

IN ARBITRATION PROCEEDINGS PURSUANT
TO THE PHYSICAL LABOR AGREEMENT BETWEEN THE PARTIES

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In the Matter of a Controversy)

Between)

PACIFIC GAS AND ELECTRIC COMPANY,)

And)

LOCAL UNION 1245, INTERNATIONAL)
BROTHERHOOD OF ELECTRICAL WORKERS)

ARBITRATION CASE
NO. 107

BEFORE THE BOARD OF ARBITRATION:

SAM TAMIMI, Business Representative and
ED FORTIER, Business Representative, Local 1245,
International Brotherhood of Electrical Workers,
P. O. Box 4790, Walnut Creek, California 94596;
Appointed by the Union.

I. WAYLAND BONBRIGHT, Manager, Industrial Relations and
RICK R. DOERING, Industrial Relations Assistant,
Pacific Gas and Electric Company, San Francisco,
California 94106;
Appointed by the Company

ROBERT E. BURNS, Esq., 155 Montgomery Street, Suite 606,
San Francisco, California 94104;
Neutral Chairman.

APPEARANCES:

ON BEHALF OF THE UNION:

TOM DALZELL, Staff Counsel, IBEW, Local 1245, P. O. Box 4790,
Walnut Creek, California 94596.

ON BEHALF OF THE EMPLOYER:

LAWRENCE V. BROWN, JR., Esq., Pacific Gas and Electric Company,
245 Market Street, San Francisco, California 94106

The Parties and the Issue

Pacific Gas and Electric Company (the "company") and Local Union 1245, IBEW, (the "union") are parties to the Physical Labor Agreement (the "agreement").

Pursuant to the agreement the parties entered a submission agreement in Arbitration Case No. 107. A hearing was held in San Francisco on October 22, 1982 at which the parties, their attorneys and grievant J I. L were present. Pursuant to the labor agreement and the submission agreement the following issue was submitted to the Board of Arbitration:

Was the ten-day disciplinary layoff of grievant J I. L and/or his demotion and/or his displacement proper under the parties' Physical Labor Agreement as last amended? If not, as to any, what is the proper remedy?

At the conclusion of the hearing the issue was submitted upon the filing of briefs by the parties. The briefs were received by the chairman of the Board on January 3, 1983.

Provisions of the Agreement

Section 7.1 of the agreement provides:

"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, 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 for other legitimate 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."

Section 102.4(a) of the agreement provides:

"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, 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 7-1/2% annum."

Section 102.4(c) provides:

"Provided further that nothing contained herein shall restrict or inhibit the parties or the Board of Arbitration from reducing the amount of a retroactive wage adjustment to an otherwise successful grievant where, in their absolute discretion, the equities of the situation do not call for the employee to receive a full retroactive wage adjustment."

Section 206.15 provides:

"An employee who is demoted for any reason other than for lack of work may be placed in a vacancy created in his headquarters by the promotion of one or more employees to fill the job which the demoted employee vacated. If no such vacancy occurs he may be demoted to a vacancy in a lower classification in the Division in which he is employed. In the application of this Section an employee shall be demoted to a vacancy in the first successively lower classification which he is qualified to fill."

Statement of the Case

Grievant was employed by the company on June 21, 1960. He transferred to the Drum Division in 1975 and on August 11, 1981 was a Light Crew Foreman (Gas) stationed at Auburn. His headquarters were designated as Roseville.

A Light Crew Foreman is a working foreman covered by the agreement. Grievant was also a shop steward representing the union at Auburn.

A Light Gas Crew normally is comprised of three employees. The Light Crew Foreman directs and controls the work activities of the crew which is assigned to him by an exempt gas supervisor. The Light Crew normally works alone and the supervision of the crew is his responsibility. He also has the responsibility of seeing that the crew complies with company rules and policies and the work is done in a proper and safe manner.

The incident precipitating the disciplinary action taken by the company occurred on August 11, 1981 at Kincaid's Coffee Shop in Auburn during working hours. On the day before, exempt foreman Gomes received a telephone call from a customer complaining that the employees of the company routinely stopped at Kincaid's during working hours. After discussing the information with exempt supervisor Willis, Gomes and Willis planned to station themselves outside the service center in Auburn the next day and follow the first truck out of the center.

