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REVIEW COMMITTEE

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**CASE CLOSED
FILED & LOGGED**

FEB 08 1994

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO
LOCAL UNION 1245, I.B.E.W.
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R.W. STALCUP, SECRETARY

RICK R. DOERING, CHAIRMAN

**Peninsula Division Grievance No. GG-PD-93-6
Pre-Review Committee File No. 1707**

- DECISION
- LETTER DECISION
- PRE-REVIEW REFERRAL

BONNIE WAGNER, Company Member
Peninsula Division
Local Investigating Committee

KATHY MAAS, Union Member
Peninsula Division
Local Investigating Committee

Subject of the Grievance:

The grievant, a Corrosion Mechanic in Belmont, was terminated on March 3, 1993, for failing to comply with the treatment prescription as defined by the Medical Review Officer (MRO).

Facts of the Case:

On October 9, 1992, the grievant was asked to submit to a Fitness for Duty exam and a DOT Reasonable Cause test, both of which he refused. As a result of his refusal to undergo the DOT exam, he was treated as a verified positive under the Drug-Free Pipeline Program.

On October 20, the MRO and the grievant discussed rehabilitation programs. Initially the MRO believed that the most appropriate treatment would be an in-patient treatment program, but the grievant refused to enter such a program. As an alternative to finding the grievant in non-compliance, the MRO compromised by agreeing to prescribe a day treatment program.

Subsequently, the grievant's participation in the prescribed program became erratic and he began violating the rules of the program. As a result, the MRO prescribed additional treatment and the grievant was warned both verbally and in writing of the consequences of non-compliance.

On December 28, 1992, the grievant was again warned by the MRO that his participation in the program had deteriorated to the point of non-compliance but that he would be given one more opportunity to comply.

On January 26, 1993, the MRO returned the grievant to work. The following day the grievant was issued a Written Reminder in the conduct category.

On February 11, 1993, the grievant was issued a Decision Making Leave for reporting a false reason for his absence on the prior workday. In addition, the grievant's participation in the rehabilitation program became erratic. On February 19, the MRO received notification that the grievant was in non-compliance and that he had refused to follow the additional treatment prescribed by the MRO which would have brought him into compliance. As a result, on February 26, 1993, the MRO notified the Company that the grievant was in non-compliance with the rehabilitation program requirements. In accordance with Paragraph 1 of Appendix J of the Drug-Free Pipeline Policy, the grievant was terminated.

Discussion:

In discussion of this case, the Committee reviewed the Reasonable Cause Testing portion of the Drug-Free Pipeline Policy and noted the following language:

"If an employee refuses to be tested, the immediate supervisor will take immediate steps to remove the employee from duty, and they will be treated as if they were a 'verified positive' as defined in Appendix J."

In addition, the policy contains the following language in Appendix J:

"The employee will be required to cooperate with the MRO, follow his instructions, and comply with the treatment testing. Failure to follow the above MRO requirements will result in discharge."

The Committee agreed that since the grievant refused to submit to a Reasonable Cause test and being fully aware of the consequences of refusing such a test, the grievant was appropriately removed from his position and placed into the First Time Offender program.

The Committee also noted that the MRO was swayed from his initial intention to prescribe an in-patient treatment by the grievant, acquiescing to the grievant's desire to be placed in a day treatment. Even so the grievant was still unable to comply with the prescribed treatment recommendations. Furthermore, the grievant had been warned of the consequences of not cooperating with the MRO and in fact he had signed an agreement acknowledging that he understood that failure to do so would result in termination.


Decision:

After a thorough review of this case, the Pre Review Committee is in agreement that the discharge was for just and sufficient cause. The Union reserves the right to argue the reasonableness of rehabilitation programs in the future.



John A. Moffat
Acting Chairman
Review Committee

Date: 2/3/94



Roger W. Stalcup
Secretary
Review Committee

Date: 2/2/94