

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

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**CASE CLOSED  
LOGGED AND FILED**

DEC 27 1985

**RECEIVED DEC 23 1985**

D.J. BERGMAN, CHAIRMAN

- ☐ DECISION  
☐ LETTER DECISION  
☐ PRE-REVIEW REFERRAL

REVIEW COMMITTEE DECISION

General Construction Division Grievance No. 3-1341-84-73  
Review Committee File No. 1622-85-15

Subject of the Grievance

This case concerns the discharge of a General Construction Equipment Mechanic for allegedly stealing a winch from the General Construction Service Center in Davis.

Facts of the Case

The grievant was employed on December 3, 1968 and discharged on October 16, 1984. He had no prior disciplinary history. The value of the winch was approximately \$523.

At approximately 2:30 p.m., on Thursday, August 16, 1984, an employee informed the Service Center Supervisor that he believed the grievant had stolen a PGandE winch and mounted it on his (grievant's) personal jeep. About 45 minutes later, the supervisor and the Warehouse Foreman went to the employee's parking lot and observed a winch of the same make and model as those purchased by PGandE on the grievant's jeep. The supervisor testified that he removed a piece of tape that had been placed over the serial number and noted that the number had been tampered with. The supervisor and the Foreman were able to read the serial number as 261220 or 251220. They then went to the shed where the Company's winches were stored to determine if any were missing. In the meantime, the grievant's shift ended, and he left work for the day.

On Monday, August 20, 1984, the grievant was asked by a Subforeman if he had taken a PGandE winch. The Subforeman told the Local Investigating Committee that the grievant indicated he purchased the winch, had a receipt to prove it, and that there was nothing to worry about.

At 8:20 p.m., on Tuesday, August 21, 1984, the grievant reported to the Davis Police Department that the winch had been stolen from his jeep which was parked near his residence.

On August 23, 1984, the grievant left work early due to illness. He remained off work on sick leave until September 5, 1984, at which time the supervisor notified him that he was being suspended immediately, pending the results of an investigation surrounding the alleged theft of a winch. The grievant did not return to work prior to his discharge on October 16, 1984.

On September 11, 1984, the grievant was interviewed by a representative of the Company's Security Department. Two prior attempts to interview the grievant were cancelled because of his illness. Upon completion of the interview, a written statement was prepared; however, the grievant declined to sign the statement. According to the Security Department report, the grievant told the representative he purchased the winch for \$680 cash; he was given a bill of sale but had misplaced it; he did not recall the make, model, serial number, pulling capacity of the winch, or whether it was new or used. The grievant further stated that, before he purchased the winch, he called Central Four-Wheel Drive in Sacramento to ask how much a winch capable of pulling 6000 to 8000 pounds would cost. He was told \$700-\$800, so he believed the price he paid (\$680) was fair. The grievant stated that he had never stolen Company property although he admitted that he does have a few PGandE hand tools which he had inadvertently brought home when he unloaded his tools during his transfer from the Field to the Service Center.

At the Local Investigating Committee meeting, the grievant stated that he bought the winch from a private party, paying \$680 cash. The grievant stated that he believes he learned the winch was for sale from a friend, but he could not remember who told him about it nor could he remember where or who he bought it from. The grievant stated that he could not find the house where he bought the winch, again, due to his unfamiliarity with the Vacaville area where the house was located. The grievant stated that he had no telephone long distance record, etc., that might lead him to the individual he purchased the winch from. The grievant could not produce a receipt for the purchase of the winch. Since he paid cash, the grievant had no personal records of the transaction.

On October 19, 1984, the District Attorney's office filed misdemeanor charges against the grievant for possession of stolen property and filing a false police report. On May 22, 1985, the District Attorney agreed to drop charges, but as a condition of dismissal, the grievant was placed on District Attorney's probation for 12 months and paid court costs of \$500.

As a result of the Company's investigation into its inventory of winches, it was determined that on May 3, 1984, the Company purchased 15 Warn winches from Central Four-Wheel Drive in Sacramento. At the time of delivery, the serial numbers were not recorded by the Company nor was such a record kept by the vendor. The Company was able to trace 12 winches to the vehicles on which they had been installed, two were still in stock, and one was unaccounted for.

