

7.1: SYSTEM OPE. ISSUED WR, TERMINATED 5
MOS. LATER. BOTH EVENTS RELATED TO BEING
UNDER INFLUENCE ON THE JOB. DISCHARGE
SUSTAINED. DISPUTE BET. CO. & UNION ON
UTILIZATION OF FITNESS FOR DUTY EXAM NOT
SETTLED.



REVIEW COMMITTEE

IBEW



PACIFIC GAS AND ELECTRIC COMPANY
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RECEIVED MAR 24 1997

**CASE CLOSED
FILED & LOGGED**

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO
LOCAL UNION 1245, I.B.E.W
P.O. BOX 4790
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R.W. STALCUP, SECRETARY

MARGARET A. SHORT, CHAIRMAN

- DECISION
- LETTER DECISION
- PRE-REVIEW REFERRAL

San Jose Division Grievance No. SJO-96-37
San Jose Division Grievance No. SJO-97-02
Pre-Review Committee File No. 2103
Review Committee File No. 1810

Kathy Richards
Company Member
Local Investigating Committee

Kathy Maas
Union Member
Local Investigating Committee

Subject of the Grievances

These cases concern a Written Reminder in Work Performance and subsequent discharge of a Distribution Operator (System Operator 1) from the San Jose Switching Center.

Facts of the Case

The grievant had almost 18 years of service and had been a System Operator for more than five years at the time of discharge. The Written Reminder, which still had about six months active status to run when the incident leading to discharge occurred, was issued, "as a result of unsatisfactory work performance". Specifically, on May 18, 1996, a Gas Service Operator at the San Jose headquarters (in the same building as the grievant) notified the Electric Construction Supervisor that he had been calling and knocking on the door of the Switching Center for about an hour without response. The Service Operator then notified the on-call supervisor who tried for another hour before reaching the grievant who was on shift. The on-call supervisor testified that the grievant sounded incoherent on the phone. The on-call supervisor directed the grievant to remain at the Switching Center, pending his arrival. By the time supervisors arrived at the Switching Center at 10:50 p.m., the grievant had been off shift for 20 minutes. The switching center Superintendent arrived at approximately 11:00 p.m.

The on-call supervisor stated that he observed the grievant as incoherent and smelling of alcohol, but did not recommend a fitness for duty examination at that time. Several other employees who came in contact with the grievant near the end of or following his shift were interviewed. None of those other witnesses stated they smelled alcohol about the grievant. The Switching Center Superintendent stated that the grievant had red eyes and was acting very emotionally. In response to a question from the Superintendent, the grievant denied he had been drinking alcohol. The Superintendent did not indicate smelling the odor of alcohol about the grievant. He also did not recommend a fitness for duty examination at that time.

Following conversation between the grievant and the on-call supervisor and superintendent, the grievant's wife arrived at the Switching Center. The grievant left with his wife at 12:15 a.m.

On Sunday, May 19, the grievant called in sick. On Tuesday, May 21, an investigatory meeting was held. Based on the grievant's responses and the events of May 18, Company decided that a Fitness For Duty examination was needed. The doctor recommended the grievant be evaluated for a chemical dependency outpatient program. Return to work was contingent on limiting the use of a prescription medication he was taking. His return to work hours were to be determined by whether he participated in an outpatient chemical dependency program and needed time off work. Two days later, the doctor indicated he was seeing the grievant medically and gave an expected return to work date of June 11, 1996.

The grievant remained off work until August 12, 1996, at which time he returned with releases from his doctor and Company's EAP Administrator. When the grievant returned to work, he was precluded by both his personal treating physician and a doctor who examined him at the request of the Company from working any overtime for three months. The grievant began working overtime again on November 15, 1996 after a discussion with his supervisor. There was no second opinion from a doctor.

Prior to the Written Reminder at issue in this grievance, which was issued on August 20, 1996, the grievant had an active coaching and counseling for unavailability, followed by an Oral Reminder for the same.

After the Written Reminder, the grievant was coached and counseled for a being away from his workstation on November 16, 1996 and again for a no call, no show on December 18, 1996. Both times he was encouraged to talk with EAP. In addition, on December 12, the grievant was taken for a Fitness for Duty examination as the supervisor observed the strong smell of alcohol on his breath and he had a difficult time following maps. As is his right pursuant to the Fitness For Duty agreement, the grievant declined to take a breathalyzer test or to consent to the release of detailed information. The doctor concluded the grievant was not fit for work that day but could return to work the following day.

The incidents leading to discharge occurred on January 4, 1997 when the grievant was found by two management employees asleep at his work station and under the influence of alcohol. One of the management employees had been contacted by another System Operator from the Edenvale Switching Center indicating a problem communicating with Almaden Switching Center and advised the management employee to go to Almaden and to take another employee with him as a safety precaution. When the two supervisors arrived (neither was the grievant's supervisor), they observed the grievant appeared unconscious. They called his name several times without response. They then walked to his workstation and shook him. He awoke then. The supervisors also smelled alcohol. They instructed the grievant to wait until his supervisor arrived for a Fitness for Duty exam. The grievant chose to leave on foot. The grievant was suspended and did not return to work prior to discharge on January 21, 1997.

