REVIEW COMMITTEE

108.1 P
108.2 P

PG and E

IBEW

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

D.J. BERGMAN, CHAIRMAN

CASE CLOSED MAY 13 1981
LOGGED AND FILED

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
R.W. STALCUP, SECRETARY

☐ DECISION
☐ LETTER DECISION
☑ PRE-REVIEW REFERRAL

Drum Division Grievance No. 15-46-79-6
P-RC 471
Claim for Supplemental Benefits

May 12, 1981

MR. B. P. KNOX, Chairman
Drum Division
Joint Grievance Committee

The above-subject grievance has been discussed by the Pre-Review Committee prior to its docketing on the agenda of the Review Committee and is being returned, pursuant to Step Five A(ii) of the Review Committee procedure to the Joint Grievance Committee for settlement in accordance with the following:

This grievance concerns the denial of supplemental benefits to a Gas Helper, Drum Division, who sustained an industrial injury on March 30, 1977. Although the grievant did not lose work and continued to work until July 10, 1978, at which point she was terminated, the correction requested in the grievance is to reimburse the grievant for all back pay owed her and continue to pay until such time as the industrial claim is settled. On July 10, 1978, on the basis of medical information it received, the Company offered the grievant a position as a Clerk D which she declined. Acting on this medical report, which led the Company to believe that she was incapable of performing physical work, the Company terminated her.

In cases like this in the past, the parties have agreed that when an employee's medical condition becomes "permanent and stationary" and the employee is precluded from performing the duties of his/her regular classification, then the Company proceeds with its obligation to rehabilitate the employee into another position either within the Company or without. In this regard, this Committee recognizes that: (1) it is the policy of the Company to make a bona fide effort to find alternate employment for the disabled employee within the Company before turning to outside rehabilitation; (2) an employee shall be eligible for supplemental benefits for the duration of temporary disability whether involved in a rehabilitation program within the Company or without; (3) the duration of entitlement to supplemental benefits shall continue to be as defined in Review Committee File No. 1200--that is, until the employee becomes stationary and rateable; (4) the parties recognize Company's obligation under the California Worker's Compensation statutes to provide rehabilitation to a permanently, industrially disabled employee who is medically precluded from returning to his or her former job and, further, recognize that rehabilitation may be directed towards future employment outside the Company. At the same time, the parties also recognize that the availability of rehabilitation to future employment outside the Company is an option provided under the statute rather than a benefit provided under the bargained Agreement, and as such, does not subrogate or supersede the employee's rights under the Agreement, including the right of an otherwise eligible employee to file an application for Long Term Disability.

The Company's stated policy for industrially-injured employees is contained in the Employee Handbook and Summary of Benefits part of which is extracted as follows:

> "The Company endeavors to return disabled employees to active, productive employment within the limits of their medical condition, experience, and aptitudes, as well as the availabilty of appropriate job assignments.
>
> "If your disability doesn't prevent you from performing light duties, you may return to work on a temporary basis. While performing such duties, you will be paid at the rate of pay for your regular classification. With the approval of your doctor, the Company will determine how long your light duty status will last.
>
> "If light duty is offered with the approval of your doctor and you refuse to perform the light duty assigned, Supplemental Benefits will be terminated. If you refuse a Company offer of a plan for rehabilitation which, in the Company's experience, is within your physical abilities and aptitudes, Supplemental Benefits will be terminated. Such a plan may include on-the-job training and reclassification.
>
> "If, under California law, you are eligible for a rehabilitation plan and elect employment outside of PGandE or its subsidiaries, Supplemental Benefits will be terminated at the start of permanent disability payments."

The Union's belief, based on the information provided to the Committee upon initial referral of this grievance to Pre-Review, was that the Company had acted prematurely, and without good cause, in first offering the grievant an alternative position and upon her refusal, then terminating her.

