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8 IN ARBITRATION PROCEEDINGS PURSUANT TO
9 AGREEMENT BETWEEN THE PARTIES

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11 In the Matter of a Controversy)
)
12 between)
)
13 LOCAL UNION NO. 1245, INTERNATIONAL)
BROTHERHOOD OF ELECTRICAL WORKERS,)
14 AFL-CIO)
)
15 and)
)
16 PACIFIC GAS AND ELECTRIC COMPANY.)
)
17 Involving discharge of S. A)
Grievant. (Arbitration Case No. 111))
18 _____)

OPINION AND AWARD
OF
BOARD OF ARBITRATION

19 This Arbitration arises pursuant to Agreement between LOCAL
20 UNION NO. 1245, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,
21 AFL-CIO, hereinafter referred to as the "Union", and PACIFIC GAS
22 AND ELECTRIC COMPANY, hereinafter referred to as the "Company",
23 under which Messrs. FRANK HUTCHINS and DARYLE J. TURNER were ap-
24 pointed Union Members of the Board of Arbitration (Board), Messrs.
25 DAVID F. KOZEL and I. WAYLAND BONBRIGHT were appointed Company
26 Members of the Board and ARMON BARSAMIAN was appointed Chairman,
27 and under which a decision by a majority of the Board shall be
28 final and binding upon the parties.

29 Hearing was held on March 19, 1983, in San Francisco, California.
30 The parties were afforded full opportunity for the examination and
31 cross-examination of witnesses, the introduction of the relevant
32 exhibits, and for argument. The Union filed its post-hearing

1 brief on or about June 8, 1983. The Company's brief was filed on
2 or about June 13, 1983.

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APPEARANCES:

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On behalf of the Union:

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TOM DALZELL, Esquire, Attorney at
Law, Post Office Box 4790, Walnut
Creek, California, 94596.

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On behalf of the Company:

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L.V. BROWN, JR., Esquire, Pacific
Gas and Electric Company, 245 Market
Street, Room 438, San Francisco,
California, 94106.

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ISSUE

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Was the discharge of S. A. _____ in
violation of the Clerical Agreement
as amended January 1, 1980? If so,
what is the remedy?

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FACTS

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Grievant was hired by the Company in 1974. She became a
24 Meter Reader in February, 1980. In 1981 and early 1982, she
25 was counseled or disciplined five times about her absenteeism,
26 tardiness, or extended break periods. On June 18, 1982, she was
27 discharged for irresponsible conduct. The precipitating incidents
28 took place on June 11 and 15, but the termination letter also
29 cited three earlier disciplinary suspensions.

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The June 11 conduct, alleged by the Company, consisted of
31 sleeping in a Company car for 54 minutes in the morning and then
32 taking a one hour, 36 minute lunch break, rather than the 30

1 minutes allowed. On June 15, she was again allegedly asleep in the
2 Company car.

3 The June 11 incident was reported as a result of an impromptu
4 audit, a standard procedure used by the Company to check on field
5 employees. Grievant did not contest the observations of the two
6 supervisors who did the audit, but explained her conduct differ-
7 ently from the interpretation given it by the observers. She
8 testified, first, that in the morning she was resting in the car
9 in accordance with her doctor's advice. She was pregnant and had
10 been having cramps. Her doctor had recommended, when she saw him
11 on June 10, that she rest whenever the cramps came on. So, on the
12 morning of June 11, she did so. She also testified that she had
13 not told her acting supervisor that morning about the doctor's advice.

14 Secondly, Grievant explained her extended lunch break by testi-
15 fying she first went to the 7-11 store to telephone the Company
16 Employee Assistance Program, then went to a Jack-in-the-Box to get
17 lunch, then back to the 7-11 to meet a co-worker. The co-worker
18 was late and did not appear until Grievant had nearly finished her
19 lunch. While the co-worker ate, Grievant helped her with problems
20 she was having. Grievant then returned the co-worker to her route,
21 returned to her own route, and spent the next 16 minutes in the
22 Company car planning her afternoon work.

23 Similarly, Grievant did not contest that she was in the Company
24 car on June 15, but testified she was not asleep but, rather, was
25 reviewing some computer sheets which the acting supervisor had
26 allowed her to take out on the route.

