

In the Matter of Arbitration

between

PACIFIC GAS AND ELECTRIC
COMPANY,

Employer,

and

LOCAL UNION NO. 1245,
INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS,

Union.

OPINION AND AWARD

(Individual Grievant
C B)

Parties' Arbitration
Case No. 109

Arbitration Board:

Employer Arbitrators: I. Wayland Bonbright
Patrick N. Long

Union Arbitrators: Daniel K. Melanephy
Larry Pierce

Chairperson: Harvey Letter

Appearances:

For the Employer:
Laurence V. Brown, Jr., Esq.

For the Union:
Thomas L. Dalzell, Esq.
Staff Attorney

STATEMENT OF THE CASE

As parties to a collective bargaining agreement, which initially took effect September 1, 1952, and, as amended, is effective from January 1, 1980, to December 31, 1982, the Union and the Employer submitted this matter to arbitration. The dispute involves the Employer's discharge of the Grievant. The

Parties agreed that all contract procedures have been complied with, or waived, and that the matter is properly before the Arbitration Board. Hearing was held before the Arbitration Board, and the Parties had full opportunity to present evidence, including the examination and cross-examination of witnesses.

(The Transcript of Record of the arbitration hearing - at page 136, lines 16 to 19 - is corrected to read as follows: "If Employer Counsel decides there is anything further to be placed on the record, in terms of evidentiary material, Employer Counsel will then, in writing, so advise the Arbitrator with a copy to Union Counsel.") After the close of the hearing, the Parties submitted briefs to the Chairperson of the Arbitration Board.

ISSUE

The Parties stipulated:

Was the discharge of the Grievant in violation of the Parties' current Physical Agreement?

If so, what is the remedy?

RELEVANT DOCUMENTARY PROVISIONS

TITLE 7. MANAGEMENT OF THE COMPANY

7.1 MANAGEMENT OF THE COMPANY

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 letter of agreement, or memorandums of understanding clarifying or interpreting this Agreement.

FACTS

There are significant conflicts between testimony given by the Employer's witnesses at the arbitration hearing and testimony given by the Union's witnesses. In resolving the conflicts in testimony, there has been close study of the entire record. In the consequent fact findings, credibility resolutions have been based, in part, upon observation of the witnesses as they testified, in part, upon the witnesses' self-interests, and, in part, upon the testimony considered in relation to the behavior that can reasonably be expected to have occurred in the circumstances. The following fact findings reflect undisputed evidence and the resolutions of the credibility of witnesses.

In March 1982, L G was a Temporary Field Foreman working out of the Employer's Oakport facility. He was supervising a Light Crew of nine employees. On March 9, two members of G's Light Crew were working at the same job site as a two member Manifold Crew consisting of W Mc and the Grievant. The Light Crew employees were digging trenches and laying pipe. The Manifold Crew workers were scheduled to "hang" meters on the pipes. G arrived at the job at about 12:30 p.m.

G checked the work progress of the Light Crew. Although

they had not completed the full range of their usual work tasks, G decided to have the Light Crew go on to another job. He went over to the two Manifold Crew members who were working at their truck. He told Mc that he wanted the Manifold Crew to finish the job, including certain tasks normally performed by Light Crews. Mc answered that he and the Grievant still had "quite a bit of work to do that afternoon" at another job site.

The Grievant complained to G that he and Mc did not have the time to finish the job G was assigning to them.

G said, "you people, all you want to do is no work for pay.

Get paid for doing nothing." The Grievant asked what G meant by "you people." (The record disclosed that, among Black employees of the Company working out of the Oakport location,

G has the reputation of being "anti-Black." For example, according to Mc, G has the reputation of not liking "Black people in general." The Grievant and Mc are Black.

G is White.)

The Grievant and G then "got into a heated argument." The Grievant said that the Manifold Crew was "always getting stuck with the dirty part of the jobs." He said, "The Field Foremen come around, and they are always changing our jobs." He added obscene and negative comments about the job performance of Field Foremen. G removed his eyeglasses and asked whom he meant. The Grievant said that he was talking about G. At that point, the Grievant and G were two to three feet

apart, were both "yelling," were acting in a "very, very belligerent" manner towards each other, and were interspersing their speech with sharp profanities. The Grievant told G: to "Get out of my face, " and to leave the job site. G: answered that he was the Field Foreman and decided "what goes on around here." G added, "I am suspending you as of now until this can be investigated."

G: went to his car which was parked across the street from the Manifold Crew's truck. G: used his car radio to summon to the job site Operating Assistant J F: who was the direct supervisor of the Manifold Crew. As G: was using the car radio, the Grievant made a "contemptuous" hand gesture to G: - using the middle finger of his right hand. G: also called General Foreman J J: to the job.

