



REVIEW COMMITTEE

IBEW



PACIFIC GAS AND ELECTRIC COMPANY
2850 SHADELANDS DRIVE, SUITE 100
WALNUT CREEK, CALIFORNIA 94598
(925) 974-4282

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO
LOCAL UNION 1245, I.B.E.W.
P.O. BOX 4790
WALNUT CREEK, CALIFORNIA 94596
(925) 933-6060
SALIM A. TAMIMI, SECRETARY

MARGARET A. SHORT, CHAIRMAN

DECISION
LETTER DECISION
PRE-REVIEW REFERRAL

ADDENDUM TO REVIEW COMMITTEE DECISION NO. 12574 OM&C – Electric T&D – Red Bluff

Lori Coniconde
Company Member
Local Investigating Committee

Kit Stice
Union Member
Local Investigating Committee

This case concerned the discharge of a Lineman, [REDACTED]. The Review Committee agreed to reinstate Mr. [REDACTED] with back pay less outside earnings and benefits in tact. Mr. [REDACTED] outside earnings exceeded what he would have earned had he not been discharged, therefore no back pay was paid.

The Secretary and Chair of the Review Committee can recall nor find another case where a full-back pay award was provided for in the grievance decision that did not result in a payment. Because of this unique situation, that is no payment of wages, no 401K contributions on the part of Mr. [REDACTED] or the Company is possible.

Discussions with Payroll, Benefits, and the Law Departments confirm that Savings Fund Plan contributions and matching in prior employee reinstatements have been paid only on the net back pay award, that is, after the subtraction of outside earnings. Consistent with that practice, no 401K Company matching is due Mr. [REDACTED] for the approximate four months that he was a discharged employee.

Mr. [REDACTED] participated in the Savings Fund Plan at 15% contributions and was eligible for the 6% Company match. The Union indicated that a back pay award and reinstatement is indicative that just and sufficient cause did not exist for the employee's discharge; that he has been harmed and continues to be harmed by the inability to contribute to the Plan. The Union therefore proposed an equity settlement in this situation to compensate Mr. [REDACTED] in the amount of \$[REDACTED].

Decision

Company will agree without prejudice or precedence to the above payment, less applicable taxes.

The Union agrees that this payment satisfies all issues related to the above-filed grievance and Mr. [redacted] discharge of March 26, 2001.

Further, the parties agree that in the future contributions to the Savings Fund Plan will be based on wages actually paid to a reinstated employee in the percentages designated prior to the employee's discharge.

The above outlines the parties' understanding and agreement for future reinstatements. Should the law covering the 401K plan change, the parties may reconsider this agreement.

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

By: Margaret Short

By: Sam A. Tamimi

Date: 2/21/02

Date: 2-21-02

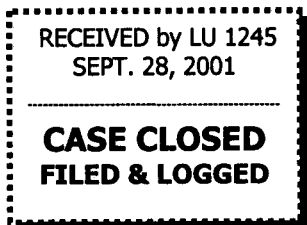


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Review Committee No. 12574

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Subject of the Grievance

This case concerns the discharge of a Red Bluff Lineman due to a grounding procedure violation committed by the crew of which he was a member. Specifically, the crew failed to connect all foreign grounds to the Equal Potential Zone (EPZ) and to remove self-contained meters, install a Caution Tag, cover the meter base with a glass and install a meter ring. The grievant failed to take action to mitigate an unsafe act.

Facts of the Case

On February 26, 2001 a four-man crew was assigned to replace a transformer damaged due to a lightning strike. The grievant drove a separate truck to the job site and arrived after the crew had conducted a tailboard. When he arrived, the Crew Leader told him to clear the brush around the work site and to prepare the material bag. At the tailboard it had been decided that the other two Linemen would work on the pole and the Crew Leader would be the observer on the ground.

The Crew Leader removed the meter on a house to the north and created a visual opening on the other two meter sites. He did not place caution tags. As the Linemen were disconnecting the high side of the transformer, they noticed that the dead end bells were flashed. A clearance was then sought and obtained.

The crew's immediate supervisor arrived at the job site while the Linemen were still on the pole. He noticed right away that the crew had established an EPZ and failed to tie the foreign ground into it. The supervisor also noted they had not pulled the meters or disconnected (shunted) the secondary.

All three crew members (other than the grievant) testified that they forgot to pull the leads to the secondary because they became so concerned about the flashed dead end bells. Further, the Crew Leader testified he was not aware that a transformer ground was considered a foreign ground and it did not register with him as a potential hazard. The other crew members also testified they did not know they had to shunt the transformer ground to the EPZ, that the first time they were aware of that procedure was when the supervisor told them so that day.

