

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS
LOCAL 1245

and

PACIFIC GAS & ELECTRIC COMPANY

Review Case #198

Coast Valleys Grievance #67

Arbitration Case #13

Issue: May the Company require employees affected by Section 108.1 to fill out an Application Form before it makes any Supplemental Benefit Payments?

Date of Opinion: December 15,
1960

AGREEMENT PROVISION:

The last sentence of Section 108.1 is in contention between the parties. It reads as follows:

"Supplemental benefits shall be considered as a credit which may be applied to any permanent disability settlement."

BACKGROUND:

Grievant was denied benefits because he refused to sign an application which contained the following condition: "It is understood and agreed by me that such Supplemental Benefits shall constitute an advance against any permanent disability indemnity which may be found to be due me as a result of my injury..., and credit in the total sum of such advances shall be allowed against such permanent disability indemnity."

POSITION OF PARTIES:

Union's Position

That the Agreement provides for the payments of benefits without any agreement of the employee as a condition precedent to such payment that the Company can take the supplemental benefit payments as a lien against permanent disability benefits; that the decision whether to allow such a lien lies not with the Company but with the Industrial Accident Commission; that the use of the word "may" was not to give the Company unlimited discretion but "rather intended to permit the Commission to decide on the basis of facts in each case whether it would be in accord with the policy of the State of California to allow a lien"; that the negotiating history supports its contention; that the Union does not object to employees signing the application form voluntarily; but does object that the signing of the application is mandatory.

Company's Position

That the Agreement is clear that Supplemental Benefits are a credit and that the Company may at its discretion apply such credit against any permanent disability award; that the Company must make an election whether it will apply the credits against such an award; that

requiring the application as in its present form is the method whereby the Company makes such an election; that past practice and negotiation history supports the Company's position.

DISCUSSION:

The parties stipulated that Supplemental Benefits constitute a credit. The Agreement is also clear that such credits "may" be applied to any permanent disability settlement. This latter provision is for the benefit of the Company. It has the right to take the necessary steps to obtain this benefit.

There is nothing in the Agreement which provides or implies that the Industrial Accident Commission is to decide whether the Company should have the benefit of the credit in each individual case. If the parties intended to have an outside agency decide if and when the credit "may" be available to the Company they should have clearly stated this in their Agreement.

The fact that the application in question and the practice of having it signed has been in effect since 1956 must be given substantial weight. There have been intervening negotiations during which the Union could have sought a change in the Agreement to coincide with its view of this case. This was not done. And the change which the Union seeks in this arbitration would be far more than an interpretation of the present Agreement. It would constitute a change in its substantive terms. It is not proper to deal with such issues in a grievance arbitration.

DECISION:

The Company may require employees affected by Section 108.1 to fill out an Application Form before it makes any Supplemental Benefit Payments.

/s/ Sam Kagel, Chairman

/s/ L. L. Mitchell, Union Member
(dissent)

/s/ William M. Fleming, Union
Member (dissent)

/s/ R. J. Tilson, Company Member

/s/ Hogan J. Kallemeyn, Company
Member

oeiu-29
afl-cio
62061do

In the Matter of a Controversy

between

INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS, Local Union No. 1245,

Complainant,

and

PACIFIC GAS AND ELECTRIC COMPANY,

Respondent,

Involving Arbitration Case No. 13:
May the Company require employees affected
by Section 108.1 to fill out an applica-
tion form identical with Exhibit A attached
hereto before it makes any supplemental
benefit payments.

OPINION AND DECISION OF BOARD OF ARBITRATION

SAM KAGEL, Chairman

L. L. MITCHELL, Representative to the
Union

WILLIAM M. FLEMING, Representative for the
Union

W. J. THOMPSON
~~V. J. THOMPSON~~, Representative for the
Company

HOGAN J. KALLEMEYN, Representative for the
Company

San Francisco, California

December 15, 1960

ISSUE:

"May the Company require employees affected by Section 108.1 to fill out an application form identical with Exhibit A attached hereto (Joint Ex. 4) before it makes any Supplemental Benefit Payments?"
(Tr. p. 240.)

AGREEMENT PROVISION:

The last sentence of Section 108.1 is in contention between the parties. It reads as follows:

"Supplemental benefits shall be considered as a credit which may be applied to any permanent disability settlement."

