

REVIEW COMMITTEE

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PACIFIC GAS AND ELECTRIC COMPANY
245 MARKET STREET, ROOM 444
SAN FRANCISCO, CALIFORNIA 94106
(415) 781-4211, EXTENSION 1125

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO
LOCAL UNION 1245, I.B.E.W.
P.O. BOX 4790
WALNUT CREEK, CALIFORNIA 94596
(415) 933-6060
R.W. STALCUP, SECRETARY

CASE CLOSED LOGGED AND FILED

DEC 15 1982

D.J. BERGMAN, CHAIRMAN

- DECISION
- LETTER DECISION
- PRE-REVIEW REFERRAL

East Bay Division Grievance No. 1-1462-81-269
P-RC 785

December 14, 1982

MR. L. R. JOHNSON, Company Member
East Bay Division
Local Investigating Committee

MR. S. A. TAMIMI, Union Member
East Bay Division
Local Investigating Committee

The above-subject grievance has been discussed by the Pre-Review Committee prior to its docketing on the agenda of the Review Committee and is being returned, pursuant to Step Five A(1) of the grievance procedure, to the Local Investigating Committee for settlement in accordance with the following:

Subject of the Grievance

This case concerns the discharge of a Service Representative in Oakland for an alleged unauthorized absence from October 14 - October 26, 1981.

Facts of the Case

The grievant suffered an industrial injury on July 8, 1981 while temporarily upgraded to Credit Representative. She continued to work as a Credit Representative and was first examined by a Company panel doctor on July 28, 1981. Following this examination, she was returned to modified duty as a Credit Representative. The panel doctor continued to treat the grievant and indicated she could return to full duties on August 5, 1981.

On August 13, 1981, the grievant was treated for the first time by a doctor at Kaiser Hospital who indicated she was temporarily disabled and unable to work on August 13 and 14, 1981. On the basis of the Treatment Verification and Diagnosis slip from Kaiser, the grievant was placed on the Compensation Payroll on the aforementioned dates, notwithstanding the panel doctor's opinion that she was capable of performing Credit Representative duties without restriction. She was again placed on the Compensation Payroll for one day, September 16, 1981; however, the record is unclear as to why this occurred. On September 17, 1981, the grievant was returned to her base classification of Service Representative because of her physical inability to perform as a Credit Representative.

For a one-week period, September 28 - October 2, 1981 inclusive, the grievant was paid sick leave. As proof of illness, she provided a Treatment Verification and Diagnosis form from Kaiser dated September 30, 1981 which indicated she had been ill and unable to work from September 25 - October 2, 1981 and that she may resume work on October 5, 1981. This slip did not state the

nature of the illness. When the grievant returned to work on October 5, 1981, she completed a sickness report indicating the reason for her absence was flu. September 25, 1981 was recorded as a Birthday Holiday.

The grievant returned to work for one day, October 5, 1981, then was again absent from October 6 to 9, 1981, inclusive. Again, she submitted a Kaiser slip excusing her absence from October 6 to 8, 1981. No reason was given although the sickness report she completed stated a relapse of the flu. On October 9, 1981, she saw another Kaiser doctor who provided a slip excusing her absence on October 8 and 9, 1981. Although no reason is stated on the slip, there was a notation "RI". According to the grievant, this meant "return industrial," and she completed a sickness report showing "cervical pain." The grievant was paid sick leave from October 6 to 9, 1981, inclusive.

The grievant continued to be treated for her shoulder injury by both the panel and Kaiser physicians. On October 14, 1981 following therapy treatment by the panel doctor, the grievant informed her supervisor that she was in pain and needed to go home. The supervisor authorized the time off on that date. The grievant was again seen by the panel doctor on October 15, 1981 who scheduled her to have an EMG on October 16, 1981. The grievant called her supervisor on October 15, 1981 stating that the doctor had instructed her to stay off work until after the results of the EMG. In attempting to confirm the veracity of this statement, the supervisor received conflicting information from the doctor and his receptionist.

