



REVIEW COMMITTEE



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MARGARET A. SHORT, CHAIRMAN

- DECISION
- LETTER DECISION
- PRE-REVIEW REFERRAL

RECEIVED
OCT. 19, 1998

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
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R.W. STALCUP, SECRETARY

Mission Division Grievance No. HAY-97-14
Fact Finding File No. 6687-98-062
Pre-Review Committee Case No. 2164

PAT MEDRANO
Company Member
Local Investigating Committee

ED CARUSO
Union Member
Local Investigating Committee

Subject of the Grievance

This case concerns the discharge of a Lineman, Hayward, for serious misconduct including initiating a physical altercation with another employee and verbally threatening him; and threatening to physically assault and then sexually abuse another employee.

Facts of the Case

The grievant, had almost thirteen years of service at the time of his discharge on December 19, 1997. The grievant's active disciplinary history revealed he had an Oral Reminder and a Coaching and Counseling in the Conduct Category. On November 1, 1997, the grievant intentionally threw tape rolls at employees in a bucket truck. Before the Company had an opportunity to deliver the discipline for this incident, the grievant was involved in the incident which led to his discharge.

On November 26, 1997, the grievant asked his supervisor if he could have the day off as a Floating Holiday. His request was denied as he was needed for a high priority job (wire down) situation. Once at the job site, the grievant began complaining about how the job was being done and the Crew Foreman in charge. He told the Crew Foreman he was going to take his truck and leave the location. The Crew Foreman told the grievant not to move the truck as it was needed where it was to perform the work. The grievant told the Crew Foreman he was going to move it anyway. The grievant persisted in the verbal altercation with the Crew Foreman by stating he wanted to move his truck and by telling the Crew Foreman to hit him. The grievant told the Crew Foreman, "why don't you just put your hands on me. I could hurt you." The grievant then took a step towards the Crew Foreman and bumped him with his chest. Another crew member had to physically restrain the grievant from further physical contact with the Crew Foreman. At that point, the Crew Foreman walked away and called for a supervisor. The grievant was suspended pending an investigation of the incident.

In an investigative interview with Corporate Security on November 26, 1997, the grievant provided a signed statement and agreed that he would not contact or attempt to intimidate anyone involved in the investigation of the November 26 incident.

One of the witnesses to the November 26 incident was reinterviewed on December 9 concerning events which occurred on Sunday December 7. He stated that he was in a PG&E truck on eastbound Stevenson Boulevard en route to repair a street light. Coming toward him was the grievant in his green pick-up truck. The employee made a left turn north on Farwell Drive. He noticed in his rear-view mirror that the grievant continued through Farwell Drive and felt relieved. In the employee's rear view mirror, he saw the grievant come out of the parking lot through a gas station and 7-11 store. The employee stated the grievant would have had to make a right turn and loop around through the lot at a high rate of speed to catch up with him. Then the grievant was behind the employee and followed him within two car lengths for about a mile. The road widened up to two lanes and the grievant shot by him on the left and pulled in front of him. The grievant continued for about 300 yards and then took off. During the investigation of this December 7 incident, this witness related another incident which occurred in February, 1997. In the February incident, the grievant had threatened this employee by telling him he was going to choke him within an inch of his life and then sexually assault him. This February incident was confirmed by another employee who had been with the threatened employee at the time. This February incident is referred to in the termination letter.

On January 15, 1998, after the grievant's discharge, he was observed at the Hayward Service Center walking down the hallway by another employee.

Also, subsequent to the grievant's discharge, another employee made the following statement to Security: On Sunday, January 25, he was at the 24-Hour Fitness Center in Fremont. The grievant came up to him and started talking to him and telling him about his job and what he was doing. Then the grievant told him that if he ever saw four employees (which he named), he would do something to them. He wasn't specific about what he would do, but it didn't sound like an idle threat to the employee. The employee stated it sounded more like a fact. The employee stated he tried to talk the grievant out of doing something stupid, but the grievant said that he would get out of jail some day. The employee further stated that the next day after this conversation with the grievant, he approached one of the employees the grievant had mentioned and told him what the grievant had said. The employee stated he was concerned for the employees as his reason for telling the other employee what the grievant had said.

On February 25, 1998, a restraining order was granted by a Fremont judge stating the grievant, a) must not threaten, strike, or make any contact with employee; b) must not keep employee under surveillance; c) must not follow employee; d) must not telephone or send any messages to employee; e) must not block employee's movements in public places or thoroughfares, or in the place of work. In addition the restraining order ordered the grievant to stay at least 150 yards away from 1) employee; 2) employee's residence; 3) employee's place of work; 4) employee's children's school or place of child care and 5) all PG&E property. A list including 11 employees and PG&E was attached as those covered by the restraining order.

Discussion:

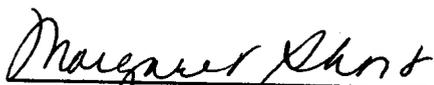
The Union acknowledged the inappropriateness of the grievant's behavior but opined that the discharge should be mitigated based on the grievant's years of service. Union believed the February, 1997 incident was untimely and inappropriate to take into consideration for disciplinary action. In addition, no discipline had been administered for the November 1 tape throwing incident and therefore, some other step of discipline would be more appropriate than discharge.

The Company responded that due to the serious nature of the grievant's misconduct, discharge was the only appropriate action. Had the Company had conclusive evidence at the time the February, 1997 incident occurred, disciplinary action would have been taken. The Company was in the process of investigating the November 1, 1997 tape throwing incident which would have resulted in disciplinary action when the November 26, 1997 incident occurred. The testimony of the witnesses is that during the November 26, 1997 incident, the grievant moved forward to the Crew Foreman to try to force a physical altercation. The witnesses testified that the grievant told the Crew Foreman to put his hands on him and chest bumped the Crew Foreman. One of the witnesses testified he physically restrained the grievant from the Crew Foreman. During this incident, the grievant engaged in inappropriate conduct which was insubordinate and disruptive to the rest of the crew and job in progress. Also, the grievant's behavior after his termination which caused the Company to obtain a restraining order, was intimidating and threatening to other employees and supervisors which reinforces the Company's belief that termination was appropriate. The Company cannot tolerate threatening behavior.

DECISION

Based on the facts of this case, the PRC determined there was just and sufficient cause for the discharge.

This case is closed without adjustment.



Margaret A. Short, Chairman
Review Committee

10/16/98
Date



Roger W. Stalcup, Secretary
Review Committee

10/16/98
Date