International Brotherhood of Electrical Workers, AFL-CIO, Local 1245, Union	*	
and	*	Arbitration Case No. 105 (Discharge of L S
Pacific Gas and Electric Company Employer	*	

Appearances:

For the Union: Tom Dalzell

For the Company: L. V. Brown, Jr.

INTRODUCTION

On September 17, 1982 a hearing was held in the above referenced matter in Palo Alto. The parties stipulated that the following issue was submitted to the undersigned as Arbitrator:

> Were the five-day suspension and discharge of L S in violation of the parties' current Clerical Labor Agreement? If so as to either, what are the remedies?

At the hearing, both sides were provided with a full opportunity to examine, cross-examine witnesses, and to present

other relevant testimony and evidence including exhibits. Subsequent to the close of the hearing, briefs were submitted by both the International Brotherhood of Electrical Workers, AFL-CIO, Local 1245, hereinafter to be referred to as the Union, and Pacific Gas and Electric Company, hereinafter to be referred to as the Employer.

FACTUAL BACKGROUND

The Employer relies upon a number of incidents as a basis for the discharge of the grievant which was instituted on June 3, 1981. They involve the wearing of inappropriate footwear, unauthorized stops, congregating, speeding, using the Company vehicle for personal business, conducting personal business on Company pay time, driving her personal vehicle to her assigned meter route and being out of her meter route.

The first incident relates to March 5, 1980 when the Employer states that its District Manager observed the grievant's vehicle parked at a produce stand outside the Livermore office service territory, and subsequently observed her driving beyond the speed limit of 55 MPH. The grievant was given a letter of reprimand dated April 9, 1980 for misuse of the company car on work time to conduct personal business, being out of the service area, taking over one-half hour to consume her lunch, and speeding in violation of the Employer's Accident Prevention Rules. The grievant was advised that further violations could

result in more severe discipline up to and including termination of her employment. The grievant testified that she had never been told not to leave the office service area for lunch and, in any event, did not know that the produce stand was outside the office area.

The second incident which the Employer relies upon took place on June 25, 1980 when the Employer stated that the grievant left her assigned meter route at about 12:45 P.M., was discovered at home at approximately 1:15 P.M., having parked her Company vehicle in front of her residence. The Employer states that a further check indicated that the car was still there at 2:15 P.M. Another letter of reprimand was the sanction and she also received one day without pay. The grievant was again warned that failure to abide by established Company rules would lead to more severe disciplinary action up to and including discharge.

The third incident was on September 12, 1980 when the grievant was tardy and was warned that she must get to work on time as part of her responsibilities.

The fourth incident arose on September 24, 1980 when the grievant did not pick up a Company vehicle as instructed and returned to her residence which was about five minutes away from her headquarters. Again, on this day, the grievant was observed proceeding in excess of 55 MPH. She received a letter of reprimand and three days off without pay for conducting personal business on Company time and for violating the Accident Prevention Rule on speeding.

On September 26, 1980, Customer Services Supervisor Mole observed the grievant and the Head Meter Reader engaged in a loud argument and Mole interceded to counsel her and to advise her that "yelling" at other employees could not be tolerated. A sixth incident relates to September 30, 1980 when the same kind of counseling took place.

A seventh incident arose on October 29, 1980 when the grievant was counseled for leaving the office in her personal car for her own reasons and was advised that she should notify the Head Meter Reader of any such absence. But the grievant's testimony on this incident puts the matter in a different light. It is accurately summarized by the Union's brief:

> The grievant's menstrual cycle started after she left home on October 29, and while her partner drove from the company office to the company yard to pick up their car for the day the grievant drove home to change her pants. C M then picked the grievant up at home on the way out to the route, a detour which took her one block off the most direct route to their work location for the day. The grievant was too embarrassed to tell any of her male supervisors that she was going home to change her pants, and there were no female supervisors at the time.

Moreover, the Union contends that the policy in effect did not prohibit the use of personal cars. The Union relies upon testimony establishing the fact that a large number of employees use their personal cars and questions how the Company could have failed to note this. But the Employer points to rules relating to the use of personal vehicles to go to and from meter reading routes which require that such vehicles be left at the office or the headquarters yard.

An eighth problem arose where the grievant was assigned to ride with another meter reader in a Company vehicle and was observed in her personal car. The car was observed at her home for a period of time. However, the grievant advised Mole that she had driven on her route with someone else in a Company vehicle but, in light of the inability of the Company to verify this incident, it was stated that further disciplinary action would be instituted.

The Union points out that the grievant drove her personal car from the Company office to the Company yard where her friend would pick her up. The Union states that the grievant was assigned to a route with no restaurants and bathrooms and constantly worked without a break until approximately 2:30 P.M., never leaving her route area. The Union characterizes as unfounded the suspicion that the grievant used her car to leave her route and go home and that her own testimony about the matter is entirely consistent with the Company's observations of her. The only inpropriety, the Union states, is using her personal car to go to the yard in the morning and back to the office in the afternoon - a matter which is so minor in the Union's view as to warrant no discipline.