The grievant testified that while he was off from May to August, he entered a 28 day in-patient alcohol recovery program. He indicated he did not apprise the Company of his whereabouts and he did not disclose his alcohol related problems to the Company panel physician. By about November he began to cut down on his 12 step meeting attendance and by mid-December had stopped attending all together and was drinking again.

The grievant testified that on January 4, 1997 during his shift, he left the building twice to purchase fifths of alcohol and consumed them in the workplace.

Discussion

This case has been discussed at great length at each step in the grievance procedure and at the Review Committee. At the outset, the Union acknowledged the inappropriateness of the grievant's behavior but opined that the discipline should be mitigated because of the long hours and stressful working conditions at Almaden. Union noted that the grievant had been medically precluded from working any overtime for 90 days following his return to work on August 15, 1996, but that he had worked from 16 to 19 1/4 hours each day during the five days prior to the May 18, 1996 incident.

With regard to the Written Reminder, the Union argued that the Fitness for Duty exam was administered several days after the observed questionable behavior and therefore was inappropriate.

Union noted that by letter dated March 12, 1986, regarding the Fitness For Duty Procedures, Union's Business Manager asked Company's Manager of Industrial Relations to confirm Union's understanding that "PG&E will not require medical clarification unless it has reasonable grounds to believe that an employee's faculties are impaired on the job". By letter dated March 26, 1986, Company responded, stating "PG&E will not require medical clarification unless it has reasonable grounds to believe that an employee's faculties are impaired on the job. You quote us correctly."

In the Union's view, this correspondence confirms an understanding that a medical clarification for fitness for duty must take place immediately following the observation that "an employee's faculties are impaired on the job". In the case at hand, the observation took place around 1:00 p.m. on a Saturday evening. The fitness for duty exam was not conducted until mid-day the following Tuesday.

Company responded that by the time supervisors arrived at the workplace, the grievant's shift was almost over. Getting a doctor's opinion about fitness for that shift was moot, however, Company had an on-going concern about the grievant's fitness due to that incident and comments he made during the investigation. Company has an obligation to seek medical clarification if there is concern about an employee's ability to work safely or concern about the safety of other employees who rely on that employee. Further, Company noted the grievant did not return to work immediately after the examination which is evidence that there was a problem.

With regard to the discharge, Union maintained that the grievant was again being required to work double shifts and considerable overtime. However, the record indicates that in the four weeks preceding discharge there were 20 workdays. The grievant worked 12 of those days and was on vacation 8 days. In addition in that four week period there were 8 RDO's. The record does not support that the grievant worked substantial overtime in the four week period prior to discharge.

Union also argued that the grievant deserved another chance. He had self-referred into a 28 day alcohol rehabilitation program and had continued to attend outpatient meetings for some time thereafter. However, stresses created in the work environment, a separation from his wife, a death in the family, and the holiday period lead to a relapse.

Company argued that the grievant had been given several opportunities to address his medical and personal conditions. He had been absent on sick leave for three months and was restricted to working no overtime for three months following his return to work. He resumed working limited overtime on November 16, 1996. No medical opinion was solicited on this issue at that time as neither the Company or the grievant requested one. On December 2, 1996, he was Coached and Counseled for leaving the work station without notification to his supervisor. On December 12, 1996, grievant was again at work while under the influence of alcohol. A fitness for duty exam was administered and he was found to be unfit that day. On December 18, 1996, the grievant was again Coached and Counseled, this time as a result of a no-call-no show incident.

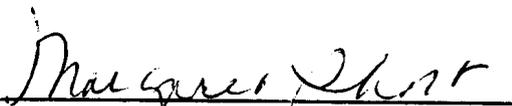
Further, Company stated that the grievant testified that on January 4, 1997, he left his work location twice to purchase alcohol, which he consumed while on shift. He failed to respond to requests of other employees, was asleep at his work station, misused Company equipment and disobeyed two supervisors by leaving the switching center. He failed to respond timely to an outage, causing it to be more extended than necessary. The public and fellow employees were placed in danger as a result of his failure to perform his duties.

Decision

After a thorough review of this case, the Review Committee is in agreement that the discharge was for just and sufficient cause. It is to be noted, however, that the Union has not abandoned the argument that the Fitness-For-Duty examination conducted on May 21, 1996, was inappropriate as a result of not having been administered in a relatively short time frame following the supervisor's observations. This case is closed without adjustment.

For the Company:

Bill Blastic
Rod Maslowski
Bill McLoughlin
Margaret A. Short

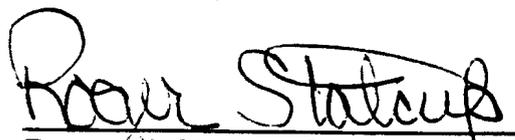

Margaret A. Short, Chairman
Review Committee

3/19/98

Date

For the Union:

William Bouzek
Mike Grill
Sherrick Slattery
Roger Stalcup


Roger Stalcup, Secretary
Review Committee

3/24/98

Date