



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

- DECISION
- LETTER DECISION
- PRE-REVIEW REFERRAL

North Coast Division Grievance No. STR-96-008
Fact Finding File No. 6467-96-178
Pre-Review Committee No. 2090

DONNA RODELLA
Company Member
Local Investigating Committee

LARRY PIERCE
Union Member
Local Investigating Committee

Grievance Issue

This case addresses whether a Meter Reader who was discharged for alleged curbing, and subsequently reinstated with full back pay and benefits, is entitled to 7 1/2% annum interest pursuant to Subsection 9.4(a) of the Clerical Labor Agreement.

Facts of Case

The grievant was terminated on May 20, 1996 for alleged curbing. The grievant was reinstated on August 3, 1996 pursuant to Fact Finding Case No. 6416-96-127. In that case, the parties agreed "...that there is not sufficient evidence to support the charge of curbing. The facts of the case are such that there is a possibility that an inadvertent error may have been the cause of the incorrect readings." The grievant was reinstated and reimbursed \$7,067.52 for back pay without interest and \$1,214.50 for COBRA payments.

Discussion

The language in Subsection 9.4(a) was amended in 1980 to include interest, in the amount of 7 1/2% annum, to back payments when it has been determined that an individual did not violate a rule, policy, or practice as alleged. At the same time, Subsection 9.4(c) was added to provide the parties with absolute discretion to make less than full adjustments when situations warrant.

In reviewing the settlement language of Fact Finding Case No. 6416, the Committee noted that the settlement makes reference to back pay, benefits, and disciplinary status, however, no reference to interest. Based on the Joint Statement of Facts and

the Memorandum of Disposition, it appears that the subject of interest was not discussed until after the settlement had been reached.

The Pre-Review Committee members noted that the language of Subsection 9.4(a) indicates that interest is appropriate in situations where it is determined that the "employee did not violate the rule, practice, or policy as alleged". It may be applicable to reinstatements where the parties have agreed that the employee "did not violate the rule" and it is agreed to include interest in the settlement. Subsection 9.4(a) or its corresponding subsection in Title 102 has never had an automatic application and has been agreed to only very rarely since its adoption in 1980. The Memorandum of Disposition in Fact Finding Case No. 6416 does not indicate that the parties agreed that the curbing did not take place, rather that it was possible that it did not.

In grievances resulting in the reinstatement of an employee, the parties need to discuss, agree upon, and document the conditions under which the reinstatement is being made. If interest is to be paid, it must be so noted in the settlement the same as back pay, benefits, and disciplinary status. The language of Subsection 9.4(c) provides the parties discretion of specifying the appropriate wage adjustment based on the facts of each case.

Another issue discussed by the Committee was the meaning of the language "7 1/2% annum". The Company opined that interest may only be applicable if the reinstatement occurs one year or more past the discharge. The intent of this language is found in the reason for its inclusion during the 1980 General Bargaining. At that time, the parties were concerned about delays in the grievance process with the Union citing examples of employees who had been discharged in excess of one year. The interest was intended to be a penalty for excessive delays in cases involving discharges. The Union opined that interest may also be applicable for reinstatements occurring less than one year past the discharge on a prorated basis. "Annum" clarifies that the 7 1/2 % is an annual rate, but in no way limits it's applicability to reinstatements in excess of one year. The Committee could not agree on this issue.

DECISION

This case is closed without adjustment. Back pay with interest is not appropriate in this case.

Margaret A. Short
Margaret A. Short, Chairman
Review Committee

6/16/97
Date

Roger Stalcup
Roger W. Stalcup, Secretary
Review Committee

6/16/97
Date