Warn Manufacturing Company was contacted and they confirmed that a winch with Serial No. 251220 was shipped to Central Four-Wheel Drive in Sacramento on April 9, 1984, and that it was manufactured on April 4, 1984. Warn also date codes their winches on the motor. For Serial No. 251220, the date code was DB4. Warn also confirmed that a winch of the type purchased by PGandE with the Serial No. 261220 has not yet been manufactured.

On August 13, 1985, the Service Center Supervisor saw a winch on the grievant's jeep. He contacted the Davis police who confiscated the winch with the grievant's permission. According to a Davis Police Department report, the supervisor stated that the winch observed on the grievant's jeep was a Warn winch, exactly like the one reported as stolen from PGandE on August 21, 1984. The supervisor also stated that he attempted to view the serial number on the

winch but discovered that it had been ground off. The police report also states that when questioned about the winch on August 13, 1985, the grievant stated, "he drove a rented truck to north Vancouver (Canada), moving a lady and her daughter, he could not remember their last name. (The grievant) said he stayed up there (in Canada) for about a week and bought the winch from "some guy". He could not give me a name. I asked (the grievant) if he got a bill of sale or anything with it, and he said he did not. I asked (the grievant) about the missing serial number and he said it was that way when he bought it.

The Davis Police Department investigating officer then contacted Warn Industries and inquired if there was any way to identify the winch after the serial number had been ground off. The officer was told that there is no other number that would positively identify the winch, but there is a manufacturer's date code on the winch motor. The officer was told that the date code would be two letters and a number. The first letter would identify the month, the second letter would identify the date and the number would identify the year the winch was manufactured. In a letter to the investigating officer, Warn Industries advised that Warn winch serial number 251220 would have a date code of DB4. The investigating officer examined the winch removed from the grievant's jeep on August 13, 1985, and determined that it had a date code of DB4.

#### Discussion

At the outset, the Review Committee is faced with a most difficult problem in this case, in that the grievant steadfastly denied theft of the winch while some of the evidence presented by the Company to support it's accusation is clearly circumstantial. Additionally, the Committee recognizes that some of the information contained in the grievance file is post-discharge information.

It is recognized by the Committee that in a discipline case, the Company bears the burden of proof. In this case, the Company did not demonstrate ever having possession of Warn Winch No. 251220. Generally, in the grievance procedure, only the facts and evidence which the Company was aware of at the time the decision to discharge is made are reviewed to determine if just cause existed for the action. On an exceptional basis, post-discharge evidence may be considered for the purposes of determining credibility, impeachment, or to further support the employer's original "theory of the case."

The Committee is in agreement that it is appropriate to consider the post-discharge evidence in this case, that is, the reappearance of the winch and the identification of the date code inasmuch as the Company's initial investigation was short-stopped by the disappearance of the winch from the grievant's jeep. This additional information was sufficient to tip the balance in order to reach accord in this case.

This case has been discussed at great length by the Review Committee as well as at lower steps of the grievance procedure. As frequently occurs in discharge grievances, there are conflicts that must be resolved by the Committee. In this case, Company alleged that grievant misappropriated Company property; Company cannot produce clear evidence of ever possessing such property; grievant denied taking the property; grievant can provide no evidence of ownership; nor can he identify the person from whom he states he purchased the property.

At the outset, Union opined that because Company could not unequivocally prove ownership of the winch and because there was no physical evidence of the alleged theft, Company had failed to meet its burden of proof. It was agreed that the discharge was based on circumstantial evidence. In the Company's opinion, the facts were more than mere coincidence, and the facts in conjunction with the grievant's story supported the allegation of theft.

### Decision

Notwithstanding all of the circumstantial evidence in this case, the Committee agrees that those facts are persuasive in support of the allegation of theft. The Committee, therefore, agrees the discharge was for just and sufficient cause and consistent with the provisions of Review Committee Nos. 1451 and 1452. This case is closed without adjustment.

#### FOR COMPANY:

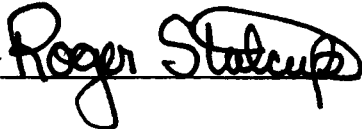
Norman L. Bryan  
Floyd C. Buchholz  
Robert C. Taylor  
Dave J. Bergman

By 

Date 12-19-85

#### FOR UNION:

P. Nickeson  
Fred Pedersen  
Arlis Watson  
Roger W. Stalcup

By 

Date 12/19/85