In the Matter of a Controversy between INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 1245, Complainant and PACIFIC GAS AND ELECTRIC COMPANY, Respondent RE: Alleged violation of Agreement by denial of per diem expenses	Arbitration Case No. 47

OPINION AND DECISION

OF

BOARD OF ARBITRATION

SAM KAGEL, Chairman

LAWRENCE N. FOSS, Union Member

TONY MORGADO, Union Member

H. G. COOKE, Company Member

J. A. CATES, Company Member

May 9, 1974
San Francisco, California

ISSUE:

Was the denial of per diem expenses a violation of the Physical Agreement?

AGREEMENT PROVISIONS:

"TITLE 301. EXPENSES

"FIELD EMPLOYEES

"301.1 Employees who are employed at the establishing Company rate of pay and who are transferred from a present headquarters to one at a new location, or who are reemployed at a new location within 30 days after layoff for lack of work at a previous location, shall be allowed expenses as provided for in Section 301.4. Transfer to a new location or re-employment at a new location shall mean one of the following:

"(a) A change from an established job headquarters or point of assembly location within an employee's own Residence Area to a location outside such area, or

"(b) A change from an established job headquarters or point of assembly location at which the current expense status is based and which is within the area of an incorporated city to a location beyond the city limits, or conversely, a change from such a location in an unincorporated area to a location within the city limits of an incorporated city, or

"(c) A change from a present headquarters or point of assembly in an unincorporated area to another location in an unincorporated area at such distance from the previous location as to cause

an employee normally to move his place of abode.

. . .

"TITLE 306. DEMOTION AND LAYOFF PROCEDURE

"306.1 Only employees who have three years or more of continuous service with Company (as defined in Section 106.1) shall be given consideration, as follows, in cases of demotion and layoff in the department of General Construction in which they are employed:...

"(e) An employee who demoted or transferred to another headquarters and displaces another employee under this Title shall not be entitled to an expense allowance if he was not on an expense allowance on the date of such demotion or transfer." (Jt. Ex. 1)

BACKGROUND:

The Grievants, Messrs. Perez and Linton, had more than three years of service with the Company. Both are Line Drivers in the General Construction Department. They were located in Antioch in the East Bay Division. One Grievant was required to move his work location from Antioch to Pleasanton and another from Antioch to Fremont. Pleasanton and Fremont both are in the East Bay Division. In both cases, the latter locations were outside the Employees' residence areas, whereas the Antioch location was within that area. The Pleasanton and Fremont work locations placed them beyond 25 miles

from their residences (Tr. 13). Before the move neither received per diem pay. The question presented in this case is whether or not, because of the move, they are entitled to per diem pay.

POSITION OF THE PARTIES:

Position of the Union:

Title 306.1(e) applies only if the Grievants' transfers are the result of demotion or layoff procedures contained in Title 306; that they were not transferred under that procedure; that by virtue of their senior status, the Grievants were not required to demote or transfer within the meaning of Title 306; that neither was affected by that Title since neither was the junior Employee within his classification; that the administrative complications caused by a reduction of force cannot bring the Grievants within Title 306; that since the Company admits that Section 306.1 did not apply to Linton, it could not also apply to Perez; that the negotiation history of the language in question supports the Union's position; that neither Grievant displaced an Employee within the meaning of Title 306.1; that in reality the Grievants did not displace junior Employees for under the Agreement they had no option as to where their work location would be; that the Company's evidence of alleged past practices has no bearing on the

interpretation of the current Agreement language.

Position of the Company:

That except in the situation at hand, per diem expenses would be payable; that since the transfer of the Grievants occurred at a time that a reduction in work forces was occurring and there was no work at their present location, nor new work to which they might be assigned, the Company was required to push less senior Employees out of the available jobs and substitute the Grievants so that Title 306 applies to the Grievants; that all movements and displacements necessitated by a reduction in the work force are controlled by Title 306 and their transfers, therefore, were pursuant to the provisions of Title 306; that the Union in the past has acquiesced in the Company's interpretation of the Agreement; that the guaranteed continued work for the Grievants under Section 306.1(b) requires that the Grievants be transferred to the place where work exists, deposing the junior incumbents; that it would be inequitable if the Grievants were allowed to gain the windfall of per diem expenses because they have the seniority to oust junior Employees who must go elsewhere for work without per diem and in all likelihood, at a lower wage rate.

DISCUSSION:

Factual Situation:

The issue in this case arose because of a reduction

of force requiring the displacement of seven Employees in the Division. Linton was the eighth most junior Employee, while Perez, the other Employee involved, was the sixteenth most junior Line Truck Driver in the East Bay Division (Co. Ex. 4).

They were headquartered in Antioch, and apparently coincidental with the reduction in force of the Line Truck Drivers in the East Bay Division, work at Antioch had decreased to the point where Linton and Perez were no longer needed there so that they were transferred within the Division. Since they were not the junior Employees who were being removed from the Division because of the reduction in force, they were not entitled to any election or options under the terms of the Agreement, but had to accept the change of work location which in both cases was more than 25 miles from their residences.

