

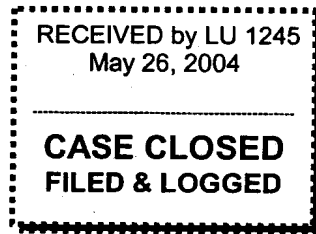


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MARGARET A. SHORT, CHAIRMAN

DECISION
LETTER DECISION
PRE-REVIEW REFERRAL

REVIEW COMMITTEE



7.1; 102.2: Discharge of a Cinnabar Lineman for inappropriate language toward a supervisor is for just and sufficient cause.

IBEW



INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO
LOCAL UNION 1245, I.B.E.W.
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(707) 452-2700
SALIM A. TAMIMI, SECRETARY

Review Committee No. 14765 OM&C – Electric T&D – San Jose/Cinnabar

Francis Azofeifa
Company Member
Local Investigating Committee

Bill Brill
Union Member
Local Investigating Committee

Subject of the Grievance

This case concerns the discharge of a Lineman for inappropriate language toward a supervisor.

Facts of the Case

The grievant was on an active DML, effective January 23, 2003 for an avoidable auto accident. The DML was grieved and upheld in the grievance procedure prior to the incident leading to the termination. The grievant also had an active Written Reminder for an avoidable auto accident. Both accidents resulted in total vehicle losses. The grievant failed to follow Code of Safe Practice Rules and speed laws.

The grievant also had an active Oral Reminder and several coaching and counselings.

On Monday, November 10, 2003 the grievant came to the bull room before 7:00 a.m. The supervisor said he thought the grievant was to be on vacation that day. The grievant responded that he "wouldn't be here if I was." Another Lineman came into the room and asked the grievant why he wasn't called out over the weekend. The grievant then realized he'd been bypassed for overtime.

The grievant went into the office to look at the overtime list and saw that it showed him being on vacation on Monday (11/10/03) making him ineligible for call-out the prior weekend. The Foreman's Clerk indicated she took the information from the vacation sign-up list. The grievant indicated he did not complete any paperwork to cancel the vacation day but told another supervisor who did not pass the message along to the Foreman's Clerk.

The grievant then went to the supervisor's office and stated that the "call-out list was all f—d-up and as a result I lost out on \$1200". The supervisor showed the grievant the sign-up list and told him it was the grievant's responsibility to have checked the list on Friday. The grievant stated he tried, but after working extended hours on Friday he could not locate the list upon returning to the yard. The grievant was yelling at the supervisor.

The supervisor then left the office and the grievant followed stating: "screw this place, I'm going home." The supervisor said, "You can't do that." The grievant responded, "Yes I can." The supervisor told the grievant to calm down and the grievant walked out the door.

The supervisor assigned another employee to work with the grievant's crew. The supervisor found out later in the day that the grievant actually went to work with his crew. The grievant reported back to the service center about 3:30 p.m. He looked at the sign-up list for Monday and noted that he was not at the top of the list. He then took the list to the supervisor's office to question why he wasn't at the top of the list. The supervisor responded that he thought the grievant had gone home on vacation.

More yelling and profanity by the grievant ensued. The grievant then marked the sign-up list with a "V" for vacation on Wednesday, November 12.

Discussion

Union argued that the grievant's behavior was just "shop talk"; grievant viewed his behavior as just "venting". Union argued the supervisor should have told the grievant to stop the inappropriate behavior or he would be subject to discipline or discharge. The Union opined that while profanity was used, there was no name calling of the supervisor. Union noted that the grievant was a shop steward who was first stepping a grievance. Union also noted that the grievant was one of the most frequent overtime workers and someone Company could count on to respond.

Company argued that yelling at and using profanity in discussion with a supervisor is inappropriate and that all employees know this and should not have to be forewarned. Further, even in the role of shop steward certain behavioral boundaries must be observed. In the instant case, the grievant exceeded these boundaries twice in the same day. Finally, an employee on a DML has made a total performance commitment to follow all rules, policies, practices, and perform at an acceptable level. This grievant was provided several opportunities to change behavior.

The parties reviewed a list of precedent cases where employees were disciplined or discharged, in part, for the use of inappropriate language. Specifically, the parties reviewed Arbitration Case No. 143, which states in relevant part:

"It is an accepted principle of collective bargaining, supported by federal law, that all participants in any meeting affecting employment rights must be entitled to express their views vigorously. This does not mean that insubordination must be tolerated. No policy protects an individual who makes threats against a Supervisor's well-being or directs profanity against a Supervisor."

This case was discussed at length at each step of the grievance procedure. At the Review Committee step, Union offered to close the case by reinstating the grievant on a DML, no back pay, and limited redress to the grievance procedure should he use profanity in the work place again.

Company considered this offer and respectfully declined.

Decision

The Review Committee agreed that this discharge was for just and sufficient cause. This case is closed without adjustment.

For the Company:

Margaret A. Short
Bob Lipscomb
Dave Morris
Malia Wolf

For the Union:

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

By: Margaret Short

By: Sam A. Tamimi

Date: 5/25/04

Date: 5-25-04