27 The earlier counseling and discipline, also not contested by
28 Grievant, were as follows:

29	September 8, 1981	Letter confirming counseling
30		on May 18 and 20, 1981 about
		repeated tardiness.
31	December 15, 1981	Assessment of one-day off
32		without pay, for tardiness.

1	January 22, 1982	Notification of two-day sus- pension for taking an extended break.
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3	March 15, 1982	Letter assessing four-day sus- pension for providing false and misleading information in con- nection with an absence. Upon grievance, the discipline was reduced to a two-day suspension.
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7	May 5, 1982	Warning about excessive ab- senteeism.
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9 POSITION OF COMPANY

10 Because Meter Readers are easily identifiable by their uni-
11 forms and vehicles, and are subject to close public scrutiny,
12 their conduct in public is critically important. Indeed, the
13 incidents leading to Grievant's discharge took place after the
14 Channel 7 showing of a TV program produced in the Bay Area, in
15 which Company employees were portrayed as malingerers. The
16 District Supervisor in Marin County had made that program the
17 subject of discussion with the Meter Readers in that district on
18 at least four occasions, so that they knew the importance of pub-
19 lic opinion and of adhering to the Company's work rules.

20 Grievant's many violations of the work rules, absences and
21 tardiness emphasize her willful neglect of her obligation as an
22 employee and constitute just cause for the progressive discipline
23 which the Company implemented, leading eventually to discharge.
24 Furthermore, the progressive discipline and Grievant's failure
25 to conform her behavior to the standard expected, point up an
26 obvious conclusion: that Grievant has an incorrigible disregard
27 for the conditions governing her employment. For that reason,
28 there is no reason to expect any change in her behavior if she
29 were reinstated.

30 Finally, there is no real dispute as to the incidents of
31 June 11 and 15, except about the activities of the two Meter
32 Readers in the Company vehicle during lunch. As to that,

1 Grievant's story was refuted by her co-worker. The Company also
2 urges the point that Grievant's account of the June 15 incident is
3 not convincing.

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POSITION OF UNION

7 For the morning of June 11, Grievant's explanation of why she
8 was "slumped" in the Company vehicle was unrefuted. It is miti-
9 gating even though Grievant should have told the acting supervisor
10 about the doctor's instructions.

11 As to the extended lunch period, the delays were not her fault
12 and her explanation removes her from the "scope of disciplinary
13 action". Her testimony about the time in the vehicle is more
14 credible than the hearsay of the co-worker who was with her. The
15 June 15 charge, in addition, is wrong because Grievant was not
16 asleep but was reviewing computer sheets, which she had with
17 her on permission of the temporary supervisor. Even if she had
18 been asleep, it would not be a violation, as employees may sleep
19 during their lunch breaks and there are no specific times that
20 lunch breaks must be taken.

21 Grievant should be treated leniently because of her good
22 record for seven years before she became a Meter Reader and be-
23 cause the prior discipline she had as a Meter Reader was for
24 unavailability rather than for the same kind of conduct with
25 which she was charged on June 11 and 15. The quality of her
26 performance should not be considered, either.

27 Finally, this is not a "last straw" case. Grievant is not
28 incorrigible or even recalcitrant. Consequently, Grievant
29 should be reinstated, with back pay, except for the time she
30 would have been on a leave of absence.

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OPINION

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The first inquiry to which we turn is whether Grievant did all or some of those things with which she was charged.

Sleeping in Company Vehicle on June 11.

Grievant does not deny the amount of time (54 minutes) but says that she was resting, not sleeping. That distinction is, for our purposes, immaterial. The Company is properly concerned about the image its employees project to the public. That image is equally damaged whether an employee is sleeping or resting. The real question then, is whether Grievant's misconduct should be excused because it was in accordance with her doctor's advice. It cannot be.

Grievant was well aware of the Company's work rules and knew of the Company's concern about its public image. Under those circumstances, she should at least have told a supervisor about the doctor's instructions. She testified she did not tell the District Supervisor, because he was not at work early enough, indicating she knew it was the proper thing to do. Her conduct was indeed irresponsible.

Extended Lunch Break on June 11.

