

REVIEW COMMITTEE

PG and E

PACIFIC GAS AND ELECTRIC COMPANY
245 MARKET STREET, ROOM 444
SAN FRANCISCO, CALIFORNIA 94106
(415) 781-4211, EXTENSION 1125

D.J. BERGMAN, CHAIRMAN

IBEW 

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO
LOCAL UNION 1245, I.B.E.W.
P.O. BOX 4790
WALNUT CREEK, CALIFORNIA 94596
(415) 933-6060
L.N. FOSS, SECRETARY

RECEIVED MAY 15 1979

**CASE CLOSED
LOGGED AND FILED**

REVIEW COMMITTEE DECISION

- DECISION
 LETTER DECISION
 PRE-REVIEW REFERRAL

Review Committee File No. 1466-79-8
P-RC 421

General Construction Grievance No. 3-434-78-85

Statement of the Case

Prior to July 5, 1978, the grievant in this matter had been off work and on the Workers' Compensation payroll. The Department then notified the grievant that "he was to return to work at 0800 July 6 after being released for full duty by the treating orthopedic surgeon." On July 6, the grievant was reexamined by Dr. Sturtz, an orthopedic specialist, at which time the doctor concluded that the employee was capable of performing his job activities. The grievant continued to complain of a pain in his back and that he was not physically able to report for work. The grievant did not report for work as instructed by the Department and was terminated.

The grievant was further examined by a urologist, who concluded that the grievant "was apparently ill on July 6 and 7." The urologist continued, "I have documented that Mr. Meyer has kidney stones in both kidneys. It is possible that his clinical complaints on July 6-7 were related to his kidney stone disease." On July 31, the urologist concluded that the grievant was capable of returning to work.

Discussion

The ultimate question before the Review Committee is whether or not the grievant's discharge was warranted under the provisions of the Labor Agreement or whether that same Agreement served to protect his employment, i.e., entitled him to sick leave pay or leave of absence without pay.

The Review Committee is not in a position to argue with valid medical opinions, particularly when those opinions have been solicited by the Company. Thus, while the employee's prior industrial injury was not a bar to his returning to work on July 6, an intervening medical cause was interposed by the grievant, i.e., his back pain and possible aggravation of a pre-existing kidney stone. His refusal to report for work was apparently unassociated with his industrial injury. Moreover, the employee's subjective complaint was later verified by a urologist, and satisfactory evidence exists that the employee's physical condition was sufficient cause for him not reporting for work as instructed.

Lacking a better guide, and with the understanding that the grievant sought and obtained other employment when he was well enough to do so, this Committee decides that he could have returned to the PGandE payroll on the same date that his physician released him to return to work; i.e., July 31, 1978. The grievant's wages shall be adjusted accordingly.

Decision

The grievant shall be reinstated with full seniority immediately. The grievant will be entitled to retroactive wage and benefit adjustments from July 31, 1978, less any outside earnings he received from that time to the point of reinstatement.

FOR COMPANY:

F. C. Buchholz
J. B. Stoutamore
D. J. Bergman

By 

Date 5-14-79

FOR UNION:

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

By 

Date 5-11-79