
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 disciplinary layoff
of ~~XXXXXXXX~~ M~~XXXXXXXX~~.

OPINION AND DECISION OF BOARD OF ARBITRATION

~~summary~~ SAM KAGEL, Chairman

LAWRENCE N. FOSS, Member appointed by the Union

WAYNE WEAVER, Member appointed by the Union

I. W. Bonbright, Member appointed by the Company

William H. Peterson, Member appointed by the Company

San Francisco, California

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OPINION AND DECISION

OF

SAM KAGEL,
Arbitrator.

San Francisco, California.

August 28, 1967
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ISSUE:

"Will the disciplinary layoff of Mr. ██████████
██████████, light crew foreman for two days be sustained?"

The relief sought by the Union is that Musselman be
reimbursed for those two days.

STIPULATED FACTS:

The parties agreed to a joint statement or stipulated
set of facts which reads in part as follows: (Co.Ex.1):

"He (██████████) was the foreman of a three-man
crew on March 8, 1966, and at approximately 2:00 p.m.
he was confronted with the task of turning his truck
around on a narrow dead end road. He asked the helper
on his truck, ██████████ S██████████, to direct him from out
side of the truck on his backing operation. Fieldman,
██████████ D██████████, was seated alongside of Mr. ██████████ in
the cab of the truck at the time of the accident.

S██████ directed thr truck backward until the right bumper step struck a bank, damaging some ice plant. He signaled M██████ to stop. M██████ then turned the wheels to the right and drove a short distance forward to the edge of the road, and then turned the wheels hard left preparing to back up again. While M██████ was jockeying the truck in an effort to turn around, S██████ decided to straighten up some damaged ice plant. At this point, M██████ tried without success to locate S██████ in the left rear view mirror and asked his passenger, D██████, if he could locate S██████ in the right rear view mirror. Neither could see S██████. M██████ then backed up catching S██████'s left leg and ankle between the bank and the right rear bumper step, breaking his leg 6 inches above the ankle and fracturing the ankle bones. An unidentified third party watching this operation from his car while waiting to get by on this narrow road, blew his horn and alerted the driver, M██████, that an accident had taken place."

COMPANY'S POSITION:

That the Company after investigating the accident sent M██████ a letter in which it stated in part that the accident was inexcusable; that the letter read in part:

"In order to impress upon you the seriousness of this accident it is mandatory that disciplinary action be taken. You are therefore instructed to take two days off without pay.

"Your past thirteen years safety record has been commendable, and I sincerely hope that there will never be a need for this type of letter again.

"That the Company believes that M██████'s actions were inexcusable and negligent; that discharge would have been proper but the Company took into account M██████ past good record in asses only a two day layoff." assessing

UNION'S POSITION:

That M██████ was directed by S██████ his helper to back up his truck; that he received explicit instructions to back it up in a certain manner and he did; that at that

point the helper chose to turn his back to the truck and bend over to repair an ice plant and that the truck unfortunately hit the helper in the leg; that under all of the circumstances M██████ did not act in an unreasonable manner or in a negligent manner; that even assuming that he did M██████'s conduct is mitigated by the obvious contributory negligence of the helper; that on the basis of the Company's own statement of policy concerning discipline the imposition of a layoff for a first offense in the case of a driver who had been employed by the Company for some fifteen years and with a commendable safety record is unreasonable disciplinary action; that it would have been sufficient for the Company under all the circumstances to have reprimanded M██████ either orally or in writing.

DISCUSSION:

M██████ testified that the first time he backed up he could see the S██████ in his rear view mirror and he was signaling with his arm to come back and he saw the arm signals in the mirror. M██████ agreed that it was his responsibility not to move the truck unless he was signaled to do so. M██████ testified that when he looked into the mirror the second time that he could not see S██████; that he asked his passenger to see if he could see S██████ and D██████ said he could not so that neither M██████ nor D██████ saw S██████ in the mirror but, nevertheless M██████ backed up without any instruction from S██████ who was acting as the flagman. M██████ was asked the following question:

"And it is your responsibility not to back up until the signal man gives you the signal, the hand signal to come on back: Is that right?"

Answer: "I'm not supposed to back up unless I can see him, right." (Tr.p.36)

With this admission on the part of M██████████ it is impossible to see what mitigation can be considered with reference to the disciplinary action that was taken. Regardless of the policy of the Company with reference to disciplinary action and regardless of M██████████'s past commendable safety record, it is impossible to excuse M██████████'s action in this case.

Contrary to the Unions contention M██████████ acted in an unexcusable and negligent manner; and S██████████ was not guilty of contributory negligence. The injury suffered by S██████████ as a result of M██████████'s negligence was severe. And when M██████████ specifically admitted that he knew that he was not to back up until he received a hand signal but did so anyway, it is clear that his negligence was inexcusable.

M██████████'s years of service and his commendable safety record were given all the weight they were entitled to when instead of discharging him the Company only assessed him with a two-day disciplinary layoff.

DECISION:

The two-day disciplinary layoff assessed against M██████████ is proper and sustained and therefore the claim by M██████████ for two days pay is denied.

BOARD OF ARBITRATION:


Chairman

Lawrence N. Foss

✓

9/6/67

James James
Arbitrator for Union

Concur

✓
Dissent

9/7/67
Date

AW Bonbright

Concur

8/31/67

WA Peterson
Arbitrator for Employer

✓
Concur

Dissent

9/1/67
Date