



REVIEW COMMITTEE

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IBEW



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**CASE CLOSED
FILED & LOGGED**

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO
LOCAL UNION 1245, I.B.E.W
P.O. BOX 4790
WALNUT CREEK, CALIFORNIA 94598
(510) 933-6060
R.W. STALCUP, SECRETARY

MARGARET A. SHORT, CHAIRMAN

- DECISION
- LETTER DECISION
- PRE-REVIEW REFERRAL

PRC 1933
FACT FINDING CASE NO. 5821-94-270
GRIEVANCE NO. SNR-94-07

DIANE THURMAN
Company Member
Local Investigating Committee

LARRY PIERCE
Union Member
Local Investigating Committee

Subject of the Grievance:

This case concerns eligibility for payment of sick leave pursuant to Section 112.9.

Facts of the Case:

The grievant suffered an injury on January 6, 1993 but continued to work until March 19, 1993. He was off work until accepting the Voluntary Retirement Incentive (VRI) effective November 1, 1993. The grievant's time off work was covered with paid sick leave while a claim for coverage under the Workers' Compensation provisions was being reviewed. The injury was determined to be industrial on September 16, 1993.

It appears from review of the grievant's Time Record, that he had the maximum amount of accumulated and current sick leave totaling 1040 hours and that he used 976 of those hours while off work.

Discussion:

Section 112.9 of the Agreement states: "If a regular employee is required permanently to leave the Service of Company because of physical disability, the employee shall, on termination of employment, be entitled to an allowance which shall be the equivalent of the sick leave to which the employee would be entitled under the provisions of Sections 112.1, 112.2, 112.3, and 112.4."

The committee reviewed a letter dated November 9, 1983 from the Director of Benefits to the Supervisor of Payroll which essentially states that if an industrially injured employee who goes from the Workers' Compensation Payroll to the Long Term Disability (LTD) Payroll then to retirement is entitled to be compensated for whatever sick leave they had at the time of the industrial injury. This letter was an interpretation of when it would be appropriate to pay sick leave pursuant to Section 112.9

In this case, the employee did not apply for or go onto LTD because of the early retirement. However, he did provide to the LIC a letter from his doctor indicating "he would never be able to return to his work...because of his multiple medical problems..."


The Company declined to cash out the sick leave pursuant to the 1983 letter because he was not "required to permanently leave the Service of Company because of physical disability", that his medical condition may have factored into his decision to retire, but he was not required to leave nor was his condition permanent and stationary.

The Union argued that but for the VRI, the grievant would have followed the course from Workers' Compensation to LTD to retirement based on the medical information provided by his doctor.

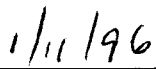
Decision:

This is a unique situation because of the VRI program and that such a situation is not likely to recur. Based on the facts of this case and without prejudice, the Pre-Review Committee agrees to pay the grievant any unused sick leave he had remaining at the time of his retirement. The sick leave should be compensated at the rate of pay the grievant was earning on October 31, 1993.

This case is closed based on the foregoing and the adjustment contained herein.




Margaret A. Short, Chairman
Review Committee



Date



Roger W. Stalcup, Secretary
Review Committee



Date