At the arbitration hearing, G: testified that he "felt physically threatened" by the Grievant's conduct during their confrontation. F: came to the scene between 12:45 and 1:00 p.m. - about ten minutes after G: ' call. G: told F: of "a little confrontation" that he had experienced with the Grievant. G: then related to F: his version of what had occurred. F: went across the street and talked to the Grievant who acknowledged to F: that he had told G: "to get off the job site." About that time, J: arrived. G: told him what had occurred and said that he was going to suspend the Grievant. J: then had F: drive the Grievant to the Company yard.

After reaching the yard, the Grievant was suspended for the remainder of the day.

On March 12, 1982, G prepared a document entitled "Proposed Disciplinary Action." It contains the following "Relevant Background" pertaining to the Grievant.

4-8-75/Letter of reprimand for tardiness. 2-12-76/Letter of reprimand regarding safety. 6-8-76/Letter of reprimand for fighting on job--3 days off. 3-3-78/Letter of reprimand for garnishment. 8-2-78/Letter of reprimand for tardiness. 8-14-79/Letter of reprimand for coffee policy--1 day off. 10-13-80/Letter of reprimand for insubordination. 2-19-81/Letter of reprimand for garnishment. 9-17-81/Letter of reprimand for garnishment--5 days off, no pay.

G recommended the following disciplinary action against the Grievant.

In view of your insubordinate action and refusal to follow a direct order, you are being given three days off, without pay, . . . and, the 1½ hours you were suspended on 3-9-82 (from 3:00 p.m. to 4:30 p.m.) You are urged to correct your improper conduct, and to meet the full responsibilities/requirements of your job. In the future, should you fail to do so, you may subject yourself to further disciplinary action, up to, and including discharge.

Thereafter, higher level Management reviewed G ' proposed discipline and decided that the Grievant should be terminated. (It has not been disclosed that, in doing so, higher level Management was aware of G ' reputation among its Black employees.) On March 18, G issued a letter to the Grievant. It stated, in part,

You have been counselled, given letters of reprimand, and disciplinary time-off, during your employment with the Pacific Gas and Electric Company, regarding attendance,

verbal altercation with a co-worker, garnishments, safety violation, coffee-policy violation, and insubordination.

Due to your most recent action of insubordination, use of abusive language towards a supervisor, your continued irresponsibility towards your employment, and the totality of your employment record, you are terminated from employment with PG and E, effective March 18, 1982.

THE EMPLOYER'S POSITION

The Company contends the evidence "supports a finding of insubordination combined with a reasonable expectation on the part of [G] that he would be physically attacked if he had not retreated from the grievant's aggressive, abusive, and physically threatening action."

The Employer notes that the case poses a fundamental credibility dispute between Union witness Mc and Company witness G concerning the confrontation between the Grievant and G . (The Employer notes that the Grievant did not testify at the arbitration hearing.) The Company asserts that its witnesses should be credited. The Company terms the Grievant's misconduct "demeaning and degrading" and asserts that "it placed G in extreme fear of physical violence." The Company states that its termination action should be considered in the light of the Grievant's prior acts of insubordination and disciplinary layoffs. The Company also asserts that the discharge should be viewed in the context of a statement attributed to the Grievant before the Local Investigating Committee in the course of the

processing of the grievance. Thus, the Committee report contained the statement, "[The Grievant] stated that he would attack a person, from now on, if he gets in his face." According to the Company, that statement demonstrates the Grievant's "announced intention to continue his disobedience in the future and resort to physical violence."

THE UNION'S POSITION

The Union summarizes the confrontation between G and the Grievant in the following way. "As the result of a racially offensive remark the consequence of which Mr. G in all likelihood did not anticipate, the grievant took issue and in a matter of seconds a shouting match had broken out, one which lasted perhaps less than a minute but one which involved profanity on both sides. As the tempers subsided, G 'got out of the grievant's face' and the grievant continued the work which he had been performing before the shouting began."

The Union contends that the testimony of its witnesses should be credited with respect to the confrontation between G and the Grievant. The Union argues that the record does not establish insubordination on the part of the Grievant because he did not refuse an order to perform his work or to refrain from using profanity. In the alternative, the Union acknowledges that the Grievant engaged in conduct "which except for Mr. G ' conduct might be considered insubordination." However, the Union argues

that the Grievant's behavior should not be viewed as insubordinate because G was "guilty of provocative behavior."

The Union contends that the use of obscenity among the Company personnel involved in this case was common. For that reason, the Grievant's use of abusive language and profane language to G does not warrant termination. As for the Grievant's past record, the Union asserts "the company did not meet its burden of establishing that any incident other than the March 9 confrontation entered into the decision-making process which led to the grievant's termination." The Union asserts that, in the circumstances of this case, "the grievant is deserving of much less severe penalty than that decided upon by the company." The Union "feels that a suspension of greater than ten work days. . . would not be justified."

