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MARGARET A. SHORT, CHAIRMAN

DECISION
LETTER DECISION
PRE-REVIEW REFERRAL

REVIEW COMMITTEE

RECEIVED by LU 1245
AUG. 14, 2001

**CASE CLOSED
FILED & LOGGED**

IBEW



INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO
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SALIM A. TAMIMI, SECRETARY

Review Committee No. 11941 and 12013 OM&C - Electric T&D - Richmond

Bill Levins
Company Member
Local Investigating Committee

Lula Washington
Union Member
Local Investigating Committee

Subject of the Grievance

These cases concern the DML and subsequent discharge of a Lineman, Richmond.

Facts of the Case

The DML was given on August 2, 2000 for making inappropriate threatening comments in the workplace and for two safety infractions. The grievant was discharged September 5, 2000 for two additional safety infractions and for contacting another employee when instructed not to do so.

The grievant had 10 years of service and no active discipline at the time of the DML. He entered the Apprentice Lineman classification, Title 200, on September 30, 1996 from the Fieldperson classification, Title 300 Gas Department. As such, pursuant to paragraph G10C of the Master Apprenticeship Agreement, he should have been retained at the beginning step of the Apprentice Lineman classification for one year. However, the grievant was progressed through the apprenticeship and became an Unassigned Lineman on September 30, 1999.

The record contains a letter dated December 1, 1998 to the grievant indicating that his 30-month progressive wage increase would be withheld for three months. At the end of that period his performance would be evaluated by crew leaders, journeymen, and his supervisor. If he did not show the skills to progress further in the apprenticeship, a request for evaluation by the Joint Apprenticeship Committee would be made. This proposed action resulted from concerns expressed by crew leaders and journeymen about the grievant's performance. This plan was never affected.

On October 5, 1999, after the grievant became an Unassigned Lineman, another meeting was held where the crew leaders expressed to management concerns about the grievant's skills and knowledge. Deficiencies in the following areas were identified:

- retention of line work principles, i.e., construction standards documents, AP Rule and work procedures
- electrical theory
- rigging principles
- transformer connections

The plan covered 18 items and more than 710 hours or approximately 18 weeks. It also recommended that the grievant be assigned for an extended period to one crew leader to facilitate mentoring and monitoring of his progress. Documentation would occur utilizing the apprentice card. This plan was never effected either.

A new supervisor reported to Richmond in the first week of April 2000. At the end of April as part of the regular monthly meeting, the crew leaders again raised concerns about the grievant's work performance, citing violations of APR 411 (a)(b) and (c) Use of Rubber Protective Equipment (date of this incident is unknown and occurred before the supervisor arrived in Richmond). The consensus was that he needed additional training. The Area Superintendent was alerted and was working on an action plan for the grievant.

The supervisor testified that sometime in May 2000 the grievant violated APR 405 - Approach and working distance by unsafely removing a door to an energized cut-out switching device.

The supervisor stated that at the end of June the grievant approached him and said he was getting annoyed being around certain other line employees. The supervisor offered to take the grievant out of the field and assign him to work FACTS tags. He did so for about two weeks.

According to the Security report, on July 18, 2000 the grievant came to the supervisor's office to thank him for taking him out of the field. As the grievant was walking out of the office he turned and said he had been agitated and the guys had been "pissing him off" and that he had been afraid that he was going to go "postal" until the supervisor gave him the current work opportunity.

On July 20, 2000 a call was received by the Ethics and Compliance Hotline from an anonymous caller expressing fear that the grievant may physically harm other employees. The concerns the caller expressed did not include references to performance or safety.

As a result of the "going postal" comment, the Hotline phone call, and concerns raised by employees that the grievant stated he had been a sniper in the military with confirmed kills and about his demeanor, Company sent the grievant for a threat assessment. By report dated August 1, 2000 the doctor concluded that the grievant was fit for duty. The doctor also commented, "The employee probably represents high risk for future safety violations/infractions/lapses based upon collateral information."

The grievant was given a DML on August 3, 2000 for the two safety infractions noted above and for the "going postal" and other inappropriate comments made over a one year period.

On August 15, a violation of APR 411(a-d) in which the grievant put the safety of an apprentice in jeopardy by operating the aerial lift truck elevating the apprentice into the 4KV contact area without the use of rubber protective equipment. The apprentice reported this to the crew leader who did not discuss the incident with the grievant or report it to his supervisor. After a couple of days the apprentice reported the incident to the supervisor.

