

In the Matter of Arbitration

Between

PACIFIC GAS AND ELECTRIC  
COMPANY,

Employer,

and

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

Union.

OPINION AND AWARD

Involving the Discharge From  
of Employment of W

Before an Arbitration Board composed of:

Chairman of the Board

Emily Maloney

Employer Members

I. Wayland Bonbright  
Len Beanland  
Pacific Gas & Electric Company  
245 Market Street  
San Francisco, CA 94105

Union Members

Michael Davis  
Lawrence N. Foss  
IBEW Local Union No. 1245  
P.O. Box 4790  
Walnut Creek, CA 94596

Appearances for the Parties:

For the Employer

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Pacific Gas & Electric Company  
245 Market Street  
San Francisco, CA 94105

For the Union

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San Francisco, CA 94195

PARTIES TO THE DISPUTE

PACIFIC GAS AND ELECTRIC COMPANY (herein called "Employer" or "Company") and INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. 1245, AFL-CIO (herein called "Union") are parties to a collective bargaining agreement (herein called "Agreement")(Jt. Ex. 1). Pursuant to the Agreement, an arbitration hearing was conducted by this Arbitration Board in San Francisco, California, on July 19, 1979, at which hearing evidence was presented with respect to the issue as set forth below. It was stipulated by the parties that the prior steps of the grievance procedure had either been followed or waived and that the matter was properly before the Board for final and binding determination. Post-hearing briefs were submitted by the parties in support of their respective positions on or about October 1, 1979.

Based upon the evidence and argument thus presented, the Arbitration Board decides as follows.

ISSUE

Was the discharge of the grievant in violation of the Physical Labor Agreement (Agreement)?  
If so, what shall the remedy be?

RELEVANT CONTRACTUAL PROVISIONS

Title 7. Management of Company

7.1 The management of the Company and its business and the direction of its working forces are vested exclusively in Company, and this includes, but is not limited to... discipline or discharge employees for just cause...

(Jt. Ex. 1)

## DISCUSSION

Grievant W. [redacted] has been employed by the Employer in Kitchen Helper and Cook classifications since August 1971. At the time of his termination from employment on July 19, 1978, for alleged falsification of his timecard, W. [redacted] was working as a Cook (B) at the Employer's Geyser Steam Project. Until the incident giving rise to W. [redacted]'s discharge occurred in July 1978, W. [redacted] had a satisfactory record of employment with the Employer; with no record of prior disciplinary action.

The relevant facts and circumstances related to W. [redacted]'s discharge from employment are as follows.

It has been the practice in the cookhouse at the Geyser facility that the employees upon reporting to work on Monday of each week fill out their timesheets for the week. Each employee, using an individual pad of timesheets, fills out and signs a timesheet for each day of the upcoming week, noting his name, employee number, shift hours, and eight hours per day worked. The pads of timesheets are kept on the right-hand side of a two-door cupboard on the outside wall of, and next to the entry door into, the camp kitchen. The kitchen, in turn, is within a closed compound (which is locked each night by 7 p.m.) which also includes the dining room.

If and when the kitchen helper and cook employees are asked to work overtime, they then note upon the pre-filled timesheets the amount of overtime hours that are to be worked. Although the record is not entirely clear on this point, it

appears that when employees are advised that an overtime meal will be required, they know how much overtime will be involved. Thus, the employee notes on his timesheet at the time he is notified that overtime will be required the number of overtime hours that will be worked. If, as in the instant grievance, it later develops that the employee does not in fact work overtime, there is no specific procedure of record for insuring that the necessary corrections are made in the employee's timesheet. The record does suggest, however, that the site administrative office checks the kitchen employees' timecards against the construction overtime worked/overtime meals ordered to verify the overtime reported by the kitchen employees.

The Cook on the morning shift (5 a.m. - 1:30 p.m.) reviews the previous day's timesheets upon reporting for work; takes up any questions he has with respect to any timesheet with the employee involved; and assembles the timesheets with a roster of the employees. The completed timesheets and roster are then placed on the left-hand side of the two-door cupboard. Later in the day, usually somewhere between 7 a.m. and 9 a.m., this material is taken by the morning Cook to the administrative office, about a mile away; or the material is picked up by an employee from the administrative office.

