpose of Mitchell was not to obtain facts to support disciplinary action ... but to learn whether grievant and the other employees would perform the work." Thus, in the Arbitrator's view, Union representation was not required, at least by law.

In this regard, Company has recently released instructions to its field supervisors that it favors providing requested Union representation when it is practical to do so. Of course, that decision in a case such as the one at hand rests in the hands of the supervisor.

If the record in this case went no further, the Review Committee would not be in a position to do otherwise than to support the discipline and time off. The record, however, indicates to the Review Committee that there are reasons for taking a different tack. While the decision in Arbitration Case 65 should have laid the matter to rest, the record indicates that the Local Management and the employees were uncertain as to the future effect of the decision in Arbitration Case 65 in the light of the Labor Commissioner's contrary decision and order. For one example, early in 1979 the acting Salinas District Electric Superintendent met with the employees at Hollister and, in what appears to have been an effort to relax the tension between the employees and their supervisors, stated that the employees would not be ordered to climb through the telephone cables if the climbing space measured less than 30 inches. However, in late July, just subsequent to the incident involved here, the Hollister General Foreman countermanded the Superintendent's agreement and reinstated the rule that they would be required to climb in such situations if in his judgement it was safe to do so.

While these events do not serve to excuse the grievants' conduct, they do tend to emphasize the uncertainty in this regard at the Hollister Yard. Since then the Review Committee is informed that conditions have improved and the Review Committee believes that some mitigation is in order.

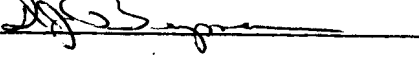
Decision

It is the decision of the Review Committee, in keeping with decisions rendered in Arbitration Cases No. 65 and No. 81 that the grievants were insubordinate and that the disciplinary layoffs were commensurate with the conduct. However, to provide a

climate conducive to continuing the improved cooperation of the management and employees at that yard, the Review Committee decides that for six of the seven grievants, excluding Schneider, whose case was decided by the decision in Arbitration Case 81, the pay for the time lost will be restored. On the other hand, to emphasize the seriousness of their misconduct, the Division will place a copy of this decision, in accordance with Company's standard practice 701-1 in each of their personnel jackets to stand as a reprimand and clear notice that future disregard of their supervisor's work orders will, if there is no objective evidence that the order will subject them to a clear and apparent hazard, be the basis for appropriate disciplinary action.

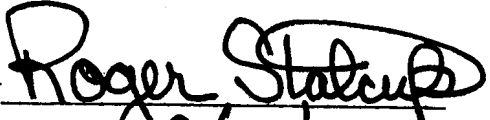
FOR COMPANY:

- L. C. Beanland
- F. C. Buchholz
- J. B. Stoutamore
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By 
Date 9-25-80

FOR UNION:

- P. Pelucca
- G. W. Abrahamson
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Date 9/25/80