On January 7, 1981, the grievant was observed in a coffee shop and almost simultaneously another "unrelated matter" is relied upon by the Company arising out of the allegation that the grievant did not use a meal ticket for the purpose of her own evening meal at the conclusion of an overtime assignment but rather used it for personal purposes.

With regard to the January 7, 1981 incident, the Union states that various Company rules which provide "conflicting guidelines" as to when, where, and with whom coffee breaks of the kind taken may be taken. The Union also states that Company rules relating to congregating are no less inconsistent. The Union argues that documents (Joint Exhibits 1 and 5) setting forth coffee break policies "contain no explanation of how meter readers who are required by the Company to ride to their routes together can take a coffee break without congregating. In any event, the Union contends that the rule was widely disregarded because it was impractical and relies upon the testimony of other employees in this connection. On the overtime meal incident arising under the same time period, the Union points out that the grievant testified that she did not use the meal ticket and did not use it for her own personal use.

On January 28, 1981, another complaint was registered by a customer on the ground that the grievant had been speeding on her property and backed the Company truck into a drainage ditch, potentially endangering her pets and small children.

In the January 28, 1981 incident, the Union states that the grievant's car went slightly off the driveway into the mud and that when the grievant checked for damage she saw none and backed out of the driveway. The grievant, states the Union, exercised normal judgment under the circumstances.

On January 30, 1981, the grievant was observed wearing canvas tennis shoes during a work day in violation of Company footwear policy. The same problem arose on February 5, 1981 when the grievant was suspended for the remainder of the day.

On the January 30 and February 5 incidents, the Union claims that Mr. Mole did not review the new footwear policy relied upon by the Company in this situation with the Livermore meter readers until February 24, 1981, several weeks after the two incidents involved. The Union points out that the Company agreed to rescind the footwear policy by a letter dated April 10, 1981. Moreover, the Union relies upon the fact that the footwear policy, to the extent that it can be characterized as valid or in existence at the time of the incidence in dispute, was universally ignored by the meter readers. The Employer maintains that its policy is reflected by rules set forth in both 1976 and 1981.

On February 24, 1981 the grievant was given a five-day disciplinary layoff with a further admonishment to meet and maintain the responsibilities of her job and to comply with rules, and a failure to do so would result in discharge.

On May 4, 1981, a day after the Company Supervisor had reviewed the "coffee policy" with the grievant, she was assigned to a vehicle to transport herself to two other meter readers and, shortly after leaving the office, stopped off at a Short-Stop Store on Portola Avenue in Livermore. All three went into the store and each made a purchase. In light of this incident and the totality of the employment record the grievant was discharged on June 3, 1981. This arose out of a policy which prohibited the "congregation of employees assigned to work alone." The Employer

points out that it relies upon established arbitrable law to the effect that it has an inherent right to establish work rules that are reasonably related to the conduct of its business. It contends that the Work Rules and Policies were unequivocally and openly ignored by the grievant. States the Employer:

> Common sense dictates that work hours are for work; not time in which the employee may devote to grocery shopping, caring for her children, visiting her parents, or any other purpose that is not carrying out the function for which she is paid. It follows, then, that the unrefuted concentration of violations incurred by the grievant in the space of a few short months emphasizes the neglect on the part of the grievant of her obligation as an employee of the Company.

The Employer emphasizes that the last incident must be considered in conjunction with prior behavior and the Company's adherence to progressive discipline. A Company relies upon an Arbitrator's decisions to the effect that even though each incident may not be a basis for discharging in and of itself and indeed could be characterized as trivial, what is important here is consideration of the accumulation of offenses and the incorrigible nature of the grievant's behavior.

The Union presented no testimony with regard to approximately five of the incidents related above. With regard to the discharge itself, the issue of sexual discrimination is an affirmative defense. This argument is based upon the grievant's testimony that shortly after she arrived she was assigned in such a manner that the three female routes were almost exclusively

routes which required walking, whereas the male employees were given almost all the less strenuous driving routes. When the grievant called the matter to Mr. Mold's attention when he arrived at the office three months after her, he redistributed the walk and drive routes in another nine months more equitably.

The Union also argues that discipline was imposed upon females far more severely than males. In addition to reliance upon particular incidents, including the coffee incident, the Union points to evidence which shows that 33.3% of the meter readers who were suspended were female and 66.7% of those discharged were female even though females constitute only 21-23% of the meter reader work force population.

The Union argues that well-established principles of arbitration show that where discipline is imposed upon an employee for violation of a Company rule, the Company's lax enforcement must be considered in connection with the appropriateness of the discipline. The employee can be lulled by the employer into believing that sanctions will not be imposed. In this connection, the Employer cites considerable arbitrable precedent which has been reviewed by the Arbitrator in this case.

