

In the Matter of an Arbitration ]

between ]

INTERNATIONAL BROTHERHOOD OF ELECTRICAL ]  
WORKERS, LOCAL UNION NO. 1245, ]

Complainant, ]

and ]

PACIFIC GAS AND ELECTRIC COMPANY, ]

Respondent. ]

RE: Discharge of Y ]

Arbitration Case No. 66 ]

OPINION AND DECISION

OF

BOARD OF ARBITRATION

JOHN KAGEL, Chairman

DAVID J. BERGMAN, Employer Member

WAYNE K. SNYDER, Employer Member

LAWRENCE N. FOSS, Union Member

EDUARDO VALLEJO, Union Member

San Francisco, California

ISSUE:

Was the discharge of Y Clerk D, in violation of the Clerical Labor Agreement?

Y was employed on September 27, 1968, and was discharged effective September 24, 1976.

BASIS FOR DISCHARGE:

By a letter dated September 28, 1976, the Grievant was informed, "You have been terminated effective September 24, 1976, due to repeated insubordination... ." (Jt. Ex. 3)

BACKGROUND:

Incident in Question

The incident which directly resulted in the Grievant's discharge occurred on the graveyard shift on September 24, 1976. At that time, according to the Clerk A who holds leadman status for that shift in the mailroom, he three times asked the Grievant to pass him certain mail and at no point did the Grievant comply. The Clerk A then telephoned his Supervisor who ordered that the Grievant leave. Based upon this incident, as well as alleged past incidents, the Grievant was discharged. The Grievant denied stating that he refused to pass over the mail in question. After he was told he was sent home, he telephoned his Supervisor and explained his version of what occurred. Nonetheless, he was sent

home and he was later terminated without there being any further discussion with him.

The Grievant's duty was to place mail in a position where it could be sorted by the Clerk A. He maintains that he fulfilled this function. In any event, both the testimony as well as a physical viewing of the mailroom shows that the Grievant, who was otherwise engaged in sorting mail, had much farther to go to get the particular mail in question than did the Clerk A. According to the Clerk A, there was no operational reason why he, the Clerk A, had to remain at his post after he had sorted the mail he was sorting and no reason he, himself, could not have gone the few feet to obtain the mail in question (See Tr. 54).

#### Grievant's Past Record

The Company introduced incidents in the Grievant's past record that it alleges support the Grievant's discharge. These include several matters in 1974 which did not result in formal discipline of the Grievant, one involving an allegation that the Grievant did not agree to the customary method of determining who should remain on overtime (Tr. 73), one where he referred to his Supervisor as a "racist dog" in front of other workers (Co. Ex. 2), and one where he had privately referred to the Company as racist (Co. Ex. 5A, B). No further incidents occurred in the Grievant's record until February 13, 1976. At that point, the Grievant was sent home two hours into his shift for refusing

to turn down a radio at the request of the Clerk A involved in this matter. As a result of the grievance procedure, the letter of reprimand was removed from the Grievant's file, although he was not reimbursed for the six hours he did not work. He was advised by a Union official after that incident that the lead Clerk had responsibility to assign work and get the work out, that he was to follow the Clerk A's directives, and that if he felt they were unfair he should file a grievance (Jt. Ex. 6). (See Co. Ex. 13, Jt. Ex. 4, Jt. Ex. 6, p. 1). In March and April 1976, the Grievant was warned with respect to excessive use of sick leave (Co. Ex. 6, 8A and B).

On September 17, 1976, the Supervisor called a meeting to discuss what was considered to be flagging productivity in the mailroom on the third shift. That shift is manned by the Clerk A, another Clerk and the Grievant. The Grievant began to present suggestions with respect to that matter which were critical of the Clerk A. Quoting the Supervisor:

"It was my intention to simply state the problem and produce a solution however, upon asking for comments George Young produced his notes and began slandering (in a polite manner) supervision by discussing the inefficient way in which the shift is run. I interjected and told George that if he had a complaint against anyone he was to take it up with his supervisor or myself, at which point he claimed all he was trying to do was participate in the meeting." (Co. Ex. 9)

On September 22, 1976, the Grievant was directed to wrap packages. The Clerk A heard the Grievant "murmuring". The Clerk A asked the Grievant if he was talking to him, to which the Grievant responded, "No. As far as I am concerned, you do not exist." Then, according to the Clerk A, the Grievant did not wrap the packages as requested but went to the restroom instead (Tr. 34). For this event, the Grievant was advised by Supervision to respond in a respectful manner to the lead Clerk (Tr. 63). He additionally was told that if it happened again he would be sent home (Co. Ex. 10, p. 2). The Grievant himself denied that he made the comment as stated by the Clerk A, and stated that he wrapped a package before he went to the restroom.