The testimony of the District Supervisor was that Grievant took a total of one hour, 36 minutes away from her route, rather than the 30 minutes allowed. The Company's primary concern is with the 44 minutes she was in the vehicle with the other Meter Reader and the 16 minutes she sat in the car by herself after returning to her own route.

Grievant testified that during the 44 minutes in the car with the other Meter Reader, she was assisting that new employee. The District Supervisor testified that the other Meter Reader told him they had not discussed business and that she became nervous about overstaying the lunch period and prodded Grievant to take her back to her route. The Union countered by pointing

1 out that the co-worker had walked from her route to meet Grievant;
2 she could have walked back if she had wanted.

3 Neither story is particularly credible. Grievant, of course,
4 carries the onus of self-interest. On the other hand, the co-
5 worker's testimony, in evidence through hearsay, is likewise not
6 worthy of much weight. In addition, the co-worker was being
7 queried about her own conduct at that time, and so had consider-
8 able self-interest, too. Because the burden of proof is the
9 Company's, the benefit of the doubt goes to the Union. It is
10 therefore found that Grievant was assisting the other Meter Reader
11 while they were in the car, for at least part of the 44 minutes.

12 Whether that excuses even a portion of Grievant's extended
13 lunch period is another matter. Grievant testified she had been
14 instructed by the temporary supervisor to pick up the other
15 Meter Reader at lunch and see if she needed any assistance. The
16 temporary supervisor, however, testified he did not so instruct
17 Grievant, casting doubt on the credibility of much of Grievant's
18 testimony. But assisting an employee, even absent any super-
19 visory instruction to do so, is hardly grounds for disciplinary
20 action, even if it cuts into productive work time.

21 The final 16 minutes of the extended lunch period was a
22 clear violation of Company work rules. Both documentary and
23 testimonial evidence was introduced that all paperwork or other
24 "non-reading" activity must be done in the office, not on the
25 route. Grievant testified she was "turning the pages" she would
26 have to drive to, an activity the Union counsel characterized
27 as "planning" her afternoon work. That is clearly "non-reading"
28 activity.

29 In sum, it is found that some of the time by which Grievant's
30 lunch break was extended should have been excused, and some should
31 not. But considering each portion of the total period separately
32 can be misleading. The fact is, Grievant was away from her route

1 one hour and 36 minutes. Even giving her the benefit, and as-
2 suming all of the 44 minute period in the car was excusable, a
3 substantial period was not.

4 Sleeping in Company Vehicle on June 15.

5 The evidence that Grievant was sleeping in the car on June 15,
6 is the District Supervisor's testimony that when he arrived at her
7 route at 12:59 p.m., she was in the car, leaning against the window
8 with her eyes closed. He called to her several times, but she did
9 not respond until he spoke very loudly. It was his opinion she
10 was asleep. He also testified that she admitted dozing off during
11 her lunch hour, but neither party clarified when she took her lunch
12 that day. Grievant claimed she was in the car checking computer
13 sheets.

14 Checking computer sheets is admittedly "non-reading" activity.
15 Grievant said, however, that the temporary supervisor had author-
16 ized her to take the sheets with her to her route that day.
17 Another Meter Reader corroborated that, although the temporary
18 supervisor denied it. Even assuming, arguendo, that she had per-
19 mission to take the sheets, the fact does not prove she was
20 working on them at 12:59. As to that point, the District Super-
21 visor's testimony is more credible. It is therefore found that
22 Grievant was sleeping in the car as charged on June 15. Because
23 Grievant did not assert it was her lunch period, it is held that
24 it was not.

25 Penalty.

26 In summary, the evidence indicates that Grievant was sleeping/
27 resting in her vehicle for nearly an hour on June 11, took a some-
28 what extended lunch break that same day, and was sleeping in the car
29 on June 15. That conduct was irresponsible. The question is
30 whether it warranted discharge.

31 The primary factors in determining what discipline is ap-
32 propriate are, the seriousness of the offense(s), the employee's

1 past disciplinary record and length of service, and any mitigating
2 circumstances.

