

7.1; 102.2: An M&C Mechanic, Merced, discharged for a 2<sup>nd</sup> positive DOT drug test, reinstated without backpay as a Fieldman in Oakland, however, shall not be assigned to work alone; with DML for one year from the date of return to work and with some stipulations to follow upon return.

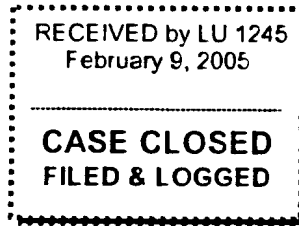


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MARGARET A. SHORT, CHAIRMAN

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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VACAVILLE, CALIFORNIA 94696  
(707) 452-2700  
SALIM A. TAMIMI, SECRETARY

Review Committee No. 15276  
OM&C – Gas T&D - Merced

Deborah Sargent  
Company Member  
Local Investigating Committee

Mike Grill  
Union Member  
Local Investigating Committee

### Subject of the Grievance

This case concerns the discharge of an M&C Mechanic for a second positive DOT drug test.

### Facts of the Case

The grievant first tested positive on a random DOT test on May 20, 1999. He returned to work on June 22, 1999 after rehabilitation, at which time, he signed a Return to Work Agreement.

Over the next five years, the grievant was tested many times either as a follow-up or random test. All were either negative or excused. In May 2004 the grievant was due for a follow-up test. When the Collector arrived at the Oakport (Oakland) Service Center, the grievant was not available for testing as he had reported to his new headquarters, Merced, on May 10. This test was rescheduled and the Collector took the grievant's specimen in Merced on June 23, 2004.

The specimen was verified positive as was the split sample for the same substance as the 1999 positive test.

At the time of discharge, the grievant had no active discipline and had 25.7 years of service.

### Discussion

Union cited Item 13, Items of Understanding, of Letter Agreement 04-16 which is the negotiated administrative procedure for the DOT mandated drug and alcohol testing program. It states:

"If 60 months or more have elapsed since an employee's verified positive random test and there have been no further positive tests during the following 60 months, the first test will not be used to support disciplinary action on subsequent verified positive tests."

Union opined that just cause did not exist for this discharge as more than 60 months had elapsed since the grievant's return to work after the first positive drug test. Union stated further, the grievant should have been removed from safety sensitive duties, reassessed, and rehabilitated before being returned to work again.

Company responded that the collection while one day late, was actually the May test rescheduled which was within the 60 months. Further, Company argued that having a controlled substance in his system meant he must have used prior to the day of collection or even if it was that morning, he reported under the influence and violated his DOT Return to Work Agreement.

Company queried the Medical Review Officer about how long this substance, methamphetamines, would stay in the system. The response was: Single Use = 2 to 4 days High Dose or Chronic Use = 6 days

Finally, the Review Committee acknowledged the reason for drug and alcohol testing is to promote a safe working environment and that the DOT regulations do not dictate penalty for a positive test other than removal from safety sensitive duties. The penalty is negotiated between the parties and documented in Letter Agreement 04-16.

#### Decision

Based on the factual situation above, the Review Committee agreed to the following to settle this grievance:

- Reinstatement without backpay as a Fieldman in Oakland; shall not be assigned to work alone
- Decision Making Leave effective for one year from the date of return to work
- Evaluation by a Substance Abuse Professional (SAP)
- Successful completion of a rehabilitation plan as prescribed by an SAP
- Negative return to work test
- Signing of a DOT Return to Work Agreement
- Lifetime follow-up testing in addition to random testing
- Limited redress to the grievance procedure if terminated during the active life of the DML or if ever another positive drug or alcohol test
- After the DML deactivates, the grievant would have Section 206.9 preferential bid rights to return to an M&C Mechanic in Oakland. His bid rights to M&C Mechanic in other locations or to other classifications would be in accordance with Section 205.7(b-e).

#### **For the Company:**

Margaret A. Short  
Bob Lipscomb  
Dave Morris  
Toby Tyler

By: Margaret Short

Date: 2/9/05

#### **For the Union:**

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

By: Sam A. Tamimi

Date: 2-9-05