

In the Matter of an Arbitration]
]
 between]
]
 LOCAL UNION NO. 1245 INTERNATIONAL]
 BROTHERHOOD OF ELECTRICAL WORKERS,]
]
 Complainant,]
]
 and]
]
 PACIFIC GAS AND ELECTRIC COMPANY,]
]
 Respondent.]

Arbitration Case No. 102
 Suspension of:
 L. R

OPINION AND DECISION
 OF
 BOARD OF ARBITRATION

Chairman, SAM KAGEL

Union Member, VEODIS STAMPS

Union Member, CORBETT L. WHEELER

Employer Member, FRED GREENSTEIN

Employer Member, *David J. Bergman*
~~KAREN SAVELICH~~

ISSUE:

Was the one-day disciplinary suspension of L. R. in violation of the Parties' current Physical Labor Agreement? If so, what is the remedy?

LETTER OF SUSPENSION:

"This will confirm our meeting of October 6, 1981, when we discussed the incident of your apparent drinking of an alcoholic beverage during working hours. In attendance were Union Shop Steward, Mr. Walter Mims, and General Foreman, Willie Griffin.

"On Monday, October 5, 1981, at approximately 11:10 a.m., I saw you holding an object covered with a rag up to your mouth and drinking from it. When you saw me, you stepped backward into the doorway of 2519 Durant Street, Berkeley. I walked up to this doorway and observed that the object I had seen you drinking was sitting on a ledge. It was a 12 ounce bottle of Coors beer wrapped with the rag. We discussed and observed this bottle. I asked you if you had been drinking from this bottle and you said, 'No.'

"At the time of this incident you were wearing the required safety equipment, a company hard hat, and red traffic vest.

"Drinking alcoholic beverage during working hours is sufficient grounds for discharge. However, even if you were not drinking beer, the appearance of doing so (bottle wrapped in a rag) while in full PG&E safety equipment and standing in a doorway of such a heavily traveled commercial area reflects an unacceptable company image to our customers. It also shows total irresponsibility for your job and full disregard for the company's rules and policies that you are certainly aware of.

"These actions will not be tolerated under any circumstances, therefore, you are being given

this letter of reprimand and Friday, October 16, 1981, off without pay as disciplinary action.

"You are urged to correct your improper conduct and meet the full responsibilities and requirements of your job in the future. Should you fail to correct your improper conduct in the future, you will subject yourself to further disciplinary action, up to and including discharge." (Co. Ex. 3)

The Company rules relating to intoxicants read as follows:

"Intoxicants

"(a) Use of intoxicants by any employee during working hours is prohibited, and any violation will be sufficient cause for dismissal.

"(b) Any employee reporting for duty while under the influence of intoxicants shall not be allowed to assume his/her duties." (Co. Ex. 1)

"and Company's Standard Practice 735.6-1:

"It is further the policy of this Company that employees shall not at any time while at work use or be under the influence of any alcoholic beverage. Employees shall not at any time while at work or on Company business use, have in their possession or be under the influence of any narcotic, marijuana, drug, or other substance the possession or use of which is unlawful.

"Violation of these policies will subject any employee to disciplinary action, up to and including discharge. In addition, supervisors and working foremen who knowingly allow others to engage in acts of misconduct are subject to appropriate disciplinary action." (Co. Ex. 2)" (Co. Br., pp. 4-5)

DISCUSSION:

Barrington L. Wilson, a Field Foreman who saw the incident that he claims occurred which formed the basis for the

suspension, testified that what he did see on October 5, 1981 was as follows:

"Q. (By Mr. Brown, Company Counsel) Mr. R is the Grievant in this matter?

"A. Yes. Mr. R had his hard hat and his safety vest on, his red safety vest on.

"I also noted that Mr. R had something up to his mouth, drinking it with a gray rag around it.

"Q. Could you actually see what was underneath the gray rag?

"A. Not from that point, no.

"Q. I would like you to go through that gesture again where you observed Mr. R with his hand in front of his face apparently holding something wrapped by a gray rag.

"A. He was holding it up drinking (indicating).

"MR. BROWN: Would the record note that the distance between the witness' thumb and his forefinger was roughly three inches, which would be the approximate size of a bottle."
(Tr. 12-13)

He then testified:

"As I was parking my car, Mr. R was drinking the beer. He seen me about that same time I seen him.

"At this point he ducked back into the doorway" (Tr. 13)

Thereafter, Wilson testified that when he approached R he did not notice that R had a cloth rag at the time but that he observed a bottle of Coors beer wrapped in the rag that he had seen up to "... Mr. R 's mouth" (Tr. 14). Then Mr. Wilson testified as follows:

"Q. Did you confront Mr. R with what you saw?

