

# REVIEW COMMITTEE

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- DECISION  
 LETTER DECISION  
 PRE-REVIEW REFERRAL

## REVIEW COMMITTEE DECISION

Review Committee File No. 1462-79-4  
P-RC 353

General Construction Grievance No. 3-287-77-158

### Statement of the Case

This case concerns the layoff of two employees following their transfer to a General Construction project at Humboldt Bay Power Plant. Shortly after their transfer, the employees were required to take a medical examination on March 3, 1977, as required by the Nuclear Regulatory Commission. Following that, both employees were informed that they would be required to leave the job and take sick leave because the doctor's findings revealed that they could not do strenuous work. The grievants were later released for work following further examinations.

Grievances concerning the layoffs were not filed within 30 days of their layoffs or return to work. The grievance contests the employees' layoffs and seeks retroactive wages for the time they were off work.

### Discussion

The record submitted to the Review Committee initially contained no information relative to Mr. Ragona's status. The same, however, was not true with regard to Mr. Shepherd. Mr. Shepherd was examined on June 10 by Dr. Smith, who reported, "It is unclear to me as to why he (Shepherd) was abruptly removed from the job in the first place but, in any event, he appears perfectly capable of resuming his full and normal activities." Much later, the Review Committee learned, with regard to Mr. Ragona, that a panel physician reported that he could find "... no evidence in Mr. Ragona's evaluation that would justify his being off work any longer." Thereafter, the Department returned him to work on May 13.

Inasmuch as the grievance was not filed until July 26, a critical initial issue in this case concerns whether the grievances were timely filed. In this regard, the Union and the Company have both insisted that the time limits expressed in Title 102 must be rigidly adhered to provide the Review Committee with proper jurisdiction to dispose of the grievance. That section of the Contract provides that a grievance of this nature must be filed within 30 days of the Company's action or the date the employee becomes aware of the action; if not, the Review Committee would lack authority to dispose of the grievance. Basically, the question here, in either case, is what is the date of the employee's awareness.

While the Company initiated the grievants' layoff, the grievants did not become aware of the final medical opinions until such time as their attorney

received the physicians' report, that is, sometime after June 30. In this particular situation then, the time limits are measured from the date the doctor's reports were received by the grievants' attorney rather than the date they were laid off.

Decision

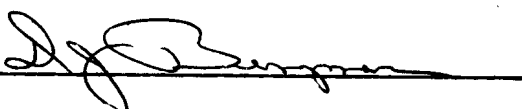
In the light of the foregoing, it is the conclusion of the Review Committee that the grievances were timely filed, and giving due regard to the medical reports, the layoffs were not medically required. Therefore, the grievants are entitled to retroactive wage adjustments from the day they were ordered to take sick leave until their reinstatement.

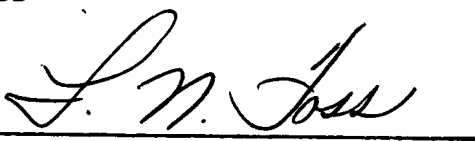
FOR COMPANY:

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FOR UNION:

G. W. Abrahamson  
W. H. Burr  
L. N. Foss

By   
Date 5-14-79

By   
Date 5-14-79