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MARGARET A. SHORT, CHAIRMAN
DECISION
LETTER DECISION
PRE-REVIEW REFERRAL

REVIEW COMMITTEE

RECEIVED by LU 1245
January 17, 2006

**CASE CLOSED
FILED & LOGGED**



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

Pre-Review Committee No. 15880 and 16015 OM&C – Electric T&D – San Rafael

Carol Quinney
Company Member
Local Investigating Committee

Joe Osterlund
Union Member
Local Investigating Committee

Subject of the Grievance

These cases concern the Decision Making Leave (DML - 15880) and subsequent discharge (16015) of a Compliance Inspector.

Facts of the Case

On Saturday, April 2, 2005 the grievant received a call-out for an overtime assignment in San Rafael. The supervisor's notes on the North Bay On-Call Supervisor's Log Sheet for Emergency Overtime indicate he paged the grievant twice at 2:25 and 2:27 p.m. At 2:41, the grievant returned the page and agreed to work. The grievant showed on his timecard one hour of travel time from home to San Rafael, starting at 2:00 p.m. The grievant lives in Cotati.

At 3:35 p.m. the Fresno Contact Center received a call from a "very upset" customer complaining that one of our bucket trucks was being driven unsafely, had tailgated his car, passed at an excessive rate of speed across a solid double line into on-coming traffic, and was put in reverse at a stop sign. This encounter occurred in Cotati on the Old Redwood Highway heading toward Penngrove. Map Quest indicates this location to be approximately six minutes from Cotati.

The grievant was given a DML on May 2 for timecard falsification and operating a Company vehicle in an unsafe and illegal manner. He was on an active Written Reminder (WR) in the conduct category at time of the DML incident. The WR resulted from driving a Company vehicle to a personal event, getting into an accident, and failing to notify Company of it. The WR was issued on January 10, 2005.

Termination of the grievant's employment effective July 12, 2005 resulted from an extended unauthorized absence from work. At 6:30 a.m. on Thursday, June 23, 2005 the grievant sent his supervisor an e-mail that he was taking the next four days off work: Floating Holidays on June 23, 24, and 27 and Sick Leave on June 28. The supervisor made numerous attempts over the next several days to contact the grievant. He tried cell phone, home phone, E-Page, and e-mail to inform the grievant that his absence was not authorized, that he could not prearrange sick leave, and that he would need a medical release to return to work. The grievant did not respond.

The supervisor indicated the grievant left work upset on June 22 because the supervisor could not complete an investigation that day (June 22) into yet another vehicle incident involving the grievant that occurred on April 22. On this date, another customer called to complain about the grievant speeding in the Company truck in a school zone.

On July 11, the grievant was arrested for felony possession of drugs and resisting arrest. He was later convicted of felony possession of illegal drugs and/or drug paraphernalia.

Discussion

With respect to the timecard falsification, the grievant indicated he didn't remember exactly what time he was called, but that it was standard procedure to start the time from the first person called out; that the Apprentice told him he was called out about 2:10 p.m. The Supervisor stated he was not sure if there was a practice to ballpark the time on call out or not, however it was not policy.

The Pre-Review Committee is in agreement that pursuant to Section 208.6 of the Physical Agreement, travel time begins when an employee starts traveling to work for an overtime assignment, not from the call-out. Based on the location and timing of the encounter with the customer – six minutes from his home but a 90 minutes after his timecard start time, and based on the grievant's own statement about his understanding of when travel time begins, it is clear to the PRC that the grievant did, in fact, falsify his timecard and discipline is in order.

The grievant's and the customer's recitations of the encounter on Old Redwood Highway do not match. However, the grievant does acknowledge tailgating the customer for about a ¼ mile and putting the truck in reverse to activate the newly installed camera on the back of the truck to see who was behind him. The customer's accounting is given credence by the fact that the call to the Contact Center came within ten minutes of the event while the impressions were still fresh. The grievant's statements are given less credibility as he has a vested interest in minimizing his inappropriate conduct and by the fact that this was not the first or last time the grievant had 3rd party encounters while driving a Company vehicle.

As to the discharge, Union argued that no other Compliance Inspector in San Rafael was off on Floating Holiday on the dates the grievant was off, that supervisory permission is not needed under those circumstances. As to the sick day, the grievant stated he intended to make that the first day of absence as his neck was bothering him, but he made a mistake on his timecards.

The PRC notes that the days the grievant wanted to take Floating Holidays had not been scheduled with vacation sign-up, Section 111.13 and that the grievant did not give 24 hours advance notice to the supervisor as described in Subsection 103.3(a). When Floating Holidays are not scheduled during vacation sign-up, permission must be obtained from the supervisor as with any other unscheduled time off. Union takes the position that zero is not a number for Floating Holidays, that if no one in a particular classification in a headquarters is off on Floater then permission must be granted. Company generally agrees with that position, however, believes that interpretation was intended when there are more than one of a particular classification or that there may be extenuating circumstances under which permission may be denied. In the instant case, it doesn't matter because the grievant's action prevented the supervisor from making a decision. Finally, the PRC is in agreement that supervisory permission is required for time off on Floating Holiday.

With respect to sick leave, the PRC agrees that it can be prearranged and often is for things such as doctor appointments, treatments, etc. But, once again, that is not the situation in this case and the grievant's explanation that he made a mistake is not credible.

Finally, Union argued that Company needs Linemen and made more than one offer of settlement involving reinstating the grievant in classifications other than Compliance Inspector. Company emphatically declined Union's offers since:

- the Positive Discipline Guidelines had been followed;
- the grievant had been given several opportunities to comply with the rules;
- he resorted to self-help and did not respond to supervisory attempts to contact him;
- there was another incident for which discipline probably would have resulted;
- feedback from San Rafael and other locations he'd worked indicated others were reluctant to work with him;
- he is now a felon.

These cases were referred to the Review Committee which had some preliminary discussion and pended the case for Union to get more information about a note written by an alleged 3rd party witness to the driving incident. Union then asked to have the case returned to the Pre-Review Committee and settled to facilitate closure sooner rather than waiting for another Review Committee meeting.

Decision

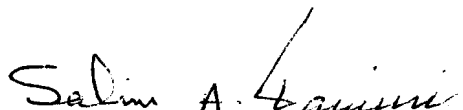
The PRC agrees the DML and discharge were for just and sufficient cause. This case is closed without adjustment.



Margaret A. Short, Chairman
Review Committee

1/17/06

Date



Sam Tamimi, Secretary
Review Committee

1-17-06

Date