



REVIEW COMMITTEE

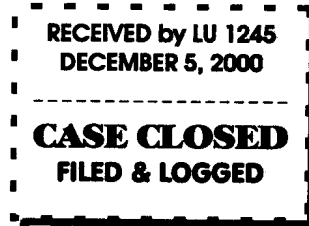
IBEW



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MARGARET A. SHORT, CHAIRMAN

DECISION
LETTER DECISION
PRE-REVIEW REFERRAL



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. 11568

Shawn Hoover
Company Member
Local Investigating Committee

Roy Runnings
Union Member
Local Investigating Committee

Subject of the Grievance

This case concerns the discharge of a Lineman with 16 years of service for repeated insubordination, intentionally bumping his supervisor, making threats of physical violence toward his coworkers, verbal abuse toward his supervisor, and other incidents of misconduct.

Facts of the Case

On February 4, 2000 the grievant was talking with another employee at the GC Eureka yard when a line truck being driven by a Miscellaneous Equipment Operator entered the yard. On February 9, the grievant reported to the Ethics and Compliance Hotline that the MEO was driving the line truck at an excessive speed and had deliberately tried to hit him. Security was called to conduct an investigation.

An interview between the grievant and Security was scheduled for February 28 at the Eureka yard, however, the grievant called in sick and further declined to be interviewed at home. Security then interviewed the MEO and other witnesses.

In the course of those interviews the witnesses indicated the grievant had made the threat toward the MEO that he was going to "kick his butt" and that "the old man needs to be taught a lesson." The grievant later acknowledged he made these comments or at least comments very similar. Upon learning this, the supervisor called the grievant at home and told him to report to Lakeville Sub in Petaluma the following day in the afternoon to be interviewed by Security and then to report to Garberville the following day. The grievant was very unhappy with this new assignment and argued with the supervisor of why he was being moved.

At approximately 12:30 on February 28 the grievant paged the supervisor who returned the call. The grievant indicated to the supervisor he was going to report to the job site that afternoon to talk with the crew. The supervisor told the grievant he was not to go to the job site or to have any contact with the crew members. The grievant became very abusive on the phone and told the supervisor he would see him at the Eureka yard. The supervisor told the grievant again that he was not to go to the job site and that he was not to go to the yard either. The supervisor called the HR Advisor and was instructed to contact the grievant again and give him a direct order and possible consequences of going out to see the crew. The supervisor called the grievant back, got his voice mail and left him the message as advised by the HR Advisor.

When the supervisor and the crew arrived at the yard at approximately 3:00 p.m., the grievant was there. The grievant approached the MEO and attempted to engage him in a discussion about the Security investigation. As the MEO and other witnesses had been instructed by Security not to discuss the investigation, the MEO refused to discuss it with the grievant.

The grievant confronted the supervisor using profane language demanding to talk to the crew. The supervisor ordered the grievant to leave the yard. The supervisor repeated the instruction several times and indicated he was giving a direct order. The grievant indicated he had a right to be in the yard and that he needed to get his tools and climbing gear prior to leaving. The grievant entered a building and made a phone call. When he exited the building, he was given his tools by one of the Lineman crew members.

The supervisor indicated the grievant pushed into him with his gear. The witnesses were not close enough to tell for certain but did indicate the grievant passed very close to the supervisor and that the grievant's behavior throughout was combative, aggressive, and threatening and that they all believed a confrontation was eminent.

During the confrontation, the Director arrived at the yard. The supervisor asked the Director to call 911 which he did. Two police officers arrived very quickly. When they arrived, the grievant moved his truck from inside the yard to right outside the gate. It took the officers approximately twenty minutes to get the grievant to leave the area. The grievant was later contacted that he was on a crisis suspension and was to report to Ukiah instead of Lakeville Sub to be interviewed by Corporate Security.

In addition to the above, after being instructed not to have any contact with employees, the grievant called one of the witnesses at home the night of February 28. According to the witness, a Lineman, the grievant told him "Siding with me would have been nice. You're my friend. I'm sorry that it had to come to this." The Lineman advised the grievant: "I'm not lying for you or against you." The Lineman indicated that right after that someone called and hung-up three times.

On February 29, 1999 and March 7, 1999 the grievant was interviewed by Security in Ukiah. The grievant was discharged effective March 23, 1999. He had 16 years service and no active discipline at the time of termination.

Discussion

The Union opined that by reconstructing the facts of this case it is clear that the Company was out to get the grievant. There is no witness to the alleged "bumping" of the supervisor; no evidence to threatening violence or physical harm to anyone; no refusal to cooperate in an investigation; and insubordination. The grievant contacted the Ethics and Compliance Hotline to register a truck driving incident that he felt threatened, which resulted in an investigation that ultimately led to his discharge. The trigger incident that escalated this situation was when the Company decided to transfer the grievant after calling him at home when he was sick. The grievant was agitated at being transferred and wanted to try to work out this issue with his crew instead of being transferred.

Union's allegation that Company was "out to get the grievant" is not borne out by the facts. This chain of events was initiated by the grievant. It is interesting that he chose to call the Hotline rather than informing his supervisor of the alleged unsafe act of the MEO. As to the physical contact with the supervisor, the supervisor's testimony must be given greater weight than the grievant's in this situation. Further, while the witnesses were not close enough to see whether there was actually contact, they all testified that the situation was very intense and that the grievant's behavior was intimidating and threatening. Beyond that, the grievant had been clearly told not to come to the job site or yard and he chose to disregard that instruction. As a Title 300 employee, the grievant is routinely subject to transfer. That decision is management's and not made by bargaining unit crew members.

On several occasions in the past, management had addressed the grievant's misconduct but when investigating, witnesses were unwilling to testify as to what occurred. In addition, the supervisor made a supervisory referral to EAP and had numerous discussions with grievant regarding his treatment of coworkers and inability to get along. The grievant created an environment of fear and intimidation at work. His behavior on February 28 was grossly insubordinate and exhibited a total disregard for supervision, and a challenge for law enforcement.

The PRC notes that in Arbitration Case 227, the arbitrator stated that when confrontation becomes physical, an employee can expect to be terminated.

The Pre-Review Committee met on several occasions to discuss this issue. The record indicates that the grievant has had a past history of poor treatment of coworkers and an inability to get along with others. The PRC further notes that on the day of the interviews into the Ethics and Compliance complaint, the grievant was home on sick leave. The grievant initiated the confrontation by going to the headquarters and not leaving when ordered to leave. Had the grievant left the area when requested, the situation would have resulted in discipline but not termination. There was nothing the grievant could do by going to the headquarters in the first place. In this case the grievant had several opportunities to walk away from the incident. By not doing so, he made himself vulnerable to discharge.

Decision

The PRC is in agreement that the grievant was terminated for just cause.

Margaret Short

Margaret A. Short, Chairman
Review Committee

12/4/00
Date

Bob Choate

Bob Choate, Secretary
Review Committee

12-4-00
Date