On August 11, 1981 Gomes and Willis stationed themselves so as to observe the first crew departing from the service center. The first truck was identified as being one assigned to grievant and his crew. As they proceeded, they noticed that grievant's truck met with the truck carrying W: 's crew. In order to avoid arousing suspicion, Gomes and Willis proceeded around a long road (about four miles) and upon returning saw that grievant's truck was nowhere to be seen. At the point where Gomes and Willis turned off there is a 7-11 store. Gomes saw W: 's truck pull into the store parking area and stop. Gomes did not investigate the W: 's stop at

the 7-11 store. He and Willis proceeded to Kincaid's Coffee Shop where grievant, his crew and four other company employees were drinking coffee. Four of the employees received disciplinary letters, two received no disciplinary action, one employee has retired. Grievant was given a ten-day suspension and a permanent demotion from the position of Light Crew Foreman to fitter. By virtue of the ten-day suspension grievant lost gross wages approximating \$1,000. His lost wages by reason of his demotion cost him about \$3,000 in 1982.

Grievant was directed by Gomes to return to his headquarters in Auburn. There followed a meeting between grievant, the two exempt supervisors and the union shop steward. During the course of that meeting grievant stated he had stopped at Kincaid's Coffee Shop during work hours several times in the past. Grievant was suspended pending a determination of discipline, if any, he would receive. The exempt supervisors met with the division manager and division personnel manager and reviewed grievant's entire work record. They were of the opinion that grievant should be discharged. That recommendation was discussed with the company's manager of industrial relations who recommended against discharge but suggested the permanent demotion of grievant and a ten-day disciplinary layoff. At the conclusion of his suspension grievant was placed in a fitter vacancy at the division gas headquarters in Roseville where the senior fitter entitled to be promoted was headquartered.

The obtaining and drinking of coffee during work hours are not the subject of a written work rule. The company offered evidence

that the division policy was that crews were not permitted to stop and drink coffee in a commercial establishment during work hours although they were permitted to stop and procure coffee to take with them on the job.

The assignment of grievant on August 11 was to proceed to a work site at Duncan Hill from the service yard. Grievant estimated that there were only about one and a half to two hours work and that there was no hurry to arrive at the site of the work. Work had been very light and August 11 was to be no exception. At the hearing a rough map of the route taken by grievant was introduced, a copy of that map is attached as Appendix #1.

Grievant testified that after leaving the service yard he proceeded in a northerly direction on Highway 49. It will be noted that Kincaid's Coffee Shop (marked "K" in the upper left-hand corner of Appendix #1) is directly north on Highway 49. Duncan Hill (marked "D" on Appendix #1) is reached by driving on Palm Avenue to the west. Instead of proceeding northerly on Highway 49 to Palm Avenue and turning left on Palm Avenue to Duncan Hill, grievant turned right on Elm Avenue, proceeded easterly to Ravine Road and then drove northerly curving to a westerly direction where Ravine Road intersects with Palm Avenue (see Appendix #1.) Grievant then turned right on Highway 49 and proceeded to Kincaid's Coffee Shop which is about one and a half to two miles north of Palm Avenue at the point of its intersection with Highway 49.

Grievant testified that he did not proceed directly north on Highway 49 because its intersection with Palm Avenue is at the

crest of a hill and turning left is difficult; and that there are traffic lights at the intersection of Highway 49 and Palm Avenue. Highway 49 is a four lane roadway with no center dividing strip.

Grievant also testified that the policy of the Drum Division has been that stops for coffee in a restaurant were frowned upon but not prohibited; that it was at the suggestion of one of the members of his crew that they stop at Kincaid's while on the way to the jobsite for a job which would only take one and a half to two hours; that Kincaid's is located on a narrow street; and that the PG&E trucks which were parked in the back were not visible from the street.

By contrast foreman W. parked his truck at the 7-11 Store in full view of persons passing by (see Appendix #.).

In late 1980 a company evaluation team performed a number of safe work practice audits in the Drum Division. According to Gomes the Drum Division came out very poorly and there were many infractions. In February 1981 Gomes began his own audits of the gas crews. On February 2, 1981 Gomes found only one "man at work" sign placed by grievant's crew. He did not like where the crew had its truck parked and found that grievant and one employee were not wearing hard hats. The remaining 24 items on the audit were marked "O.K.". On February 27, 1981 Gomes found only one chock block on grievant's truck and two employees without hard hats. The other 28 items were marked "O.K.".

Gomes' audit on grievant's crew on March 26, 1981 did not note any infractions. The audit of April 15, 1981 noted no

infractions and the items were all marked as "good". The audits of April 6 and April 28, 1981 also were marked "good".

On April 22, 1981 there was an after-hours emergency job. Grievant and his crew were called out at 10:00 p.m. to stop a gas leak caused by an outside contractor. Gomes arrived on the job just before grievant and his crew shut off the gas. When Gomes arrived, according to grievant, the first thing he said was, "Where are your hard hats?" Grievant told him that the blowing gas was a lot more serious and he and his crew had immediately gone to work to get it shut off.