The Crew Leader was given a Written Reminder and the Linemen were given Oral Reminders. They were also grieved and no resolution had been reached at the time of the Review Committee meeting.

The grievant was discharged because he was on an active DML, which resulted from the resolution of an earlier grievance. RC11437 concerned the grievant's discharge for allegedly throwing a hammer at another employee on the ground. Following his return to work on July 21, 2000 from that discharge, the grievant was involved in another grounding error. On January 7, 2001 the grievant was working with an Electric Crew Foreman on a car pole accident. They failed to install a second set of grounds on a transformer located at the other end of the line, not recognizing it as a potential back feed source. In lieu of discharge, the Company issued Mitigation to Discharge letter to the grievant, citing his truthfulness in the investigation, the lack of consequence for the grounding error, and the lack of a shop steward during the investigation.

Discussion

The Union argued that the grievant should not have been disciplined at all in this case because he did not participate in the tailboard and did not know which of several appropriate work procedures the crew was going to utilize in replacing the damaged transformer. Therefore, when he arrived at the job site he wouldn't necessarily know whether the crew was following all the rules or not. The Union further argued that the grievant was acting as the Groundman on that day and had no responsibility to observe or instruct the manner in which the work was performed.

Union commented that all the employees in the Red Bluff headquarters have been disciplined for grounding errors and that training was not provided until after the discharge that is the subject of this grievance even though employees had been asking for training for quite some time. Union also submitted documentation of another grounding incident, which occurred 12 days before the incident that is the subject of the discharge. In that situation, the ECF received a WR but the Lineman on the crew was not disciplined or coached and counseled. Union opined that Company was not being consistent in its application of discipline.

Union stated a belief that local supervision was "out to get" the grievant, that there is no history in Red Bluff or anywhere else in the system of disciplining all employees on a crew including those who did not have responsibility for committing the error.

Company responded that some of the grievant's statements in the LIC indicate a knowledge on his part as to how the job was to proceed. As a journeyman Lineman and especially in light of the January 7 grounding incident in which he was directly involved, the grievant should have recognized the grounding error and said something to the other crew members to stop the job and utilize the correct procedures. Company argued, that the grievant was working in the immediate vicinity of the pole and had to have observed that the secondary leads were not pulled. Further, this crew's failure to ground the transformer in the EPZ was a repeat of January 7 and if anyone should have known the correct procedure, it is the grievant.

The T&D Safety Accountability Model has been reviewed with all employees. For Linemen and other physical non-lead positions, it states the employee:

"Shall use reasonable care in the performance of their duties and act in such a manner as to assure at all times maximum safety to themselves, fellow employees, and the public.

"Knows and follows all of the safety rules for each task and shares job related information with other employees as necessary. Stops the job to clarify a safety or technical condition before proceeding with the task at hand. Actively participates in job site tailboards, staff meetings and safety discussions. May require to lead job site tailboard as assigned."

Company opined that the grievant was given the benefit of doubt twice, once with the reinstatement and once with the mitigation to discharge. Given the above expectation and the totality of his record, discharge was for just and sufficient cause.

In reviewing the discharge letter, the Review Committee noted that there is no reference to the Safety Accountability model.

Decision

After many lengthy discussions of this grievance, the following was agreed to resolve this case. The grievant is to be reinstated as a Lineman in Red Bluff with the prior DML active for the remaining number of months/days to equal 12 active months, approximately 3 ½ more months. He is to also receive a post-DML coaching and counseling based on the expectations of the Safety Accountability Model. The SAM is also to be reviewed with all employees in the headquarters.

If back pay is requested, grievant will need to provide documentation of his earnings and any unemployment insurance payments, which will be an offset to wages owed. If back pay is paid, the grievant will need to provide a copy of his 2001 IRS filing by the end of April 2002.

Benefits and vacation entitlement are in tact. As the grievant was in the Commercial Driver DOT Pool, a negative return to work test is required.

The Union argued that under PD the DML should have deactivated while the grievant was off work. Company did not agree with Union's interpretation of the PD agreement on this issue. Union stated their real concern was about retaliation by management against the grievant. Company's Review Committee members agreed to discuss these concerns with local supervision noting that neither the law nor Company policy protects such behavior.

This case is closed on the basis of the foregoing adjustment and understandings. Its closure should be so noted by the LIC.

For the Company:

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Ernie Boutte
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For the Union:

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By: Margaret A. Short

Date: 9/28/01

By: Salim A. Tamimi

Date: 9-28-01