OPINION OF THE CHAIRMAN AND DECISION OF THE ARBITRATION BOARD

ARBITRATION CASE NO. 85

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. 1245,	WILLIAM EATON Chairman
and	Wayne Greer Union Member
PACIFIC GAS AND ELECTRIC COMPANY.	LAWRENCE FOSS Union Member
Termination of T	I. WAYLAND BONBRIGHT Company Member
	DAVID BERGMAN Company Member

APPEARANCES:

FOR THE UNION:

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ISSUE AND EVIDENCE

This is an arbitration to determine the following issue as submitted by the parties:

> Was the discharge of Lineman T in violation of the parties' Physical Labor Agreement?
>
> If so, what is the remedy?

Hearing was held in the company's offices in San Francisco on October 16 1980. The parties stipulated that prior steps of the grievance procedure have been exhausted, and that the matter is properly before the Arbitration Board. Following examination and cross-examination of witnesses and the presentation of documentary evidence by both parties, it was agreed that the matter would be submitted upon simultaneous filing of post-hearing briefs, which were received on December 7 1980.

The Grievant, who has some 14 years seniority with the company, was working as a lineman in the San Joaquin division at the time of his termination which occurred on February 22 1980. The termination was the result of an incident occurring on February 7 1980, when the Grievant stopped to make a purchase at what was apparently a liquor-delicatessen type of store in violation of company regulations prohibiting employees of the Grievant's classification from making such purchases during working hours.

It is stipulated that between the date of the purchase and his discharge the Grievant was on vacation from February 8 through February 11, was on sick leave from February 12 through February 15, that February 18 was a holiday, and that from February 19 through February 22 he was working as a temporary line subforeman.

He suffered an industrial injury on the morning of February 22 from which he remains incapacitated. He was notified of his discharge on the afternoon of February 22.

In general, it is the company's contention that the incident of February 7 represented one of a series of such incidents involving failure of the Grievant to obey instructions both on the job and by going off route in a similar manner, resulting in a cumulative offense justifying discharge. The union denies that grounds for discharge have been shown.

February 7 Incident

The fact that the Grievant had stopped to make a purchase at the liquor store was called to the company's attention by a telephone call from a customer who observed the company truck parked at the store.

The Grievant testified that he stopped because he had forgotten to get a drink, meaning a non-alcoholic drink, for lunch, and that as a consequence he bought a pepsi and a fruit pie which he placed into his lunch pail and ate at lunch time.

It is undisputed that, when questioned about the event upon return to the company's yard at the end of the shift, the Grievant readily admitted having made the stop. In addition, he stated that he had bought two bottles of peppermint Schnapps to take on a ski trip, although in fact he had made no such purchase.

He explained this by stating that he had been annoyed upon being questioned about what he considered a minor deviation, and seemed to indicate that his instantaneous thought was to trap the company into a charge which could not be proved. Upon further examination, he agreed that the allegation concerning the liquor was

"confused" and "stupid", and that his general belief was that the company would drop the entire matter when it was discovered that proof of purchase of liquor could not be established.

The injury which the Grievant sustained on February 22 occurred when he was lifting the cover off an underground installation and slipped and fell under muddy conditions. He stated that when he was at the doctor's office he heard the rumor that he had been discharged, and that when he returned to the yard at approximately 4:30 or 5:00 p.m. he was officially informed of that fact.

The Agreement between the parties provides supplementary benefits for employees suffering industrial injuries under most circumstances. It is agreed that the Grievant has not been paid such benefits by the company since his injury on February 22 1980.

The union introduced into evidence a Review Committee decision, file number 219, in which the Review Committee stated that for the purposes of Title 108, the supplemental benefits provision, "an employee who, before he is notified of layoff or termination, is injured and thereby eligible to receive supplemental benefits shall continue to receive such benefits when his temporary disability extends beyond the date of his termination."

Company Policy

Bud Sonberg, general foreman, electrical T&D of the Fresno district, described the general pattern of work assignment and employee responsibility in the district. Sonberg supervises six field line foremen, one of which is the Grievant's foreman, who assigns work on a daily basis. The Grievant, by virtue of his seniority, has worked from time to time as line subforeman, and on other occasions has been assigned as a one man unit for various

purposes. In either of these conditions, according to Sonberg, the company requires the individual to be primarily responsible for the work, it being in the field and not susceptible to more than sporadic supervision.

