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24.1 C

IN A BOARD OF ABRITRATION PURSUANT TO TITLE 9 OF THE CURRENT COLLECTIVE BARGAINING AGREEMENT BETWEEN THE PARTIES

In the Matter of a Controversy between LOCAL UNION 1245, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, Complainant, and PACIFIC GAS & ELECTRIC COMPANY, Respondent, involving the discharge of E A .	OPINION AND AWARD OF THE BOARD OF ARBITRATION ARBITRATION CASE NO. 98

This Arbitration arises pursuant to Agreement between LOCAL UNION 1245, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, hereinafter referred to as the "Union," and PACIFIC GAS & ELECTRIC COMPANY, hereinafter referred to as the "Company," under which ADOLPH M. KOVEN was selected to serve as Chairman of a Board of Arbitration which was also composed of BOB CHOATE Union Board Member; CORBETT L. WHEELER, Union Board Member; FRED GREENSTEIN, Company Board Member; and ELLEN KOSSAR, Company Board Member; and under which the Award of the Board of Arbitration would be final and binding upon the parties.

Hearing was held on March 29, 1982, in San Francisco, California. The parties were afforded full opportunity for the examination and cross-

APPEARANCES:

On behalf of the Union:

Thomas M. Dalzell, Esq.
IBEW Local 1245
P.O. Box 4790
Walnut Creek, CA 94596

On behalf of the Company:

L. V. Brown, Jr., Esq.
Pacific Gas & Electric Company
544 Market Street
San Francisco, CA 94106

ISSUE

Was the discharge of E A , Service Representative, in violation of the Clerical Labor Agreement as last amended? If so, what is the remedy?

RELEVANT SECTION OF THE CONTRACT

Title 24, Section 24.1:

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, the following: to direct and supervise the work of its employees; to hire, promote, transfer, suspend, and discipline or discharge employees for just cause.

BACKGROUND:

The grievant, who had worked for the Company for approximately ten years, was discharged because of his conduct on July 10, 1981, and because of his prior disciplinary record. The grievant was charged with leaving the Company office building on his break without authorization on July 10, 1981, overstaying his break by seven minutes, and making a false entry in the log kept at the building guard's station regarding the time he returned to the building.

On July 10, the grievant worked the noon to 9:00 p.m. shift. He was entitled to a 20-minute break at 6:40. He testified as follows: He had arranged with his wife to give her the keys to the car after she finished work, and he left the building for that purpose. He could not leave work until about 6:44 p.m. He went to the lobby and signed the log at the request of the guard at 6:45 p.m. The guard had left on his rounds and the grievant would be unable to get back into the building, and he therefore left a traffic cone in the door while he went outside to see his wife who was waiting across the street. He gave her the keys, and she gave him a pair of pants which she had just purchased for him. He was outside less than two minutes, and was no more than ten feet from the door. The grievant then went back inside the building, removed the cone from the door, and signed back in at 6:48. He tried on his new pants in the men's room, changed into his old pants, bought some candy from a vending machine, and then walked back to his desk about 6:55 p.m. He thought that Carr, his supervisor, was at her desk when he returned, but he was not sure.

As he was about to sit down at his desk, he noticed that the seam of the pants he was wearing had split. He went to the men's room and changed his pants. Two employees testified that they saw him enter or leave the men's room about 6:55 p.m. The grievant then returned to his desk around 7:00 p.m., with five minutes to go on his break. He resumed work immediately.

The telephone rang and the grievant answered it; the call was for his supervisor, Carr, and the grievant went to find her because she was not at her desk. He did not find her in the lunch room, and he checked the log in the lobby and noted that she was outside the building. He returned to his desk and resumed work. At about 7:00 p.m., the grievant saw the guard and Carr make a photostatic copy of the log, and he became concerned.

The Company's version of the events was as follows: The grievant left on his break at 6:45 p.m. At a grievance hearing, a Company witness testified that the grievant had left at 6:50 or 6:51, but at the arbitration hearing he denied that he knew when the grievant had left. The grievant had not returned to his desk by 7:00 p.m. Carr left the building to move her car about 7:00 p.m., and on her way out the door she looked at the sign-out log and noted that the grievant had signed out at 6:45 p.m., but that he had not yet signed in. Because the guard was off on his rounds, Carr became concerned that the grievant would not be able to reenter the building, and she waited for him until about 7:05 to let him in. When he did not return, she left the building. There were no obstructions in the door. She noted upon signing in after parking her car that the grievant had signed the log indicating that he had returned to the building at 6:48 p.m. She returned to her desk at 7:10 or 7:15 and the grievant returned to his desk just a few moments before she arrived. Carr did not ask the guard what time the grievant had signed in or whether he had seen the grievant sign in.

Sometime before October 1981, two months after the grievant was discharged, the Company noted that alterations had been made in the grievant's name and social security number in the log book. The social security number which had been substituted by the person who made the alteration was not the number of any Company employee.

The Company had a policy prohibiting employees from leaving the building without permission except for lunch. The grievant testified that he was told by his supervisors that this policy did not pertain to night shift employees. However, employees who worked after hours regularly left the building during their evening break to move their cars closer to the building after the day shift employees had vacated their parking places. These employees would tell a supervisor as they left the building that they were going to move their cars.

The grievant had been counseled, warned or suspended 20 times for conduct ranging from excessive absenteeism, wage garnishment, leaving his work station without authorization, and altering or providing false proof of illness documents. These disciplinary actions were imposed for multiple violations of Company rules. On one occasion the grievant was suspended for leaving the building without permission.