In particular, the Union challenges the reasonableness of some of the rules, i.e., the coffee break as it relates to meter readers who do not happen to have their route near commercial establishments. Further, the Union argues that the rule relating to coffee breaks is confusing and conflicting and the footwear policy was not even read to the employees until February 24.

As noted above, the Employer disputes this, referring to a policy in effect since 1976.

Both the Employer and the Union refer to arbitrable precedent which supports the idea that an accumulation of offenses, none of them cause for discharge alone, can be a basis for discharge. However, the Union states that such cases fall into a number of categories which are not present here: (1) the harrassment of the employer by an employee; (2) the incorrigible behavior of the employee; (3) argumentative, insubordinate, and disruptive behavior which argues for the inappropriateness of further corrective discipline.

Finally, the Union addresses itself to the Steve Wilson Channel 7 report on PG&E meter readers which focused upon both billing errors and meter work habits involving employees at home during work hours. The Union states that this publicity was inaccurate and unfair and should not be used as a basis for discipline. The Employer notes that such publicity shows the attention that is focused upon it, the need for the rules, and thus their reasonableness.

CONTRACT PROVISIONS INVOLVED

> "The Management of the Company and its busines and the direction of its working forces are vested exclusively in Company, and this includes ... discipline or discharge (of) employees for just cause..." (Jt. Ex. 1 §1.3 MANAGEMENT OF COMPANY)

> "If an employee has been demoted, disciplined or dismissed from Company's service for alleged violations of a Company rule, practice or policy and Company finds upon investigation that such employee did not violate a Company rule, practice or policy as alleged, it shall reinstate him and pay him for all time lost thereby." (Jt. Ex. 1 §9.12)

OPINION

I am of the view that the grievance must be sustained and that the reinstatement must be ordered without backpay. I find it unnecessary to address the discrimination issues inasmuch as the uncontradicted testimony is that corrective steps have been taken to deal with the problem of meter reader assignments and, in any event, other instances provide me with a full record on which to base a decision.

In the first place, it should be noted that the Union did not dispute a large number of incidents which the Employer relies upon to support the discharge. Accordingly, even without regard to consideration of those incidents which are in dispute, the grievant is not without fault in this proceeding. However, I am of the view that the grievant's testimony on the October 29, 1980 incident is credible, and I find the Employer's reliance upon this particular situation as not an appropriate basis upon which to impose a discharge.

On the January 7 and 8, 1981 incidents, I do not believe that there is a discrepancy in the various documents which the

Employer has put out about coffee policy. Perhaps the matter should have been made more clear and some of the 1980 memos should have specific reference to the time of day during which a break may be taken. But I do not find any conflict. Moreover, at the same time, with regard to the meal receipt matter itself, I credit the grievant's testimony. There is no basis on this record for the conclusion that the meal receipts were used improperly.

The January 28, 1981 customer complaint seems to be a relatively minor matter. It does not appear that there was much damage, although I admit to some degree of concern about this issue given the other aspect of the grievant's record which went unrefuted.

But I find the footwear policy to be reasonable and well-established. Its subsequent discontinuance is irrelevant to the employee's obligation to obey the rule.

I am less certain about the last incident which led to the discharge. It may be that aspects of the Employer's rules are unreasonable as they relate to assignments in areas where there are no restaurants or restrooms. Yet my sense about this incident and the grievant's overall record on rules is that some other course of action ought to have been taken by the employees and grievant here.

In essence, the grievant's record is not a good one. Some further discipline is warranted by what appears to be a

recurring theme of rule violations. Discharge is not warranted under the circumstances. I am of the view that reinstatement without backpay is the appropriate remedy. The grievant's record makes this the appropriate remedy.

AWARD

The five-day suspension of L S was not in violation of the parties' current Clerical Labor Agreement. The discharge was in violation of the parties' current Clerical Labor Agreement. The grievant, L S , shall be reinstated within 48 hours of receipt of this Award.

March 23, 1983

William B. Gould, Arbitrator

Sworn to and subscribed before me
this 23rd day of March, 1983.

Notary Public

OFFICIAL SEAL
CLARIE E. KUBALL
NOTARY PUBLIC - CALIFORNIA
SANTA CLARA COUNTY
MY COMMISSION EXPIRES MARCH 28, 1986

ARBITRATION CASE

NO. 105

In the matter of the Decision and Award dated March 23, 1983, of William B. Gould, the neutral Arbitrator selected by the parties, the following other members of the Board concur or dissent to the Award as follows:

Company	Union
☒ Concur	☐ Concur
☐ Dissent	☒ Dissent
I. Wayland Bonbright	Bob Choate
Dated 25 March, 1983	Dated 25 May, 1983
☒ Concur	☐ Concur
☐ Dissent	☒ Dissent
Luke Johnson	Bryan LeGare
Dated 25 March, 1983	Dated 20 May, 1983