Finally, on October 22, 1981, the results of the EMG were known; it was normal. The grievant was informed that she was released to return to full duty effective October 23, 1981. On October 23, 1981, the grievant went to Kaiser and obtained a slip marked "RI" from her doctor excusing her from work from October 14 to 28, 1981. She gave this form to her supervisor on Friday, October 23, 1981. On Monday, October 26, 1981, the supervisor called the grievant at home and informed her she was discharged, effective that day.

Discussion

The grievant was employed on September 9, 1968, and her record is replete with letters concerning her poor attendance and tardiness. She was discharged on June 20, 1979 for continued unavailability and reinstated without back pay through the grievance procedure. The settlement stipulated that she must immediately establish and maintain an acceptable level of attendance and her absence from work for any reason may subject her to discharge for being unavailable for work. For the first six months following reinstatement, the grievant was not absent due to illness. Then, beginning April 22, 1980 through August 5, 1980, she was absent due to illness on three occasions totaling 45½ hours. This resulted in another letter reiterating the conditions of her continued employment. The letter also cited two instances of tardiness. There were no further absences due to illness in 1980.

On January 6, 1981, the grievant was tardy to work and received a one-day disciplinary layoff. The grievant was absent from work due to illness a total of 96 hours in 1981.

In discussing the facts of this case, the Pre-Review Committee noted that the grievant began treatment for an industrial injury with her personal doctor more than 30 days after the date of injury which was her legal right. Further, the Company was aware of this ongoing treatment inasmuch as she supplied Verification of Treatment and Diagnosis forms to her supervisor and in fact was placed on the Compensation Payroll for two days in August based on the very cursory information contained on one of these slips. Her absence due to non-industrial disability during the latter part of September and early October, was authorized on the basis of these Kaiser slips which did not include any reference as to the nature of the problem. The manner in which these forms had been completed was no different than the final one she turned in on October 23, 1981, yet the Company chose not to accept it and instead discharged her. The Pre-Review Committee is in agreement that, on October 23, 1981 when the Company was faced with conflicting medical opinions, it would have been appropriate to seek medical clarification via a third agreed-to Medical Examiner.

The Committee also noted that even though the grievant had several conversations with various supervisors from October 14 to 23, 1981, not one of them told her that if she did not return to work, she would be discharged.

Finally, there was no investigatory meeting held with the grievant and a Shop Steward prior to her discharge.

Decision

The grievant is to be reinstated as a Service Representative in Oakland without back pay, but with benefits intact except that any vacation entitlement will be adjusted pursuant to Subsection 8.5(a) of the Clerical Agreement. Her continued employment will be subject to the following conditions:

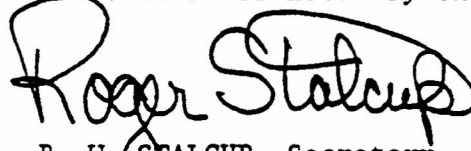
1. Until December 31, 1984, the grievant must continue to provide proof of illness at which time a review of her attendance record will be conducted to determine whether or not this requirement will be continued. Such proof of illness must state the reason for the absence, the treatment provided, and the expected and/or actual recovery date.
2. Any absence or requests for time off will be carefully reviewed and Company may require documentation to support the need for time off.
3. Requests for Floating Holidays must be approved by the grievant's supervisor no less than 24 hours prior to the date the Floating Holiday is to be taken.
4. Requests for vacation other than as scheduled in accordance with Subsection 8.13 of the Clerical Agreement may be denied pursuant to Subsection 8.12.
5. Any absence or tardiness for a one-year period following the date of reinstatement may result in discharge for continued unavailability.

6. Following the one-year period from reinstatement, the grievant must maintain an acceptable level of attendance.

This case is considered closed on the basis of the foregoing and the adjustments provided herein, and the closure should be so noted by the Local Investigating Committee.



D. J. BERGMAN, Chairman
Review Committee


R. W. STALCUP, Secretary
Review Committee

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