



REVIEW COMMITTEE

IBEW



PACIFIC GAS AND ELECTRIC COMPANY
2850 SHADELANDS DRIVE, SUITE 100
WALNUT CREEK, CALIFORNIA 94598
(925) 974-4282

MARGARET A. SHORT, CHAIRMAN

DECISION
LETTER DECISION
PRE-REVIEW REFERRAL

RECEIVED by LU 1245
AUGUST 25, 2000

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
(925) 933-6060
BOB CHOATE, SECRETARY

Pre-Review Committee No. 11439

Vern Wittman
Company Member
Local Investigating Committee

Kathy Maas
Union Member
Local Investigating Committee

Subject of the Grievance

This case concerns the discharge of an Area 1 Fitter for attempting to bribe a DOT Collector.

Facts of the Case

On January 28, 2000 the grievant was notified of the need to report for a post rehabilitation follow-up alcohol test. Grievant had tested positive for alcohol on April 5, 1996. As such he was subject to unannounced follow-up testing for five years in addition to random testing. The grievant was tested at 7:51 a.m. The resulting read on the Breath Alcohol Test (BAT) was .03. The second, confirmation test was .026.

Between the first and second tests, the grievant became quite upset, paced the room, and stated his fear that he would lose his job. The grievant then begged the Collector to blow into the EBT for him and offered the Collector \$1000 to do so. The Collector declined and after the second test notified the grievant's supervisor. The supervisor removed the employee from work.

Other employees tested after the grievant indicated there were some irregularities about the collection process. None of the irregularities constituted a fatal flaw under the DOT regulations.

Discussion

Union opined that had the Collector done the procedure properly, the grievant would not have been placed in the position of feeling trapped and in danger of losing his job. Had the Collector known the procedure and the regulations, he might even have been able to assure the grievant that based on the test results his job was not in jeopardy.

Company responded that the Joint Statement of Facts contains an exhibit submitted by the Collector which details the grievant's actions but does not address the irregularities in procedure stated by the other employees. In addition, the Collector submitted a copy of the log he keeps showing the testing of the Evidential Breath Testing device (EBT) which is conducted between donors to verify that the calibration of the EBT is within the appropriate range. Thus, Company isn't convinced that the actions attributed to the Collector actually occurred or that he was asked to respond to the allegations.

Letter Agreement 90-86 which outlines the parties' agreement concerning the implementation of the DOT Drug Free Pipeline Program, many of the principles established in that letter agreement were carried forward when the alcohol testing program was implemented in 1995. It states in Attachment I, Item B.3.:

"The Collection Site Person shall not make any remarks or provide any information or interpretation of a specimen with respect to the employment status of the individual."

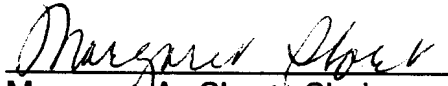
L/A 95-31 and a guidance/requirement form regarding conduct for collections that is given to each employee prior to testing, clearly emphasizes that willfully and tampering a test specimen, is discharge. To bribe a Collector is a form of tampering. Based on the DOT guidelines, alcohol results in the range of .02 to .04 constitutes grounds for removing the employee from covered work for at least 24 hours following the test as the employee is considered unfit to perform safety sensitive work. PRC 2131 involved the disciplining of an employee with an alcohol test result of .039. L/A 95-31, further notes that in most cases, a second positive test (Drugs, Alcohol, or both) will result in the employee's discharge.

As to the irregularities in collection procedures, the parties have addressed this in PRC 2205. As noted above, employees are given a checklist of the procedure prior to submitting a specimen so they will know what to expect. If an employee believes that the procedures are not being correctly followed, they should bring the matter at the time of the testing to the attention of their supervisor.

Finally, the PRC reviewed PRC 1525 which upheld the discharge of an employee for abusive language directed toward a DOT Collector. The discharge of that employee (who was on a DML) and the grievant in this case is predicated on the language that failure to follow the collection procedures, the action will be treated as insubordination. In this case, the grievant knew of the consequences prior to his unsuccessful attempt to offer a monetary reward to the Collector to influence the test results.

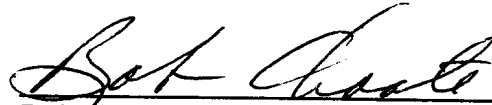
Decision

The PRC is in agreement that the discharge was for just and sufficient cause. This case is closed without adjustment.



Margaret A. Short, Chairman
Review Committee

8/15/00
Date



Bob Choate, Secretary
Review Committee

8/15/00
Date