

7.1: Employee administered a random DOT alcohol test; results indicated alcohol concentration of .039. Company issued WR; PRC reduced to OR.



REVIEW COMMITTEE

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**CASE CLOSED
FILED & LOGGED**

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO
LOCAL UNION 1245, I.B.E.W
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R.W. STALCUP, SECRETARY

MARGARET A. SHORT, CHAIRMAN

- DECISION
- LETTER DECISION
- PRE-REVIEW REFERRAL

**North Valley Division No. CHI-97-20
Fact Finding No. 6565-97-96
Pre-Review Committee No. 2131**

SUE AMPI
Company Member
Local Investigating Committee

MICKEY HARRINGTON
Union Member
Local Investigating Committee

Grievance Issue

This grievance concerns a Written Reminder issued to a Gas Mechanic as a result of a positive random Department of Transportation (DOT) alcohol test.

Facts

The grievant was informed when he reported to work at 7:00 a.m. that his name had been selected for the random DOT testing. At approximately 8:00 a.m., the grievant was tested for alcohol using a breath testing device. The test results indicated an alcohol concentration of .039. Based on the test results, the grievant was removed from work as required by the DOT guidelines. Company issued a Written Reminder.

Discussion

The primary issue raised in the grievance was the accuracy of the test results. This issue was discussed thoroughly and dismissed at the earlier stages of the grievance procedure.

The secondary issue raised in the grievance was the appropriateness of issuing a Written Reminder to an employee with an alcohol concentration between .02 and .039. The Union believed the disciplinary level associated with this range of intoxication should be lower than a Written Reminder typically issued for positive test results of .04 and higher.

The DOT guidelines require that employees testing between .02 and .039 be removed from duty without pay until the start of the employees' next regular scheduled duty period, but not less than 24 hours following administration of the test. Employees testing .04 or higher are similarly removed from work and must be evaluated by a

substance abuse professional, comply with any recommended treatment, pass a return-to-duty alcohol test, and be subjected to follow-up testing.

The Company pointed out that employees in both ranges (.02-.039 and $\geq .04$) are not fit to do their job. In both ranges the Company is required, by law, to remove employees from work due to safety considerations. The only difference in the ranges is the evaluation, treatment, and testing requirements of the higher range.

The Committee reviewed Letter Agreement 95-31, which covers the DOT Alcohol and Drug Testing Program for Commercial Drivers. As it relates to discipline for employees in the .02-.039 range it states;

"Employees falling under the application of these provisions will be subject to disciplinary action under the Positive Discipline System."

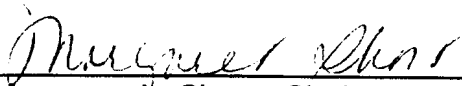
The Committee also notes the language of Letter Agreement 95-31 which states;

"An employee who tests positive for illegal drugs or alcohol misuse during one of the testing programs may be offered the First Time Offender program which currently exists. This will include a prescribed rehabilitation program as specified by a Medical Review Officer or Substance Abuse Professional who is specially trained in substance abuse/alcohol illnesses. In most cases, a second positive test (Drugs, Alcohol or both) will result in the employee's discharge.

The Committee looked at other instances where employees tested in the .02 to .039 range and found that other employees had not been disciplined. The Company members opined that this was due to a lack of understanding of the Company policy which indicates that disciplinary action is appropriate. The Committee agreed, given the absence of any discipline for other employees in similar circumstances, to reduce the discipline to an Oral Reminder. Future cases of employees testing between .02-.039 will be evaluated for the appropriate level of discipline.

DECISION

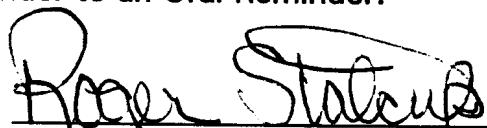
The P-RC agrees to reduce the Written Reminder to an Oral Reminder.



Margaret A. Short, Chairman
Review Committee

4/20/98

Date



Roger W. Stalcup, Secretary
Review Committee

4/20/98

Date