Analysis of Issue:

The Company denied Linton and Perez expenses on the basis of Title 306.1(e). The Company takes the position that any transfer occasioned by a reduction in force automatically results in a displacement of another Employee, thereby triggering the specific language of Section 306.1(e) to deny expenses.

Analysis of the Agreement:

The language of Section 306.1(e) prior to 1954 read:

"An employee who is not on an expense allowance on the date of a demotion and transfer by reason of the provisions of this Section shall not qualify for such allowance if he is demoted and transferred to another headquarters." (Co. Ex. 7)

In 1954, at the behest of the Company, the word "and" between "demotion" and "transfer" was changed to "or" and, at the request of the Union, the terms "and displaces another Employee under this Title" were added. According to the Union, the latter was added in order to make the Agreement consistent within Title 306.1 where a junior Employee exercises the options available in the event of a reduction in force under Title 306.1(b) and (f).

In the event of reduction in force, only the junior Employees are entitled to an option. They may retain their same classification if they have the appropriate seniority to displace an Employee in another Division by lateral transfer. Or, they can determine not to transfer out of the Division but instead be moved to the next lower classification and displace an Employee in that classification, again provided the displacing Employee has appropriate seniority. According to the Union, it is solely to this Employee that Title 306.1(e) applies.

And, according to the Union, neither Linton nor Perez, being senior Employees who were not to be removed

from the Division because of the reduction in forces, had any election under Title 306, and therefore were entitled to expenses on the basis that Title 306.1(e) did not apply to them.

Language of Title 306.1(e):

It is clear in this case that neither Linton nor Perez "displaced" another Employee by their transfer. The Company maintains that such displacement did in fact take place as their transfers occurred because of a reduction in force. However, it was the reduction in force which displaced the junior Employees in the Division, not the reassignment of Perez and Linton. That this was factually so was established especially in the case of Perez. The Company maintains that Perez displaced the most junior Employee in the Division, Early. Yet Perez himself had high seniority with the Division, and if strict displacement was involved, he would not have been involved in the transfer.

Rather, what occurred was that the Company assigned Employees in Antioch, who coincidentally had wrapped up their job, to locations where the junior Employees in the Division who were required to be reduced had been working. As the Union points out, neither Perez nor Linton had any choice in the matter. Yet, for the Company's view to prevail, it would have to appear that Linton and Perez themselves displaced the

junior Employees which they did not since they were involuntarily transferred.

Title 306.1(e) must be applied as it is written. Neither Perez nor Linton displaced another Employee under the Title for this could only be done by junior Employees either through transferring to another Division, or by bumping into a lower classification.

The transfer of Perez and Linton was for the convenience of the Company, not because of the application of the Title. It is clear that the Company, since senior Employees had no option, was free to transfer anyone within the Division due to the reduction in force in terms of staffing the Division, including the option of transferring Line Drivers who would have gotten expenses or those who would not have gotten expenses.

Past Interpretation:

The Company contends that this matter was settled prior to 1954 changes in the Agreement when the Company interpreted prior Section 306.1(e) for the Union:

> "Transfers resulting from application of demotion and lay off procedure do not qualify a man for expenses." (Co. Ex. 11)

That statement was in response to a question which was admittedly posed in general terms but without reference to specific fact situations (Tr.58-59) concerning a three-year man who was transferred at the same

classification "to fill the position of an employee laid off or demoted..." (Co. Ex. 11). Company participants maintain that this question and answer applied to both intra- and inter-Division transfers.

However, in light of the uncontradicted evidence in the record as to why the additional language to Section 306.1(e), namely, "and displaces another Employee under this Title", was added to the Agreement, and that the situations in question do not happen very often (Tr. 30, 66), it does not appear that such a general statement and answer in 1954, prior to the amendments to the language of the provision, can be binding some 20 years later in these situations "which do not happen very often."

Similarly, the testimony of the Company that it has consistently refused to pay expenses under circumstances cannot be deemed as a "past practice" which is binding in interpreting the Agreement. Again, not only has the situation not happened very often, but the Company has admitted to "errors" where expenses have continued to be paid under such circumstances.

Thus, the language of the Agreement must be applied, and since the facts establish that the intra-Division transfers in this case of senior men occurred at the convenience of the Company and where the Employees had no option, Title 306.1(e) does not apply. Therefore,

Perez and Linton were entitled to their expenses.

DECISION:

1. Linton and Perez shall forthwith be paid the expenses they would have received under the terms of the Agreement.

2. The computation of such expenses is remanded to the Parties, the Arbitration Committee retaining jurisdiction in the event there is any dispute between them as to the amount due either Grievant.

Sam Kagel Chairman	Concur/~~Dissent~~	May 9, 1974 Date
J.W. Bonbright Company Member	Concur/Dissent	9 May 1974 Date
J. Bates Company Member	~~Concur~~/Dissent	May 9, 1974 Date
Lawrence N. Foss Union Member	Concur/~~Dissent~~	May 9, 1974 Date
Tony Mongelo Union Member	Concur/~~Dissent~~	May 9 1974 Date