



# REVIEW COMMITTEE

7.1 -Just cause for discharge. Grievant, who was on DML, engaged DOT collector in oral altercation.



PACIFIC GAS AND ELECTRIC COMPANY  
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OCT 17 1991

**CASE CLOSED  
LOGGED AND FILED**

INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, AFL-CIO  
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R.W. STALCUP, SECRETARY

D.J. BERGMAN, CHAIRMAN

**RECEIVED OCT 15 1991**

- DECISION
- LETTER DECISION
- PRE-REVIEW REFERRAL

De Anza Division Grievance No. DEA-91-5  
P-RC 1525

October 14, 1991

GREG HOLMES, Company Member  
De Anza Division  
Local Investigating Committee

DENNIS SEYFER, Union Member  
De Anza Division  
Local Investigating Committee

Subject of the Grievance:

This case concerns the discharge of a Gas Serviceman for abusive language directed at a contractor.

Facts of the Case:

The grievant, who had 16 years of service, was at the Decision Making Leave step of Positive Discipline. The DML was received on July 23, 1990 for attendance related problems.

On February 7, 1991, DOT random testing was in progress in a men's room at the Cupertino Service Center. The testing was being conducted by an employee of Secon, which is PG&E's urine collection contractor. The grievant entered the men's room and a verbal confrontation ensued between him and the collector.

The grievant's testimony was somewhat contradictory on whether he saw a sign posted on the men's room door indicating that testing was in progress. The grievant stated that once he was in the men's room he proceeded to a urinal and begin voiding when he heard someone say that he couldn't use it. The grievant responded that he was already using it and was almost done. According to the grievant, words were then exchanged and the collector called him a profane term. When the collector asked the grievant his name, the grievant responded with profanity and would not give his name.

The Secon collector was not interviewed by the Local Investigating Committee. However, he did provide two written statements. The statements indicated that he had placed "do not use" signs on the restroom door and was in the process of a collection when the grievant walked in. The collector told the grievant that a drug test was in progress and asked him to wait or use a different bathroom. The grievant responded with profanity and proceeded to void in a urinal. The collector repeated himself and received the same response. The collector then asked for the grievant's name and after failing to get it asked who his supervisor was. The grievant again responded with profanity and approached the collector until he was close to his face.

The employee providing a specimen at the time of this confrontation heard the exchange but could not see who was talking. He told the LIC that he heard the Secon collector tell the other individual that he couldn't use the bathroom because of the drug test. The other guy responded that he was using it anyway and added a profanity. The Secon collector then asked the other individual his name but he would not state his name. By this time they were both angry and profane with each other.

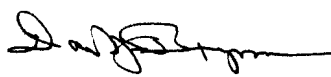
Statements were also provided to the LIC by a number of employees in the yard. These statements differed somewhat on the question of whether there was a sign posted on the men's room door requesting that employees stay out. Some of the statements also indicated that with or without a sign, other employees had walked in and used the facilities or tried to use the facilities before being asked to leave by the collector.


Discussion:

The Pre-Review Committee does not find particular relevance to the question of whether signs were posted or other employees entered the men's room on the day of the incident since the grievant was not disciplined for entering the room. The discipline was for verbally confronting the Secon collector. The testimony clearly indicates that a confrontation took place. A preponderance of the evidence also indicates that the grievant was the initiator of the confrontation through his words and actions. It is very unlikely that this conduct would be considered dischargeable for an employee without an active disciplinary history. However, some discipline is appropriate and given the grievant's DML status, just cause exists for the termination.

Decision:

The grievance is denied and the case is closed without adjustment. Such closure should be noted by the Local Investigating Committee.

  
DAVID J. BERGMAN, Chairman  
Review Committee

  
ROGER W. STALCUP, Secretary  
Review Committee