

7.1; 105.5: DML was issued to a Street Fitter for entering a hole with blowing gas which is an unsafe working practices. The DML has deactivated making the issue moot. Further, the RC agreed that if there is another grievance involving a DML entering an excavation with blowing gas, the parties may expediate the grv. to arbitration.

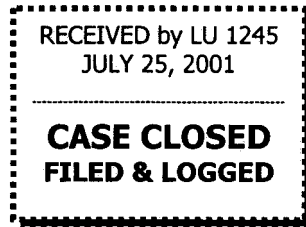


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MARGARET A. SHORT, CHAIRMAN

- DECISION
- LETTER DECISION
- PRE-REVIEW REFERRAL

REVIEW COMMITTEE



IBEW



INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO
LOCAL UNION 1245, I.B.E.W.
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SALIM TAMIMI, SECRETARY

Review Committee No. 11504 General Construction

Brenda Marks
Company Member
Local Investigating Committee
Committee

Kit Stice
Union Member
Local Investigating

Grievance Issue

This case concerns a Decision Making Leave (DML) issued to a Street Fitter for entering a hole with blowing gas.

Facts of the Cases

The grievant is a Street Fitter with approximately 25 years service. On January 21, 2000, a third party dug into a 3-inch plastic gas main. A gas crew was called in response to the dig-in. The Gas Crew Foreman testified that he had instructed the grievant to dig a hole on each side of the dig-in and put clamps on while the GCF went to the yard for repair materials. Instead disregarding the Crew Foreman's direction, the grievant entered the hole with the blowing gas and installed cold clamps. The grievant stated that he believed what he did was safe, however, acknowledged that he did not wear a flash suit or have an observer as required.

The grievant attended training sessions covering safe work practices in these situations on November 22, 1999 and on January 13, 2000, one week prior to the dig-in. Company has been communicating extensively on this topic and taking severe disciplinary action in an effort to stop the practice of entering holes with blowing gas.

The grievant had two active coaching and counselings for failure to wear a safety vest and not properly completing his paperwork.

Discussion

The Union argued that the DML was too severe. In the past, the grievant's actions would have been acceptable. Additionally, there were two other employees on the scene (a Gas Service Rep and an Electric Distribution Supervisor) and neither attempted to stop the grievant. The Union expressed concern that the Company is trying to raise the bar on discipline. Union cited other safe work procedure violations, specifically switching errors, that typically result in a Written Reminder for a first offense where there is no other active discipline. Further, Union noted that a DML under the Positive Discipline system is equivalent to a three to five day disciplinary lay-off without pay under the Constructive Discipline system and under the Constructive Discipline system, this offense would have warranted a one or two day lay-off or the equivalent of a Written Reminder under the PD system.

Union stated that the purpose of discipline is to change behavior and that in their opinion, a Written Reminder, can accomplish changed behavior without putting the employee at risk for termination for a minor event as a result of being on an active DML.

Company agreed with Union's comments about consequences under the Constructive Discipline system but noted that PD has been in effect for approximately 15 years. During that time various levels of discipline have been taken for entering a hole with blowing gas, however, since an incident in 1999 where a Gas Fitter was seriously burned trying to install a clamp on a leaking plastic main, the Company had made a concerted training effort system-wide. By letter dated August 15, 1999, which was reviewed with all gas construction employees, Company communicated:

"If it is determined that the area they will be working in, or is anticipated to be a hazardous/gaseous atmosphere, anyone entering that area is required to use an approved gas flash suit and proper respiratory equipment. Some believe that a hazardous/gaseous atmosphere is only present in the excavation and not at or above ground level. This is not always true. Depending on the nature of the leak and other factors, a hazardous/gaseous atmosphere may exist at and above ground level in addition to the excavation..."

In addition, the Code of Safe Practices (CSP) 1313(d) states:

"Employees working in an area where a hazardous gaseous atmosphere is present, or is anticipated, shall wear an approved flame resistant suit for protection against accidental ignition."

The grievant had received Respiratory Awareness Training two months prior to the incident and attended a training approximately one week prior to the incident during which a video was shown that covered situations like this.

Finally, PRC 2207, 11473, and 11474 all concerned DML's given to gas department employees for entering an excavation with blowing gas.

Considering the potentially serious consequences, the Company believes that a DML is appropriate. Additionally, the grievant had recently been trained on how to properly handle such situations and ignored the very specific instructions of his GCF.

Decision

The Committee could not reach agreement on whether the DML was issued for just cause. The DML has deactivated making the issue moot. The Committee agrees to close this grievance on this basis without prejudice to the position of either party. Further, the Review Committee agreed that if there is another grievance involving a DML for entering an excavation with blowing gas, the parties may expedite the grievance to arbitration.

For the Company:

Margaret A. Short
Ernie Boutte
Dave Morris
Malia Wolf

For the Union:

Sam Tamimi
William R. Bouzek
Ed Dwyer
Sherrick A. Slattery

Margaret Short
Margaret A. Short, Chairman
Review Committee

7/25/01
Date

Sam A. Tamimi
Sam Tamimi, Secretary
Review Committee

7-25-2001
Date