In the Matter of an Arbitration between Pacific Gas and Electric Company and The International Brotherhood of Electrical Workers, Local Union 1245	)	Re: Grievance of C (Case #86)

Representing the Employer: L. V. Brown, Esq.

Representing the Union: Neyhart, Anderson, Nussbaum & Reilly
by Peter D. Nussbaum, Esq.

Arbitration Panel:
Employer Appointees:
Marsha E. Badella
Paul E. Pettigrew
Union Appointees:
Lawrence N. Foss
Joe Valentino
Chairman:
Daniel J. Dykstra

INTRODUCTION

A hearing on the matter noted above was held in San Francisco, California, on November 14, 1980. Post-hearing briefs were mailed to the chairman of the arbitration panel on or about January 20, 1981, but because of a mailing mix-up one of the briefs was not received until February 2, 1981.

As stipulated by the parties as per joint exhibit two the issue presented is: "Was the discharge of C in violation of the parties' Physical Agreement? If not, what is the remedy?" It was further stipulated that the matter was properly before the arbitration panel.

BACKGROUND

The Grievant, C , was hired on April 14, 1974. He was discharged on January 18, 1980. At the time of his termination he was working as a meter repair mechanic at the Employer's meter repair shop in Fremont, California.

In the Company's opinion the Grievant's discharge was warranted because of his unsatisfactory work record over his entire period of employment. It is conceded, however, that the events of January 17, 1980, triggered that decision.

As nearly as can be ascertained from the record the scenario which occurred on that day began when an employee, not the Grievant, complained to E , one of the foreman, that W , another meter repair employee, was creating excessive smoke in the shop by the way he was cleaning his soldering iron. Upon hearing this, Mr. E called Mr. W into his office to confer with him about the smoke problem. During the conversation which ensued Mr. W stated he was being harassed by some of his co-workers because on the previous day he had repaired a larger number of meters than was normally done by a single employee. When asked who was harassing him, Mr. W refused to give names.

Following this conversation, Mr. E went into the shop to observe the amount of smoke in question. While in the shop he thought he heard the Grievant make a remark. He, thereupon, walked over to the Grievant and asked him if there was a problem. The Grievant stated that he was not speaking to the foreman. Upon hearing this remark, Mr. E told the Grievant he wanted to see him in his office. In response to the request, The Grievant started to follow the foreman and when about ten feet from his work bench he took off his safety glasses and tossed them with a underhand toss towards the bench. When the glasses fell to the ground, Grievant retrieved them and put them on the work bench. Admittedly, the removal of the glasses before exiting the shop was a violation of company safety rules.

Soon after the Grievant arrived in Mr. E office, they were joined by the Shop Steward, P , and Mr. E co-foreman, M . During the conversation which took place, the Grievant was

asked if he had been having a problem with Mr. W . He responded, "no." The conversation then turned to the fact the Grievant had walked through the meter shop without wearing safety glasses, and this apparently led to an argument concerning the seriousness of this offense. Following this conversation, Mr. M and Mr. E conferred as to the incident. This conference led to the mutual decision, on January 18, 1980, to terminate the Grievant's employment. Persuant to that determination, Mr. E sent the Grievant a letter worded as follows:

> "You are hereby discharged from the employment of this Company effective at the end of your shift January 18, 1980. The reason for termination is your continued failure to meet your employment obligation including attendance, conduct and safety. It is evident that prior letters of reprimand and disciplinary lay-offs have failed to motivate you to meet these obligations as follows:
>
> 1. On January 17, 1980, I requested that you come to my office to discuss your disruptive actions concerning Mr. W . As you left your work area you willfully and flagrantly violated Accident Prevention and Plant Rules by throwing your safety glasses in a congested area at a distance of approximately 10 feet. You also walked through the small meter repair area without your safety glasses where eye protection is required at all times.

2. On October 22, 1979, you were given a four-day disciplinary lay-off because of your continued disregard for your employment responsibilities including reporting to work on time.

3. On May 21, 1979, you were given a two-day disciplinary lay-off because of insubordinaton and safety rule violations.

4. On May 8, 1979 you were given a written reprimand for tardiness.

5. On July, 15, 1977 you were given a written reprimand for tardiness.

From the above record it is evident that the progressive discipline that you received has failed to motivate you to meet your employement obligations. Therefore, the Company has no other alternative but to discharge you effective January 18, 1980, for your failure to correct your irresponsible conduct after being duly warned to do so."

