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MARGARET A. SHORT, CHAIRMAN

DECISION
LETTER DECISION
PRE-REVIEW REFERRAL

REVIEW COMMITTEE

RECEIVED by LU 1245
OCT. 17, 2002

**CASE CLOSED
FILED & LOGGED**

IBEW



INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO
LOCAL UNION 1245, I.B.E.W.
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SALIM A. TAMIMI, SECRETARY

Review Committee No. 13156

Jodeane Fischer
Company Member
Local Investigating Committee

Gary Hughes
Union Member
Local Investigating Committee

Subject of the Grievance

This case concerns a DML given a Stockton Troublemaker for inappropriate comments and behavior toward a supervisor.

Facts of the Case

On October 21, 2001 the grievant contacted his supervisor and asked to be taken to a doctor. According to the grievant, he was driving on the freeway when his truck slipped out of gear, causing him to be jerked resulting in back and neck pain. The grievant had previously complained about this problem with the truck and the Stockton Garage had serviced it on at least 12 occasions between September 24, 2001 and October 21. The Garage did acknowledge the slippage but believed the problem was corrected with each servicing. Subsequent to the October 21 incident, the truck was sent to an external transmission repair company. It was kept for three weeks and cost about \$1300 in repairs. The transmission was replaced.

The supervisor responded to the grievant's request and did take him immediately to a panel doctor. After arriving, the supervisor asked to speak with the doctor prior to his examining the grievant. The supervisor indicated he informed the doctor of the Company's light duty program and asked to speak with the doctor before he put in writing any restrictions the grievant might have. The supervisor did not share with the grievant why he wanted to see the doctor or the conversation he had with the doctor.

The grievant was examined by the doctor and released to work without restriction. The LIC report includes an excerpt of an email from the Safety, Health, and Claims Rep indicating that the grievant yelled and screamed at the doctor, stormed out of his office, and indicated he would not be returning for treatment. In a subsequent telephone call between the doctor to the SH&C Rep, the doctor indicated the grievant was upset because his supervisor talked to the doctor before the examination.

After the examination, the grievant stormed out of the doctor's office and took a walk. When he returned about 20 minutes later, he opened the office door; shouted across the room at the supervisor that he wanted to see him outside. Once outside the supervisor indicated the grievant got close to him, used profanity at him, and pointed his finger at his chest, perhaps hitting him in the chest twice with his finger. At one point the supervisor took a couple of steps backward. The supervisor indicated another patient observed what took place.

The grievant demanded that the supervisor take him to his own doctor. The supervisor at that point called his supervisor, told him what had taken place, and that he did not want to take the grievant to his doctor given the grievant's state of mind. It was recommended that the supervisor call a cab for the grievant. When he went back outside to tell the grievant he would be calling a cab, the grievant again asked if the supervisor would take him. The supervisor agreed to take the employee home.

At the time of the incident, the grievant had no active discipline.

Discussion

At the outset, the Review Committee agreed the grievant's insubordinate behavior was inappropriate and warranted discipline. It was also agreed that the supervisor complied with the grievant's requests for truck servicing and for taking him to the doctor. There was no attempt by the supervisor to deny any rights the grievant had.

The Union argued that the supervisor should have told the employee why he wanted to see the doctor, that by not doing so the grievant assumed the supervisor was trying to influence the doctor's findings before the examination. Union further argued that the discipline should be mitigated because of the misunderstanding and to a greater extent because of the number of times the grievant's truck had to be serviced and the frustration he felt because it continued to malfunction.

Union noted the purpose of discipline is to change behavior. Given the grievant's long service, 31 years and no active discipline, a DML was too severe.

Company responded that the grievant's frustration with the truck was understandable but doesn't absolve his behavior. The grievant clearly disrespected his supervisor in front of others and arguably got physical with him. Further, the grievant was upset before the truck slipped as he had already complained about having too many tags. Company stated further that stern discipline for this type of behavior has been upheld in the grievance procedure in the past. Arbiters also support strong discipline in these situations as management has the obligation to protect its employees and run an orderly operation. Insubordinate behavior by employees undermines those objectives.

As to the truck repairs, Company noted that it was serviced each time the grievant complained. The supervisor trusted that the employees expert in this field discharged their responsibilities competently.

The RC reviewed the Guidelines for Supervisors to Attend Medical Examinations issued by Safety, Health, and Claims and Industrial Relations. These guidelines were prepared at the request of and with input from IBEW. The RC agreed the supervisor was compliant with these guidelines.

Finally, this case was discussed at length at each step of the grievance procedure. It was discussed at three consecutive Review Committee meetings. This is demonstration of how strongly the parties believed in their respective positions. However, recognizing that the next step in the grievance procedure would be to arbitrate the case, the RC agreed that wasn't feasible, as no decision would be rendered before the DML deactivates (assuming nothing further occurred).

It was also noted by the Committee that certain key witnesses were not interviewed by the LIC. Some of the discussion at the RC could have been facilitated by that testimony.

Decision

Based on all of the circumstances in this case, the Review Committee agrees to reduce the Decision Making Leave to a Written Reminder. This case is closed with adjustment.

For the Company:

Margaret A. Short
Ernie Boutte
Dave Morris
Malia Wolf

For the Union:

Sam Tamimi
William R. Bouzek
Ed Dwyer
Sherrick A. Slattery

By: Margaret Short

By: Sam A. Tamimi

Date: 10/15/02

Date: 10-16-02