



REVIEW COMMITTEE



IBEW

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R.W. STALCUP, SECRETARY

MARGARET A. SHORT, CHAIRMAN

CASE CLOSED
FILED & LOGGED

- DECISION
- LETTER DECISION
- PRE-REVIEW REFERRAL

**San Francisco Division Grievance No. BEL-97-11
Fact Finding File No. 6610-97-141
Pre-Review Committee Case No. 2162**

**Peninsula Division Grievance No. BEL-97-12
Fact Finding File No. 6649-98-024
-Pre-Review Committee Case No. 2166**

VERN WITTMAN
Company Member
Local Investigating Committee

HUNTER STERN
Union Member
Local Investigating Committee

Subjects of the Grievances

These grievances concern a DML given to the grievant for purchasing, possessing and transferring illegal drugs while at work and his subsequent discharge for failure to adhere to the conditions of his return to work agreement.

Facts of Cases

The grievant was a Division Operator in San Francisco with 13 years of service and had an active DML at the time of discharge. At the time of the incident that lead to his DML, he had an Oral Reminder in the Conduct category and a Written Reminder in the Attendance category.

Events leading to DML: On July 30 and 31, 1997 the grievant reported late for work and did not provide adequate notice. Additionally, on July 30 he took an inordinate amount of time (approximately one and a half hours) to deliver a Company vehicle a short distance from his workplace. During an investigative interview with his Supervisor, he admitted that he had used the Company vehicle to purchase illegal drugs,

returned to the workplace with the drugs and transferred them later in the day on Company property to his girlfriend who is not a PG&E employee.

Following the interview, the grievant was admitted to an in-patient treatment program. He returned to work on August 28, 1997 and he signed a Last Chance Agreement under the provisions of Letter Agreement 87-55. Several days later, he left work early without permission. On September 4, he received a DML for the July 30th incident.

Events leading to discharge: Between September 8 and September 22, 1997 the grievant was off sick with a note from his personal physician. At some point during this absence, he entered a day drug treatment program arranged by a Company EAP Counselor. The day drug treatment program was scheduled to end on September 29. The grievant's Supervisor was notified that he would return to work on September 30. On September 30, the grievant failed to report to work. His Supervisor left two phone messages and paged the grievant twice. Three hours later the grievant returned the phone call and told the Supervisor that he had not been released for work by the treatment center. The Supervisor verified that the grievant had been released from his treatment program and phoned the grievant back. This time, the Supervisor told the grievant he had been released for work and gave the grievant a direct order to report for work. The grievant agreed to report for work in one half hour.

When the grievant failed to report for work as instructed, the Supervisor again phoned the grievant. There was no answer and the tape/answering machine did not pick up. The grievant called the supervisor later in the day and said he was not reporting for work because he was not fit for duty and wanted to see his personal physician.

The grievant alleges he was not informed by the treatment center that he was released to return to work on September 30. While it is unclear from the LIC report as to what instructions the grievant received from the treatment center and the EAP Counselor prior to the 30th, the EAP Counselor and his Supervisor both told him on September 30 that he had been released and to report for work.

The grievant did not return to work until October 6. There is no indication that the grievant saw his personal physician between September 30 and October 6 and he did not provide any proof of illness or disability. He was discharged on October 7.

Discussion

The DML: There is no dispute as to the incident that lead to the DML. The grievant admitted to violating the Employee Conduct Standard Practice, 735.6-1, by 1) using a Company vehicle to conduct personal and illegal business; 2) purchasing illegal drugs on

Company time; 3) possessing illegal drugs at the workplace; and 4) furnishing/transferring illegal drugs at work.

Sales, purchasing and/or furnishing/transferring illegal drugs at work is a dischargeable offense without regard to mitigating circumstances. This has been well established in numerous Review Committee decisions and in Arbitration Case No 157. Section IV of the First Time Offenders policy (LA 87-55) provides that a Written Reminder be given for possession of illegal drugs at work. The grievant's activities went far beyond possession. Additionally, the Grievant had an active Oral Reminder in the Conduct category at the time of the incident. A very strong argument could have been made to discharge the grievant rather than place him under the provisions of the First Time Offenders policy.

The discharge: The First Time Offenders policy (LA 87-55) is intended to provide an alternative to immediate discharge for certain drug related incidents. An employee's commitment to rehabilitation and after-care is documented in a written agreement, signed by all parties. It is appropriately known as the "Last Chance Agreement." Failure to comply with any portion of the agreement results in immediate discharge

The most relevant portions of the Last Chance Agreement that the grievant signed include the following commitments:

5. I am responsible for ensuring that the treatment facility/program provides the company with the necessary documentation to establish my compliance with my rehabilitation obligation.
7. Failure to comply with any provision of this agreement or any future violation of Company drug prohibitions will result in my immediate discharge.
8. Any misconduct, attendance, or performance problem that warrants discipline will result in my immediate discharge.
9. I will be required to provide satisfactory proof of illness for any absences from work for a period of one year.

The grievant violated his commitment by failing to report at the end of a treatment program, disregarding a direct order from his supervisor to report for work and failing to provide satisfactory proof of illness to justify his absence.

DECISION

The parties agree that the DML and subsequent discharge of the grievant was for just and sufficient cause. On that basis, these grievances are considered closed.

Margaret Short

Margaret A. Short, Chairman
Review Committee

7/21/98

Date

Roger Stalcup

Roger W. Stalcup, Secretary
Review Committee

7/21/98

Date