



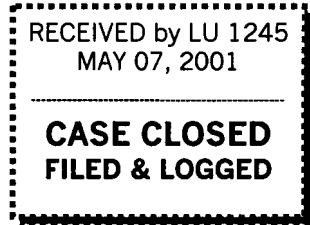
REVIEW COMMITTEE



PACIFIC GAS AND ELECTRIC COMPANY
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MARGARET A. SHORT, CHAIRMAN

DECISION
LETTER DECISION
PRE-REVIEW REFERRAL



INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO
LOCAL UNION 1245, I.B.E.W.
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WALNUT CREEK, CALIFORNIA 94596
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SALIM A. TAMIMI, SECRETARY

Review Committee No. 11646

Monica Oakes
Company Member
Local Investigating Committee

Jim Lynn
Union Member
Local Investigating Committee

Subject of the Grievance

This case concerns the discharge of a Lineman for failure to return to work or to submit a completed Leave of Absence application form.

Facts of the Case

The grievant was assigned a Tuesday-Saturday schedule. He called in sick on Tuesday, February 29, 2000 and each day that week including Saturday. On the following Tuesday, March 7, the grievant's wife called in stating the grievant was still sick and she would fax a doctor's excuse. The supervisor advised her to drop off the excuse which she did on Thursday. The note dated March 7, stated: "Off work to 3-21-00 because of illness." It did not give the nature of the illness nor did it state how long the grievant had been ill.

The grievant was a no call; no show on March 21 and 22. The supervisor called the telephone of record on both of those dates, as well as, March 15. There was no answer. Later on March 22, the grievant's wife called to inform the supervisor that the doctor wanted the grievant to stay home an additional two weeks and she would bring in proof. She also gave the supervisor a current phone number.

During the phone conversation, the supervisor informed the wife that the grievant had run out of sick leave on March 8. His time off was being charged to vacation and he only had eight more days of it. The supervisor advised the wife that if the grievant was off work more than ten workdays after exhausting the vacation, he would need to apply for a leave of absence or he could be discharged.

When the wife did not arrive on March 22 with the doctor's note, the supervisor sent another temporary supervisor to deliver the employee's check and Leave of Absence forms to his home. The supervisor spoke with both the grievant and the wife and told them it was important to have the application completed and returned. The wife indicated she would personally deliver the form the next day. That evening the couple gave the supervisor a doctor's note dated March 21 which stated: "Off work to 4-15-00 diagnosis - depression."

Late on March 23, the supervisor spoke with the wife who indicated the Leave of Absence form had not yet been completed. The supervisor stressed the importance of having the form completed or termination could result.

On March 24, the supervisor received a call from the Union Business Representative indicating the grievant was going to file a Workers' Compensation Claim. The supervisor told the Business Rep that the Leave of Absence form was still needed. On March 27 the supervisor called the grievant's home in the presence of the shop steward and left a message about completing the leave form.

Late on March 28, the wife came to the office and gave the supervisor a pink slip which indicated October 99 as the date of injury with a request to see a doctor for "stress and intimidation". The wife was given additional Workers' Compensation forms to complete. The supervisor informed her that until the Workers' Comp claim had been accepted, it was still necessary to complete the leave forms.

On March 29, the supervisor contacted the Safety, Health, and Claims Workers' Comp Rep to alert her of the claim. The supervisor contacted the Workers' Comp Rep on April 4 and was told the WC rep had left several messages for the grievant over the past several days but had received no response.

Also on April 4, the supervisor contacted the Union Business Rep and informed him the grievant had only one day of vacation left. The supervisor clarified for the Business Rep that the claim had not yet been accepted and therefore the time off had to be authorized by leave of absence. The Business Rep indicated he would contact the wife right away to ensure that she understood the need to deliver the necessary form.

On April 5, the last day of vacation, the supervisor sent a certified letter to the grievant indicating he had exhausted all paid time off to which he was entitled and that he had until April 19 (ten workdays) to get the completed leave forms turned in or return to work. The certified receipt was received indicating the letter was delivered on April 6. The receipt was signed, however, at the LIC, both the wife and grievant denied the signature belonged to either of them. It appears to be the grievant's name.

On April 6, the grievant and his wife showed up at the HR office. The wife told the HR Advisor that the grievant's job was being threatened by a letter they'd just received. The wife insisted that since the grievant had filed a Workers' Comp claim the request for the completion of leave forms was inappropriate or even illegal. The HR Advisor explained that until the claim is accepted, the time off has to be accounted for and

therefore the leave forms needed to be submitted. The Advisor explained that if they were uncomfortable with that, they could indicate on the leave form that signing the leave forms in no way compromised their pending Workers' Comp claim. The HR Advisor received from the wife the completed DWC form (application for Workers' Comp).