BACKGROUND:

Employee Darington was denied benefits because he refused to sign an application which contained the following condition: "It is understood and agreed by me that such Supplemental Benefits shall constitute an advance against any permanent disability indemnity which may be found to be due me as a result of my injury....., and credit in the total sum of such advances shall be allowed against such permanent disability indemnity." (Jt. Ex. 4, Exhibit A)

POSITION OF PARTIES:

Union's Position:

That the Agreement provides for the payments of

benefits without any agreement of the employee as a condition precedent to such payment that the Company can take the supplemental benefit payments as a lien against permanent disability benefits; that the decision whether to allow such a lien lies not with the Company but with the Industrial Accident Commission; that the use of the word "may" was not to give the Company unlimited discretion but "rather intended to permit the Commission to decide on the basis of facts in each case whether it would be in accord with the policy of the State of California to allow a lien"; that the negotiating history supports its contention; that the Union does not object to employees signing the application form voluntarily; but does object that the signing of the application is mandatory.

Company's Position:

That the Agreement is clear that Supplemental Benefits are a credit and that the Company may at its discretion apply such credit against any permanent disability award; that the Company must make an election whether it will apply the credits against such an award; that requiring the application as in its present form is the method whereby the Company makes such an election; that past practice and negotiation history ^{supports} ~~supports~~ the Company's position.

DISCUSSION:

The parties stipulated that Supplemental Benefits constitute a credit. The Agreement is also clear that such credits "may" be applied to any permanent disability settlement. This latter provision is for the benefit of the Company. It has the right to take the necessary steps to obtain this benefit.

There is nothing in the Agreement which provides or implies that the Industrial Accident Commission is to decide whether the Company should have the benefit of the credit in each individual case. If the parties intended to have an outside agency decide if and when the credit "may" be available to the Company they should have clearly stated this in their Agreement.

The fact that the application in question and the practice of having it signed has been in effect since 1956 must be given substantial weight. There have been intervening negotiations during which the Union could have sought a change in the Agreement to coincide with its view of this case. This was not done. And the change which the Union seeks in this arbitration would be far more than an interpretation of the present Agreement. It would constitute a change in its substantive terms. It is not proper to deal with such issues in a grievance arbitration.

DECISION - CASE NO. 13:

The Company may require employees affected by Section 108.1 to fill out an application form identical with Exhibit A attached hereto (Jt. Ex. 4) before it makes any Supplemental Benefit Payments.

BOARD OF ARBITRATION:

<u>Sam Nagel</u> CHAIRMAN	
<u>L. L. Mitchell</u> Representative for the Union	<u>Dissent</u>
<u>William M. Fleming</u> Representative for the Union	<u>Dissent</u>
<u>D. J. Wilson</u> Representative for the Company	
<u>Harold Kellerman</u> Representative for the Company	

COL. B - THIS COPY FOR			
G. O. COP.	CLAIMS DEPT. (Orig. & Copy)	2	
	PERSONNEL DEPT.	1	
	G. O. DEPT. CONCERNED		
DIV.	DIV. MGR.		
	DIV. SUPT.		
	ACCOUNTING		

EXHIBIT A

Div. _____ Div. Accid. No. _____

1. Name: _____
(FIRST) (MIDDLE) (LAST) (SOCIAL SECURITY NO.)

2. Address: _____
(STREET) (CITY)

3. Division: _____ 4. District: _____

5. Department: _____

(ABOVE SPACE FOR GENERAL OFFICE USE ONLY)

(SEE INSTRUCTION NO. 5 ON REVERSE SIDE)

6. Gen. Const.

HYDRO	LINE	STEAM ELEC.	SUBSTN.	GAS.
-------	------	-------------	---------	------

 Job _____ Location _____ Account _____
(SEE INSTRUCTION NO. 6 ON REVERSE SIDE) 7. Number _____ or Item _____ (SEE INSTRUCTION NO. 7 ON REVERSE SIDE)

8. Location of Accident: _____
STREET CITY COUNTY

9. On employer's premises: Yes _____ No _____ 10. Age: _____ 11. Married or single: _____

12. Date of Accident: _____ 13. Day of Week: _____ 14. Hour: _____ M.

15. Occupation: _____ 16. Days worked per Week: $\left. \begin{array}{l} \text{Actual:} \\ \text{Base:} \end{array} \right\}$ _____