Gomes testified that he had received complaints from the electric department concerning grievant's trenching work. The electric department supervisor told Gomes that his crews would refuse to work with grievant if grievant were assigned in the future to do their trenching work.

On July 6, 1981 grievant was verbally reprimanded by Gomes for leaving work on July 3, 1981 fifteen minutes early and falsifying his time card to reflect that he had worked until 4:30 p.m., the end of his shift.

On February 15, 1977 grievant was temporarily demoted from Light Crew Foreman to fitter pending investigation and on February 18, 1977 he received a three-day suspension without pay. The grounds for the discipline were "repeated stops for coffee inspite of a written warning in October 1976 for a particularly flagrant violation of the rule at that time", not working during working hours, horseplay with crew members, directing crew to take the "scenic route" back to the yard to use up time until

quitting time and working on personal projects. The local investigating committee found that, except for the horseplay allegation, each of the performance discrepancies were major recurring problems and not isolated minimal occurrences. The local investigating committee unanimously upheld the temporary demotion pending investigation in the three-day layoff without pay.

Grievant was warned on February 18, 1977 that "any recurrence of these types of performance problems will result in discharge".

On October 20, 1976 grievant was given a warning letter for stopping at a restaurant on two occasions on this same day.

From October 20, 1976 to October 28, 1981 in the Drum Division, ten letters of reprimand were issued to employees for stopping at restaurants for coffee. During that period disciplinary layoffs of three days and one day were given to two employees for stopping at restaurants for coffee, each employee having previously been reprimanded for the same acts.

Between September 1, 1978 and September 1, 1981 disciplinary layoffs for one or two days were given in the Drum Division for a variety of reasons. One employee was discharged for insubordination, one for continuing unsatisfactory work performance, one for falsification of meter readings and one for unsuitability for overhead linework. One employee was given a two day suspension for falsification of a meter reading.

S: H: , called by the union, testified that a field foreman told him to keep an eye on grievant and that "they were out to get him"; that grievant's crew at one time was getting all the hard jobs; and that grievant was the first active shop steward in Auburn.

Other facts are discussed in the opinion.

Discussion and Opinion

The company takes the position that as a public utility the activities of its employees during working hours are subject to public inspection, that members of the public in Northern California, most of whom are customers of the company, are concerned about their gas and electric bills, and that when they see the company's employees having coffee during working hours, the company's customers are concerned and express their concerns by complaining. The company's position is justified. The company is represented by its employees and the obligations of the employees are to comply with company rules and practices and to avoid giving members of the public cause for complaint.

It was the complaint from a member of the public which led Gomes and Willis to institute the surveillance of grievant's crew and the crew of W. The description of the routes taken by Gomes and Willis and the route taken by grievant and his crew are described above. Willis testified that when he and Gomes returned from their round-about trip to the intersection where the 7-11 store is located, he did not recall seeing W's truck still at the store.

The facts are clear that grievant and his crew travelled off their route to the jobsite at Duncan Hill in order to have coffee at Kincaid's. Grievant's testimony that stopping for coffee at a restaurant (as contrasted from obtaining coffee "to go") was frowned upon in the Drum Division but not prohibited was contrary to his own experience. In October 1976 and again in 1977 grievant was warned and disciplined for stopping and having coffee during working hours. One of the charges considered by the local investigating committee in March 1977 was based upon repeated stops for coffee in spite of a written warning in October 1976 for violations of the rule at that time. It is not credible that in August 1981 grievant did not know of the unwritten rule or practice in the Drum Division prohibiting stops at restaurants for coffee. Grievant could hardly have forgotten his written warning in October 1976 and the local investigating committee hearing in March 1977 which resulted in a three day suspension. Grievant was in charge of his crew. Whether it was his idea or the idea of one of his crew members, he should not have gone to Kincaid's on August 11, 1981 and had coffee. Grievant's conduct on August 11, 1981 amounted to insubordination because he must have known of the prohibition in the Drum Division against crews stopping at restaurants for coffee during working hours. The fact that the Duncan Hill job would only have taken an hour and a half or two hours is not material. It was grievant's obligation as the Light Crew Foreman to go directly to the Duncan Hill jobsite, perform the work, and return with his crew to the service center for a further assignment.

The management was entitled to take into consideration grievant's prior work record. That record is described above. A very significant aspect of that record consists of the offenses in 1976, 1977 and again on August 11, 1981 of stopping at restaurants for coffee during working hours.