POSITION OF THE PARTIES:

Position of the Company

That the Clerk A's version of what occurred on September 24 is corroborated by the statement of the third Clerk who was present on that shift, submitted to the Local Investigating Committee; that, while the September 24 incidents were not in themselves supportive of discharge, in light of the Grievant's formidable prior record of job dereliction, the cumulative effect provides permissible grounds for discharge; that the deliberate-ness of the Grievant's refusal was of the same stripe as his past insubordinate acts; that the Grievant was not provoked as he

maintains; that all incidents cited directly relate to third shift production; that a meeting thereon was frustrated by unwarranted personal attacks by the Grievant; that the Grievant's conduct disrupted the efficient and harmonious operation of the shift; that an Employee owes a fundamental responsibility to his Employer to contribute to the efficiency of the operation, not to its destruction; that the Grievant's tactics constituted the kind of wilful insubordination that the Employer must be assured will lead to serious punishment, even without a prior warning; that the Grievant's poor attendance record must be taken into account with respect to the propriety of the penalty invoked; that the concepts of progressive discipline are not applicable under the facts of this case; that there are no Agreement provisions supporting or requiring the imposition of progressive discipline and the imposition thereof would be anti-thetical to the production problems of the third shift; that a retroactive wage adjustment can occur only in instances which are free of the alleged misconduct; that the Grievant chose to finish out his education rather than seek reemployment and is not, in any event, entitled to back pay.

Position of the Union

That the events of September 24, even if proven, are so petty as not to warrant any discipline; that dismissal may not be imposed based upon the Grievant's record; that the appropriate

remedy would be reinstatement with full back pay, interest and restoration of rights; that the award of full back pay and interest is also appropriate because the Employer improperly sought to justify the discharge on several grounds not alleged in the discharge letter and the Employer was proven to have been guilty of violating a settlement agreement it had reached with the Union with respect to the February 13, 1976 letter.

DISCUSSION:

Incident of September 24

With respect to the incident of September 24, there is a contradiction in the evidence as to whether it constituted insubordination at all. While the Exhibit attached to the Local Investigation Committee Report, signed by the third Clerk, stated that the Grievant said "ain't gonna do it", his statement before the Committee also was that the Clerk A walked over to the radio to turn it down in order to repeat his request to the Grievant to bring the mail and that the Clerk A had determined in that particular instance to do something different than was normally done (Jt. Ex. 6, pp. 4-5). And, even if it is accepted that the incident occurred, it is clear, as the Grievant maintains, that there was an element of provocation with respect to it. Not only was the Grievant otherwise productively engaged, which is not denied by any participant, but there was an extremely

short distance involved for the Clerk A to have secured the mail himself and his getting it himself would not have interrupted any operational procedure in the mailroom. Thus, it could be concluded that his repeated directive to the Grievant to secure the mail was not justified in the first place. In fact, that the Clerk A was testing the Grievant is shown by the statement of the third Clerk that, instead of going the short distance to get the mail himself, which would not have led to any incident at all, the Clerk A instead walked to the radio to turn it down. In short, the incident in question, even if it did occur, was one which involved provocation of the Grievant.

#### Discipline in Question

Even if the incident did occur, not only must these factors stated above be taken into account, but the Company's response to the incident must be considered as well. In this case, on determining to discharge the Grievant, at no point did the Company seek to listen to the Grievant's side of the situation, a matter which is basic, especially where, as here, no non-Bargaining Unit Supervisor was involved. While there was some testimony that the Grievant's alleged poor attendance record, as well as his alleged abuse of sick leave, was taken into account the record supports that the basis for the Grievant's discharge was the alleged repeated insubordination (See Un. Ex. 4, Jt. Exs. 3, 6, Tr. 100). Additionally, the Supervisor with the



ultimate responsibility for the determination to discharge the Grievant took into account the letter of reprimand from February, 1976, which, pursuant to agreement between the Company and the Union, had been removed from the Grievant's record (Tr. 106, 111).