"A. I did. I asked Mr. R -- well, at least I told Mr. R, when I walked directly up to him as I drove up, 'I seen you drinking something from a rag.'

"I come up here, and I observed this bottle of Coors beer with the same rag around it. And I asked him, 'Was you drinking beer?'

"He told me, 'No.'" (Tr. 14-15)

Shortly after Wilson confronted R he took a picture which was introduced in evidence as Joint Exhibit 4-B.

L. R, the Grievant in this case, had been working for the Company for 22 months. He had no disciplinary record.

He testified as follows:

"A. I sat down on the ledge and took my hard hat off. I had a rag with me that day, and I was wiping the sweat from out from underneath my glasses. My glasses kept on sliding down.

"Q. (by Union Counsel, Ms. Gwinn) Was it a warm day?

"A. Yes, it was a sunny, warm day.

"Q. Was it warm in your truck?

"A. Yes, it was quite warm in my truck.

"Q. Was this the second visit to the site that day?

"A. Yes it was.

"Q. When you were finished with the rag, what did you do with it?

"A. I placed it behind me.

"Q. Was it common to have a rag -- carry a rag around?

"A. On warm days it was basically a habit with me because I did sweat. This was to keep the sweat off me.

"I didn't have any water or anything with me to cool down with." (Tr. 34-35)

Thereafter he testified that after sitting down on the ledge for four or five minutes he saw Mr. Wilson for the first time. He testified as to the conversation with Mr. Wilson as follows:

"THE WITNESS: From what I remember he said, 'You were drinking that beer --'; oh, he said, 'There is a beer up there, and you were drinking that beer, weren't you?'

"And I said, 'No, Barry, I wasn't.'

"He said, 'I saw you drinking that beer.'

"I said, 'Barry, I wasn't drinking any beer.'

"He says, 'There is a beer up there. You know that?'

"I says, 'Yes, I saw it before I sat down.'

"And he said, 'I will show you the beer.'

"And I said, 'I know the beer is there.'

"And he said, 'I'm going to show you the beer now.'

"And I had to walk up there and have him show me where the beer is." (Tr. 37-38)

As to the rag that R was carrying and which Wilson claims was wrapped around the beer bottle, R testified as follows:

"Q. (By Ms. Gwinn) Mr. R, when you got finished with the rag, wiping your head with the rag, how did you put the rag down?

"A. I had the rag in this hand (indicating) and I -- there is a glass window that was right here. And my hand hit, from what I can remember, the glass window; and, I dropped it down.

"MR. BROWN: Would the record note while the witness was making that testimony, he reached in back of him and continued to look forward."
(Tr. 38)

Joint Exhibit 4-B is a picture taken by Wilson immediately after the incident in which there appears to be a bottle with a rag draped over the top and shoulder of the beer bottle. As to the manner in which that rag got onto that beer, Robinson testified, as already noted above, that he had the rag in his hand; that there was a glass window behind him that his hand hit "... from what I can remember, the glass window; and, I dropped it down" (Tr. 38).

No explanation was given by R. as to why he would, at that particular moment, drop the rag behind himself. Nor as a matter of fact why he would seek to get rid of the rag at all since he claimed that the rag was for the purpose of wiping off the sweat from his face.

It was that particular rag which Wilson claims he saw wrapped around the bottle when he claimed R. was drinking beer from the bottle.

SUMMARY:

The fact is that there were no other actual witnesses to the events involving the drinking of the beer which Wilson

claimed occurred and which R denied. The matter of judging which of the descriptions of the events that occurred is acceptable must be based upon, in part, the conduct of the Parties. The record indicates that Wilson testified that he saw R drink from a bottle that was wrapped in a rag; that he then saw immediately in the presence of R a bottle of Coors beer and that he saw the rag halfway draped around the beer. R admitted it was the same rag that he had used to wipe the sweat off his face. And he explained the manner in which he got rid of the rag. This conduct would seem to indicate that he sought to cover the bottle of beer though that was not a successful maneuver since the rag merely partially covered the bottle. And in any case R was trying to cover the bottle of beer so as to separate it from his relationship to the bottle of beer. And as the letter of suspension states, even if he was not drinking the beer at the time Wilson saw him, he did give the appearance of drinking and having in his possession a bottle of beer.

Under all the circumstances of this case, it cannot be held that Wilson's testimony as to what occurred did not in fact occur.

DECISION:

The grievance is denied.

Sam Kagel
Chairman, Neutral Member

Concur/~~Dissent~~

D. J. [Signature]
Employer Member

Concur/~~Dissent~~

Fred H. Greenstein
Employer Member

Concur/~~Dissent~~

C. J. Wheeler
Union Member

~~Concur~~/Dissent

Woods [Signature]
Union Member

~~Concur~~/Dissent

San Francisco Sept 3, 1982