

**REVIEW COMMITTEE**

7.1 Just Cause - terminated  
while absent due to an  
industrial injury

**PG and E**

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

D.J. BERGMAN, CHAIRMAN

- DECISION  
 LETTER DECISION  
 PRE-REVIEW REFERRAL

NOV 3 1987  
**CASE CLOSED  
LOGGED AND FILED**

**RECEIVED OCT 9 1987**

General Construction Grievance No. 3-1391-86-119  
P-RC 1192

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

September 30, 1987

PHIL G. DAMASK, Chairman  
General Construction  
Local Investigating Committee

BARRY J. HUMPHREY, Chairman  
General Construction  
Local Investigating Committee

Subject of Grievance

Company's failure to return grievant to work and subsequent discharge of grievant.

Facts of the Case

Grievant was industrially injured in 1980, as a Miscellaneous Equipment Operator "B." Grievant was released for work on February 5, 1985 but had a 75 lb. lifting restriction. The grievant was informed that he would not be allowed to return to work because of the restriction.

As a result of a previous grievance and a Rehabilitation case hearing on September 6, 1985, the grievant was provided with an additional 60 days of rehabilitation services during which he would receive temporary disability payments. At the end of such services, if the grievant was not able to return to work he would be terminated, although the Union reserved the right to grieve such termination.

Upon completion of the 60-day temporary disability payments, Company did not request that grievant be sent to a doctor for medical evaluation for possible return to work, nor did the Company terminate the grievant. The grievant was not receiving any Company benefits after November 5, 1985, and was not on the active payroll, compensation payroll, or on a leave of absence.

In 1986, in regard to grievant's industrial disability, grievant's attorney continued to file Workers' Compensation motions in an attempt to have grievant receive additional benefits. Grievant was sent by his attorney to a doctor and was medically evaluated on February 5, 1986 and was released to return to his previous classification. On July 7, 1986, the grievant was sent to an agreed to medical examiner who determined that grievant could return to his previous occupation.

September 30, 1987

In early October 1986, the Company became aware that it had failed to take action in late 1985 or early 1986 with regard to the grievant's employment status. A payroll change tag was prepared on October 13, 1986 discharging the grievant retroactively on November 11, 1985.

On October 24, 1986, another medical report was received by the Company concerning an evaluation performed September 30, 1986 which indicated that the grievant was able to perform his occupation as a Miscellaneous Equipment Operator.


#### Discussion and Disposition

The Committee discussed this case at length with regard to the Company's employment obligation to the grievant with reference to the unusual circumstances of this case. The Committee agreed that at the point in time the Company elected to discharge the grievant, October 13, 1986, just cause did not exist. This determination was based on the evidence that no medical evaluation was performed at the end of the grievant's temporary disability payment period in 1985 and medical evaluations in hand as of the termination date indicated the grievant could perform the full scope of MEOB job duties. The Committee also noted that there is no evidence in the record of the grievant ever requesting a leave of absence.

The Committee agreed to reinstate the grievant provided he pass a physical exam that he can now perform the full duties of the Miscellaneous Equipment Operator "B" classification without restriction. Further, the Committee agreed that the grievant's service will be bridged and he will receive back pay from October 27, 1986 until his reinstatement at the MEOB rate of pay less any outside earnings. In addition, it was agreed that the grievant's medical bills would be covered from the aforementioned date until his return to work and that the grievant would be initially reemployed within a commutable distance from his residence.

Based on the foregoing, this case is closed without prejudice to either party's position and such closure should be noted on the Joint Grievant Committee minutes.

  
DAVID J. BERGMAN, Chairman  
Review Committee

  
ROGER W. STALCUP, Chairman  
Review Committee

RRDoering(2-1124):rdp

cc: Jess Herrera  
I. Wayland Bonbright  
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Reg. & G.O. Human Res. Mgrs. & Dirs.