DISCUSSION:

The three charges against the grievant are that he left the building on his break without authorization; that he made a false entry in the log regarding the time he returned to the building; and that he overstayed his break by seven minutes.

As to the first of these charges, there is no question that the grievant left the building without the authorization of his supervisor, nor is there any question that the Company had a policy, which had been communicated to the grievant, that night-shift employees were not to leave the building without the permission of their supervisors. But there was ample evidence that the Company made an exception to this rule for night-shift employees who wished to re-park their cars after hours. Although there is some conflict in the testimony, the weight of the evidence is that these employees frequently left the building without permission from their supervisors. It is true, of course, that the grievant did not leave the building to re-park his car but, rather, to give his car keys to his wife. Nevertheless, the distinction between moving a car and giving the car keys to a spouse is not so great that discipline would have been justified on this ground. Thus, the Company failed to enforce its rule against employees leaving the building and the grievant's violation of that rule was for a purpose very similar to the one for which employees were permitted to leave without permission. In these circumstances, the grievant's failure to seek permission to leave the building momentarily to give the car keys to his wife cannot form the basis of the discharge.

The second charge against the grievant is that he falsified the sign-in sheet by indicating that he had returned to the building at 6:48 instead of sometime after 7:03. Here we have a direct conflict between Carr and the grievant. The grievant's testimony that he returned at 6:48 is corroborated by the testimony of two employees in the dispatch office that the grievant went to the men's room a few minutes before 7:00 p.m. This corrobrative evidence is entitled to be credited because one of these witnesses was constantly required to observe the exact time during the course of his work and the second employee often noticed the time because it was close to his lunch time and he was making his hourly count of the tags.

Moreover, although Carr asked the guard whether she could copy the log shortly after she became suspicious that the grievant had falsified the time of his return, she did not ask the guard whether he had let the grievant in or out of the building and what time the grievant had left and returned. This failure to ask questions of the guard, which would have provided very strong corroboration of the Company's charges, throws some doubt on the validity of the Company's charge that the grievant falsified the time of his return to the building.

The Company has the burden of proving the facts leading to the grievant's discharge. In view of this burden, the testimony of Carr that the grievant had not signed in by 7:03 p.m., does not outweigh the evidence and inferences in favor of the grievant's testimony that he had signed in at 6:48 p.m.

The final charge against the grievant is that he overstayed his break by seven minutes. If Carr's testimony is to be accepted, the grievant went on his break at 6:45 p.m. He was entitled to be gone from his desk until 7:05. His testimony that he returned to his desk before 7:00 and noticed that his

pants were torn and went to the men's room to change them is also corroborated by the evidence of the two witnesses who stated that the grievant went to the men's room before 7:00 p.m. The Company's testimony that the grievant did not return to work until between 7:10 and 7:15 is open to some doubt. The grievant testified that when he returned to resume work before 7:00 and noticed that his pants were torn, he did not actually sit down at his desk but proceeded directly to the men's room in the dispatch office. It may be that the supervisor momentarily looked away and did not see the grievant prepare to sit down and then leave the area to change his pants. In these circumstances, the grievant's testimony that he returned to work prior to 7:00 p.m. must be accepted.

The Company in its post-hearing brief also charges that the grievant falsified the log following the events of July 10. It is true that the log clearly shows that someone altered the grievant's name and his social security number. Nevertheless, the Company presented no evidence whatever that it was the grievant who had made these changes. The grievant knew on July 10 that the log had been copied, and the likelihood in these circumstances that he would have altered the log (even assuming he had access to it) is minimal. In any event, the Company would have had to meet a very heavy burden of proof to demonstrate the grievant's guilt of this charge, and the mere evidence that the log had been altered by someone before October 1981, is obviously insufficient to meet that burden.

Thus, what we have here is the grievant's violation of a Company rule which other employees violated as well. This offense obviously does not merit discharge. However, in view of the fact that the grievant had been previously disciplined for this same offense and his unfavorable prior record, some discipline is warranted.

(a) The parties shall meet and attempt to arrive at a settlement of for how long A should be suspended. In the event that a settlement is negotiated, the issue of the grievant's suspension (and back-pay) will be considered resolved and is to be effectuated by the parties.

(b) If the parties are unable to negotiate a settlement, they are to submit to the Arbitrator what their "Final Offer" has been to the other party under the mailing date of October 15, 1982.

(c) The Arbitrator will then select one of the two "Final Offers" as his Award.

(d) The Arbitrator will retain jurisdiction in the event that any back-pay problem arises in effectuating his Award (or the settlement of the parties) in respect to the period of suspension (and back-pay) for the grievant.

It is my understanding that the foregoing remedy procedure is acceptable to both parties. If not, the Arbitrator will resolve the back-pay issue according to the standards ordinarily applied by arbitrators.

INTERIM AWARD

(a) The parties shall meet and attempt to arrive at a settlement of for how long A should be suspended. In the event that a settlement is negotiated, the issue of the grievant's suspension (and back-pay) will be considered resolved and is to be effectuated by the parties.

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It is my understanding that the foregoing remedy procedure is acceptable to both parties. If not, the Arbitrator will resolve the back-pay issue according to the standards ordinarily applied by arbitrators.

Dated: 9-29-82

/s/ Adolph M. Koven
ADOLPH M. KOVEN, Arbitrator