

REVIEW COMMITTEE**PG and E****IBEW** 

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**CASE CLOSED
 LOGGED AND FILED**

INTERNATIONAL BROTHERHOOD OF
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 R.W. STALCUP, SECRETARY

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RECEIVED APR 9 1984REVIEW COMMITTEE DECISION

- DECISION
 LETTER DECISION
 PRE-REVIEW REFERRAL

General Construction Grievance No. 3-1233-83-76
 Review Committee File No. 1577-84-12

Grievance Issue

Six-week disciplinary layoff, demotion to Electrician, and prohibition from promotion for one year issued to a Subforeman A for unauthorized removal of Company property.

Facts of the Case

On June 22, 1983, an anonymous letter was received by the General Construction Personnel Department which accused the grievant of being in possession of stolen Company property. The letter specified that the property in question included an oak desk and several tools.

On July 8, 1983, the grievant was interviewed by his General Foreman and a representative of the Security Department. The grievant readily admitted that he had the subject property at his home and gave permission to the Security Representative to go there and examine it. Upon examination, the desk was found to be a 42" long oak desk with one drawer in the center and three on the right side. It had a formica top and was in good condition. The desk was located in the grievant's living room and was being used as a piece of furniture. The only materials being stored in the desk drawers were children's school supplies.

In addition, a large assortment of Company tools and related supplies such as those typically used by an Electrician Subforeman A was found in a chest in the grievant's garage. The chest appeared not to have been opened recently.

The grievant was suspended on July 26, 1983. The subject demotion and disciplinary layoff were issued on August 24, 1983. The grievant returned to work, as an Electrician, on September 5, 1983.

The grievant told the Security Representative that he had been given permission by his General Foreman in 1977 to keep the chest of tools at his home in Bakersfield; that in 1980, he was assigned as a Subforeman to the construction site of the Figarden Substation, northwest of Fresno; that he then took the chest and contents to the Figarden Substation site and placed it in the tool van; that upon completion of the Figarden Substation the tool van was put in storage, and he took the chest and contents to his home to protect it from theft. The grievant admitted that he did not tell the General Foreman that he had taken the chest and contents to his home. The grievant admitted further that although he was assigned to the Load Management Program in late

1981 and had not needed the chest and contents on the job since then, he had continued to store them at his home until the Security Department's investigation.

The Security Representative later contacted the General Foreman (now retired) who the grievant claimed had given him permission to store the tools at home in 1977. The General Foreman stated that he could not recall giving the grievant such permission.

The grievant told the Local Investigating Committee that in August of 1982, he instructed two employees in a Company pickup to deliver the subject desk to his home; that he did not intend to steal the desk, but to use it to correct prints, complete logs and to write performance reviews; that at the time he took the desk he was working with Load Management in Bakersfield; that the desk was in a porta shed which leaked and that he took the desk home, in part, to protect it from water damage; that if he had intended to steal the desk he would not have used Company personnel to drop it by his home because he had access to the porta shed 24 hours a day, 7 days a week and could have taken it himself at any time; that his error was using poor judgment in not obtaining permission to use the desk at home.

The General Foreman who supervised the grievant during the Figarden Substation job told the Local Investigating Committee that the grievant's work performance is outstanding; that during the investigation with Security the grievant was cooperative and open; that the grievant did not have to do paperwork at home, but did anyway; that the tools and supplies stored in the grievant's garage were not out of the ordinary for a Subforeman in the Bakersfield area and possession of such tools is a common practice in that area. The General Foreman conceded that had the grievant requested permission to take the desk home, such permission would have been denied, but added that he still felt that the grievant was guilty only of poor judgment.

Discussion

The Committee agreed at the outset that the grievant was improperly in possession of Company property in violation of Standard Practice 735.6-1. The discussion then centered on the extent of the discipline which was issued to the grievant.

The Company stated that the discipline was issued primarily for the grievant's removal of the desk, and only to a lesser extent for his possession of the tools. The Company acknowledged that the grievant's stated rationale for removing the desk, i.e., to use in writing performance reviews, etc., may well have been, in part, true. However, Company added, this factor was taken into consideration in its decision not to discharge the grievant. The Company also acknowledged that the grievant may have been indirectly led to believe that storage of the tools and related materials at his home was proper while he was working as an Electrical Subforeman A. However, the grievant admitted that he had not used the tools since being assigned to Load Management work, and that he had not informed his General Foreman that he retained possession of the tools since that time.

The Company opined that the facts of the case clearly illustrate that the grievant willfully violated the well-promulgated rules regarding personal

possession of Company property; that violation of these rules could have resulted in the grievant's discharge; that the mitigating circumstances of the case have already been taken into consideration in the decision not to discharge the grievant.

The Union stated that the discipline issued to the grievant was grossly out of proportion to the infraction committed, and opined that a five-day disciplinary layoff and no demotion would probably have been more appropriate. The Union added that the grievant's possession of tools should not have been considered to be improper inasmuch as the General Foreman is on record that many Subforemen in Bakersfield store such tools at their home with Company's at least tacit approval. Union stated further that the Company's approval of the grievant's storage of tools at home could very well have influenced him to believe that use of the desk at home for Company business would also be proper. The Union noted that, in any event, nothing in the grievant's behavior was surreptitious or would otherwise lead one to believe that he knew he was guilty of wrongdoing. The Union stated again that the discipline was much too severe.

Decision

After a discussion of the issues and facts of the case, the Company stated that the one year prohibition from promotion may have been excessive considering the extent of the other disciplinary actions taken against the grievant. Accordingly, Company offered to promote the grievant to Subforeman A retroactive to January 30, 1984.

After a further discussion of the case, the Union reluctantly agreed to accept the Company's offer.

The case was settled on the basis of the above.

FOR COMPANY:

- N. L. Bryan
- F. C. Buchholz
- R. C. Taylor
- L. V. Brown

By *L. V. Brown*
 Date 4-5-84

FOR UNION:

- R. L. Choate
- P. Nickeson
- R. Pedersen
- R. W. Stalcup

By *Roger Stalcup*
 Date 4/6/84