In addition to the entries made on timesheets for overtime hours, the kitchen employees who work overtime also prepare

and submit a form for a \$4.00 allowance in lieu of an overtime meal.

Now, more specifically as to the circumstances which led to W. 's termination from employment.

During the week of July 10-14, 1978, W. was working as the Cook on the 10 a.m. - 6:30 p.m. shift. Al was working as the Cook on the 5 a.m. - 1:30 p.m. shift. Timecards were prepared in the usual manner by the kitchen employees upon their reporting for work on Monday morning. On July 10, 1978, W. was scheduled to and did work 2½ hours' overtime without incident.

On July 11, around 2 p.m., Ba who was acting as Station Construction Foreman in the absence of the regular foreman, advised W. that some of his men would be working late that evening so that there would be need for an overtime meal (or meals). W. informed Ba that he took his instructions with respect to working overtime/preparing overtime meals from the administrative office, and that Ba should channel his request for the overtime meal through that office.\*

Thereafter, around 4:15 p.m., W. was given direction by the administrative office to prepare the overtime meal(s).

Sometime after W. was asked to work overtime on July 11, he entered 2 hours' overtime (and a \$4.00 in-lieu-of allowance) on his timesheet. Also, he told his kitchen helper that afternoon that he was not feeling well, that if the helper believed he could handle the situation, he W 17 would prepare the food

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\*W. testified that he did not know that Ba was serving as acting foreman and for that reason (or for other reasons not made clear in the record) appears to have been unwilling to accept Ba's authority to direct him to work overtime/prepare overtime meals that evening.

but he would not stay overtime.

W. 's testimony is not entirely clear as to when he made the overtime entry on his timesheet and when he decided he would not be able to work overtime. At one point he testified that it was around 3:45 p.m. that he talked with the kitchen helper about not feeling well enough to stay overtime; at another point, he placed the time that he talked with the kitchen helper at 4:45 p.m. W also testified, as set forth above, that he did not accept Bar 's 2 p.m. authorization with respect to the overtime, and that he did not receive authorization for the overtime from the administrative office until 4:15 p.m.

In any case, W left work on July 11 around 5:50 p.m. without withdrawing or changing the timesheet he had prepared showing 2 hours of overtime and a \$4.00 in-lieu-of meal allowance. (W had not taken a lunch break for the day so that by the time he left work, around 6 p.m., he had worked approximately 8 hours.)

As to the filling out of the form for the \$4.00 allowance, W testified that he believes he completed that form on the morning of July 11 in connection with the overtime he had worked on July 10 and that he inadvertently noted July 11 on the form as the date for which the meal allowance was claimed. According to W , he submitted only the one in-lieu of form in connection with overtime work on July 10 and scheduled to be worked on July 11; and that he did not submit such a form for July 11 because it developed that he did not work overtime

on that day.

On reporting for work on July 12, around 9:30 a.m., W. testified that he went to the cupboard where the timesheets are kept and prepared a new timesheet for July 11 showing only 8 hours worked. He placed this corrected timesheet on his timesheet pad. According to W., he did not look into the other side of the cupboard to see if the timesheets and roster for July 11 were still there so that he might destroy the timesheet showing overtime and replace it with the corrected timesheet. Rather, he assumed that those timesheets had already been taken up to the administrative office.

Around 11 a.m. on July 12, Senior Field Clerk Ma and another employee from the administrative office showed up at the cookhouse. At that time, Ma also picked up the timesheets for the previous day, which, contrary to W.'s assumption, were still in the cupboard when he claims to have completed his corrected July 11 timesheet. Ma claims to have spent about one-half hour in the area, with the timesheets in hand, talking with the kitchen/cook employees.

W., however, testified that although he knew Ma was at the cookhouse showing another employee around, he did not leave the stove where he was working to talk with Ma, nor did he see Ma with timecards in his hand. W.'s testimony was to the effect that it did not occur to him to talk with or to give Ma the corrected timesheet; that he believed the timesheets had already been picked up for July 11 and that his changed timesheet would go in, in the usual manner, the following morning.

