

7.1 -Discharge of Serviceman already on DML following auto accident.



REVIEW COMMITTEE

IBEW



PACIFIC GAS AND ELECTRIC COMPANY
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MAR 23 1994

**CASE CLOSED
LOGGED AND FILED**

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO
LOCAL UNION 1245, I.B.E.W.
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WALNUT CREEK, CALIFORNIA 94596
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R.W. STALCUP, SECRETARY

RICK R. DOERING, CHAIRMAN

RECEIVED MAR 18 1994

- DECISION
- LETTER DECISION
- PRE-REVIEW REFERRAL

Kern Division Grievance No. KERN 92-28
Review Committee File No. 1760

Bill Mattox
Kern Division
Local Investigating Committee

Ron Van Dyke
Kern Division
Local Investigating Committee

Grievance Issue: The discharge of a Gas Serviceman, at the DML step of Positive Discipline, for an automobile accident.

Facts of the Case: The grievant was hired by the Company on January 21, 1972. He was terminated on August 19, 1992. His termination was caused by a traffic accident that occurred on August 12, 1992. The grievant was driving a Company vehicle en route to the service center, when he entered an intersection and failed to see a motorcycle which collided with the Company vehicle. The Highway patrol report indicated that the grievant caused the collision by failing to yield the right of way to the approaching traffic.

According to the grievant, the Highway Patrol report was inaccurate; the grievant's view was obstructed; the motorcycle driver was speeding and did not have any front brakes; and finally, all witnesses were not interviewed by the patrolman.

At the time of this incident, the grievant was at the Decision Making Leave step of Positive Discipline.

On January 5, 1994, a decision of Superior Court in Kern County found that the grievant was negligent and that third party was comparatively negligent.

Discussion: The Union argued prior to the court ruling that the termination was based solely on the Highway Patrol report which was "highly suspect" since the investigating officer was relatively new to his position. The Union also argued that the motorcyclist was at fault because he was traveling at excessive speeds.

The Company argued that the action was appropriate. The Company noted that the circumstances of this case were very similar to those found in Arbitration Case No. 167. In that case it was found that:

"...that fact that the accident was due to the Grievant's negligence or inattention rather than intentional misconduct does not undermine the Company's case. Negligence may properly form the basis of disciplinary action when an employee is on notice of his obligation to exercise reasonable care and fails to do so. Here, the Grievant had clear notice of his obligation in that regard, and failed to meet that standard, resulting in a preventable accident that caused damage to a third-party vehicle. Under the circumstances, particularly in light of his DML status, it is found that discharge was warranted."

Disposition: The Committee agreed based on Arbitration Case No. 167 that the discharge was for just cause.

This case is closed without adjustment.



John A. Moffat, Acting Chairman
Review Committee

3/8/94
Date



Roger W. Stalcup, Secretary
Review Committee

3/2/94
Date