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8 IN ARBITRATION PROCEEDINGS PURSUANT TO  
9 AGREEMENT BETWEEN THE PARTIES  
10

11 In the Matter of a Controversy )

12 between )

13 INTERNATIONAL BROTHERHOOD OF )  
14 ELECTRICAL WORKERS, LOCAL UNION )  
NO. 1245, AFL-CIO, )

15 and )

16 PACIFIC GAS AND ELECTRIC COMPANY. )

17 Involving discharge of F )  
18 Grievant. (Arbitration Case No. 84) )

OPINION AND AWARD

OF

BOARD OF ARBITRATION

19 This Arbitration arises pursuant to Agreement between INTERNATIONAL  
20 BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. 1245, AFL-CIO,  
21 hereinafter referred to as the "Union," and PACIFIC GAS AND ELECTRIC  
22 COMPANY, hereinafter referred to as the "Company," under which Messrs.  
23 LAWRENCE N. FOSS and FRANK HUTCHINS were appointed by the Union to  
24 serve on the Board of Arbitration (Board), Messrs. I. WAYLAND BONBRIGHT  
25 and DAVID J. BERGMAN were appointed by the Company to serve on the  
26 Board, and ARMON BARSAMIAN was selected to serve as Chairman of the  
27 Board, and under which the decision of the Board shall be final and  
28 binding upon the parties.

29 Hearing was held October 1, 1980, in San Francisco, California.  
30 The parties were afforded full opportunity for the examination and  
31 cross-examination of witnesses, the introduction of relevant exhibits  
32 and for argument. Both parties filed post-hearing briefs on or about

1 November 3, 1980. Pursuant to agreement of the parties, the Chairman  
2 issued his letter-award disposing of the stipulated issue on November  
3 13, 1980.

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6 APPEARANCES:

7 On behalf of the Union:

8 Messrs. Neyhart, Anderson, Nussbaum,  
9 Reilly and Freitas, by JOHN L. ANDERSON,  
Esquire, 100 Bush Street, Suite 2600,  
10 San Francisco, California, 94104.

11 On behalf of the Company:

12 L.V. BROWN, Jr., Esquire, Attorney,  
13 Pacific Gas and Electric Company,  
245 Market Street, Room 438, San  
Francisco, California, 94106.

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16 ISSUE

17 Did the discharge of F violate  
18 the provisions of the parties' Labor  
Agreement? If so, what is the remedy?  
19 (Joint Exhibit 2)

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21

22 RELEVANT TITLE OF AGREEMENT

23 Title 112. Sick Leave

24 .....

25 112.8 Abuse:

26 ... If an employee abuses the sick leave provisions of  
27 this Agreement by misrepresentation or falsification,  
he shall restore to Company all sick leave payments he  
28 received as a result of such abuse. In case of recurring  
offenses by the employee, Company may cancel all or any  
29 part of his current and cumulative sick leave, and may  
treat the offense as it would any other violation of a  
condition of employment. ...

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FACTS

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2       The basic facts are undisputed (Joint Exhibit 3).

3       At the time of his discharge on December 27, 1979, Grievant was  
4 employed as an Apprentice Electrician. He was initially employed by  
5 the Company on November 19, 1973.

6       Preliminary to Grievant's discharge, he was suspended on December  
7 7, 1979. At that time, he had three days' of paid sick leave available.  
8 Grievant did not work on November 27, 1979, and only for a half hour  
9 on November 28, 1979. He reported such absences as an illness, and  
10 in support thereof, produced substantiation in the form of a patient  
11 treatment verification dated November 27, 1979 and purportedly signed  
12 by Dr. A. ADLER. The bona fides of that verification is the basis  
13 of the instant dispute.

14       No dispute exists that the signature on the patient treatment  
15 verification form is not that of Dr. ADLER. Indeed, Grievant acknow-  
16 ledged that it was not, and that he had not discussed his absence or  
17 an alleged illness with Dr. ADLER. In addition, a Kaiser Medical  
18 Advice Section nurse informed the Local Investigating Committee  
19 (Committee) that there was no record of Grievant having called that  
20 Section for advice, nor was there a patient treatment or duplicate  
21 verification record in his medical file. While Grievant's explanation  
22 to the Committee was that his wife had procured the forged document  
23 from a friend, a fact of which Grievant stated he didn't know until  
24 he was so informed by the Company on December 7, 1979, neither his  
25 wife nor the friend were produced as witnesses before the Committee  
26 or the Board.