The union contends that the treatment of grievant is disparate and that other employees who have committed similar offenses were only reprimanded or given short suspensions for one or two days. The record of other disciplinary actions in the Drum Division shows that on the first offense of stopping for coffee at a restaurant, a reprimand, verbal or in writing, is given. For the second offense, a disciplinary layoff of one day (in the case of R.L. H) was given. Grievant committed the third offense of stopping in a coffee shop on August 11, 1981 and was given a ten day suspension. Thus, progressive discipline was imposed on grievant. The more serious discipline was his demotion from Light Crew Foreman to fitter as the result of his third offense of stopping at a coffee shop while in charge of his crew and because of the other items in his record with the company.

The instances of discipline of other employees, some of which were for conduct more serious than grievant's conduct on August 11, cannot be evaluated on a bare statement of the offense and discipline imposed. The facts of each occurrence and the record of the employee must also be considered. It is rare that the facts and circumstances of disciplinary cases are identical. There is no evidence that the Wren crew congregated and drank coffee at the 7-11 store. 7-11 stores sell groceries and coffee and other soft drinks "to go". Such stores are not restaurants.

The obtaining of coffee "to go" is not prohibited.

A working foreman such as grievant has supervisory responsibilities over and above his responsibilities as a workman. Those supervisory responsibilities are recognized in a substantial way for, as the union states, grievant has suffered a loss of wages during 1982 in an amount approximating \$3,000. The company must rely on its unit foremen. The unit foremen must not only comply with all safety rules but see to it that the members of his crew comply as well. The crew cannot go to a coffee shop for coffee unless the unit foreman authorizes it and goes with them. The company by the nature of its business operations cannot be expected to have supervisory foremen follow and observe the crews during all of the working hours. The basis of grievant's demotion was that grievant was not a reliable Light Crew Foreman because he had three times over the space of about five years violated a company policy prohibiting congregating for coffee at a restaurant. There are the other matters such as the punching out 15 minutes ahead of time on July 3, 1981 without permission, and in 1973 not working during working hours, taking the "scenic route" back to the yard to use up time until quitting time and working on personal projects during working hours. The charges which were found to be true by the local investigating committee in 1977 are of the same general type as stopping and drinking coffee at a restaurant during working hours. Grievant not only led his crew into a policy violation at Kincaid's. He participated in it and manifested by his conduct then and at the other times that he was not performing his duties as Light Crew Foreman.

Grievant was the shop steward at Auburn. The position of shop steward is a difficult one. It requires the shop steward to act on behalf of the employees in situations where conflicts with supervisors may arise. A shop steward even when acting with tact and diplomacy may irritate the management supervisors. The record does not disclose that grievant's conduct as shop steward or his position as shop steward entered the management decision to suspend and demote him. There is a hearsay statement attributed to a supervisor who is no longer with the company that he wished to "get" grievant. That statement is not supported by credible evidence. There is also a question of personal animosity of Gomes toward grievant. Gomes denies any such animosity and denies any statement that he was out "to get" grievant. The facts are that grievant and his crew were at Kincaid's Coffee Shop on August 11, 1981 during working hours and that grievant knew and must have known that he was violating a division policy.

The company has the right under section 7.1 of the agreement to "demote, transfer, suspend . . . for just cause . . .". Under the facts and circumstances of this case the company did have just cause to suspend grievant by reason of his conduct on August 11, 1981 and his prior offenses and also the company had just cause to demote him. Under section 206.15 of the agreement the company had the right to promote a fitter from Roseville to grievant's position and to demote grievant to the vacancy created in his Roseville headquarters by the promotion of another employee to fill his job.

The grievance with respect to the suspension and demotion must therefor be denied.

Grievant has been employed by the company for over twenty years. The later Gomes audits of grievant's crew were good. By the permanent demotion the company intends to deny him any opportunity to attain again a position as Light Crew Foreman or any higher unit position. The suspension and demotion were for just cause but it would not be just in the light of grievant's long seniority and his abilities to prevent grievant from again becoming a unit foreman by reason of the conduct for which he was suspended and demoted. By now grievant should have learned that he must comply with company policies and give the company a full day's work for his pay.

Award

Pursuant to the Physical Agreement, the submission by the parties and the evidence, the following award is issued:

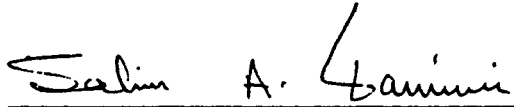
1. The ten day disciplinary layoff of grievant J. I. L. and his demotion and his displacement, and each of them, were proper under the parties' Physical Labor Agreement as last amended.

2. Grievant shall not be prohibited after the date of this award from bidding for a promotion pursuant to the provisions of the Physical Labor Agreement.


January, 14 1983

BOARD OF ARBITRATION:

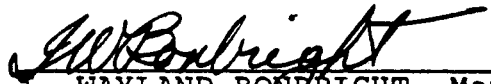
~~Concurs/Dissents~~


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