Upon returning to the administrative office, Ma reported to Project Superintendent Charles Tallon that he believed W had entered overtime hours on his timesheet for July 11 for time not worked. Tallon referred the matter to Ba. Ba went to the cookhouse around 2 p.m. to talk with W. Ba's account of his discussion with W is that he asked W if he had worked overtime the previous day; that W responded, "who wants to know;" that Ba said Tallon wanted to know; that W said, "if Tallon says I didn't work the 2 hours, I didn't work the 2 hours;" that W asked for the timecard so that he could change it; that W tried to take the timesheet from Ba's hand; that Ba would not give him the timesheet, but asked W again whether he had worked overtime; and that W responded to the effect that he would say no more.

According to W, Ba had two timesheets in his hand when he confronted him; that W asked to see the sheets so that he could identify the correct one; that Ba refused to let him see the sheets; that he did not explain to Ba that he had submitted two timesheets because he believed that Ba had both of the timesheets in his hand and therefore knew this.

The following day, July 13, W was called to Tallon's office, at about 11 a.m. Since the timesheets had not yet been picked up/delivered to the administrative office, W took the timesheets with him and dropped them off at the appropriate desk in the administrative office before meeting with Tallon.

These timesheets were, of course, those for July 12; and, if everything had been in order and W had completed a corrected timesheet for July 11 on the morning of July 12, then the timesheets W carried to the administrative office on July 13 should have included W 's corrected July 11 timesheet.

There are several accounts of who was present at the July 13 meeting. W testified that he met only with Tallon. Tallon claims that Ma was also in his office for the discussion with W . The minutes of the Local Investigating Committee indicate that the account given by W of the July 13 meeting on August 3 was that Tallon, Ba , and another employee (Si ) were present in the July 13 meeting.

In any case, W testified that in the meeting with Tallon he acknowledged that he had submitted a card showing overtime for July 11, but that he had become ill after completing the card and had not worked the overtime; that he did not tell Tallon that he had submitted a corrected timesheet because he assumed that Tallon already had both timesheets.

W was suspended at the conclusion of the July 13 meeting, pending discharge.

W then returned to the cookhouse area to pick up his personal belongings. Sa , who was also on duty at this time, testified that he saw W drive into the parking area; that he observed W the entire time he was in the cookhouse area/kitchen; that he walked with W to the door of the compound upon W 's leaving; and that at no

time did W go to the cupboard area where he might have filled out the corrected July 11 timesheet.

On July 14, 1978, a grievance meeting was held in Tallon's office. During that meeting, W (or his Union representative) for the first time stated that W had completed a second card for work performed on July 11, showing only an 8-hour shift. The parties then went to the cookhouse, looked through the cupboard, and there among the various papers scattered about the cupboard found the second timesheet which W claims to have filled out on the morning of July 12 showing an 8-hour day worked on July 11.

#### POSITIONS OF THE PARTIES

It is the position of the Employer that it was clear when the action was taken on July 13, 1978, to suspend W that he had submitted a timesheet and an in-lieu meal chit for time he had not worked. At no time until after he was suspended, did W attempt to explain that he had also submitted a corrected timesheet for the day in question. When W did come forth with the account of the corrected timesheet, after he had been suspended from employment, the Employer maintains that it properly concluded that W's story was not convincing and that there was cause for his termination.

The Employer points to what it asserts are concrete inconsistencies in W's testimony which cast serious doubt on his credibility:

W's testimony with respect to July 11 shows that he told his helper about 3:45 p.m. that he  $\sphericalangle$ W  $\sphericalangle$  would not

~~be staying overtime. Yet he did not tell the administrative~~  
office when that call was received (around 4:15 p.m.) authorizing  
the overtime that he would not be working. Furthermore, since  
W testified that he would accept authorization for overtime  
only from the administrative office, and not from Ba 's 2 p.m.  
request, then W would not have filled in his overtime card  
until after administrative office authorization was received.  
And by that time, at 4:15, the Employer asserts that W 's  
testimony shows that he had already made up his mind he would  
not work the overtime that evening.

Further, if W intended to set the record straight  
by submitting a revised timecard, why was that timecard not  
taken to the administrative office; or why, at least, did W  
not telephone the administrative office and inform them that a  
revised timesheet was being submitted.

