



REVIEW COMMITTEE



PACIFIC GAS AND ELECTRIC COMPANY
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RECEIVED
FEB. 22, 1999
CASE CLOSED
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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

General Construction No. HAY-98-08
Fact Finding No. 6688-98-063
De Anza Division No. DEA-98-04
Fact Finding No. 6747-98-122
Pre-Review Committee No. 2182

San Jose Division No. SJO-98-11
Fact Finding No. 6822-98-197
Pre-Review Committee No. 2193

General Construction No. SJO-98-013
Fact Finding No. 6843-99-001
Pre-Review Committee No. 2202

PAT MEDRANO
PAULA JEAN
PAM COEN
Company Members
Local Investigating Committee

ED CARUSO
KATHY MAAS
Union Members
Local Investigating Committee

Subject of the Grievances

These cases involve both Title 200 and Title 300 employees who worked 16 hours then were released for an eight hour rest period prior to reporting for their regularly scheduled hours.

Facts of the Cases

These cases cover the time period from Monday, February 2, 1998 through about Tuesday, February 10, 1998. There were significant rain storms during this period resulting in the need for employees to work overtime for service restoration.

The Area 3 OM&C Manager issued a letter dated December 19, 1997. This letter was similar to others issued around the system and in part, addressed how to manage "Prolonged Emergency Response". It stated:

"...the need for extending work hours needs to be balanced with the human need for sleep and the natural decline in attentiveness and/or productivity when fatigued. Rest periods are best called under these conditions.

Our policy is to provide rest periods of 8 hours in length every 24 hour period for all employees involved in emergency response. We will enact this schedule approximately 30 to 36 hours after the initial storm or emergency response when public safety concerns are resolved and assessment is underway. This rest period will be scheduled for the vast majority of employees in the night hours, when visibility is poor and safe working conditions may not be available, generally speaking...."

The letter goes on to list several specific instructions to be observed. In practice, most employees worked their regular hours and then prearranged overtime hours so that the total consecutive time did not exceed 16 hours, and then were released for an eight hour period. Employees reported at the start of their regular work hours.

In each of these grievances, the LIC determined that the crews that were sent home were not replaced with other crews.

At issue, is whether this planned approach to service restoration violates Item 2 of Letter Agreement 85-61, which states:

"If Company determines, based on observing objective behavior by an individual employee performing overtime work, that the employee can no longer continue to work safely, the Company will send the employee home. The Company will not send an employee home for the purpose of circumventing a rest period or increased overtime penalties."

Discussion

Union opined that Company is in direct violation when it sends employees home from an overtime work assignment during storm restoration and then schedules employees to return to work at the beginning of their regular work schedule. Union argued that this practice circumvents rest periods and overtime provisions of the Agreement. Letter Agreement 85-61 is clear in Paragraph 2 where it states that the Company will not send an employee home for the purpose of circumventing a rest period or increased overtime penalties. However that is precisely what Company is doing per its letter dated December 19, 1987.

Company opined that the critical issue in the grievances that led to Letter Agreement 85-61 was the sending home of employees who were working overtime *and replacing them with other employees*. The grievants believed they had an entitlement to continue on the overtime assignment until the work was completed, discontinued, or they could no longer work safely. To address that issue, the parties agreed that if an employee requested to go home due to fatigue or if the supervisor observed that an employee was too tired to continue to work safely, then the employee would be sent home. Under these circumstances, it would be permissible to replace the employee with another worker to complete the work. The last sentence of Item 2 simply means that an employee may not be replaced so that he does not qualify for a rest period or so that penalty payments are not incurred.

Review Committee Case Nos. 1565 and 1569 address two grievance issues wherein Company sent employees already working an overtime assignment home and replaced them with other employees who were called out to continue and/or complete the jobs already in progress. The issues in these grievance files were referred to arbitration (Arbitration Case No. 120). Prior to an arbitration hearing, however, the parties executed Letter Agreement 85-61, and agreed to settle the grievances by applying the provisions of the Letter Agreement. Where employees were replaced, the Review Committee found a violation of the Agreement, and compensated those employees who had been replaced as if they had continued to work.

The Pre-Review Committee agreed, that the above-referenced Review Committee Decisions establish the principle that if employees working overtime are sent home, for any reason, *and are not replaced*, there is no violation of Letter Agreement 85-61. Further, the PRC agreed that additional work tags may be assigned to crews that are already working or to additional crews called-out. Which crew gets the assignment is predicated on the ability to respond to the work site the quickest, based upon the principle of practicability, as addressed in several prior decisions from the Pre-Review and Review Committees. In a case where the newly called out crew would be able to respond to the new work site quicker, such call-outs would not violate Letter Agreement 85-61 and would not constitute a replacement of the crews already working. However, if the crew that was already out on an overtime assignment had completed its assigned work and was available to respond to a new work site, and such crew was released and "replaced" by a newly called-out crew, a violation of the agreement may be found.

Union further opined that if Company collected tags (was aware of work), then sent individual employees or crews home, waited for some period of time, and then called out new crews to work the accumulated tags that this would be a violation of Letter Agreement 85-61. Company agreed this could be a violation, but there might also be a change in circumstance that caused Company to reconsider and decide to have the tags worked. The PRC agreed that such a decision would be subject to challenge. Union opined that such a decision would likely be reviewed in the grievance procedure.

By way of illustration, Union opined that a scenario where some employees/crews had worked their regular work hours and continued to work an extension of the work day for 8 hours. Other employees had been called out for overtime work and had worked 4 hours. Additional work was "in hand" (for example, storm damage repair tags), the employee/crew that had worked 8 hours had completed an assignment, the employee/crew that had worked 4 hours still had work to do to complete the present assignment. To send home the employees/crews who had worked 8 hours overtime during the 16 hours immediately preceding regular work hours, and hold the remaining work for the crew that had been called out later and had worked 4 hours would violate the provisions of L/A 85-61.

Company stated that these hypothetical situations presented by the Union are not at issue in these cases and the arguments may be made in the future should factual situations present themselves in the grievance procedure.

Decision

In the cases at hand, most of the grievants were released from work after working 8 hours of overtime. They were scheduled to return to work after an 8 hour break. In most cases, the 8 hour break concluded simultaneously with the beginning of their regular work hours. However, in no case was there any other employee (replacement employees) called out to continue working the storm damage repair work outside of regular work hours. With that being the case, the Pre-Review Committee is of the opinion that there was no violation of the Agreement or Letter Agreement 85-61. These cases are closed without adjustment.

Margaret A. Short
Margaret A. Short, Chairman
Review Committee

2/18/99
Date

Roger W. Stalcup
Roger W. Stalcup, Secretary
Review Committee

2/18/99
Date