17. Hours per Day: _____ 18. Base Pay: Per Hour \$ _____ Per Day \$ _____ Per Week \$ _____ Per Month \$ _____

19. Length of Service with Company: _____ 20. How long in present position: _____

21. Years of experience (see Instruction No. 21 on reverse side): _____

22. Statement to be made, if possible, by injured man as to what he was doing and how the accident happened:

Signature of Injured Employee: _____

23. What machine, tool, substance, or object was most closely connected with the accident? _____

24. If mechanical apparatus or vehicle, what part of it? _____

25. Were mechanical guards, or other safeguards provided? Yes _____ No _____ 26. Was injured using them? Yes _____ No _____

27. Medical Attention: $\left\{ \begin{array}{l} \text{Doctor:} \text{_____ Address:} \text{_____ Date:} \text{_____} \\ \text{Hospital:} \text{_____ Address:} \text{_____} \end{array} \right.$
(CITY)

28. Nature of Injury: _____

29. Probable length of disability from work: _____

30. Under whose direction does injured work? _____

31. How does person in charge account for accident? _____

(See Instruction No. 31 on reverse side)

Accid. No. _____ District _____
 Division _____

(OVER)

32. How could accident have been avoided:

33. Responsibility:

34. Names and addresses of all witnesses: (IMPORTANT)

NAME	DEPARTMENT	ADDRESS

35. Period covered by Sick Time Payments: From To No. Days Amount \$

36. Date accident first reported: Report made out by:

Date of this report: Signed: (MGR., SUPT., FOREMAN, ETC.)

INSTRUCTIONS

ALL ACCIDENTS to Company employees which involve examination or treatment by a doctor or cause lost time MUST BE REPORTED to Claims and Safety Dept. PROMPTLY. Answer each question FULLY. When blank spaces are not sufficient for full statements, answer on separate sheets and attach hereto. Separate report must be made for each person injured. IF THE ACCIDENT IS FATAL, or involves serious injury, TELEPHONE notice thereof immediately.

Questions 1 to 4 are self-explanatory.

Question 5: State whether Office, Overhead, Underground, Substation, Elec. Water Collection, Elec. Gen. Hydro, Elec. Gen. Steam, Natural Gas, Gas Mfg., Gas Dist., Steam Distribution, Water Distribution, Transportation, Division Substore, Central Warehouse, General Office.

Question 6: Indicate whether: Hydro, Line, Steam Elec. Gen., Substation, Gas Dist.

Question 7: (a) If employee is injured while working on a capital account, give the work order or GM with account or item number. (b) If employee is injured while working on operation or maintenance, so indicate or furnish work order and account number.

Question 8: "Location"—The town and place where accident occurred (plant, street, highway, etc.) should be stated.

Questions 9 to 20 are self-explanatory.

Question 21: State how many years' experience person has had on type of work being done at time of accident.

Question 22: Give injured person's explanation, if physically able to make one, stating in detail what employee was doing at time of accident and what was cause of accident. If impossible to secure this promptly, do not delay report for it, but send supplemental report later giving full details.

Question 23: Name the specific machine, tool, appliance, gas, liquid, etc., involved.

Question 24: State if gear, pulley, motor, etc.

Questions 25, 26, 27, 29, 30 and 35 are self-explanatory.

Question 28: State part of body injured and nature, such as cut, sprain, fracture, dislocation, burn — head, face, arm, leg, body, hand, etc.

Question 31: The Supervisor should answer this question by giving his version as to the cause of the accident, and the cause of the injury.

Question 32: State the specific preventative measures that can be taken by employer and workers. Do not say "By being more careful." Specify what should or should not be done.

Question 33: "Responsibility"—State whether: (a) Accident was due to want of care on part of injured employee and if so, how. (b) Or to negligence on part of any other persons and if so, how. (c) Or to violations of rules; if so, what rule. (d) Or to any defect in machinery, tools or other appliances. (e) Or to a combination of above.

Question 34: Give the names of persons whose testimony standing alone, or with that of others, would tend to prove the fact that the injured employee sustained an injury "arising out of, and in the course of his employment." They need not have been present at the very place and time the accident occurred, but mention if not present.