

In the Matter of a Controversy]
]
 between]
]
 INTERNATIONAL BROTHERHOOD OF]
 ELECTRICAL WORKERS, LOCAL 1245,]
]
 Complainant,]
]
 and]
]
 PACIFIC GAS AND ELECTRIC CO.,]
]
 Respondent.]
]
 Re: Five Day Disciplinary Layoff]
 of ██████████ y Whe ████████ n and]
 ██████████ - WC ██████████]

Arbitration Case No. 60

OPINION AND DECISION
OF
BOARD OF ARBITRATION

- SAM KAGEL, Neutral Member
- I. W. BONBRIGHT, Company Member
- DAVID J. BERGMAN, Company Member
- ALBERT SANDOVAL, Union Member
- FRANK QUADROS, Union Member

San Francisco, California

INTRODUCTION:

This case was heard by a Board of Arbitration with Arthur B. Jacobs as Chairman. After Mr. Jacobs' decease the Parties agreed to submit the case on the transcript of the hearing as heard by Mr. Jacobs with briefs to the undersigned Arbitrator.

ISSUE:

Was the five day disciplinary layoff of the Grievants for just cause and, if not, what is the remedy? The Grievants are [REDACTED] Wh [REDACTED] and [REDACTED] W [REDACTED]

BASIS FOR DISCIPLINARY LAYOFF:

The Company claims that the Grievants wrongfully removed gasoline from a Company vehicle; that this conduct on the part of the Grievants was theft of Company property.

BACKGROUND:

W [REDACTED] and Wh [REDACTED] worked the 3:30 p.m. to 11:30 p.m. shift on Sunday, November 2, 1975. W [REDACTED] after leaving the

end of his shift and after leaving the power plant for home, about 100 yards out of the gate of the Plant near the corner of 23rd and Illinois Streets, he ran out of gasoline. W█████ was driven back to the Plant by Employee N█████. W█████ contacted Grievant W█████ and explained that he had run out of gas and asked if W█████ would drive him to a filling station. They went to a Mobile Gas Station at the corner of Army and Potrero which operated all night. They were told that there was no gas available. They then went to a Texaco Gas Station on 16th and South Van Ness and were told that while there was gas available at that station, there were no containers available.

W█████ and W█████ returned to the Plant, stopping at the guard shack as they entered. W█████ and W█████ testified that W█████ informed the Guard that they were returning to get a container and some gasoline. The Guard testified that he understood W█████ to say that he and W█████ had returned to get a container for some gasoline.

W█████ and W█████ proceeded into the Plant, obtaining some gas from a truck. The Guard testified that the Grievants

had a siphon hose and had containers filled with gasoline. The Grievants refuted this testimony. The testimony indicated that a siphoning hose was not necessary since the truck tanks had anti-theft devices and, according to Wh [REDACTED] they opened a drain plug on the side of the tank of the truck. According to the Grievants, they filled the five gallon container which they had found in the Plant to rinse out the residue that had been in the container; that they then filled the container with what Wh [REDACTED] guessed was a gallon or two of gasoline and screwed the drain plug back onto the tank. According to Wh [REDACTED], at that point the Guard approached and asked what they were doing and Wh [REDACTED] told him that they were getting gas to put into W [REDACTED]'s car. The Guard stated that he was going to have to make a report of the incident.

Wh [REDACTED] and W [REDACTED] left the gas at the truck and went to the office of the Shift Foreman, [REDACTED] Ar [REDACTED]. Apparently, as they came into the office, Ar [REDACTED] had just completed a conversation with the Guard. Ar [REDACTED] told Wh [REDACTED] and W [REDACTED] that they should have come to him and he would have contacted the Guard who had keys to the gasoline pump. According to the Grievants, Ar [REDACTED] told them that it was okay and that they could take the gas and leave. The Grievants then left the Plant and went to W [REDACTED]'s car and began to place gasoline in it. The Guard Supervisor observed the Grievants, standing

alongside their cars pouring gas from the metal container into the gas tank of W[REDACTED]'s car.

