

7.1: WR was for just cause given to a Fresno Materials Handler for inappropriate conduct in the workplace - harassing another employee.



PACIFIC GAS AND ELECTRIC COMPANY
2850 SHADELANDS DRIVE, SUITE 100
WALNUT CREEK, CALIFORNIA 94598
(925) 974-4282

MARGARET A. SHORT, CHAIRMAN

DECISION
LETTER DECISION
PRE-REVIEW REFERRAL

REVIEW COMMITTEE

RECEIVED by LU 1245
November 2, 2005

**CASE CLOSED
FILED & LOGGED**

IBEW



INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO
LOCAL UNION 1245, I.B.E.W.
P.O. BOX 2547
VACAVILLE, CALIFORNIA 94696
(707) 452-2700
SALIM A. TAMIMI, SECRETARY

REVIEW COMMITTEE No. 15637 Materials - Fresno

Jennifer Williamson
Company Member
Local Investigating Committee

Mike Grill
Union Member
Local Investigating Committee

Subject of the Grievance

This case concerns a Written Reminder given a Materials Handler for inappropriate conduct in the workplace, specifically, harassment of another employee.

Facts of the Case

As a result of a Compliance and Ethics complaint, Corporate Security was contacted to conduct an investigation into a confrontation involving two bargaining unit employees in the Fresno Warehouse. On November 24, 2003 the grievant had a need to use a computer. There are five computers shared by all employees, although one is generally designated for the outside picker and one for the inside picker. The grievant did not regularly use a computer. However, another Materials Handler did regularly use a computer and usually used the same one all the time. The grievant had been told before not to use the workstation normally used by the other Materials Handler.

On November 24, 2003, an incident occurred involving the grievant and the other employee. Both acknowledge a 19-year dislike of each other; during one period, they did not speak for 10 years. The incident began when the grievant came inside and parked his pick cart directly in front of the other Handler's workstation blocking her access to her desk and telephone. As the Handler approached the workstation, the grievant got off the cart and raised his arm in the air. The Handler believed he was going to strike her so, fearing for her safety, she raised both arms to attempt to push him out of the way.

The Security Report indicates the grievant was not injured. The grievant was off work on sick leave and leave of absence for approximately one year. At the LIC, he stated "his leave shortly after this investigation was triggered by this incident." The grievant did not inform his supervisor of an injury, nor did he file a pink slip or Workers' Compensation claim.

Regarding the use of the computer the supervisor had given the grievant permission a couple days earlier to use any of the computers since they were not assigned, but also advised him "to do what he needed to do and avoid (the other employee) as much as possible." On the day of the incident, the Materials Leadperson told the grievant twice not to use the computer usually used by the other Handler. The grievant ignored those instructions.

Corporate Security interviewed five other employees that witnessed the incident. While each tells what happened in slightly different words, the theme is common. The grievant had his hand raised in the air in an apparent blocking position with a smile on his face. The other Handler appeared to be distressed, trying to reach around the grievant to get to the telephone, and telling him to get out of her way.

The grievant had no active discipline prior to the WR. The other employee involved received an Oral Reminder.

Discussion

At the outset, Union acknowledged the grievant's behavior was inappropriate and warranted discipline. However, Union argued the other employee should have received an equal or greater level of discipline since she pushed the grievant. Union cited Arbitration Decision No. 227 to support its position that the other Handler was treated too lightly and therefore the grievant's discipline should be mitigated and reduced to an OR.

Company responded the grievant was really the aggressor in this case. His behavior was intended to irritate the other employee despite the fact that he'd previously been told to avoid any conflict with her and specifically told that day not to use her workstation. His actions were pre-meditated and deliberate while the other Handler's behavior, while not acceptable, was reactive and borne of long-standing frustration. Company noted the other employee was, in fact, disciplined and had subsequently retired so there was no longer a concern about any on-going problem from her.

The discipline for the grievant, on the other hand, still had several active months left. To reduce the discipline for him would send the wrong message since he did not believe his behavior was inappropriate, that he was the victim. Finally, had grievant not been absent from work for a year, the discipline would have been meted out and deactivated by now, assuming there were no further problems.

Union offered to refer this case back to a non-precedent setting step, reduce the discipline to an OR with a very strongly worded admonishment and without prejudice. When Company's PRC member checked whether there'd been a positive change in the grievant's behavior, it was learned that he'd been coached and counseled twice since the WR: once in the attendance category and once for being insubordinate. Based on this new information, Company declined to reduce the WR and referred the case to the Review Committee.

At each step in the grievance procedure, this case was discussed at great length. At the Review Committee, more attention was paid to the fact that the grievant was told twice on the day of the incident not to use the other Handler's workstation. The grievant's actions show a disregard for taking direction which he subsequently repeated.

Decision

The Review Committee agreed the Written Reminder was for just and sufficient cause. This case is closed without adjustment.

For the Company:

Margaret A. Short
Bob Lipscomb
Dave Morris
Craig Porter

For the Union:

Sam Tamimi
William R. Bouzek
Louis Mennel
Sherrick A. Slattery

By: Margaret Short

By: Sam A. Tamimi

Date: 11/1/05

Date: 11-1-05

