



REVIEW COMMITTEE



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PACIFIC GAS AND ELECTRIC COMPANY
201 MISSION STREET, ROOM 1508
MAIL CODE P15B
P.O. BOX 770000
SAN FRANCISCO, CALIFORNIA 94177
(415) 973-8510

**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 94596
(510) 933-6060
R.W. STALCUP, SECRETARY

MARGARET A. SHORT, CHAIRMAN

**Steam Generation Grievance No. DPP-95-54
Fact Finding Committee No. 6295-96-006
Pre-Review Committee File No. 2066**

- DECISION
- LETTER DECISION
- PRE-REVIEW REFERRAL

SUSAN CUNNINGHAM
Company Member
Local Investigating Committee

FRANK SAXSENMEIER
Union Member
Local Investigating Committee

Subject of the Grievance

This case concerns the discharge of a long service Traveling Machinist from Pittsburg Power Plant for engaging in a verbal altercation with a fellow worker.

Facts of the Case

The grievant had the following active disciplinary record:

3/3/94	coach/counsel	Conduct	Inappropriate comments to female co-worker
5/2/94	Oral Reminder	Conduct	Threw bicycle from deck
5/10/94	Written Reminder	Conduct	Verbal altercation with another employee (reduced from DML)
12/14/94	coach/counsel	Attendance	No call; no show
1/22/95	Oral Reminder	Attendance	No call; no show
2/21/95	coach/counsel	Conduct	Insubordinate behavior
3/17/95	coach/counsel	Attendance	Excessive sick leave usage
4/30/95	coach/counsel	Attendance	No call; no show
5/18/95	Written Reminder	Attendance	No call; no show
6/2/95	DML	Conduct	Misuse of company vehicle
10/31/95	Discharge	Conduct	Verbal altercation with another employee

The record includes testimony from several employees who witnessed the altercation on October 26 which led to the grievant's discharge. It occurred in the 1-4 Mechanical Shop computer room. In general all agree that the grievant was already in the room sitting sideways in a chair using one computer and partially blocking another. The partially blocked computer was the only one available. The other employee came into the room and asked the grievant to move so he could sit at the available computer. The grievant responded with a comment that led to a verbal exchange that became progressively more heated. After a few minutes all witnesses left the room. The other employee testified that the grievant threatened him. There were no witnesses to this threat and the grievant denies making it.

The other employee was disciplined for his part in the confrontation. However, the grievant sent an e-mail apologizing to the other employee about 30 minutes after the incident.

Discussion

Much of the discussion in this case concerned the DML and the Written Reminder dated May 10, 1994. The Union argued that the DML, which was not grieved, was predicated on an active Written Reminder in the Conduct category or two active Written Reminders, but in either case, the 1994 WR should have been deactivated prior to the issuance of the DML. Company opined that the WR was properly kept active by the May 8 initiation of an investigation with the potential for discipline in the Conduct category.

The incident in the WR occurred on April 28, 1994 and involved another verbal assault and threatening comments. It is worth noting that this was originally a DML but was reduced to a WR in the grievance procedure. The WR would normally deactivate on May 9, 1995. On Monday, May 8, 1995 at approximately 3:30 p.m. the grievant was observed by two supervisors in Pittsburg. At the time he was on a traveling assignment to Moss Landing and had been since March 31. One of the supervisors had learned that morning that the grievant had been a no call; no show for work and that the grievant was to be released the next day Tuesday to return to his regular headquarters at PPP.

This observation triggered an investigation into why the grievant was in Pittsburg on May 8 that resulted in the Written Reminder dated May 18, 1995. On May 17, 1995 Company received mileage reports for the company vehicle used by the grievant for the Moss Landing assignment. It is unclear from the record whether Company suspected vehicle abuse on May 8 and was waiting for the mileage reports to discuss with the grievant or whether receipt of the mileage reports raised the suspicions. In any case, the DML was issued because the grievant put excessive mileage on the vehicle, approximately 4500 miles over the expected usage for normal travel back and forth between Moss Landing and his residence. The grievant testified that he made "one or two trips per week - some during the middle of the week". He indicated he had permission from his supervisor for all trips. The supervisor acknowledges giving permission for a couple of extra trips but not as many as would have been made based on the mileage. The practice has been one trip home every third weekend.

Company opined that the incident leading to termination falls into the Conduct category of Positive Discipline and as such does not need to follow all steps in the process. Further, this kind of behavior has been a pattern for this employee for which he has been disciplined and was clearly on notice that the behavior was unacceptable. Given the disruptive behavior and the potential for violence exhibited by the grievant, just cause existed for the discharge.

DECISION

Based on the totality of the grievant's record, the Pre-Review Committee agreed the discharge was for just and sufficient cause. However, the Pre-Review Committee leaves open for a future case the issue of timing of deactivation of discipline.

This case is closed without adjustment.

Margaret Short
Margaret A. Short, Chairman
Review Committee
8/15/96
Date

Roger Stalcup
Roger W. Stalcup, Secretary
Review Committee
8/15/96
Date