

REVIEW COMMITTEE

7.1(P)
112.8CF



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**

OCT 18 1985

D.J. BERGMAN, CHAIRMAN

RECEIVED OCT 16 1985

- DECISION
 - LETTER DECISION
 - PRE-REVIEW REFERRAL
- General Construction Grievance Nos. 3-1387-85-21
and 3-1408-85-39
P-RC 1033

October 15, 1985

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

MR. BARRY HUMPHREY, Chairman
General Construction
Joint Grievance Committee

Grievance Issue

Suspension and subsequent discharge for continued unavailability.

Facts of the Case

The grievant was a Routine Shop Clerk assigned to the Davis Service Center.

The Local Investigating Committee Report noted that grievant had been counseled numerous times about excessive absenteeism prior to 1984. On January 27, 1984, grievant was issued a "letter of concern" for unavailability. This letter was not grieved.

On February 8, 1984, grievant was issued a letter of reprimand for continued unavailability. Again, this letter was not grieved.

On April 1, 1984, grievant was again counseled about continued excessive absenteeism.

On May 18, 1984, grievant was issued a second letter of reprimand, denied sick leave pay for May 8, 1984, and instructed to take May 22, 1984 off as a disciplinary layoff for continued excessive absenteeism. This action was the subject of a formal grievance. At the Local Investigating Committee level of the grievance procedure, it was agreed that grievant would be paid sick leave for May 8, 1984; at the Joint Grievance Committee level it was agreed that the one day disciplinary layoff was inappropriate and was restored. However, the May 18, 1984 reprimand letter was not removed. The letter was revised and reissued on October 24, 1984 in conjunction with the grievance settlement. As revised, the letter stated, in part: "Availability for work is a condition of employment. If your time on the job doesn't improve, you will be subject to more severe disciplinary action, up to and including discharge."

On October 31, 1984, grievant was issued a third letter of reprimand for continued unavailability. Again, this letter was subject to the grievance procedure. The case was settled by the Joint Grievance Committee, wherein the parties agreed to close the case by modification of the final paragraph of the letter to state: "You have been repeatedly urged to noticeably improve your attendance in order to meet the full requirements of your job. You have not done so. This letter is to be viewed as the final step in the discipline procedure for unavailability. It is given to you as notification that upon a review of your next occasion of absence for any reason, you may be discharged."

The Local Investigating Committee Report also indicated the following sick leave/leave of absence/personal time off record for grievant:

Year	Sick Hours	LOA Hours	Personal Hours	Total Hours
1979	141	0	46	187
1980	162	0	61	223
1981	151	0	97	248
1982	128	480	1	609
1983	168	0	13	181
1984	88-1/2	0	17-1/2	106

The record notes that grievant was not absent from work due to illness following the October 31, 1984 letter until January 30, 1985, when she was off for the full day. Grievant was also off on sick leave for 1/2 hour on February 8, 1985, and for 4 hours on February 20, 1985. The Local Investigating Committee noted that the full day and both part-day absences were in conjunction with scheduled vacation days.

In March 1985, the grievant had scheduled vacation on Monday, (March 4), Tuesday (March 5), Thursday (March 7) and Friday (March 8). The grievant also called in sick on Wednesday (March 6) and on Monday, March 11. On Tuesday, March 12, the grievant again called in sick. During the conversation with the supervisor, the grievant mentioned something about Industrial Compensation, but the supervisor was unclear what the grievant meant.

After the grievant called in sick on March 12, 1985, the grievant's supervisor discussed with several of his supervisors what disciplinary action should be taken. The grievant's supervisor elected to suspend the grievant pending an investigation regarding the grievant's health status.

At approximately 4:00 p.m. on March 12, the grievant arrived at the Davis Service Center and asked that a Shop Steward accompany her to see her supervisor. The grievant presented the supervisor with a doctor slip stating she could not work for the next three weeks. The supervisor then informed the grievant she was being suspended.

Following the notification of suspension, the grievant was sent to a physician for a complete psychiatric examination.

The physician's report was received on April 19, 1985. After the physician's report was received, the grievant's entire work history was reviewed. Taking into account the long-term record of unavailability and discipline, the decision was made to discharge the grievant for continued unavailability.

Discussion

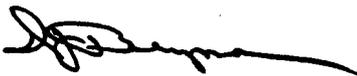
The Company opined that appropriate constructive disciplinary steps were followed with regard to the grievant's termination. The Union opined that grievant had been suspended and discharged for unjust and insufficient cause. Union pointed out that the evaluation performed on the grievant by a doctor of psychiatry at the request of the Company indicated that grievant was presently temporarily disabled and that the disability was in part attributable to stress from her job with PGandE. Union argued that her continued excessive absenteeism was in part the result of a job related disability and, therefore, should not be relied upon as the basis for termination.

In addition, Union stated that the Company could not discharge an individual that files a Workers' Compensation claim. The Company does not disagree with the Union's statement; however, the filing of a Compensation claim was not the reason for the discharge in the case.

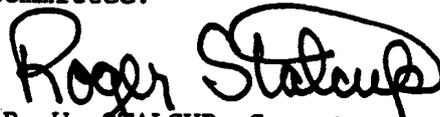
Decision

The Committee discussed this case at length. At the conclusion of discussion, the Committee agreed that the termination was appropriate based upon constructive discipline and the grievant's record of unavailability. However, the Committee further agreed that this case may be reopened when the Workers' Compensation Appeals Board decision is reached. In the event, the WCAB finds that grievant was disabled and entitled to temporary disability benefits at the time of her termination, the case will be reopened for determination of necessary adjustments. If the WCAB denies her claim, this case will remain closed.

Based on the foregoing, this case is closed and such closure should be noted in the minutes of the Joint Grievance Committee.



D. J. BERGMAN, Chairman
Review Committee



R. W. STALCUP, Secretary
Review Committee

MAShort(1123):ml