RESPECTIVE POSITIONS OF THE PARTIES

Although the respective positions taken by the parties are no doubt obvious on the basis of factual data noted above, it may prove helpful to summarize them briefly at this point. The Employer contends that the events of January 17, 1980 may not in themselves warrant a discharge, but it argues that when the Grievant's entire record is taken into account his termination is justified. That record, in the Company's opinion, reflects acts of insubordination and of failure to follow company policy. In addition, that record reflects numerous instances of absences or tardiness, a record which caused the Grievant to be classified within the ten percent of the

employees required to produce medical verification of illness. It is also the Company's opinion that the Grievant was the instigator of several acts of misconduct by other employees in the shop. Finally, the Company contends that the Grievant is at best a marginal producer and this fact makes his other offenses the more significant.

In contrast to the foregoing arguments, the Union contends that the events of January 17, 1980, can in no way justify a termination of employment. It contends that in the past even repeated failures to wear safety glasses has occasionally resulted in a written warning. Usually the only discipline administered was an oral reprimand. Thus, in the Union's opinion, the basic question is whether the Grievant had such a terrible record as to warrant the conclusion that the additional incident was sufficient to justify the discharge.

It is the Union's contention that the basic incident in that past record which caused the Company to take the action it did occurred in May of 1979. On that occasion, the Grievant was disciplined by the Company for failure to button his sleeves while at work. As a consequence of this discipline, other employees staged a brief work stoppage. It is the Union's opinion that the Company holds the Grievant responsible for this stoppage even though there is no specific evidence to show that he in any way encouraged it.

CONTRACTURAL PROVISIONS

Two sections of the work agreement were cited by the Employer in its post-hearing brief. The first is section 7.1 dealing with "Management of Company". It provides:

> "The management of the Company and its business and the direction of its work forces are vested exclusively in Company, and this includes, but is not limited to,

the following: to direct and supervise the work of its employees, to hire, promote, demote, transfer, suspend, and discipline or discharge employees for just cause; to plan, direct, and control operations; to lay-off employees because of lack of work or other litigimate reasons; to introduce new or improved methods or facilities, provided, however, that all of the foregoing shall be subject to the provisions of this agreement, arbitration or Review Committee decisions, or letters of agreement, or memorandums of understanding clarifying or interpreting this Agreement."

The second section that was quoted by the Company is section 102-4(a). It provides:

"If an employee has been demoted, disciplined or dismissed from Company's service for alleged violation of a Company rule, practice or policy and the Company finds upon investigation that said employee did not violate a Company rule, practice or policy as alleged, Company shall reinstate the employee and pay the employee for all time and benefits lost thereby plus interest on such reinstated pay in the amount of 7½% per annum."

DISCUSSION

At the outset of this discussion it is appropriate to note that we agree with the Company's contention that the Grievant was not a model employee. It is evident that he was not a high producer. Furthermore, it is apparent that his record for reporting for work on time left something to be desired. In addition, his questioning of certain orders, such as those given on May 15 and 16, 1979, to the effect that he button his shirt sleeves, shows a querulousness and immaturity unbecoming a responsible employee. Given these

facts it is understandable that the Company had little patience with him.

The issue which must, however, be decided is whether just cause existed for his discharge. In weighing this question several factors give concern. While the evidence submitted by the Company did show that the Grievant was not a high producer, its measure for performance was somewhat lacking in detail and preciseness. More significantly, the evidence reflects that during the Grievant's entire work history his production record, while the object of occasional counseling, never resulted in any type of formal discipline. Furthermore, it was not one of the causes for discharge enumerated in the termination letter of January 18, 1980.

It is also true, as noted above, that the Grievant had an unenviable record in so far as reporting on time is concerned. On July 15, 1977 he was given a written reprimand for being tardy seven times between March 8, 1977 and July 6, 1977, and on May 8, 1979, he was given a second reprimand for being tardy nine times from August 1978 through May 3, 1979. In addition, on October 22, 1979, he was given a four-day suspension for not reporting for work until 12:30 p.m., and for failing to call in that he would be absent prior to 7:00 a.m.

In conjunction with this record it should be noted that while the first reprimand for tardiness, that of July 15, 1977, revealed seven instances in which the Grievant was late for his shift, five of those showed a tardiness of less than three minutes. In fact the longest tardiness revealed was for fifteen minutes.

The second written warning reflects tardiness of a more serious nature for they range from fifteen minutes to four hours during the ten months period, August 1978 to May 1979. It is noted, however, that there apparently

were no instances of tardiness from July 6, 1977 to August 8, 1978.

Finally, in terms of the Grievant attendance record there is the incident of October 22, 1979 which resulted in the four day suspension. The explanation given by the Grievant for calling in late (9:30 a.m.) and for his tardiness was that illness caused him to oversleep. Even if one credits this explanation at full value it is apparent that the Grievant was not as responsible as he should have been in respect to prompt attendance. The Grievant did testify that he was aware of this fact and he stated he was making efforts to improve his record in that respect. There is some evidence that this is the case, but the fact remains that it was not a good record. If, therefore, the final incident had been related to promptness in attendance it would have strengthened the Company's position.

