

101.1. Co. improperly refused Leave of
Absence when app. incomplete;
reinstated with back pay.



REVIEW COMMITTEE

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IBEW



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CASE CLOSED
FILED & LOGGED

INTERNATIONAL BROTHERHOOD OF
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MARGARET A. SHORT, CHAIRMAN

- DECISION
- LETTER DECISION
- PRE-REVIEW REFERRAL

Grievance No BEL-95-01
Pre Review Committee File No. 1978

Subject of the Grievance

This case concerns the discharge of a nine-year Belmont Gas Serviceman for failure to provide the required completed medical release information.

On May 3, 1994 the grievant completed a pink slip but stated he did not need medical treatment. He continued to work until October 6, 1994 when he completed a Report of Occupational Injury or Illness, however, this time he requested to see a doctor. The grievant was sent home on paid sick leave which was exhausted on October 13, 1994.

On October 12, the grievant sent a letter to the Division Manager asking for assistance in getting his questions answered concerning any benefits he may have been entitled to. He also stated he was scheduled shortly to have surgery. The Division Manager wrote back that the grievant's inquiry had been forwarded to the Sr. Human Resources Advisor.

The HR Advisor sent a letter October 21 which included a leave of absence form to be completed and returned by November 4, 1994. The letter closes by stating, "I hope your surgery went well and you are recovering well."

On November 2, 1994 (received November 8) the grievant sent a letter to the HR Department with a copy of a Return to School form for limited work effective November 14, 1994. He was limited to lifting less than ten pounds and office work according to the form and according to the grievant's note "lifting, or any other strenuous activity excluded". The note goes on to state that he had "a follow-up appointment in December at which time the doctor will either continue work restriction or clear me to full duty. Should there be any problem with this, please advise me. Otherwise I will be in to work on November 14."

On November 14, the grievant reported for work, met with the supervisor and shop steward and was sent home as there was no light duty available. He was told he would be off until he was released for full duty. Between November 14 and 30, the supervisor left a number of phone messages for the grievant requesting him to call, informing him that the completed leave of absence form had not been received. The grievant did not respond.

On November 30, the supervisor sent the grievant a letter indicating the leave of absence form was to have been returned by November 4 and it had not yet been returned. The letter also states that "You are currently off without pay, and I have been coding your absences 'sick'. As a result of you not meeting your obligation to return the forms by November 4, your absence as of today is coded as off without permission without pay. You are required to return the completed medial leave of absence request forms to me by Friday, December 9, 1994. Failure to do so will be considered your resignation of employment..."

The grievant responded by letter dated December 2, 1994 to the supervisor. He states that he, "underwent hernia surgery on 10/19/94and was hospitalized until 10/23/94.....I took the leave of absence form, as well as the PSEA forms included in your 10/22 mailing, to my physician for his required notes and signature. I received said forms completed on 11/9/94 , and promptly sent same forms to the respective recipients, yourself included....Today is the first time I've heard that you never got the form. You made no mention of not having it on 11/14/94 (when I attempted to return to light duty).. I do have copies of the form I sent you, but I'm sure originals are necessary. if the original form has been lost or misdirected, you'll need to send me another. And since it will again entail my doctors signature, I can't guarantee your receiving it by 12/9/94 or any other date or time.:" The grievance asked a couple more times for more leave of absence forms to be sent to him.

On December 6, 1994 the HR Advisor sent a letter to the grievance and enclosed a Summary of Benefits handbook and her phone book. Another leave of absence form was not included. Also on December 6, the supervisor left a recorded phone message for the grievance regarding the leave of absence. he called again and spoke with the grievance's mother who acknowledged the grievance had received previous messages. The supervisor told her that a copy of the original leave of absence form the grievance said he had would be acceptable, it was needed no late that December 9, and he offered to pick it up.

On December 8, phone messages were exchanged and finally the supervisor and grievance spoke and arrangements were made to have someone pick up the forms from the grievant.

On December 9, upon reviewing the form, the supervisor determined they were incomplete and left the grievant a phone message to that effect. Later that day, the grievant left a phone message for the supervisor that he had a doctor appointment on December 14 and asked permission to submit the completed form on that date. By phone message, the supervisor agreed.

On December 16, not having heard anything from the grievant, the supervisor left a phone message reminding the grievant of his agreement to return the completed forms on December 14 after his doctor appointment.

On December 19, the grievant left a phone message for the supervisor that he had a light duty release and tentative release for January 14, 1995, please call. The grievant also wrote a letter to the Division Manager stating a need for a leave of absence form and that he would return to work on January 14.

On December 20, the supervisor left a phone message that a completed leave of absence form was needed, updated and/or copies are acceptable, if complete, return forms no later than December 21.

On December 23, the supervisor sent a letter to the grievant stating, " You are currently off without pay, and without permission.... it is imperative that you return the completed medical leave of absence request forms by January 3, 1995. Your failure to return these completed forms by January 3, 1995 will result in your termination of employment"

The grievant responded by letter dated December 27, stating: "I have been more than cooperative with your requests, but I've done all I can.should have given you a copy of the leave of absence form. That's all I have. If that's not good enough, you'll have to send me another form as I requested, and I'll take it to my physician."

On January 3, 1995 the supervisor phoned the grievant twice and received no answer. On January 4, 1995 the supervisor phoned PSEA in an attempt to get return to work status from PSEA. PSEA did not have the necessary papers.

On January 4, 1995 the discharge letter was sent to the grievant.

While this series of communications was occurring, there was also correspondence and communication with Safety, Health, and Claims concerning his industrial injury claim. On December 29, the claim was denied as an industrial injury.

On July 7, 1995, the Pre-Review Committee was provided a copy of a Return to Work form releasing the grievant to regular duty as of January 16, 1995. It was signed by his doctor on January 4, 1995.

DISCUSSION

At issue in this case is the grievant's non-compliance with his supervisor's specific instructions. Those instructions were to return a completed leave of absence form. Though it was not clear from the written correspondence, what was incomplete about the form finally received on December 8, 1994 was that the date of return was left blank by the doctor. However, the purpose of having a doctor complete a leave of absence agreement is to provide the company with medical evidence of a need for time off. In this case it was abundantly clear that the grievant had a medical condition for which it was appropriate to grant a leave of absence from the time he ran out of sick leave. On both October 6 and November 14, the company sent the grievant home as he was not able to perform the full duties of his classification. From October 19 - 23, the grievant was hospitalized.

The leave of absence should have been granted and then the return date pursued. Company had other options such as calling the grievant's doctor or sending him to a panel physician to try to ascertain this information.

While the company had other options, the grievant is not relieved of his responsibility and it does appear that he could have made more of an effort to comply with company's request.

DECISION

Based on all of the facts in this case, the Pre-Review Committee agrees to the reinstatement of the grievant on leave of absence from October 13, 1994 until January 15, 1995 and then with backpay retroactive to January 16, 1995 less outside earnings and unemployment insurance. The Committee also agrees that the grievant is to be examined by Dr. Terplan to determine his fitness to return to the Serviceman classification since this is the second occasion that the grievant has required a leave of absence for the same condition. Back pay is contingent on the outcome of the medical review. In addition, as the grievant is being returned to a DOT covered classification, he will need to be drug tested. The Union is agreeing to the DOT test without prejudice.

This case is considered closed based on the foregoing and the adjustment provided herein. Such closure should be so noted by the LIC.

Margaret Short
Margaret Short, Chairman
Review Committee

9/7/95
Date

Roger Stalcup
Roger W. Stalcup, Secretary
Review Committee

9/7/95
Date