On the afternoon of August 15, the grievant cut a secondary wire feeding several customers. Upon cutting the wire the grievant held the open wire in each leather-gloved hand, potentially creating path of current through his body. On August 21, the Superintendent met with the grievant to investigate the August 15 incidents.

While working overtime on August 18, the apprentice noticed he had missed a phone call on his personal cell phone. When he returned the call, it was the grievant wanting to know what the apprentice had said to get him in trouble.

On August 25, 2000 the grievant was placed on paid leave while an investigation was conducted into the two additional safety violations. The grievant's employment was terminated effective September 5, 2000.

No other employee was disciplined for any of the four safety violations. There was no Positive Discipline Log for the grievant.

Discussion

This case was discussed at length at each step in the grievance procedure between the parties and within the respective organizations. It presents many variables to consider in reaching a decision. It is clear from the record that the grievant committed several very serious safety infractions. Why the grievant committed them was the subject of much debate. Company believes that the grievant knew or should have known the correct procedures and chose not to follow them. The Union argued that the grievant was never properly trained as an apprentice and cites the on-going complaints from peers and the two supplemental training programs put together by management but never implemented. What is clear is that while work performance problems were made known to management, appropriate action to address those concerns was not taken.

As to the threatening comments and behavior, the record demonstrates that no discipline was taken at the time the comments were made. The DML and discharge letters refer to incidents as much as a year old, which were not acted on. The triggering comment for the DML was made in the context of the grievant having a positive conversation, which he initiated with his supervisor, not in a heated discussion or investigation into any matter. It is unclear why this comment in this context was cause for a fitness for duty examination and discipline when other prior incidents appeared more ripe for such action. That notwithstanding, the Company cannot ignore such inappropriate comments by employees.

Union argued that the PD agreement provides for demotion as a consideration for poor performance caused by competency issues and that discipline will not correct the problem. Placement in a position where an employee can be successful is the desired outcome. Union further argued that no discipline was in order for these events and that the discharge was not for just and sufficient cause. Finally Union noted that the grievant had 10 years of service and went from no discipline to discharge within approximately a one month period for events, some of which, had not been addressed in a timely manner.

Company responded that generally demotion is a consideration in situations where there is skill or knowledge deficiencies, however, this case involved more than work performance issues. It also involved inappropriate conduct and failure to follow instructions. For these reasons Company strongly argued that just and sufficient cause existed for discipline.

The Review Committee by the decision in this case is in no way minimizing the importance of following all work procedures and safe work practices or the seriousness of intimidating and threatening behavior in the workplace. This was a complex and difficult case.

Decision

The Review Committee agreed to an equity settlement in this case as follows: reinstatement as a Fieldman Gas T&D, Oakland with back pay at the Fieldman rate, less outside earnings and unemployment payments, if any, with benefits intact.

Should the grievant decide not to return to employment with Pacific Gas and Electric Company, back pay liability ends as of July 25, 2001 the date of the Committee's monthly meeting. In order to determine liability, grievant shall submit to Company documentation of outside earnings and unemployment insurance payments, if any. Further, grievant shall submit to Company, not later than May 15 of each year, a copy of his 2000 and 2001 IRS Income Tax filings for purposes of verifying the information submitted for payment of liability.

He will be placed on a Written Reminder in the Conduct Category of PD active for the period of time that was remaining on the DML, approximately 11 months. The grievant is being given an opportunity to demonstrate changed behavior. It is incumbent on him to make a success of this reinstatement. EAP is available and recommended to the grievant.

A negative DOT return to work test is required within the 30 days prior to the grievant's return to the active payroll.

The Review Committee is in agreement that the grievant is not to be returned to the Richmond headquarters or the Appr. Lineman or Lineman classification prior to the expiration of the Written Reminder.

Once he has returned to the active payroll, should the grievant become the senior bidder to a Lineman or an Apprentice Lineman vacancy, his qualifications will be reviewed by the Joint Apprenticeship Committee, for the purpose of recommending either bypass or wage placement. Such a review shall include but is not limited to: a reading of these complete files and any other related material and an evaluation at the Lineman training school. A job award to any apprenticeship will constitute the grievant's second apprenticeship pursuant to Paragraph G11 of the Master Apprenticeship Agreement.

This case is considered closed on the basis of the foregoing and is without prejudice to the position of the parties or any future grievance.

For the Company:

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Ernie Boutte
Dave Morris
Malia Wolf

By: Margaret Short

Date: 8/16/01

For the Union:

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

By: Sam A. Tamimi

Date: 8-16-2001