27       The Company discharged Grievant for submitting falsified infor-  
28 mation concerning sick leave. This offense represents the first  
29 for Grievant with respect to the relevant portion of 112.8.

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1 unilateral interpretation to challenge at a later date through these  
2 same Grievance Procedures. Consistent with its labor policy of long-  
3 standing the Company instead submitted the contemplated policy to  
4 the Union for their suggestions and revisions. This course of action  
5 resulted in meetings with the Union followed by the adoption of  
6 revisions submitted by the Union. The final product thus being the  
7 joint effort of Union and Company. Moreover, Grievant's misconduct  
8 in this instance is specifically addressed in Standard Practice No.  
9 735.6-1, Pages 1 and 2.

10 Concededly, the discipline in this case is harsh. But then acts  
11 of a criminal nature are, as pointed out in the Employee Conduct  
12 policy, serious breaches of the employer-employee relationship.  
13 Therefore, we submit that the discharge was for just cause and does  
14 not violate any provision of the Agreement.

15 The final matter to be addressed here concerns the Union's  
16 proposed remedy. If, arguendo, the Board does not agree that the  
17 discharge was for "just cause," the Agreement specifically denies  
18 his reinstatement with back wages. To this end, the parties have  
19 provided in the Agreement and the Submission Agreement that the Board  
20 is confined to resolving a dispute within the confines of the parties'  
21 Labor Agreement. Thus, back wages hinge on Grievant's not having  
22 violated a Company policy as provided in Section 102.4.

23 In this regard, the testimony is unequivocal that Grievant  
24 violated the provisions of the policy and is, therefore, not entitled  
25 to retroactive wages or interest if reinstated by the Board.

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#### POSITION OF UNION

29 Both the plain language of Section 112.8 and its negotiating  
30 history make it abundantly clear that misrepresentations and/or  
31 falsifications concerning sick leave are unique. Punishment by the  
32 Company for the first such offense may not exceed forfeiture of sick

1 leave pay secured through the "misrepresentation or falsification".  
2 It is only when "recurring" offenses occur that normal disciplinary  
3 actions may be invoked. Thus, Section 112.8 bifurcates the rights of  
4 the Company to discipline an employee to (1) forfeiture of sick leave  
5 procured, in the first instance of abuse, and (2) up to and including  
6 discharge for "recurring" instances of sick leave abuse by reason of  
7 misrepresentations or falsification.

8 While the Company may allege forgery, it has not proved that  
9 Grievant "forged" anything. On the contrary, the only record  
10 evidence submitted tends to prove that Grievant had nothing whatever  
11 to do with the falsification of the sick leave slip here in question.  
12 The quantum of proof required of an employer in cases such as alleged  
13 by the Company here -- conduct involving moral turpitude or ordinarily  
14 punishable by criminal law -- is "proof beyond a reasonable doubt".  
15 Clearly, the Company has not met its burden in this case.

16 Finally, of course, even assuming that the Company could, despite  
17 the plain language of Section 112.8, punish an employee for the  
18 offense of "forging" any "payment paper", the Company must prove that  
19 a sick leave verification slip is contemplated by the Standard  
20 Practice to be a "payment paper." In addition, it must show that  
21 employees were put on fair notice that forging such a document  
22 would be considered the offense of forging a "payment paper" as  
23 outlined in the Practice. It surely may not be said that the  
24 Standard Practice gives such notice on its face, nor did the Company,  
25 at hearing, submit any evidence that could lead one to believe that  
26 employees were put on such notice.

27 It appears clear from the language and negotiating history that  
28 no employee for whatever reason may be discharged for the first  
29 offense of "falsification or misrepresentation" in connection with  
30 the procurement of sick leave. Even were one to assume that the  
31 Standard Practice provided an independent basis for discharge based  
32 upon "forging ... of a payment paper", the Company here has proved

1 neither that Grievant engaged in a forgery nor that a sick leave  
2 verification is a "payment paper" within the meaning of the Standard  
3 Practice.

4 For these reasons and on the basis of the record as a whole,  
5 the Union respectfully requests that the grievance herein be sustained.