Notwithstanding these factors, the Company contends that the Grievant's course of conduct, especially from an educated and mature individual such as the Grievant, was in its view a wilful and calculated attempt to destroy production on the third shift by repeated challenges to the Clerk A's authority. While the Union recognizes that the Clerk A has the authority to direct work and that the Grievant was advised to file a grievance in the event he disagreed with the Clerk A, it is not established, that the Grievant's record supports the intentional nature of the misconduct alleged by the Employer.

The incidents in 1974, which were presented in evidence, never resulted in formal discipline. The next incident with respect to the Grievant was one where the letter of reprimand was removed from the Grievant's record. The incidents concerning sick leave were not dealt with in a formal manner, and in fact, there are provisions in the Agreement to deal with them. Moreover, as shown, they were not a major contributing factor to the determination to discharge the Grievant. The September 17 meeting, where the Company maintains that the Grievant unjustifiedly attacked the Clerk A, was not as the Company maintains. Rather, the Grievant

was doing precisely what he was told to do at the meeting, namely to make suggestions with respect to improving the productivity of the shift. The Supervisor chose not to hear the Grievant out with respect to his suggestion, even if they had the effect of being critical of the Clerk A. That was, of course, the Supervisor's choice, but there appears to be nothing whatsoever with respect to that meeting which can be considered to be insubordination on the part of the Grievant. There is a difference of opinion with respect to the incident concerning the Grievant's "murmuring" and, in no event, was there formal discipline with respect to that incident.

In short, whatever the Company's opinion of the Grievant, and whatever it was entitled to expect from him with respect to cooperation and productivity, its efforts to document his alleged poor record are weak. This, coupled with the Company's own irregularities with respect to the ultimate decision to discharge the Grievant, including the failure to hear his side of what occurred in that final incident (which incident, in and of itself, is not only questioned but is admitted by the Company to be insufficient, standing alone, to justify discharge) and reliance upon documents which had been agreed to be excised from the Grievant's record, further calls into question the propriety of the Company's determination to discharge the Grievant herein. In short, the discharge of the Grievant, based upon the record presented, cannot

stand.

REMEDY:

With respect to remedy, the Union seeks full back pay and interest. It cites no provision of the Agreement to support the payment of interest in back pay claims. Nor is there any basis for providing for full back pay or interest as a punitive measure based on the Union's characterization of the Company's conduct in this case.

With respect to back pay, what is significant is that the record indicates that the Grievant is a full-time college student (Tr. 126, 152). That the Grievant has been at school on a full-time basis, when he can pursue his studies in that manner (Tr. 152), indicates that full back pay would not be an appropriate remedy, the Grievant having chosen to take himself out of the job market to pursue his education.

The exact determination of the Grievant's status during the period between his discharge and reinstatement will be ordered hereunder and will be remanded to the Parties, the Arbitration Board retaining jurisdiction in the event they cannot agree thereon.

DECISION:

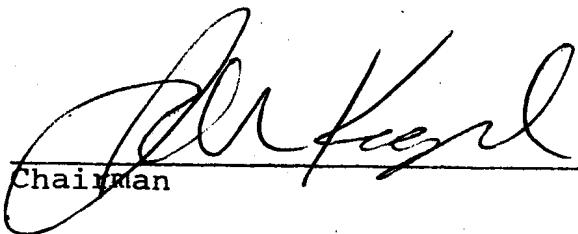
1) The discharge of : Y Clerk D, was in violation of the Clerical Labor Agreement.

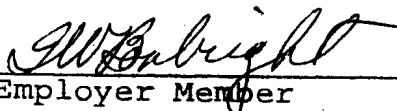
2) The Grievant shall forthwith be offered reinstatement to the position that he held, with seniority and all other rights, as if he had not been discharged.


3) Provided that the Grievant seeks reinstatement and is reinstated, the Grievant shall forthwith receive the pay that he would have received had he not been discharged between the date of his discharge and the date of his reinstatement, less:  
a) outside earnings, if any; b) pay for the period of time that he attended college on a regular basis which would have precluded working full time on a graveyard shift.

4) The determination of the back pay due the Grievant is remanded to the Parties, the Arbitration Board retaining jurisdiction in the event the Parties cannot agree thereon.

5) The Grievant shall, within 10 days of the date of this Award, advise the Company in writing of his determination to be reinstated.

  
Chairman Concur/Dissent 1/18/78  
Date

  
Employer Member Concur/Dissent 1/18/78  
Date

  
Employer Member Concur/Dissent 1-18-78  
Date

Lawrence N. Joss Concur/~~Dissent~~ 1-18-78  
Union Member Date

Edward Valpey Concur/Dissent 1-18-78  
Union Member Date