



REVIEW COMMITTEE

IBEW



JUN 18 1992

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INTERNATIONAL BROTHERHOOD OF
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**CASE CLOSED
LOGGED AND FILED**

RECEIVED JUN 15 1992

D.J. BERGMAN, CHAIRMAN

- DECISION
- LETTER DECISION
- PRE-REVIEW REFERRAL

Central Division Grievance No. EB-CE-30-76-90-54-16
P-RC 1495

June 11, 1992

COLLINS ARENGO, Company Member
Central Division
Local Investigating Committee

DENNIS SEYFER, Union Member
Central Division
Local Investigating Committee

Subject of the Grievance:

This case concerns the bypass of a non-climbing lineman for a lineman vacancy outside his headquarters.

Facts of the Case:

The grievant, a Lineman headquartered at the Cinnabar Service Center in Mission Trail Region, had a valid bid on file when the lineman vacancy opened at Central Division's Oakport Service Center. The grievant accepted the position when the senior bidders on the list declined. Upon learning that the grievant was a non-climbing lineman, East Bay Region rescinded the offer, based on Section 205.11, that the employee was not physically qualified to perform the duties of the classification.

At the time of the bypass, the grievant was classified as a Subsection 112.10(b) non-climbing Lineman. Oakport Electric Transmission and Distribution Department, at the time, had 2 non-climbing journeymen among its complement of 17 linemen, 8 troublemen and 8 electric crew foremen. East Bay Region stated that it would continue to bypass any bidder to a lineman vacancy as long as the bidder retained non-climbing status.

The grievant had returned to work from the Compensation Payroll on February 13, 1989, to his former headquarters at Cupertino, in Mission Trail Region. As a result of an industrial injury, grievant was blind in one eye. His designation as non-climbing lineman was the result of medical opinion that as a result of monocular vision, he lacked depth perception and would be unable to perform hot stick work. He was otherwise unrestricted.

Although not confirmed in the LIC Report, the grievant stated to the Union member of the Pre-Review Committee that he bid from Cupertino to Cinnabar in May 1990; that he was awarded this position pursuant to Subsection 205.7(b) of the Physical Agreement and where he retained his non-climbing status; that, in response to his questions on the subject, he was informed by his General Foreman, the local Human Resources Representative, and the Union's Business Representative that his bidding rights as a non-climbing lineman were not restricted; that based on this information he purchased a home in the Pittsburg area with the belief that with his length of Service, he would be able to bid to a location in the East Bay Region.

Following the bypass, the grievant also disputed his designation as a non-climbing lineman, claiming that other current and former employees in the lineman classification who were blind in one eye were not similarly designated. At his request to change his status, he was re-evaluated by being sent to the Company's Lineman school at Kettleman where he was enrolled in the four week Advance Lineman Training Course. After approximately two weeks, the grievant voluntarily removed himself from the course. As a consequence, he retained non-climbing status.

Following further discussion between Company and Union, it was agreed to return the grievant to the Kettleman Lineman School for a two week period where he would be observed for his ability to climb and for certain specific work activities, primarily related to working with hot sticks.

Upon completion of the school, the Resident Instructor stated that the grievant successfully met and completed the requirements assigned to him.

Videotapes of the grievant's performance at the school were then provided to the Professor and Chairman of the Department of Ophthalmology at Stanford University Medical Center. In summary, the physician opined that the grievant retained his basic skills and could satisfactorily perform as a climbing lineman under ordinary circumstances. However, in unexpected or hazardous situations, he was at higher risk of accidents than linemen with normal vision.

As a result of these findings and opinions, the non-climbing status was suspended.

The grievant was initially bypassed to a lineman position at Oakport on August 3, 1990. His first trip to the Kettleman Lineman School was in April 1991. The second trip to Kettleman was in September 1991. The report from the physician at Stanford was received by Company in December 1991.

During the time this grievance was being processed, and while the grievant still retained non-climbing status, he was awarded an Underground Construction Journeyman (Electric) position at Fremont. Almost coincidental with the suspension of non-climbing status, he was awarded a Lineman position at the Meadow Lane headquarters in Walnut Creek.

Discussion:

The Union's opinion is that the grievant should be provided equal consideration for positions to which he bid, regardless of headquarters. If during the regular sequence of consideration (Section 205.7) it is determined that the grievant is the senior bidder to a position, it should be offered to him if the headquarters does not already have more than 10% of its journeymen in non-climbing status. Union also opined that there is inconsistency in the administration of Section 205.7 in that non-climbing linemen and electric crew foremen were being allowed to bid to new headquarters without restriction.

The Company's opinion is that it is not obligated to consider a light duty journeyman from another headquarters in order to place them as a Subsection 112.10(b) employee. The intent of Subsection 112.10(b) is to return an employee to work at the headquarters where the injury occurred, not to provide employees the right to transfer or bid to positions in other headquarters or higher in their line of progression when they are incapable of performing the full duties of that position. Further, Company opined that the available work determines how many, if any, disabled journeymen can be supported in a headquarters notwithstanding the staffing numbers.

Decision:

The primary intent of Subsection 112.10(b) is to accommodate permanently partially disabled employees at their present headquarters. However, headquarters other than where the employee currently works will consider the light duty employee for vacancies after evaluating the employee's physical limitations and ensuring that there is sufficient work at the headquarters within the employee's ability to perform as a full-time journeyman.

The Company and Union noted that additional factors will need to be considered in similar cases after the Americans With Disabilities Act becomes effective in July 1992 which may impact cases such as this.


DAVID J. BERGMAN, Chairman
Review Committee


ROGER W. STALCUP, Secretary
Review Committee

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