

REVIEW COMMITTEE

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D.J. BERGMAN, CHAIRMAN

- DECISION
 LETTER DECISION
 PRE-REVIEW REFERRAL

General Construction Grievance No. 3-1159-83-2
P-RC 842

December 22, 1983

MR. R. S. BAIN, Chairman
General Construction
Joint Grievance Committee

MR. CALLENDER, Union Member
General Construction
Joint Grievance Committee

Grievance Issue

Employees not allowed to work because supervision decided that the soil was too wet to permit efficient or productive operations.

Facts of the Case

On Saturday, January 22, 1983, 1.48 inches of rain fell in the Fresno area.

On Monday, January 24, 1983, .63 inches of rain fell in the Fresno area. Almost all of the Gas Construction employees who reported to work in the Fresno area that day were sent home due to inclement weather. They were instructed at the time to not report back to work until Wednesday, January 26. They were properly paid four hours show-up time for January 24.

On Tuesday, January 25, .13 inches of rain fell in the Fresno area. The aforementioned employees remained off work that day in accordance with the instructions they had been issued on January 24.

On Wednesday, January 26, .20 inches of rain fell in the Fresno area. The aforementioned employees reported back to work that day as instructed, and worked all day.

On Thursday, January 27, 1.36 inches of rain fell in the Fresno area. Most of the Gas Construction employees who reported to work in the area were sent home due to inclement weather. They were instructed at that time to not report back to work until Monday, January 31. They were properly paid four hours show-up time for January 27.

On Friday, January 28, .22 inches of rain fell in the Fresno area. The aforementioned employees remained off work that day in accordance with the instructions they had been issued on January 27.

An exempt supervisor inspected all of the Fresno area Gas Construction work sites on January 24. No supervisor inspected those work sites on January 25, 27 or 28.

The Local Investigating Committee held interviews with the exempt supervisors who were involved in the decisions to not work the subject jobs on January 24, 25, 27 and 28. The Local Investigating Committee also interviewed several of the employees who were not allowed to work on those days. After considering the facts of the case and testimony provided by these supervisors and employees, the Local Investigating Committee agreed that, in most cases, the decisions to not work the subject jobs were justified by the wet ground conditions.

However, the Local Investigating Committee could not agree on whether supervision's decisions to not recall one three-man crew on January 25 and 28 were justified by the conditions present. The crew was assigned to work in a substantially-completed tract with paved streets. At least one of the crew members opined that productive work could have been performed by his crew on January 25 and 28. The exempt supervisors, of course, disagreed.

The General Construction Joint Grievance Committee also was unable to resolve this remaining issue, and referred it to the Review Committee.

Discussion

Section 303.5 of the Agreement, as amended effective January 1, 1983, reads as follows:

Section 303.5 CLOSE DOWN DECISION

The decision to close down a job or a portion of a job and send employees home under this Title shall be made by a supervisor when, in his reasonable judgement, the weather, ground, or other conditions at the worksite make it impractical to work efficiently, productively or safely. The decision will be made by an exempt supervisor who personally examined the conditions at the worksite and who has evaluated the availability of other miscellaneous work or training as provided for in Section 303.1, except in those cases where such a supervisor is not able to personally examine such worksite. When the exempt supervisor is unable to personally examine such worksite, he shall consult with a bargaining unit supervisor who is familiar with such worksite. If an employee is sent home and conditions improve to the point at his worksite that work can be performed efficiently, productively and safely, the Company will make a good faith effort to call the employee back to work on the earliest workday possible regardless of the number of days off originally anticipated.

The Pre-Review Committee has agreed that, while nothing in Section 303.5, or any other Section in Title 303 (Inclement Weather Practice), specifically requires daily on-site inspections when inclement weather practices are effected, in this particular case, more than the single inspection should have been made.

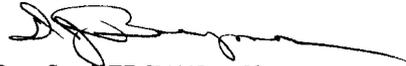
Turning to the issue at hand, the Pre-Review Committee finds itself (as in several previous cases pertaining to the same issue) in the rather

difficult position of attempting to determine, several months after the facts, whether employees could have worked "efficiently, productively or safely" on the days in question. The Committee is asked to make this determination from the record referred to it. Such determination can be imperfect at best.

With this in mind, the record (facts and testimony) which has been referred to the Pre-Review Committee for this case seems to show that the three-man crew in question possibly could have worked efficiently, productively and safely on January 25 but not on January 28. The Committee especially noted and was influenced by the recorded amount of rain which fell each day from January 24 through January 28. This is not to say, however, that the amount of rainfall should be the only factor considered in an inclement weather shut-down decision.

Decision

As an equity settlement, the employees on the three-man crew in question shall be paid eight hours at the straight time rate of pay for January 25, 1983. Case closed on this basis.



D. J. BERGMAN, Chairman
Review Committee



R. W. STALCUP, Secretary
Review Committee

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