Sonberg stated that temporary upgrades are governed by the collective bargaining Agreement, that the senior lineman in the yard would be first in line for upgrade, and that working conditions are such in Fresno that that senior person would be upgraded almost continuously. The Grievant, according to Sonberg, would be senior man in the Fresno yard.

Assistant union business manager Larry Foss testified that the classifications of employee known as troubleman in the electrical department and gas service man in the gas department are allowed to eat meals in restaurants during lunch hour while on duty, and are allowed to take coffee breaks and to buy food during work hours. In each case, the employees drive company trucks and are furnished with uniforms designating their employment by the company.

Foss agreed that it is company practice to discipline employees for unauthorized stops during work hours. He stated that in his experience the initial discipline meted out by the company for such infractions has ranged from a disciplinary letter to a maximum of a ten day suspension, depending upon the number of violations.

The union introduced into evidence Review Committee decisions 416 and 1376. In the former a two day disciplinary layoff for drinking coffee in a coffee shop during work hours and outside the areas serviced by the employees involved was sustained. In the latter a five day disciplinary layoff was reduced to a warning letter

and layoff for the remainder of an overtime day when the infraction was stopping by a private residence for three or four minutes to pick up a voltmeter previously loaned to another employee.

Grievant's Work History

Following his employment on May 31 1966, the Grievant worked in several classifications prior to becoming a lineman on December 13 1971. From December 1 1978 to December 16 1979 he was a line subforeman, reverting to a lineman on the latter date, it being stipulated that the change did not constitute a demotion. He worked as a temporary troubleman from August 13 1979 to January 7 1980, at which time he resumed the lineman classification, which it is again stipulated was not a demotion. It is agreed that the subforeman job was a promotion, and that there is no adverse material in the Grievant's file during the year he worked in that capacity.

Discipline received by the Grievant during these years includes: a disciplinary letter of August 3 1970 for working without proper grounding; a one day disciplinary layoff dated June 30 1971 for cutting a main line conductor while installing double deadends; a memo to file on September 25 1972 for parking his truck on Fresno State University grounds, allegedly doing paper work; a two day disciplinary layoff on February 27 1975 for violation of safety rules and for wasting time, which referred to the Fresno State University incident of September 25, which discipline was upheld in the grievance procedure; a memo to file on May 12 1977 for stopping at a store; and a one day disciplinary layoff dated June 14 1977 for playing cards during working hours.

The union introduced into evidence a standard practice

memorandum, number 701-1 indicating that all disciplinary letters and memoranda to file over five years old on which no further action is needed should be removed from an employee's personnel records. The memorandum also indicates that if the subject of the discipline has not been finalized, or if in the opinion of the personnel manager conditions warrant, the information may be retained for longer periods.

General foreman Sonberg testified that, in his opinion, the Grievant needs constant supervision as a lineman, that he has proved to be unreliable, and that he is the last, or worst, employee in the Fresno yard in regard to following directions. Sonberg stated that he has administered verbal counseling to the Grievant on "numerous occasions", but was unable, on cross-examination, to explain why there was no indication of such counseling in the Grievant's personnel records.

Sonberg agreed that, as a member of the fact finding committee in the instant dispute, he had signed item number 16 of the report, indicating that the Grievant's work as a temporary troubleman had been satisfactory. The Grievant testified that Sonberg had spoken to him only on the occasion when the letters referred to above had been administered, and that no one had ever told him that he did not do good work.

Sonberg testified without contradiction that the Grievant averaged approximately 90 hours per year of sick leave, and that he is "on documentation", meaning that he is required to present a report from a doctor after calling in sick. Sonberg added that approximately 25 percent of the yard is under the same requirement.

The final item of the Grievant's record introduced into evidence was a memorandum to file dated January 23 1980, written by

Sonberg, and dealing with an incident which occurred on April 12 1979. At that time the Grievant was foreman in charge of a crew assigned to certain work which required overtime in order to be completed. Sonberg described the letter as not a disciplinary letter, but simply as a note to file. His testimony did not make clear why the writing of the note had been delayed for some nine months after the incident to which it referred.