The DWC form was delivered to the Superintendent's office and later faxed to SH&C. The Comp Rep indicated she was processing the claim and had been trying to get a hold of the grievant.

On April 12, the HR Advisor left a voice message for the grievant reiterating the need for the completed leave forms and that the Workers' Comp application would not be compromised by doing so. At the LIC, the grievant and his wife acknowledged receipt of this voice message.

At the LIC it was determined that the grievant had completed two prior pink slips. On both he had failed to check the box asking the question, "Do you need medical treatment other than first aid?"

On April 19 the grievant did not return to work or submit the completed leave form. Further, no messages or contact was made by the grievant to his supervisor.

On April 20, the supervisor was informed that the Business Rep had talked with the grievant/wife the evening of the 19TH and informed them of the need to submit leave papers. They told the Rep they would do so by 1:00 p.m. on April 20. At approximately 1:30, a different HR Advisor was contacted by the wife. This Advisor told the wife the leave papers were needed immediately. The wife claimed to have misunderstood the process but indicated she would personally wait in the doctor's office, get the leave form completed, and deliver it to the HR office that same day, April 20. Based on this commitment, the supervisor agreed to delay termination until 5:00 p.m. The wife was so informed.

There was no further contact from the grievant or his wife that day. About 5:15 p.m. the HR Advisor went to the building lobby to check for the grievant/wife; she then walked across to another building where there was a security guard to see if anyone had been looking for her. No one had been there looking for her. At that point the Advisor emailed the Union Business Rep of the situation and spoke with the supervisor by phone.

On April 21, the supervisor ordered the grievant's final paycheck. The termination letter was sent by certified mail on April 24. The receipt was returned unsigned.

On May 1 the supervisor and a Security Rep went to the grievant's home to collect his ID card and keys. The wife said the grievant was not available and ordered the supervisor off her property. By May 8, Security still had not heard from the grievant.

The wife and a shop steward both testified to the LIC that the doctor would not complete the leave of absence papers without first examining the grievant.

At the time of termination, the grievant had an active coaching and counseling from December 15, 1999 for failure to report for a work assignment.

Discussion

Union alleged the grievant should not have been terminated because he was not capable of making decisions related to his employment, that he relied on his wife who was unfamiliar with Company policies and procedures. His wife acted alone in deciding not to submit the leave form. The Union noted the grievant had twenty years of service and was a good Lineman. Finally, the Union cited Review Committee Decision 1536 as being a similar situation and that employee was placed on Long Term Disability.

Company opined there was no evidence that the grievant was incapable of making decisions, but that notwithstanding, his wife was told on several occasions by several different people both in writing and orally what was needed. The Union can't have it both ways, argue that the grievant was incapacitated and had to rely on the wife and then argue she didn't understand. There is nothing Company could have done to make the instructions any more clear. The grievant and his wife resorted to self-help. By their own testimony, the doctor wanted to examine the grievant. Why did he not submit?

At the Pre-Review step of the grievance procedure, a letter was sent to the doctor asking him several questions. The doctor indicated he had treated the grievant for about ten years. He diagnosed the grievant as suffering from depression, anxiety, and was suicidal. He indicated the grievant had not followed the recommended course of treatment and had torn up the completed leave of absence form. The doctor indicated he did not know whether the grievant was capable of understanding the ramifications of not turning in the completed leave forms. The doctor also submitted copies of his notes from each visit. It is apparent from the notes that the grievant did not follow the doctor's recommendation to see a psychiatrist. There is even one notation where the grievant told the doctor he had gone to the recommended clinic but when the doctor checked, the grievant had not been there.

Company believes if followed all appropriate procedures to help the employee maintain employment and that the cited Review Committee Decision is not relevant.

Findings

- The grievant was a 20 year employee with very little sick leave available.
- The grievant had an active coaching and counseling in Conduct.
- The grievant declined to follow medical advise or seek medical treatment on several occasions. The grievant did contact EAP in December 1999.
- That Section 101.1 provides for leaves of absence for urgent and substantial reasons for absences in excess of ten consecutive workdays without pay. The grievant was properly given the leave of absence form to be completed by his treating physician. This is consistent with how this Section has been administered in the past.
- The Workers' Compensation claim is not a proper subject for the grievance procedure.

Decision

The Review Committee agrees that steps should be taken to protect the rights of employees with medically documented mental health problems that prevent them from making sound decisions concerning their employment with the Company. The Committee is further in agreement that because so many extra steps were taken in this case to protect the grievant, there was just and sufficient cause for discharge.

This case is considered closed without adjustment.

For the Company:

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Ernie Boutte
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For the Union:

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Ed Dwyer
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By: Margaret Short

By: Salim A. Tamimi

Date: 5/7/01

Date: May-5-2001