W 's account is also unbelievable, the Employer maintains,  
with respect to his claim that Ba had two timecards when he  
confronted W on July 12. If W had put the corrected  
timesheet in the cupboard on that morning, for pickup the following  
day, as he claims, then why would he expect Ba to have the  
timesheet in his hand that afternoon. And why would W not  
have insisted to Ba that he had placed a corrected timesheet  
in the cupboard that morning.

Again, the Employer insists, it is not believable that  
W would go to the July 13 meeting with Tallon, taking

with him to the administrative office the July 12 timesheets, without going through those timesheets to insure that his corrected sheet for July 11 was there, or that he would not have told Tallon in the meeting that he had prepared and submitted a revised timecard.

The Employer maintains that the Union has not established by clear and convincing evidence that W did in fact place a corrected timecard in the cupboard on July 12. It is irrelevant as to when thereafter the timesheet was placed in the cupboard. And in this respect, there is no question, the Employer contends, but that W or someone acting for him could have had access to the cupboard at any time of the day or night following W's suspension, at which time the corrected timesheet could have been placed in the cupboard.

Finally, the Employer asserts that acts of dishonesty have been severely dealt with by the Employer in the past, and that under the Employer's practice, in which practice the Union has acquiesced, W's conduct in this instance must be deemed to constitute cause for discharge. The Employer views the falsification of a timecard, which it claims has been proved in this case, to be no different in effect from stealing Employer cash. While the policy with respect to misappropriation of Employer property has recently been revised (Review Committee Decisions 1451-1452, September 26, 1979)--to include consideration of

~~the merits of each situation, taking into account value of~~  
the property at the time of misappropriation, the seriousness  
of the misconduct, and the employee's service record and length  
of service--nonetheless that policy does not apply where an  
employee has stolen Employer cash. And because W. 's  
wrongdoing is tantamount to the stealing of cash, the  
considerations enumerated in that policy should not apply here.  
Instead, the Employer asserts, discharge of W. is clearly  
warranted in this case.

It is the Union's position that the offense at issue in  
this case should not be considered to be a falsification of a  
timesheet by W. , but rather the offense at issue is that  
of carelessness or poor judgment on W. 's part. W.  
completed his timesheet for July 11, showing overtime then  
scheduled to be worked that evening; the timesheet was  
completed in accordance with usual procedures followed at  
the worksheet; there were no procedures in effect for taking  
corrective action after W. determined that he would not  
be working overtime; and by not calling to the attention of  
the administrative office that the first timesheet that had  
been submitted was incorrect, W. was careless and used  
poor judgment but he did not falsify his time record.

The Union further maintains that when W. was  
confronted by Ba. and later by Tallon it was understandable  
that W. did not bring the corrected timesheet to their  
attention. W. had an understandable mistrust of Ba. ,

because Ba tried to exercise supervisory authority over W without explaining to him that he [Ba] was acting foreman at the time; and the accusations of wrongdoing by W on the part of Ba and Tallon evoked poor responses from W.

Even if it is assumed that W was to some degree culpable in this matter, the Union contends that a number of factors mitigate against the severe penalty of discharge: W's work record over some seven years of employment with the Employer has been satisfactory; the Employer does not have adequate time-reporting procedures for the cook and kitchen helper employees; Ba's actions in refusing to show W the timesheet(s) and in failing to inform W that he had a right to Union representation resulted in the matter being blown out of proportion; and W never claimed at any time that he had worked the overtime in question.

Further, the Union maintains that the policy set forth in Review Committee Decisions 1451 and 1452 calls for consideration of this case on its merits, including the mitigating circumstances involved. This is not a case, in the Union's view, that can be equated with proven theft of Employer cash, so as to be outside of the policy spelled out in 1451 and 1452.

The Union seeks reinstatement of W with full backpay and benefits.

## OPINION

The critical question in this case is whether W deliberately and intentionally submitted a timesheet for July 11, 1978, showing two hours of overtime that were not worked. The Board is of the opinion, based upon a careful evaluation of the entire record, that W entered the overtime on his timesheet, as he claimed, during the afternoon of July 11, sometime after he was notified that he would be required to work overtime that evening. Thereafter, when W decided that he did not feel well enough to work the overtime, he failed to take any steps to correct the timesheet. The Board is of the opinion that it either did not occur to W to make the correction on the timesheet, or that he reflected upon it briefly and for the time being decided to let the card go through. Possibly W believed that he had actually performed the overtime work that he had indicated on his time card by the fact that the work involved was accomplished by him during his regular hours.

