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Mr. L.L. Mitchell  
I.B.E.W. Local 1245  
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Dear Mitch:

I've wrestled with the hypotheticals you sent over for some time. It has become clear to me that I am unable to give you a clear cut list of employee rights to leave for personal reasons. Whether an employee under the P. G. & E. physical agreement is entitled to leave depends upon the circumstances of each case. My definite thoughts on the subject are limited to the following:

Title 101.1 would appear to govern whether an employee should be granted leave. That Title gives the employer limited discretion to deny leave where the personal basis for leave is not "urgent or substantial", or adequate arrangements cannot be made to take care of the employee's duties "without undue interference with the normal routine of work".

The language of that Title at the very least would seem to require that management be given notice by an employee that he desires leave. Management has the right to direct the work of the Company under Title 7.1 and the language of Title 101.1 seems to imply that an employee does not have the right to be absent from work without at least letting the employer know, so that it can make the necessary arrangements to assure that the work its entitled to direct gets done.

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Of course, there are circumstances under which an employee's failure to request leave before taking it, would not give management the right to impose discipline. For example, if an emergency arose which needed the employee's attention immediately or he was confronted with circumstances which made it impossible or impractical to notify the employer, then his failure to request leave should be excused. There are arbitration cases in which such a finding has been made.

Once the employee has requested leave, under most circumstances it must be granted. The burden of justifying denial or discipline is on employer. Title 101.1 says that the employer shall grant leave. It can deny leave only if it can show that the reason the employee wants leave is frivolous or that there is a pressing need for his services at the time he wishes to take off.

A refusal by a supervisor to grant time off, unless he makes a good case for requiring the employee to remain on the job, can in my opinion, be ignored by the employee with impunity, provided the employee's reason for wanting time off is "substantial".

What constitutes a "substantial personal reason" is difficult to assess without having a concrete set of facts from which to work. Going to a son's baseball game, which ordinarily may not be a substantial personal reason, becomes one if the employee seeking time off is divorced, his son lives with the employee's former wife and the employee has only certain opportunities to see his son, etc.

The more "substantial" the personal reason, the less the employer can argue that the grant of time off would unduly interfere with the normal routine of work.

The time it takes to accomplish the personal business is yet another factor which may determine whether or not the employer has a right to deny time off. The less time the personal business requires, the less likelihood there will be of undue interference with the normal routine of work. An hour or two off to go to the bank to cover a bounced check, would appear to be a substantial personal reason for time off which, under most circumstances, would not unduly interfere with the normal routine of work.

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It would appear that all of the personal reasons, funeral of a close friend, banking needs, court appearances, loss of baby sitter, etc. are "substantial" and thus leave should ordinarily be granted.

Whether leave should be granted with pay or taxed as vacation would, in the first instance, depend on whether the Company had "a plan or rule beneficial to employees" within the meaning of Title 107.1. It appears to me that standard practice 721.7-2 regarding funeral leave with pay would be such a rule and that the Company would be required to apply that rule in practice in a reasonable and non-discriminatory manner.

I am not familiar enough with the practice of taxing vacation time to comment with knowledge as to that possibility. However, it would appear from reading of Title 111 that vacations should be taken according to the schedules referred to in that Title and that employees do not appear to have the right to schedule their own vacation arbitrarily.

I hope that I have answered the main elements of the questions you posed. If you wish further comment from me, please let me know.

Sincerely,

  
John L. Anderson

JLA:knh