



REVIEW COMMITTEE



PACIFIC GAS AND ELECTRIC COMPANY
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MARGARET A. SHORT, CHAIRMAN

DECISION
LETTER DECISION
PRE-REVIEW REFERRAL

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**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

Review Committee No. 12431 and 12624

Vern Wittman
Company Member
Local Investigating Committee

Bernard Smallwood
Union Member
Local Investigating Committee

Subject of the Grievance

These cases concern a Decision Making Leave (DML) and subsequent discharge of a Gas Crew Foreman. The DML was for inadequate work performance and for a safety violation, specifically performing work without a qualified electrical worker present after dropping a lid assembly on an energized switch.

The discharge resulted from a congregating incident.

Facts of the Case

DML

The grievant had 29 years of service when discharged on April 19, 2001 and no active discipline prior to the DML on January 31, 2001.

On November 28, 2000 the grievant and two Equipment Operators were assigned to replace a contractor damaged switch cover for a 4'6" x 8'6" subsurface 12kv, 600 Amp, two-way switch. The grievant held a tailboard of the job with the crew. They successfully removed the concrete portion of the lid and two outer steel plates.

The crew rigged the center lid and frame as one unit. However, the grievant did not fasten a second chain on the lid because he didn't want to risk coming into contact with the elbows of the energized switch. As the Equipment Operator began lifting the assembly, the load shifted and dropped onto the energized switch. The grievant yelled for the Equipment Operator to stop and ran about 30 feet expecting an explosion. After a couple minutes, the grievant returned to inspect the damage. He noted that the rigging was still taut and that the assembly was not touching the switch elbows. He instructed the Equipment Operator to continue the lift and removal of the assembly, which was completed without further incident. The grievant then called his supervisor to report the incident.

The switch was damaged and had to be replaced that evening. In order to do so, a large office building had to be shutdown resulting in a claim against the Company for \$49,800. The electric crew worked into a rest period. The same switch had been damaged by a third party two months before and the office building suffered an unscheduled shutdown at that time.

Neither of the Equipment Operators was disciplined for this incident.

DISCHARGE

On Thursday, March 29, 2001 the grievant's supervisor asked him if he would cover for him on Monday, April 2, as he would be on vacation. The grievant routinely filled in for the supervisor when he was absent. The grievant's statement to the LIC indicates he reported back to the yard in early afternoon on Friday March 30 at the request of his supervisor so that he could go over the jobs and crew lists planned for April 2. The grievant stated he actually began the assignment in the afternoon of March 30 by directing a crew to respond to a Grade 1 gas leak on overtime. The grievant also put in for one and one-half hours overtime for making the assignment.

On Monday, April 2 he reported at approximately 5:30 a.m. to be available for any sick calls. The supervisor had instructed the grievant to come in at his normal time and hand out the work packets. The grievant decided to come in early because he would not be able to retrieve voice messages from the supervisor's phone as he did not have or want the password.

After the work packets were being handed out and some reassignments made, an M&C Mechanic announced the passing of another employee. Shortly thereafter, all employees left the yard, including the grievant and the Fieldperson he was working with that day. They went to a job site in two separate trucks. Once there, the grievant claims he was concerned about the M&C Mechanic and had the Fieldperson drive him three blocks to the M&C Mechanic's job site at a shopping center. The grievant noticed several other company vehicles and located three other employees at a Nations restaurant in the shopping center. The grievant and the Fieldperson joined the other employees for breakfast. The grievant felt entitled to a meal because he started work early. It is in dispute as to whether he started early enough to qualify for a meal, but in any case the overtime was not authorized.

Within ten minutes of the grievant's arrival at the restaurant, the Distribution Superintendent entered the restaurant, chastised them for congregating, and told them to report the incident to their supervisor on Tuesday. According to the grievant the supervisor berated him in front of the crew and the restaurant's other customers. The Superintendent acknowledges he was upset but disputes the comments attributed to him by the grievant.

The grievant did inform his supervisor of the incident the next day. The grievant was discharged because he was on an active DML and the other employees received Written Reminders.

Discussion

Union's position is that the DML is too severe for what happened on November 28, 2000, that a Written Reminder was more appropriate. It follows, then that the discharge was not for just and sufficient cause.

Union argued that this lid replacement required a Qualified Electrical Worker (QEW) and that one should have been provided when the job assignment was made. Further, Union argued that after the prior damage, the switch was improperly installed as noted in Item 11 of the Joint Statement of Facts. Union opined that the grievant could not properly rig the assembly because the installation of the switch did not provide sufficient clearance between the bushings and the lid. Finally, Union noted the two months between the incident and the DML and speculated that the discipline occurred only because of the claim that was filed.

The grievant and the Company disagreed with Union about the need for a QEW at the outset of the job, but did agree that one was required once the load dropped onto the energized switch. The grievant testified that he has changed thousands of these lids and worked around energized conductors and apparatus without a QEW. He did not explain why he didn't call the supervisor, request a QEW or electric crew prior to removing the dropped assembly from the switch. During the investigation, the grievant stated the root cause of the problem was improper rigging, this perhaps provided the reason for not calling for assistance.

As to the discharge, Union argued that the grievant was acting as a supervisor on April 2 and as such could take the grieving employee to breakfast. Testimony indicates that this would be a very rare event even for the regular supervisor. This explanation doesn't fit with the facts because:

- the grieving employee didn't report to the grievant,
- the grievant did not notify the grieving employee's supervisor of his concerns,
- the grievant thought the grieving employee was at a job site, not Nations
- the grievant had the Fieldperson go too

If the grievant had been acting in the capacity of the supervisor, he should have told the employees to vacate the restaurant rather than joining in on the rule violation.

At the LIC, the grievant claimed he needed to eat because of his diabetic condition. That explanation also doesn't fit with the facts, as the grievant's medical condition was known in advance and he did have food available to him, which he had brought with him to work.

Company opines that it is very apparent that the grievant was congregating, got caught, and developed a cover story.

The Review Committee discussed these cases at length. It was one of four discharges on the agenda. In each case, the Union argued that Company is not administering Positive Discipline within the spirit and intent of the negotiated system, that Company is advancing to the most severe step of discipline too soon and too frequently. Union

argued that this is a long service employee deserving of more consideration than going from no discipline to discharge within an approximate two month period.

Union pointed out the language in the PD Agreement, which states that mitigating factors shall be considered prior to the decision to discharge.

In addition to long service, the Union opined that Company had routinely trusted this employee to be responsible in the regular supervisor's absence. Beyond the relief assignments, Company has a lot of time and training invested in the grievant, his knowledge and experience takes years to acquire and replace.

Company opined that the grievant in both incidents has exhibited a lack of good judgment and a willingness to bend the facts or rules to cover his transgressions. It is clear that in these two instances he did not demonstrate the qualities of leadership and personal qualifications expected of a crew leader or an exempt supervisor.

After much debate, the Review Committee agreed to an equity settlement in this case as outlined below.

Decision

The Review Committee reached the following decision without prejudice to the position of either party or to the PD system.

The grievant is to be reinstated as a Gas Crew Leader, Colma, with benefits in tact except for vacation forfeiture pursuant to Subsection 111.5(a) of the Physical Agreement. He shall be returned on a DML effective until January 30, 2002. The existing DML letter is to be revised to include the congregating violation. Grievant is to receive one-half the back pay from the date of discharge to the date of reinstatement. Grievant will also be required to successfully complete a DOT Return to Work test.

This case is considered closed on the basis of the foregoing and the adjustment contained herein.

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 A. Short

Date: 9/18/01

By: Sam A. Tamimi

Date: 9-18-2001