

106.3P (17.3C): Was grievant terminated or did he resign? Emp. resigned, requested Co. to let him rescind resignation; Co. declined. Based on Arb. 53, should have been allowed to rescind; reinstated with back pay.



REVIEW COMMITTEE

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IBEW



PACIFIC GAS AND ELECTRIC COMPANY
201 MISSION STREET, ROOM 1508
MAIL CODE P15B
P.O. BOX 770000
SAN FRANCISCO, CALIFORNIA 94177
(415) 973-8510

CASE CLOSED
FILED & LOGGED

FEB 23 1995

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO
LOCAL UNION 1245, I.B.E.W
P.O. BOX 4790
WALNUT CREEK, CALIFORNIA 94596
(510) 933-6060
R.W. STALCUP, SECRETARY

RICK R. DOERING, CHAIRMAN

REVIEW COMMITTEE DECISION

- DECISION
- LETTER DECISION
- PRE-REVIEW REFERRAL

Review Committee File No. 1778
Local Grievance No. FRO-94-28-300

Melanie Curry
Company Member
Local Investigating Committee

Ron Van Dyke
Union Member
Local Investigating Committee

Grievance Issue: Did the grievant resign his employment with the Company or was he terminated without just or sufficient cause.

Facts of the Case:

The grievant is a lineman with 10 years working in Distribution Construction. On April 18, 1994, the grievant reported one-half hour late for work.

Later on April 18, while working with another employee the temporary Subforeman "A" told him to grab a spade and go to a different location to dig a hole by himself. The grievant grabbed his lunch and told the Subforeman something and left. That "something he said" is in dispute. The Subforeman said the grievant said he quit. The grievant's statement was he said he was sick. None of the crew members could recall the exchange between the Subforeman and the grievant.

The Company processed the grievant as a resignation. On April 19, 1994, the Company wrote to the grievant a letter explaining that his pay would be mailed to him and where benefit questions should be directed. The Company mailed to the grievant his last paycheck and vacation pay.

The grievant contacted his Local Union Business Representative on April 26 who informed him to contact the local Human Resource Advisor. The grievant told the Human Resource Advisor that he (grievant) walked off the job because he was sick. The Advisor asked the grievant if he called his supervisor and the grievant responded "no". The Human Resource Advisor did not tell the grievant to contact the supervisor nor did he contact the grievant's supervisor.

On April 28, the Union filed a grievance alleging the employee was terminated without just cause. The grievant provided the company with a Doctor's note dated April 19, stating that he (the grievant) would be unable to work until May 3, 1994.

On May 2, 1994, the Company transferred two Subforemen into the area and the temporary Subforeman was returned to his Lineman position.

Discussion:

Company argued that the employee resigned. The employee received the Company's April 19, 1994 letter confirming the resignation; that the grievant cashed his final check; that the Union Business Representative told him contact his supervisor; that if the grievant was sick he should have followed this call in procedure. The grievant's actions point only to resignation.

The Union argued that the grievant was ill. This illness was supported by a note from the grievant's doctor. Regardless of the illness if the employee had resigned the provisions of Arbitration Case No. 53 should be applied.

The Committee agrees that Arbitration Case No. 53 provides an employee a limited right to rescind a resignation. The rescission must be timely made and before the status quo has changed. In this case the grievant notified the Company he was ill, albeit a Human Resource Advisor, and the Company took no action. This was the only contact reported other than the letter confirming the resignation. The grievant was aware of the call-in procedure and made no effort to contact his supervisor. The "status quo" had not changed at the time the grievant notified the Company that he was ill and did not resign.

Disposition:

The Committee agrees that based on the decision in Arbitration Case No. 53 that the status quo had not changed; that an employee has a limited right to rescind his resignation and that the employee had a doctor's excuse for the period of illness to return the employee as follows:

The employee will be returned with back pay and benefits less outside earnings except the period April 19 through April 28, 1994, no pay, April 28 through May 2, 1994, sick leave with pay (if applicable). The grievant will also be placed at the next step of Positive Discipline in attendance for his failure to follow the call-in procedure.

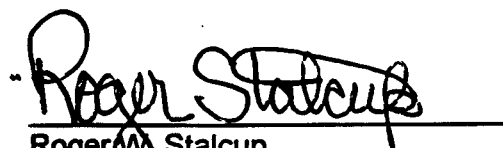
This case is closed.

For the Company:
Shan Bhattacharya
Bill Blastic
Bill McLoughlin

For the Union:
William Bouzek
James Lynn
Sherrick Slattery



John A. Moffat
Chairman
Review Committee



Roger W. Stalcup
Secretary
Review Committee

2/23/95

Date

2/23/95

Date