



# REVIEW COMMITTEE

7.1 - Just cause for discipline -  
Theft of gasoline

**IBEW**



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AUG 31 1990

**CASE CLOSED  
LOGGED AND FILED**

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D.J. BERGMAN, CHAIRMAN

**RECEIVED AUG 29 1990**

- DECISION
- LETTER DECISION
- PRE-REVIEW REFERRAL

## REVIEW COMMITTEE DECISION

General Construction Grievance No. 03-2040-89-145  
Review Committee File No. 1705-90-10

### Subject of the Grievance

This case concerns the discharge of a Miscellaneous Equipment Operator for the alleged theft of gasoline.

### Facts of the Case

At approximately 5:30 p.m. on November 14, 1989, the grievant completed his equipment fueling route, stopped at the San Ramon Gas office to drop off his assigned keys, then drove the fuel truck to the TES yard where it is stored. According to the grievant, he then let the diesel engine cool by keeping the engine running, walked to his personal vehicle and started it, walked back to the fuel truck to pick up some personal items, walked back to his personal vehicle, and drove it over to the fuel truck to load his personal water cooler into his pick-up. At that point, his pick-up stopped running and the grievant determined that it was out of gas. The grievant decided to put some gas from the fuel truck into his pick-up in order to have enough fuel to get to a gas station. The grievant put 1.6 gallons of gas into his vehicle. The grievant indicated that he intended to notify his foreman in the morning and pay for the gas he took, allowing the 1.6 gallons to remain on the fuel truck gas gauge.

A management employee who happened to be in the TES yard at the same time observed the grievant putting gasoline from the fuel truck into the pick-up. The management employee did not recall whether the fuel truck was running but did notice that the grievant's pick-up was running. The management employee confronted the grievant with his actions at that time.

### Discussion

Throughout discussions in the grievance procedure the Union agreed that the grievant's actions were at the least an exercise in poor judgement and that some discipline short of discharge was warranted. The Committee acknowledged that the grievant engaged in self-help and had an opportunity to go to a nearby gas station to attempt to obtain gas, or to call his supervisor to ask for permission to take some gas from the fuel truck. He availed himself of none of these opportunities.

In discussion of this case, the Committee reviewed a number of precedential decisions. P-RC 557 and RC 1503 sustained discharges for use of Company credit cards to purchase gasoline for personal use. Arbitration Case No. 60 sustained five day disciplinary layoffs of two employees for theft of approximately two gallons of gas from a fuel truck. One of the employees had run out of gas in the yard. P-RC 1392 was a recent General Construction case in which Decision Making Leaves were sustained for two employees who took approximately two gallons of gas from a Company gas can to fuel a personal car that had run out of gas.

The Company believes this is clearly a case of theft. The grievant was not "borrowing" gasoline because the act of borrowing is preceded by agreement between two parties to that act. There is also no evidence that the taking of gas without advance permission is condoned, either expressly or implied. Therefore, the taking of the gas, regardless of the grievant's intentions to pay the following day was an act of theft.

The grievant's intentions in this case are fair game for arguments over the severity of discipline. Review Committee Decision Nos. 1451 and 1452 outline certain misconduct offenses for which no consideration of merits will occur. This is not one of those cases, therefore, it must be judged on its own merits.

It is undisputed that the grievant took 1.6 gallons of gas. He claims he took the gas because his own vehicle had run out. In dispute is whether the pick-up was running at the time he was putting in the gas. The Company credits the management employee's testimony that the pick-up was running. Company members of the Committee are particularly troubled by the fact that the grievant was in a position of trust, operating essentially unsupervised dispensing gasoline. That trust was violated when the grievant dispensed gas into his own vehicle. However, in consideration of the amount of gasoline taken which lends credence to the grievant's claim that he was in need of gas to get to a gas station or home, the Committee is in agreement that discharge in this case is too severe. In reaching this conclusion, the Committee is in no way condoning the grievant's actions.

#### Decision

The grievant is reinstated without backpay but with service and benefits intact as a MEOB in a supervised crew situation in the Gas Construction Department in the East Bay area. The grievant will be placed at the Decision Making Leave step of Positive Discipline which will be active for one year from the date of his return to work.

With this adjustment, this case is considered closed.

#### FOR COMPANY:

William J. Eddy  
Rodney J. Maslowski  
Ronald A. Morris  
David J. Bergman

By 

Date 8-27-90

#### FOR UNION:

Arthur D. Murray  
Patrick S. Nickeson  
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Roger W. Stalcup

By 

Date 8/23/90