The Pre-Review Committee gathered additional information which included testimony of the panel physician before the Worker's Compensation Appeals Board and a copy of a Decision and Order of the Rehabilitation Bureau. The grievant's deposition was taken on August 9, 1978 and the Decision and Order was effective on August 10, 1978. After reviewing this additional evidence and the testimony of the panel physician that, in his medical opinion, the grievant was permanent and stationary and the Decision and Order of Rehabilitation Bureau confirmed that conclusion, the Committee concurred that, as of August 10, 1978, the Company had the obligation to offer the employee rehabilitation to another line of work. Since the employee rejected the offer of rehabilitation within the Company, the Company's only continued obligation is to provide the grievant with whatever outside rehabilitation rights she might have under the Worker's Compensation laws of the State of California.

In resolving this case, the Committee agrees that the termination of the grievant on July 10, 1978 was premature and that the grievant is entitled to receive supplemental benefits under Title 108 of the Physical Agreement until she was considered permanent and stationary; that is, August 9, 1978. On the basis of her rejection of the offer of rehabilitation as a Clerk, and inasmuch as she had not filed for Long Term Disability, the termination of the grievant was appropriate.

This case is considered closed on the basis of the foregoing, and the closure should be so noted in the Minutes of your next Joint Grievance Committee meeting.

D. J. BERGMAN, Chairman
Review Committee

R. W. STALCUP, Secretary
Review Committee

DJB:ml

cc: REMetzker
MEBadella
LCBeanland
LBlandford
IWBonbright
LVBrown
FCBuchholz
RHCunningham
NRFarley
CAMiller
JBStoutamore
WKSnyder
CPTaylor
RCTaylor
Division Personnel Managers

REVIEW COMMITTEE DECISION

Review Committee File No. 1200-72-78
Humboldt Division Grievance No. D.Gr/C 19-72-4

Statement of Fact

This grievance concerns supplemental benefits received by the grievant for an industrial injury. The grievant began receiving temporary disability payments as a result of an industrial injury on November 22, 1971. These temporary compensation payments and supplemental benefits, pursuant to the provisions of Section 108.1 of the Physical Agreement, were paid to the employee until June 5, 1972.

On that latter date he was removed from the temporary disability compensation payroll inasmuch as his injury was permanent and rateable and supplemental benefits were discontinued.

Thereafter, he continued to receive $52.50 per week as advances against permanent disability pending a decision by the Workmen's Compensation Appeals Board.

The grievant returned to work July 3, 1972.

Discussion

The issue in this case surrounds the time period from June 5 to July 3, 1972. Specifically, the question is whether or not during that period of time the employee was entitled to supplemental benefits pursuant to the provisions of Title 108 of the Agreement.

Section 108.1 provides for a wage makeup when an employee is absent by reasons of an injury arising out of and in the course of his employment with Company which comes within the application of the Workmen's Compensation Insurance Chapter of the State Labor Code. To pinpoint the issue here, the Labor Agreement goes on to provide:

> "He shall be eligible for supplemental benefits for the duration of <u>temporary</u> disability." (Emphasis added)

The grievant received the proper supplemental benefits during the period of temporary disability within the meaning of that section between November 22, 1971 and June 5, 1972. To answer the question here then, the temporary disability terminates when it is medically determined that the employee has reached the stage where his injury is "stationary and rateable" and, if such conclusion is affirmed, the employee is no longer entitled to receive supplemental benefits.

The Workmen's Compensation Appeals Board later affirmed the Company's conclusion that the grievant's condition was stable and rateable when it made its finding and award of a permanent disability of 31% payable at the rate of $52.50 a week for 124 weeks.

Decision

From the facts and discussion set forth above, the discontinuance of the supplemental benefits was proper under the explicit provisions of Section 108.1 of the Labor Agreement.

FOR UNION:

W. H. Burr
E. R. Sheldon
L. N. Foss

By L. N. Foss

Date Nov 27, 1974

FOR COMPANY:

J. A. Fairchild
P. Matthew
L. V. Brown

By L. V. Brown

Date NOV. 27, 1974