



REVIEW COMMITTEE

IBEW



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INTERNATIONAL BROTHERHOOD OF
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SALIM A. TAMIMI, SECRETARY

MARGARET A. SHORT, CHAIRMAN

DECISION
LETTER DECISION
PRE-REVIEW REFERRAL

RECEIVED by LU 1245
Dec. 03, 2003

**CASE CLOSED
FILED & LOGGED**

Review Committee No. 14450
General Construction - Gas - Brisbane

Dave Mackey
Company Member

Hunter Stern
Union Member

Subject of the Grievance

This case concerns the discharge of a Miscellaneous Equipment Operator (MEO) with seven years of service.

Facts of the Case

On June 17, 2003 grievant was assigned to drive the crew truck to the job site in a residential area. Upon arrival at approximately 8:00 a.m., she found that a Company pick-up truck driven by the Backhoe Operator to the job site was parked in the location where she wanted to park the crew truck. The grievant indicated she wanted the crew truck with equipment and tools to be easily accessible to the crew.

Grievant first asked the Gas Crew Leader to get the keys to the pick-up from the Backhoe Operator so she could move it. The Crew Leader told her he was busy with a customer and to take care of it herself. Grievant stated she tried to wave down the Backhoe Operator for at least 30 minutes but did not get his attention. During this time she also blew the air horn on the crew truck to get the Backhoe Operator's attention.

Grievant then asked another Backhoe Operator to get the keys. That Operator approached the Operator who said he was busy moving a plate and would move the pick-up as soon as he was finished moving that plate. This was communicated to the grievant. The Operator did move the truck shortly after being approached by the second Operator.

The driver of the pick-up stated the grievant then approached the Backhoe while he was driving and carrying a plate. She yelled and swore at him to move the truck. He told her he wasn't going to listen to her yelling in that manner and took off down the hill to put the plates down and get another one. Again the grievant started yelling and swearing at him and said she was going to tell the Crew Leader the Operator tried to run over her with the backhoe. She did complain and the Leader called an exempt supervisor at approximately 8:15 a.m. to come to the job site. The Operator stated the grievant was always cussing at the whole crew. This crew had worked together for about 4-6 months.

Grievant stated the Backhoe Operator was driving between 25-30 miles per hour and he almost hit her. She stated he stopped abruptly and the front tire brushed her leg. Grievant did not file a pink slip as a result of this.

The Backhoe Operator stated he was driving approximately 5 miles per hour as one can't go too fast while carrying a plate. The Supervisor's investigation concluded that the Backhoe was not being operated at an unsafe speed. The Operator did state he had to stop abruptly when grievant approached the side of the Backhoe.

While this incident was being investigated, several crewmembers reported another incident involving the grievant, which had occurred approximately one week earlier. Two crewmembers were asleep in the cab of a truck during lunch. The grievant drove a Bobcat up to the driver's side of the truck and raised the pick so that it was pointing toward the cab of the truck and pulled forward so that the pick was within 2-5 feet of the cab window. Grievant then turned on the pick, which makes a machine gun noise, for approximately two minutes to wake the sleeping employees. Grievant stated she then moved the Bobcat behind the cab of the truck and rocked the truck a little by pushing it with the Bobcat. These employees were not wearing hearing protection, which is required when around an operating pick. The driver's side window was halfway down.

The Supervisor stated the piston in the pick could be broken when used without resistance such as how the grievant utilized it. Grievant stated she was not aware of this.

The grievant was on an active DML at the time of these incidences. The DML, which was not grieved, was for another "horseplay" incident where the grievant pointed a can of spray paint at a probationary employee because he brought to her attention a safety hazard that had been discussed that morning at the standup meeting.

Discussion

Union argued that horseplay is common among Title 300 employees and that the grievant learned that culture on the job. Further, Union argued the grievant did not know the seriousness of the DML step of Positive Discipline and that is why she did not grieve it. At each step in the grievance procedure Union argued reverently that the DML was too severe.

Company responded that for the last several years there has been increased focus on safety with very clear messages to employees that horseplay is not acceptable. Furthermore, the DML letter to the grievant specifically states:

"This behavior is a violation of our policy on civil treatment, Safety Accountability Model, T&D Values and Code of Safe Practices Rule P-9 (a) and (b) – Care in Performance of Duties. You are a senior employee and I count on you to act as a role model to the new employees in this organization."

"You need to be aware that any inappropriate conduct towards another PG&E Employee or violation of any work rules, standards or Policies during the term of the DML will not be tolerated and your employment with Pacific Gas and Electric Company may be terminated."

As to the DML, consistent with contract language and precedent grievance decisions, Company declined to discuss the level of discipline as it was not grieved and therefore stands. The confirming letter received by the grievant, quoted above, is very clear and unequivocal as to the seriousness of the DML and the grievant's status.

In Arbitration Case 180 in reference to a discharged employee who had been on a DML, the Arbitrator stated: "...Grievant's employment was hanging by a slender thread."

Finally, these are two serious safety incidences warranting discipline. Had the Company known of the Bobcat incident and coached and counseled rather than terminate, the Backhoe incident still would have resulted in discharge.

Decision

Based on the foregoing, the Review Committee agrees that the discharge was for just and sufficient cause. This case is closed without adjustment.

For the Company:

Margaret A. Short
Ernie Boutte
Dave Morris
Malia Wolf

By: Margaret Short

Date: 12/3/03

For the Union:

Sam Tamimi
William R. Bouzek
Louis Mennel
Sherrick A. Slattery

By: Sam A. Tamimi

Date: Dec. 3 - 03