The Grievants, when they spoke to A[REDACTED], apologized to him for the incident occurring on his watch.

A[REDACTED] stated that what they had done was wrong and the Grievants agreed with A[REDACTED] that what they had done was in poor judgment on their part.

The fact is that the Shift Foreman did pass the Grievants through the gate. This was after the Grievants had agreed with A[REDACTED] that what they did was mistaken bad judgment. Nothing appears in the record that A[REDACTED], before giving them permission to leave the Plant, checked out the amount of gas that they took to determine whether it was only some gas, a small amount in a metal container, or, as it is alleged, a larger amount of gas in a metal container and some in clorax bottles. A[REDACTED] claimed he had not condoned the Grievants' taking the gas out of the Plant, but only had authorized their leaving.

The Company insists that the conduct of the Grievants involved deceit and theft. With reference to the deceit, apparently, that refers to the difference in the testimony of the Grievants and the Guard, namely, that the Grievants claimed that they were going onto the property to get a container and gas and the Guard believing that they were going

onto the property only to get a container, but not gasoline. In this regard, it would seem reasonable that if they were going onto the Plant to get a container, then, presumably, they would have gone off the property to get the gas at the Station which they knew had gas. But, if they decided to use the container which was on the Plant property and obtain gas on the property, they did that without any permission. But, assuming that they told the Guard that they were going to get a container and gas, where were they going to get it? They are long-time Employees and they knew the existence of a gas pump. Whether they knew that the Guard had the keys to it or not is not the point. They must have been aware of the fact that getting gas out of a truck, whether by a siphon or by removing a plug, is not a normal type of conduct.

The Union points out that the Grievants have long periods of service with the Company and good records. Even assuming these to be the facts, there is no excuse for the conduct which was involved here. The only "excuse" was the fact that [REDACTED] apparently gave them permission to leave the Plant and [REDACTED] was derelict in not checking more thoroughly as to whether they had the gas or did not have the gas. But this particular factor was, in effect, weighed by the Company in deciding to not discharge the Grievants, but,

rather, to give them disciplinary layoffs which were assessed in this case.

What is significant as to the conduct of the Grievants after they obtained the container on the Company's property appears in the record as follows:

"Q. [By Mr. Brown for the Company] You are well aware of the fact that you could have taken the can and gone back and got the gas for Mr. Wong's car, isn't that true?

"A. [Wh [REDACTED]] Oh, I didn't think of that at the time. I honestly didn't think of it.

"Q: Yet you had just left that station and knew it was open and had gas available, but no can?

"A. That's right." (Tr.52)

SUMMARY:

The taking of the gas by the Grievants was inexcusable when, as Wh [REDACTED] testified, they knew that one of the gas stations was open which had gas, but had no container; that they had come onto the property to obtain the container and they could have gone back and obtained the gas. The so-called permission, given to them by Shift Foreman Ar [REDACTED], even though he was apparently derelict in his responsibilities, nevertheless, does not excuse the original conduct of the Grievants which was conduct prior to the discussion of the incident with Mr. Ar [REDACTED]. Accordingly, the Grievants,

in effect, indulged in self-help insofar as taking gasoline was concerned from a Company truck on Company property and this conduct comes within the parameters of theft.

DECISION:

The grievance is denied.

Sam Kagel
Neutral Member ~~Concur/Dissent~~ 11/23/76
Date

Al Bonbright
Company Member ~~Concur/Dissent~~ 11/23/76
Date

Jack [Signature]
Company Member ~~Concur/Dissent~~ 11-23-76
Date

Frank [Signature]
Union Member ~~Concur/Dissent~~ 11-23-76
Date

Albert Sandoval
Union Member ~~Concur/Dissent~~ 11/23/76
Date