



REVIEW COMMITTEE



IBEW

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CASE CLOSED
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INTERNATIONAL BROTHERHOOD OF
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R.W. STALCUP, SECRETARY

MARGARET A. SHORT, CHAIRMAN

- DECISION
- LETTER DECISION
- PRE-REVIEW REFERRAL

North Bay Division. Grievance No. SNR-96-08
Fact Finding File No. 6482-97-13
Pre Review Committee File No. 2091

Carol Quinney
Company Member
Local Investigating Committee

Larry Pierce
Union Member
Local Investigating Committee

Subject of the Grievance

This case concerns the discharge of a long service Utility Clerk-Typist Operating from Vallejo for failure to report for work or provide a completed Leave of Absence Agreement.

Facts of the Case

Following is a chronology of the events leading to the grievant's discharge:

- July 24, 1996 (W) Reported for work, requested and was granted six hours of vacation.
- July 25(Th) Left VMS going to doctor, would not be in. Left no number to call.
- July 26(F) Left VMS relative died and blood pressure still up. No number to call.
- July 29(M) Called from pay phone, won't be in. Left no number to call.
- July 30(T). Left VMS, blood pressure high - went to emergency room. Dr. will schedule appointment for Wednesday or Thursday, would be out all week. Did not call again or report during rest of the week. No number to call. Last day of paid sick leave.
- July 31(W) Supervisor called all listed numbers, all disconnected with no new number referral.
- August 1(Th) No call - no show.
- August 2(F) No call - no show.
- August 5(M) Left VMS going to see therapist would call later in day. Called in afternoon, talked to supervisor. Grievant said she had a doctor's note and would be at work on Thursday, August 8. Supervisor advised grievant that she was out of sick leave, to call in each day before start of shift and to leave number where she could be reached.
- August 6 (T) Left VMS checking-in. Left no number.
- August 7 (W) Did not call-in.
- August 8(Th) Called in a.m. from Kaiser hospital would call again later. Later in a.m. called doctor putting off for two weeks to treat for depression.

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Requested leave of absence papers. Called late in afternoon, will pick up leave papers on August 9 when pick-up paycheck.

August 9(F) Supervisor met at noon with grievant. Gave her the Leave of Absence papers and instructed they were to be completed and returned by 7:00 a.m. Wednesday, August 14 or she was to return to work or she could be terminated. A confirming letter was sent.

Grievant gave supervisor two Kaiser verification slips that excused her from work: one for the period of August 5-7 and the other for August 8-25.

August 13(T) 10th day of leave without pay and without authorization.

August 14(W) Left VMS in morning, not coming in would try in the afternoon after her doctor appointment. Left VMS about 3 p.m. would try to come in later - did not.

August 15(Th) No call-no show.

August 16(F) No call-no show. Discharged.

August 19 (M) Confirming letter delivered

The completed Leave of Absence form was presented to the company at the Local Investigating Committee meeting on September 23. It was signed by the same doctor that excused her from work for August 8 - 25 and was for the same dates. The leave form had been signed by the doctor on August 16, 1996. The treatment recommended by the doctor was not acted upon by the grievant. Her explanation for why the leave forms were not turned in by August 14 and why she did not follow-up on treatment was that, she dropped off the leave forms at the doctor's office on August 9 with instructions as to where they should be returned (to the Vallejo Service Center, via U.S. mail) and assumed they had been. She did not follow-up on the treatment recommended by the doctor because she was terminated and did not have medical coverage after August 31.

The grievant had an active coaching and counseling given February 27, 1996 for attendance related problems. There are no other notations on the Performance Record. A review of the Time Reports for 1992 through 1996 show that in no year did she carry over any accumulated sick leave and that she used excessive amounts of sick leave. There is a pattern of using the 80 hour allotment by July during each of the five preceding years, mostly one or two day increments and thereafter during each of the years continuing to be absent on sick leave without pay. During these years, there were no leaves of absence except during 1995 when a very similar sequence of events took place except that the completed leave forms were submitted to the company by the date required.

Discussion

The Pre-Review Committee discussed this case at length and in detail. It is apparent that the grievant had an extremely poor attendance record of excessive absenteeism, suspicious usage, and many examples of failure to follow the call-in procedures or to report for work as

agreed after being granted time off. It appears that there were numerous occasions when discipline could have been taken.

