

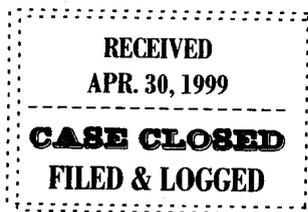


REVIEW COMMITTEE

IBEW



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MARGARET A. SHORT, CHAIRMAN

- DECISION
- LETTER DECISION
- PRE-REVIEW REFERRAL

Fresno Division Grievance No. FRO-98-29
Fact Finding No. 6830-98-205
Pre-Review Committee No. 2200

MONICA OAKES
Company Member
Local Investigating Committee

JIM LYNN
Union Member
Local Investigating Committee

Subject of the Grievance

This case concerns the discharge of a long service Customer Services Sr. Service Representative I for violation of the Employee Conduct Standard Practice, 735.6-1. Specifically, the grievant participated in the break-in of a supervisor's file cabinet.

Facts of the Case

A supervisor was transferred to a new position. He cleaned his personal belongings from his office and files. He left the supervisory files of the employees that worked at his old location. He later contacted the soon to arrive supervisor and asked him to send the file of one of the employees. The new supervisor found the file cabinet was unlocked and the locking mechanism appeared to have been damaged. The 20 or so files that should have been in the bottom drawer were missing. The new supervisor then contacted Security.

The Security Representative determined that a prying instrument, (probably a screwdriver), had been used to pry open the top drawer of the filing cabinet resulting in the locking mechanism being broken.

The Security Rep interviewed two employees, the grievant, and another Sr. Service Representative. The grievant stated he and the other employee went to the unoccupied supervisor's office where they found a group of keys, but they did not open the locked file. The grievant then went to his office in the cashier's cage where he retrieved a screwdriver and gave it to the other employee. The other employee pried open the file cabinet. Each employee read their respective files, returned them to the bottom drawer and closed the cabinet.

A couple of days later, the other employee returned to the file cabinet and destroyed all the employee files, approximately 20. This employee informed the grievant of this action. The grievant did not inform anyone.

Discussion

The Union argued that discharge was too severe for the grievant's involvement in that he had not been involved in the destruction of the employee records. Union further cited the grievant's long service, 28 years, and lack of any active discipline. Union also noted that the employees have a right to review their files.

Company responded that employee's have a limited right to review the unofficial supervisory file but only by scheduling an appointment and under the observation of an exempt employee. Company acknowledged that the grievant's involvement was less than that of the other employee but that his actions in providing the screwdriver, participating in the break-in and damaging of company property, and failure to report the subsequent destroying of the files was sufficient to warrant termination. Further, the grievant was in a position of trust as the office cashier and his actions clearly called into question his trustworthiness.

The Committee discussed at length the details of Pre-Review Committee File No. 1292, a grievance which addressed employee access to the "unofficial" supervisors' files. The Union alleged that the supervisors' files had not been properly purged and that employees had been denied the opportunity to review the contents of these files. It was noted by the PRC that there was conflicting testimony in the LIC Report in this earlier case as to whether information contained in the supervisors' file was available to other supervisors' to review. Union claimed the refusal of access to these files violated the provisions of Section 106.11 of the Agreement. Company maintained that supervisors need to be able to keep personal jog-notes and records, and at the point that a pattern of behavior is evident or an incident occurs which warrants application of Positive Discipline, such discipline should be confirmed in writing and the documentation made a part of the "official" record.

In the settlement of this former case the PRC agreed, in part, that:

"...information kept by supervisors in informal files would not be used to affect an employee's status, nor would the file be transferred from supervisor to supervisor, except for duplicates of documents which are also contained in the (official) 701 file".

Additionally, the PRC agreed that the supervisor's files should be maintained in two parts. Part I, which would be subject to employee review may contain any information duplicated from the 701 file; any active discipline record and the supporting documentation; the positive discipline employee performance record oral reminders. Part II, which would not be subject to employee review may contain supervisors' personal or jog-notes or other information which has not been used to affect an employee's status. It was also agreed by the PRC that at the time the supervisors' personal or jog-notes or other information is relied upon for any action under Positive Discipline, it is then to be transferred to Part I of the supervisors'

operating file, where it would be subject to deactivation and removal pursuant to Section VI of the Positive Discipline Guidelines. As noted above, documents filed in Part I would be subject to employee review in accordance with the provisions of Section 106.11 of the Agreement.

In reaching this decision, the Pre-Review Committee also stated:

"The Committee further agreed that the materials contained in Part II of the supervisors' operating file is not to be available to or reviewed by other supervisors."

The grievant in the instant case was discharged because he, along with another employee, broke into a file cabinet and reviewed the contents of each of a supervisors' operating file that pertained to each of them. The grievant testified that he had previously been denied access to the file by the supervisor. The supervisor who had accumulated the information contained in the various files had transferred to another headquarters prior to the time of the break in. He did not take with him his supervisors' operating files, which contained his personal or jog-notes and other information which had not been used to affect any employee's status. Several days after this supervisor reported to his new headquarters, he called his replacement supervisor at the previous headquarters, and requested that the replacement supervisor send to him a copy of the supervisors' operating file for the second individual who was involved in the break in of the file cabinet. As a result of this request, the replacement supervisor discovered the file cabinet to be empty.

The Union argued that in this case, several violations of the Agreement took place. As agreed in PRC 1292, the grievant should have been permitted to review Part I of the supervisors' operating file. He was denied this request. Secondly, in the Union's opinion, the information contained in Part II of these supervisors' operating files are the exclusive property of the supervisor who created the files, and are not, under any circumstance, to be available to or reviewed by any other supervisor. This is stated in clear and unambiguous terms in the settlement of PRC 1292. In the case at hand, the departing supervisor intentionally left his supervisors' operating files for his replacement. In the testimony of the replacement supervisor at the LIC, he stated that the departing supervisor personally delivered to him a key which he explained was for the lock on the file cabinet containing the supervisors' operating files. Although it does not appear that the replacement supervisor ever accessed these files, he clearly was aware that they were being made available to him for his review and use.

The Union pointed out that had the departing supervisor taken the files with him when he transferred out of the headquarters, the events which gave rise to the grievant's discharge could not have taken place.

Company agrees with the accuracy of the above statements as they relate to the earlier PRC Decision (#1292). However, company believes the grievant had an obligation to file a grievance if he believed he had a right to review information in the supervisor's file. The

grievant certainly did not have the right to resort to self-help by forced entry into the supervisor's file cabinet. The grievant's actions were sufficient to warrant discharge.

Prior to being discharged, the grievant was offered the opportunity to retire.

Decision

Without prejudice to the position of either party in regard to the issue of just cause and without precedent, the PRC agrees to close this case on the basis of allowing the grievant to retire retroactive to October 1, 1998.

Margaret Short
Margaret A. Short, Chairman
Review Committee

4/29/99
Date

Roger Stalcup
Roger W. Stalcup, Secretary
Review Committee

4/29/99
Date