DISCUSSION

Company Argument

This case bottoms on more than just the Grievant's deviating from the route, and making the unauthorized stop. Beyond that is his confessed deliberate lie, aggravating and compounding the seriousness of the offense. This brands him as a very deceptive, untrusthworthy fellow.

Stopping in front of a liquor store, entering, and remaining for some 15 minutes is itself a serious indiscretion. A far more serious inference may rationally be raised in a customer's mind observing such an incident. The company is extremely sensitive to public censure.

The Grievant did not confess his lie as to buying liquor until confronted by the store clerk's statement that he had not done so. Only his lie was before the Grievant's supervisors when the decision was made to discharge him. He was working as a crew leader at the time, virtually unsupervised. The natural conclusion was that he purchased liquor for the purpose of imbibing during the day. Otherwise why would he not have bought it at the end of the worday?

At best a lineman's work is inherently dangerous, made

more so by drinking during the course of the day. Transporting liquor in a line truck could also adversely affect the company if discovered.

Despite the Grievant's waffling testimony at the arbitration hearing, it appears that in his mind he knew he was in deep trouble and would be harshly disciplined. He believed he could beat the "rap", and be reinstated with retroactive pay, if the company could not prove that he purchased, drank, or transported the Schnapps.

The fact that he was upgraded to subforeman pending disposition of the matter is explained by the fact that 50% of the linemen in the Fresno yard, at any given time, are upgraded to troubleman, or line subforeman. In any event, the nature of the work at the Fresno yard is such that, at any given time, the Grievant would have been primarily accountable for his own job conduct, or that of others, in any assignment. Nor was the scope of his deceit known to his supervisors at the time of the upgrade. That fact should therefore have no bearing on the final outcome in this matter.

The Grievant had been forewarned of serious consequences of future rule violations in disciplinary letters, days off without pay, and memorandums to file. These have been grieved and the disciplines sustained.

While the company candidly admits that an exhaustive search of reported cases has failed to produce an authoritative decision based on this bizarre set of facts, it was, nevertheless, the "final straw" in the Grievant's unsatisfactory work record. What he did can be likened to embezzlement. He artfully and insidiously sought to misappropriate the company's monies.

The company respectfully submits that the universal

penalty for job dishonesty is discharge, and that there is nothing in the Grievant's past employment record that commends a lesser penalty in this case.

Union Argument

The Grievant's offense was not a serious one. It is uncontradicted that it is common for employees to make such unauthorized stops for brief periods. Nor is the company's image seriously tarnished by such actions. Employees in other categories are allowed to buy food and to eat at restaurants during ordinary working hours. The public cannot tell which category of employee might be involved.

It is accepted in labor relations that the degree of penalty should be in keeping with the seriousness of the offense. Arbitrators have repeatedly recognized that for less serious offenses, corrective or progressive discipline should be utilized. The company itself believes in a policy of progressive discipline. Yet in this case, in the nearly 14 years that the Grievant has worked for the company, the most severe discipline ever previously received was a two day disciplinary suspension in 1977.

Penalties previously imposed by the company for similar offenses have been far less severe than that imposed on the Grievant. Other employees who have stopped without authorization to purchase or eat food received penalties ranging from a disciplinary letter to a ten day layoff for multiple offenses.

The Grievant is an employee of long-term service, and was the most senior lineman in his yard at the time of his discharge. In short, the penalty assessed by the company does not fit the "crime" committed by the Grievant.

Mr. Sonberg testified on direct examination that the Grievant needed "continual supervision", that he was "unreliable", that he had been counselled on "numerous occasions", and that he had been required to provide satisfactory medical evidence when he was off sick.

On cross-examination, however, Sonberg admitted that he had no documentation for the "numerous" counselling sessions referred to, that only one memo had been placed in the Grievant's file between 1977 and the date of his discharge, and that there was nothing to indicate that his work performance was unsatisfactory during that period. Sonberg also admitted that approximately 25% of all the employees he supervises had been placed under the same medical evidence requirement.

The "unreliable lineman", as Sonberg characterized the Grievant, was upgraded twice between December 1978 and the date of his discharge. Both upgrades occurred after the last disciplinary letter in his file. In brief, the alleged poor work record of the Grievant involves incidents that are so old as to be considered stale. The most recent one occurred on June 14 1977, nearly 31 months prior to the unauthorized stop at the store.