In either case, the Board is not sufficiently convinced that the record establishes that W intended to leave the matter of the incorrect timesheet unattended and to accept payment for the two hours that he had actually not worked. Clearly, W readily acknowledged that he had not worked the overtime when he was confronted about the matter by the foreman and the project superintendent. Further, insofar as the record reveals,

W did not accept payment of a \$4.00 in-lieu-of-meal allowance for July 11; and for that matter, it has not been established that W submitted a claim for such an allowance on July 11.

The Board believes that it is highly unlikely that W completed the corrected timesheet as he claims that he did on July 12. Had he prepared a revised timesheet at that time, most certainly he would have brought that fact to the foreman's attention, when he was confronted about the overtime on July 12; to the attention of the person in the administrative office to whom he delivered the July 12 timecards on July 13; or to the attention of the project superintendent in the July 13 meeting that led to his suspension.

But even if we concede that W did prepare the corrected timesheet on July 12, he still erred seriously by not calling that fact to the attention of management when he was being challenged about having worked overtime.

The Board is in accord with the Union's view that this matter is one that has grown all out of proportion, first because of the carelessness and poor judgment on W's part in not setting the record straight with respect to the fact that he did not work overtime, by withdrawing his overtime timesheet on July 11 or contacting the administrative office promptly on the morning of July 12; and, then, because of the accusatory attitude of the Employer, which attitude appeared to make no

allowance whatsoever for the possibility that W 's entry of overtime was made in error--which attitude the Board further believes affected W 's ability to respond in a rational manner.

Nonetheless, W 's conduct in this matter certainly cannot be excused and must be deemed to call for a very sharp penalty.

It is the Board's view that even if W 's conduct in this case ought fairly to be characterized as falsification of his timesheet, it is appropriate to weigh all of the facts and circumstances involved in determining whether termination of W 's employment is warranted. W 's conduct may not be within the category of "misappropriation of property" so as to be ruled in with respect to the consideration of mitigating circumstances spelled out in Review Committee Decisions 1451-1452. However, neither has the falsification of time records been specifically included within the definition of the stealing of Employer cash to as to be clearly ruled out insofar as consideration of mitigating circumstances is concerned.

Therefore, the Board believes that the circumstances of this case, particularly where the Board is not clearly convinced that W 's conduct should be considered a deliberate falsification of his timesheet, call for a consideration of all factors involved: W 's seven years of satisfactory service with the Employer; the Employer's lack of specific time-reporting procedures at this worksite; the Employer's accusatory manner

toward W at the outset, giving him virtually no opportunity to set the record straight before dropping the axe. Taking those factors into consideration, and on the basis of the entire record, the Board has reached the conclusion that there was not cause for W 's termination from employment. At the same time, however, the Board cannot justify an award of backpay for the time that W has been off the Employer payroll.

For all of the reasons above set forth, the Board shall award as follows:

AWARD

The Employer violated the Agreement by discharging W from employment on July 19, 1978.

W shall be entitled to reinstatement to employment as soon as possible, and in no event later than ten days of the receipt of this award by the Employer. W shall not, however, be entitled to backpay or other benefits during the period of time that he has been off the Employer's payroll.

Dated: October 31, 1979.

Respectfully submitted,

*Emily Maloney*  
Emily Maloney, Chairman  
Arbitration Board

Union Members:

*Michael Davis*  
Michael Davis  
*Lawrence N. Foss*  
Lawrence N. Foss

Concurring \_\_\_\_\_ Dissenting 11-13-79

Concurring \_\_\_\_\_ Dissenting 11-13-79

Employer Members:

*I. Wayland Bonbright*  
I. Wayland Bonbright  
*Len Bearland*  
Len Bearland

Concurring 11/7/79 Dissenting \_\_\_\_\_

Concurring 11/8/79 Dissenting \_\_\_\_\_