The other incident on the Grievant's formal record of discipline, prior to that of January 18, 1980, was that of May 21, 1979. On that occasion the Grievant was given a two day lay-off for refusal to button his shirt sleeves. As already noted that refusal was petty and immature. It is apparent, however, that the seriousness of that event is in retrospect the Employer's belief that the Grievant inspired the temporary work stoppage that followed a discussion which the Grievant had with Company officials.

It appears that subsequent to that discussion the Grievant reported to other employees that he had been discharged. While the Company maintains this was not the case, the evidence suggests that the statements made by management were such as to lead the Grievant to believe he had been terminated. It was in fact not until the next day that he was told in precise terms that his discipline was a two day suspension.

Aside from the fact the Grievant told workers he had been fired, the only concrete evidence the Company had to infer that the Grievant urged the walk out was the fact he was seen talking to several employees in the parking lot as he was leaving. This evidence is not enough to warrant the conclusion that the Grievant urged employees to stop work. It is natural and understandable that he should tell other employees what had occurred, as he perceived it, in his discussion with management. The opportunity to do so presented itself when he saw these employees in the parking lot during their break. While the Company may believe he was urging them to support him by conducting a work stoppage, the arbitration panel cannot, without more proof, sustain a finding to that effect.

This conclusion is important because it seems apparent that the Company's belief that he was the instigator of this stoppage played a significant role in its decision to terminate the Grievant following the incident of January 17, 1980. As already observed that incident revolved around the request to the Grievant that he report to the foreman's office and his subsequent removal of his safety glasses before leaving the shop. It is obvious that the removal of his glasses was a violation of safety regulations, but, as the testimony reveals, such failure to wear glasses, particularly while entering or exiting the shop, would normally result only in a verbal or written warning. It seems apparent that the Company also believed that the Grievant was one of those harassing Mr. W but again there is little hard evidence to support this supposition. Mr. E , the foreman, admitted he did not hear any remarks the Grievant made to Mr. W . Again, while suspicion may be warranted, the basic facts necessary to support such a conclusion are lacking.

Finally, it should be noted that even though the Grievant's record left much to be desired, the final incident which triggered termination should, in our

opinion, be an incident which is substantively more significant than the one in question. In making this observation, it is not intended to suggest that past conduct may not lend substance to a particular instance. In fact, it is recognized that the two together, past conduct and a particular incident, may very well justify termination even though the incident which triggered the discharge would not in itself represent just cause. Furthermore, the observation made is not intended to belittle the significance of wearing safety glasses. What is important, however, is the fact that heretofore the failure to wear safety glasses even in repeated instances has produced at most a written warning. It is our belief that such an offense, even with Grievant's record, does not provide a proper basis for discharge. This is particularly true when in our opinion part of the Company's concern as to that past record was predicated on a conclusion based on suspicion rather than hard evidence.

The above evaluation leads to the conclusion that the Grievant's discharge was not for just cause. It is a fact, however, that the Grievant was not without cause for what occurred. As observed in some detail in the preceding paragraphs, his record reflects numerous instances, despite repeated warnings, of actions not in keeping with the obligations of an employee. Thus, the incident of January 17, 1980 was viewed as the final straw. Whereas the Company over-reacted, it is our opinion, nonetheless, that a period of disciplinary suspension should be imposed. It is stressed that this suspension is based on the Grievant's total record, and it is not to be viewed as precedent as to the discipline which should be imposed for violations of safety glasses regulations such as were involved in this case. It is further appropriate to note that the Grievant should be aware that henceforth he will have to act more maturely and more responsibly if he is to remain an employee with the Company.

AWARD

For reasons noted above, it is concluded:

1. That the Grievant's discharge on January 18, 1980 was not for just cause, and it was therefore in violation of the parties Physical Agreement;

2. That the Grievant should be reinstated as an employee;

3. That such reinstatement should be without loss of seniority and with back pay for the period March 1, 1980 until reinstatement. From such back pay there should be deducted any earnings and other nonreimbursable payments received by the Grievant during the period since his discharge;

4. That the period January 18, 1980 to March 1, 1980 be viewed as a period of disciplinary suspension;

5. That the back pay award should be with interest of 7½% per annum as provided by the contract.

Daniel J. Dykstra

Lawrence N. Foss - affirming
Joe Valentino - affirming
Paul E. Pettigrew - dissenting
I. Wayland Bonbright (substituting for Marsha E. Badella) - dissenting

March 13, 1981