Other incidents cited against the Grievant occurred as far back as 1970, 1971, and 1972. Arbitrators have recognized the need for a time limitation on consideration of past offenses, even where the collective bargaining agreement does not expressly impose one. The company's own standard practice bulletin realizes this principle in providing that disciplinary letters and memoranda over five years old should ordinarily be removed from an employee's personnel file. Even though the old records were not removed from the Grievant's file, the fact that he was promoted into a supervisory

position in 1978 would indicate that the company apparently believed that he had then corrected any past deficiencies. He has never received an unsatisfactory work evaluation.

When confronted by his supervisors on February 7 1980, the Grievant readily admitted that he made the unauthorized stop. Foolishly, however, he also told his supervisors that he had purchased the two bottles of Schnapps. He made up this story partly out of irritation at having been singled out for a practice that was quite common, and partly because of some silly notion on his part that he could not later be disciplined for something he had not done. While he should not have fabricated such a story, that conduct does not warrant discharge for what was an otherwise minor infraction. The Grievant informed the company of his fabrication in testifying before the local investigating committee.

The triggering incident which led to the Grievant's discharge was a minor one. Discharge is far too severe a penalty, and is unwarranted even if one considers his past record, and the fact that he initially fabricated a story regarding his purchase.

The most severe discipline warranted is a brief layoff, not to exceed a few days to be assessed when the Grievant returns to work. In the meantime, he is entitled to the differential between workers' compensation and the 85% of his normal wage which he would ordinarily be entitled to under the collective bargaining Agreement. In addition he should receive interest on the back pay.

The union respectfully submits that the dispute should be resolved in the manner indicated, and suggests that the Arbitration Board retain jurisdiction to resolve any questions that may arise over the implementation and application of the award.

Conclusions

The infraction committed by the Grievant in stopping to buy food is undisputed. That infraction is compounded by his later deliberate falsifications concerning what he had done. The latter infraction is, if anything, more serious than the stopping itself, which it is recognized would not, standing alone, be a dischargeable offense.

The principal question presented to the Arbitration Board by these circumstances is whether the triggering infraction, or infractions, taken together with the past record of the Grievant justifies a penalty so severe as discharge. There is little dispute but that the principle of progressive discipline, properly applied, may culminate in discharge for a series of violations. One of the issues in the present dispute is whether cumulative violations of a different sort may also at some point justify discharge.

There are several factors to be considered. One is the seriousness of the separate offenses, a second is their proximity in time to the triggering incident, and a third is whether all of the offenses, however disparate, have been gathered together by the company in a manner which constitutes warning of generally unsatisfactory work performance or conduct. Under the facts of the present dispute we are persuaded that something less than just cause for discharge has been shown.

The earliest incidents relied upon by the company are up to ten years old, and for this reason must be accorded less weight than fresh offenses would be. Moreover, the earliest offenses appear to have been of a nature which have not been repeated, indicating that the discipline there assessed had its intended effect.

There do remain three similar, and reasonably recent incidents. Those were the Fresno State incident, a prior case of stopping at a store, and a one day disciplinary layoff for playing cards during working hours. These all occurred within five years of the present incident.

The record before us indicates that in roughly similar circumstances the greatest penalty which has been assessed was a ten day disciplinary layoff. The additional circumstance in this dispute of intentionally misleading his supervisors concerning the nature of the stop at the store justifies an additional penalty. Accordingly, the Board has assessed a 15 working day disciplinary suspension. It is our intention, in light of various medical problems which the Grievant has encountered, that the penalty be assessed in such a manner that the Grievant receives 15 working days off without pay or any other form of compensation.

The award is rendered accordingly.

DECISION

The discharge of lineman T was in violation of the parties' Physical Labor Agreement in that discharge is too severe a penalty in all of the circumstances present.

The Grievant is assessed a 15 working day disciplinary suspension, to be applied in the manner indicated above.

The Arbitration Board retains jurisdiction of the dispute until the terms of this award shall have been effected, and in the

event that any question should arise as to how the discipline should be applied.

January 13 1981

WILLIAM EATON, Chairman

WAYNE GREER, Union Member

LAWRENCE FOSS, Union Member

I. WAYLAND BONBRIGHT, Company Member - Dissent

DAVID BERGMAN, Company Member