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8 OPINION

9 Section 112.8 is clear and unambiguous. In consequence thereof,  
10 the weight of arbitral authority holds that evidence of bargaining  
11 history or intent of the parties (parol evidence) and evidence of  
12 custom and past practice are irrelevant and immaterial. (See, generally)  
13 Elkouri and Elkouri, How Arbitration Works, Third Edition, Page 362  
14 (Parol Evidence) and Page 389 (Custom and Past Practice) ). Given  
15 the eminently clear language of Section 112.8, then, we need not  
16 look to other evidence to dispose of the instant controversy.

17 Moreover, where, as here, the dispute is clearly and unambiguously  
18 covered by the Contract, the Company's rules relative to employee  
19 conduct are likewise irrelevant and immaterial. The parties  
20 negotiated the Agreement; only the parties may change the Agreement.  
21 And Standard Practice 735.6-1 cannot seriously be considered as  
22 somehow equivalent to the collective Agreement, under the facts and  
23 circumstances of this case, the scope of the Union's review thereof  
24 notwithstanding. Quite simply, Standard Practice 735.6-1 is not  
25 a document arrived at through collective bargaining.

26 Without question, the reason for which Grievant was discharged,  
27 i.e., submitting falsified information with respect to sick leave,  
28 is "misrepresentation or falsification" within the meaning of Section  
29 112.8. Additionally, no contractual distinction exists between  
30 "misrepresentation or falsification" under Section 112.8 and conduct  
31 which may fall within the Penal Code of the State of California.

32 Further, even assuming, arguendo, that Standard Practice 735.6-1

1 was applicable to  
2 exists that Grievant was guilty of "forgery" with respect to the patient  
3 treatment verification dated November 27, 1979.\* In any event, from  
4 Standard Practice 735.6-1 read as a whole, it is difficult, if not  
5 impossible, to conclude that patient treatment verifications rise to  
6 the level of a "payment paper" within the meaning of that document,  
7 and even assuming, without deciding, that Grievant was guilty of  
8 "forgery", Section 112.8, by its very terms, gives employees one mis-  
9 representation or falsification "on the house" before discipline or  
10 discharge may be imposed.

11 With respect to the Company's argument concerning the appropriate  
12 remedy herein, Section 102.4 cannot be asserted as a basis for with-  
13 holding any backpay from Grievant where, as here, 1) the Company's  
14 action in discharging Grievant was in direct violation of Section  
15 112.8, and 2) Section 102.4, in any event, is inapplicable to the  
16 facts and circumstances of this case.

17  
18 AWARD

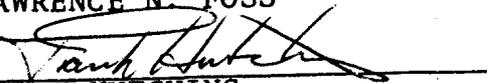
19 The discharge of F violated the provisions of the  
20 parties' Labor Agreement. Mr. F shall be reinstated  
21 to his former position, shall be made whole for any loss  
22 of earnings from the date of his discharge to the date he  
23 is offered reinstatement, and shall suffer no loss of  
24 seniority or other Contract benefits.

25 DATED: January 22, 1981.

26   
27 ARMON BARSAMIAN, Chairman

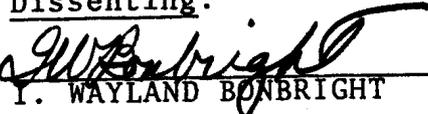
28 Concurring:

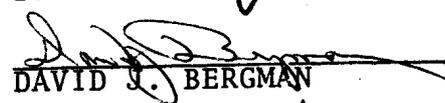
29   
30 LAWRENCE N. FOSS

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32 FRANK HUTCHINS

Dated: FEB 6, 1981

Dissenting:

  
I. WAYLAND BONBRIGHT

  
DAVID J. BERGMAN

Dated: 1/23/81

\* It should be noted that this Arbitrator believes that reliance on the criminal law quantum of proof (beyond a reasonable doubt) in labor arbitration is misplaced. Labor arbitration arises under collective agreements; not the Penal Code. There are different rules, procedure forums and possible penalties. The highest standard of proof to which an employer should be held is that "clear and convincing" evidence be presented to establish just cause for discipline or discharge. That is the standard applied by this Arbitrator regardless of the reasons for the action taken against the employee.