DISCUSSION AND CONCLUSIONS

In the first instance, the contractual validity of the Company's discharge action in this case depends upon identification of the March 9, 1982, conduct that is attributable to the Grievant. The fact findings set forth above - based in substantial part upon credibility resolutions - identify the critical aspects of the Grievant's March 9 conduct. Those findings demonstrate that the Grievant - using profanity - attacked and denigrated Gillis' supervisory functioning as a Field Foreman. Additionally, the Grievant yelled at, and was generally belligerent towards,

G . He went so far as to "order" G to leave the job site. The Grievant directed a commonly understood, vulgar and contemptuous, hand gesture to G . In sum, it is apparent that the Grievant engaged in serious misconduct that warranted the imposition of discipline.

The Grievant's misconduct is reasonably viewed in the context of his past record as an employee. From April 1975 to September 1981, the Grievant was involved in nine situations which resulted in disciplinary action against him. Those nine situations included such infractions as fighting with another employee on the job, insubordination to supervision, and disregard of Company rules. (It is noted that G was unaware of the Grievant's overall discipline history at the time he recommended a three day suspension in the instant case.)

In broad scope, the record suggests that the Grievant generally resented supervisors and particularly those who directed his work. It also appears that, in "ordering" G to leave the job site, the Grievant improperly attempted to arrogate to himself control of the job and to demean Field Foreman G . (Although G testified at the arbitration hearing that he "felt physically threatened" by the Grievant, G did not actually appear to be concerned about his physical well-being. Thus, shortly after his encounter with the Grievant, G told F that he had a "little confrontation" with the Grievant. That report did not reflect that G truly felt threatened by the

Grievant.)

It remains to decide whether the Grievant's past disciplinary history, his generally negative attitude towards supervision, and his misconduct in the instant case warranted his discharge or whether any other factor served to mitigate the Grievant's March 9 misconduct.

It is clear from the evidence that the Grievant's obscenities and verbal attack against G were responsive to G ' comment that "you people" want to be "paid for doing nothing." That G comment is to be viewed in circumstances where G had an unsavory reputation as an anti-Black supervisor among Black employees at the Oakport facility. In those prevailing circumstances, it is deemed reasonable to consider G ' remark to have been invidious and inflammatory. Otherwise stated, it is deemed proper to conclude that G ' comment constituted provocation of the Grievant. Nevertheless, the Grievant's insubordinate and gross reaction in the March 9 confrontation may not be overlooked. He could have taken other, reasonable measures.

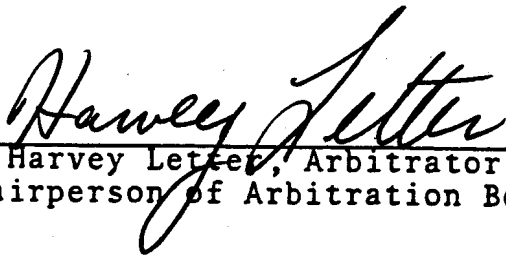
Upon consideration of the overall record and with the purpose of striking a fair and reasonable balance between the circumstance mitigating against the discharge of the Grievant and the adverse aspects and consequences of the Grievant's serious misconduct, it is concluded that the discharge was an excessive penalty in this case and violated the Parties' Agreement. However, a substantial penalty is warranted. In the absence of a valid basis for discharge

under the Agreement, it is concluded that it is justifiable in this case to impose a ninety day suspension against the Grievant. His record shall show a ninety day suspension from the date he was removed from the Employer's payroll. The severity of the discipline should serve to impress upon the Grievant and others the critical importance of refraining from abuse of the Company's supervisory personnel and of accepting the supervisors' role in implementing the Company's operations through reasonable and proper direction.

AWARD

1. The Grievant was discharged in violation of the Parties' Physical Labor Agreement.
2. Although the Grievant's conduct warranted corrective action, the penalty of discharge was not warranted.
3. The Grievant's record shall show a suspension of ninety (90) days from the date he was removed from the Employer's payroll in March 1982.
4. The Grievant shall be reinstated with no loss of seniority and shall receive back pay for the period dating from the end of his ninety (90) day suspension. There shall be deducted from the Grievant's back pay any earnings he received after the end of the ninety (90) day suspension.
5. Pursuant to the Parties' stipulation, the Chairperson of the Arbitration Board retains jurisdiction of this dispute

until all of the terms of the Award are complied with so that he may interpret or correct the Award should it be required.


Harvey Letter, Arbitrator
Chairperson of Arbitration Board

We ~~concur~~/dissent.

/s/ I. Wayland Bonbright

I. Wayland Bonbright 5/11/83

/s/ Patrick N. Long

Patrick N. Long 5/11/83

Employer Members of Arbitration Board

We concur/~~dissent~~.

/s/ Daniel K. Melanephy

Daniel K. Melanephy 5-3-83

/s/ Larry Pierce

Union Members of Arbitration Board

Larry Pierce 5-3-83

Dated: May 17, 1983