3 Here, no disagreement exists that standing alone, Grievant's
4 offenses on June 11 and 15 were not so serious as to warrant dis-
5 charge. The Company acknowledged as much in its opening statement.
6 Grievant's past record, however, is mixed. Apparently unblemished
7 for approximately seven years, it deteriorated markedly the last
8 year of her employment. She had been warned repeatedly and had
9 been given carefully graduated progressive discipline. A one-day
10 suspension and a two-day suspension were both agreed as warranted
11 by the Union in the course of considering her grievances with
12 respect to them. A four-day suspension was reduced to two days.
13 The final warning letter about Grievant's excessive absenteeism
14 was also concurred in by the Union. That letter indicated, inter
15 alia, that if her attendance did not improve, she would be sub-
16 ject to termination.

17 Coming on top of such a record, the June 11 and 15 incidents
18 do establish a pattern of continuing irresponsible behavior. But,
19 that does not explain how admittedly minor infractions justify a
20 jump from a two-day suspension to a discharge, particularly since
21 Grievant's final warning before the discharge concerned her at-
22 tendance. Indeed, in a counterproductive sort of way, that final
23 warning may well have helped cause one of the precipitating in-
24 cidents. Grievant testified that the reason she did not return
25 to the office and go home when she got the cramps on the morning
26 of June 11 was partly because she had received the warning letter.

27 No doubt exists that the Meter Readers had been warned
28 against the kind of practices Grievant engaged in on June 11 and 15.
29 The District Supervisor testified he had discussed the TV program
30 with them on three occasions. In addition, he had reviewed work
31 rules with them as late as March 16, 1982. Those rules, identi-
32 fied as Standard Practice No. 850-B, introduced as Joint Exhibit 4a,

1 discuss acceptable behavior and conclude with warning that failure
2 to follow them could result in discipline.

3 These warnings however, are a far cry from the warning issued
4 in an earlier case cited by the Company. There, Arbitrator Gentile
5 upheld a discharge for a single incident of falsification of time
6 records and failure to stay in the assigned work area during
7 working hours. (The employee's Company vehicle had been observed
8 in front of his residence during working hours, but he reported
9 that he had worked a full eight hours that day.) In that instance,
10 the employees had been told unequivocally they would be fired if
11 they engaged in that specific kind of conduct. It had been made
12 clear to them it was considered serious enough to warrant summary
13 discharge. This is not the situation in the instant case.

✓ 14 As a final factor, the mitigating circumstances here must be
15 considered. Although Grievant's conduct was irresponsible when
16 she slept or rested in the car on June 11, her doctor had advised
17 her to rest when she had cramps. Although she overstayed her
18 lunch break that same day, part of the time was spent helping
19 another employee. And although she was asleep in the vehicle on
20 June 15, no record evidence exists that it was more than momentary.

21 The Chairman cannot agree that Grievant has demonstrated such
✓ 22 incorrigibility that change in her behavior is unlikely. Her
23 good record, followed by problems only after she became a Meter
24 Reader, suggest that she simply was not mature or responsible
25 enough to handle a job without constant supervision. Given
26 Grievant's prior discipline and this final opportunity for her to
27 show the Company she can be a productive employee, the Chairman
28 believes her behavior on the job will change for the better.

29 Taken as a whole, then, the discharge cannot be upheld. The
30 change from carefully graduated progressive discipline to dis-
31 charge was not justified, particularly in view of the lack of
32 specific advice to the Meter Readers that such behavior would

2 cumstances present here. Grievant will be reinstated, but without
3 back pay. She will suffer no loss of seniority or other contract
4 benefits. But she will be considered to have been on disciplinary
5 suspension from the time of her discharge to the date of her re-
6 instatement, and that fact can be used for future discipline if
7 Grievant demonstrates continuing irresponsibility.

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AWARD

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1. The discharge of S. A. [redacted] was in violation of the Clerical Agreement as amended January 1, 1980.
2. Grievant shall be reinstated to her former position without backpay, but without loss of seniority or other Contract benefits.
3. The time Grievant has been off work shall be considered a disciplinary suspension and her personnel file shall be so noted.

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21 DATED: July 27, 1983.

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24 ARMON BARSAMIAN - Chairman

25 Concur

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FRANK HUTCHINS, Union Member


DAVID F. KOZEL, Company Member


DARYLE S. TURNER, Union Member


I. WAYLAND BONBRIGHT, Company Member

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Dated: 9-5-83

Dated: 9-1-83