



REVIEW COMMITTEE

7.1 -Just cause. Co, Union,
& Gr signed Agrmt - Gr
wud remain alcohol free
while employed by PG&E.
Discharged.

IBEW



PACIFIC GAS AND ELECTRIC COMPANY
215 MARKET STREET, ROOM 916
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SEP 20 1991

**CASE CLOSED
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RECEIVED SEP 20 1991

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

D.J. BERGMAN, CHAIRMAN

- DECISION
- LETTER DECISION
- PRE-REVIEW REFERRAL

Golden Gate Region Grievance Nos. GG-GG-GG-02-90-00-18 &
GG-GG-GG-02-90-00-20

P-RC 1513

September 20, 1991

NANCY PETERSON, Company Member
Golden Gate Region
Local Investigating Committee

ED CARUSO, Union Member
Golden Gate Region
Local Investigating Committee

Subject of the Grievance:

This case concerns the suspension and subsequent discharge of an Electrician for operating Company equipment without a valid driver's license and for being unfit for duty on November 9, 1990.

Facts of the Case:

On August 24, 1989, the grievant received a Decision Making Leave resulting from continuing attendance problems. On August 24, 1990, the Company, the Union, and the grievant entered into an Agreement for Continued Employment in lieu of discharge. Among the conditions were:

#5. Any alcohol or drug related misconduct during a one year period following your return to work shall result in your discharge. Your recourse to the grievance procedure shall be limited to a determination of whether or not the specific incident factually occurred.

Any non-alcohol or drug related misconduct, attendance, or performance problem that warrants discipline, and results in your subsequent discharge, shall be subject to a full and complete review in the grievance procedure to determine just cause.

#6. You must abstain from the use of alcohol and illegal drugs while employed by PG&E.

#7. Failure to comply with any provision of this agreement shall result in your immediate discharge.

On November 9, 1990, at approximately 8:30 a.m., one hour after his starting time the grievant was observed by his supervisor sitting in his truck outside of a substation. The supervisor noted certain conditions about the grievant causing the supervisor to recommend a Fitness For Duty examination. In addition, the grievant complained of a reinjury to his leg.

The grievant was returned to the headquarters for completion of paperwork for the Fitness For Duty examination. He was then taken to three different doctors: one in error, one for the fitness exam, and one for the leg injury. Upon arriving at the doctor's office who was to perform the Fitness For Duty exam, the grievant was given a form to sign. He asked the supervisor what it was. The supervisor responded that it was "just a standard doctor's release form to check me over". The Shop Steward then reviewed the form and stated it was more than a standard release form, thought it was the wrong form, and recommended the grievant not sign it. The Steward asked the supervisor to explain the form. According to the Steward, they (there were two supervisors there) "either didn't know how to explain it or didn't want to explain it. They just shrugged their shoulders."

The grievant was then taken to another doctor who examined his leg and prescribed medication. They then returned to the service center where the grievant was told by the Substation Superintendent that his refusal to sign the Release of Information form constituted insubordination. Based on the alleged insubordinate act and the supervisors' observations concerning his condition, the grievant was suspended and subsequently terminated. He was driven home.

With regard to the lack of a valid California Driver's license, there was a miscommunication caused by the Department of Motor Vehicles. The grievant's license was suspended effective June 19, 1990 for a DUI; notice of the suspension was mailed to the grievant September 28, 1990. However, on September 24, 1990, the grievant had received an Order of Reinstatement for a violation which occurred May 11, 1987. On two occasions when the grievant was questioned by supervision as to the status of his driver's license, he stated that he had a valid license and on one occasion showed the Order of Reinstatement. The grievant believed at the time that he had a valid license. Currently there is ongoing discussion between the company and Union as to the driver's license requirement as a condition of employment for various classifications, including Electrician.

Discussion:

The Pre-Review Committee discussed the facts of this case noting that according to the Substation Superintendent, the grievant admitted during a November 27, 1990 investigation into the events of November 9, 1990 to drinking a glass of wine subsequent to the August 24, 1990 agreement. The Committee also noted the observations of three employees (two supervisors and a bargaining unit employee) who came into contact with the grievant on November 9. These observations included: the smell of alcohol, slightly slurred speech, and a belligerent attitude.

The Committee also discussed, at length, the importance of supervisors being familiar with and following the provisions of the negotiated Fitness For Duty procedure. The purpose of the procedure was to remove from supervisors the responsibility for making the medical determination of an employee's fitness for duty when it is suspected that an employee is impaired. An issue in this case was whether the grievant was, in fact, insubordinate for refusing to sign the medical release. The parties have agreed that an employee's refusal would not be an insubordinate act unless the employee refused to go to the doctor at all. The Pre-Review Committee agreed that the grievant's refusal to sign the Medical Release did not constitute an insubordinate act. The Company has the right to insist upon a doctor's opinion as to fitness for work. Following is Section B of the Fitness For Duty Procedure:

REFUSAL TO UNDERGO MEDICAL CLARIFICATION EXAMINATION

"It is important that both supervisors and employees are informed of the following about medical clarifications. The referral of an employee for medical clarification, who has demonstrated that he or she may not be fit to perform their job duties in a safe and efficient manner, is an instruction to perform an assignment (a work order). Therefore, refusal to report for medical clarification is to be treated as any other refusal to perform work. Should that happen, the employee should be informed they will be suspended without pay pending an investigation ... Employees may, however, refuse to sign the "Release of Medical Information", form 62-4160, with no adverse affect. In that case, inform the employee that neither specific medical nor laboratory test results from the examination will be released to PG&E, but that the medical clarification examination is nevertheless required to establish the employee is physically fit to perform his/her work."

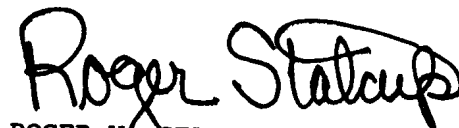
Union expressed great concern that the supervisors didn't appear to be familiar with the Fitness For Duty policy, that this appears to be a recurrent problem in this Division, and that perhaps training is in order. Company expressed concern that the Shop Steward advised the grievant that he should not sign the Medical Release form. The parties agreed that a Shop Steward may explain to an employee the options available but should not advise the employee not to sign, except in a situation where the supervisor cannot or will not explain the form or the Fitness For Duty procedure.

The Committee also discussed the conditions of the August 24, 1990 agreement and agreed that the grievant had violated conditions 5 and 6.

Decision:

The Committee agreed that the discharge was for just and sufficient cause based on the observations of the grievant on November 9, 1990 in conjunction with his violation of the provisions of the August 24, 1990 agreement.


 DAVID J. BERGMAN, Chairman
 Review Committee


 ROGER W. STALCUP, Secretary
 Review Committee