The difficulty with this termination is that Company had in hand prior to the termination a valid doctor's excuse from the grievant stating the need for time off until August 25. This doctor's excuse was hand delivered to the grievant's supervisor on Friday, August 9, 1996. The information contained in the doctor's note was later confirmed by an appropriately completed Leave of Absence form. Getting the form completed by the August 14 deadline was not entirely within the grievant's control and she was given only two and one-half workdays to comply. Based upon the information available to the Pre-Review Committee, it is our conclusion that the grievant delivered the leave of absence form to the doctor's office on August 9, at which time she was informed the doctor was on vacation. She left the form, requesting that the doctor sign and forward the form to Company upon his return from vacation. It appears the doctor signed the form several days following his return from vacation, and that the medical plan office held the completed form in the plan office for approximately two weeks. They then mailed the completed form back to the grievant.

In situations like this where it is not known far enough in advance that an employee will need a leave of absence, sometimes the completed leave of absence form is received after the 10th day of absence without pay but covers the period of time from when the employee ran out of sick leave until the expected return date. In those situations, a Payroll Change Tag is cut to retroactively put the employee on a leave.

On the other hand, employees have a responsibility to ensure that the company is at all times kept informed of their status to perform their job. This employee has had prior experience with being put on a leave of absence and what is needed and when. She did not keep the company informed as to what she was doing to get the leave papers completed nor did she follow-up with the doctor's office to ensure that the papers were completed and returned to the company by the deadline even though she knew her employment was at risk. Therefore, the grievant must accept some responsibility for her actions which contributed to her discharge.

Decision

Based on the narrow set of facts in this case, the Pre-Review Committee reached a decision that attempts to reconstruct what should have happened with this employee. On August 26, 1996, the employee either would have been released to return to work by her doctor or would have had to provide medical documentation of the need to extend the Leave of Absence. However, medical leaves are granted for employees to follow a prudent course of medical treatment to take care of the problem. If the employee fails to follow the recommended treatment, then, the Company opined, a leave should not be granted or extended.

Based on the specific facts of this case, the Pre-Review Committee agrees to the following remedy:

The grievant will be examined by the doctor that completed the leave papers. The doctor will prepare a report of his diagnosis and recommended treatment which will be provided to the Company. The grievant will be required to immediately follow those recommendations. If the grievant refuses the examination or refuses to comply with the treatment, the discharge will be sustained.

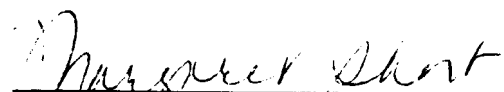
If the grievant does agree to be examined and participate in any recommended treatment, she will be reinstated with seniority and benefits intact except for forfeiture of vacation pursuant to Subsection 8.5(a), and will be placed on a leave of absence, assuming one is necessary. If a leave is not required, she will be returned to work following successful completion of company's pre-employment drug screen. If she fails the drug screen, she will be placed under the First Time Offender Policy.

As a condition of her return, the grievant will be required to sign a release agreement that will allow company to obtain a report from the doctor based on his examination and to periodically obtain information from her doctor(s) to confirm compliance with the recommended treatment program(s). Failure to continue with the recommended treatment while on leave will result in the grievant again being discharged with redress to the grievance procedure only to confirm non-compliance.

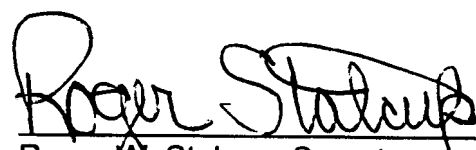
Upon release to return to work by the doctor, the grievant will be returned and be placed at the Written Reminder step of the disciplinary procedure for her unauthorized absences, failure to follow the call-in procedure, failure to maintain communications with her supervisor or to request a leave of absence in a timely manner, and her excessive absenteeism. She will continue to be required to provide satisfactory proof of illness when absent on sick leave. If the grievant fails to maintain a satisfactory level of attendance (including following call-in procedures), she may be disciplined or discharged.

As an equity settlement, back pay will be determined by subtracting from 40 weeks whatever period of time she is delayed in returning to work due to the need for the examination, required treatment, and the pre-employment drug screening. The 40 weeks is based on the number of weeks between a letter from the doctor dated October 8, 1996 and July 15, 1997. The time away from work between August 5, 1996 and October 8, 1996, as well as any time between July 15, 1997 and the date the grievant physically returns to work will be accounted for as medical leave of absence. Company agrees it will take the necessary steps to expedite the issuance of a check for the equity settlement after the grievant returns to work.

This case is closed based on the foregoing.



Margaret A. Short, Chairman
Review Committee
7/18/97



Roger W. Stalcup, Secretary
Review Committee
7/18/97