

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

Arbitration Case
No. 112

Discharge of
F

OPINION AND DECISION

OF

BOARD OF ARBITRATION

SAM KAGEL, Chairman

ROGER STALCUP and
FRANK SAXSENMEIER, Union Members

I. WAYLAND BONBRIGHT and
JEFFREY D. SISSON, Company Members

BACKGROUND:

On November 16, 1983, the Board issued a Decision in the case of F dealing with the issue of whether or not a grievance filed by Ms. F was timely. The Board held that her grievance was timely filed. The matter was then referred back to the Parties insofar as the merits are concerned. Ms. F was reinstated to her employment on January 3, 1984.

The remaining question is what, if any, retroactive or damage settlement Ms. F is entitled to receive.

Negotiations ensued with reference to a settlement of the claims of Ms. F, and a Settlement and Release of all Claims (Arbitrator's Exhibit 1) was drafted between the Company and the Union and is attached hereto and made a part hereof.

Part of the negotiations also included a deletion of paragraph 3 of a letter dated December 22, 1983, addressed to Ms. F from Ira R. Irwin, Regional Manager of Pacific Gas and Electric Company (Jt. Ex. 15), which reads as follows:

- "3) You will be required to maintain with the Company a current address and telephone number so that you may be contacted for overtime assignments or any other employment related matters."

Arbitrator's Exhibit 1, attached hereto, and the exclusion of paragraph 3 of Joint Exhibit 15 were trans-

mitted to Ms. F : by the Union. Ms. F was unwilling to accept the offer, although the Union as an institution believed that the proposed settlement was acceptable in view of the entire record in this case.

DISCUSSION:

At the hearing, on March 28, 1984, Ms. F : appeared as a witness. The final offer of the Company reflected by Arbitrator's Exhibit 1 and Joint Exhibit 15 is a final offer of \$ damages, all sick leave, 15 days vacation, and paragraph 3 to be deleted out of the December 22 letter. Ms. F was asked why that offer was unacceptable, and she responded:

"For the reasons that I have stated, that the \$ are for damages which there is, as far as I know, there is no provision for in the contract, that is the contract that was violated."

Ms. F also complained that the Company should have returned her to work at an earlier date than it did.

Title 102 of the Collective Bargaining Agreement between the Parties sets forth the grievance procedure, and Section 102.8 of that Title reads:

"By written agreement between Company and Union, other provisions may be substituted for or added to the provisions of this Title."

Accordingly, it is completely proper within the terms of the Agreement that the Company and the Union could agree, as they did in this case, to a settlement of Ms. F 's claim

based upon the concept of damages. Additionally, the Arbitrator has the authority to fashion a remedy in accordance with accepted law.

An examination of the entire record in this case establishes that the proposed settlement, namely Arbitrator's Exhibit 1, is a fair settlement of the claims of Ms. Ferrer. And, as already noted, the Agreement between the Parties and the Arbitrator's independent authority provide for the settlement of Ms. Ferrer's claim to be cast in the form as it appears in Arbitrator's Exhibit 1.

DECISION:

Arbitrator's Exhibit 1 is adopted as the full and final settlement of all claims of Ms. Ferrer against the Company. Additionally, the letter of December 22, 1983 (Jt. Ex. 15), addressed to Ms. Ferrer shall be modified so as to exclude paragraph 3 of that letter.

Sam Kagel
Chairman, Neutral Member

Concur/~~Dissent~~

W. Wright
Employer Member

Concur/~~Dissent~~

Stephen D. Brown
Employer Member

Concur/Dissent

Frank Saksenmeis
Union Member

Concur Dissent

Roger Stalup
Union Member

Concur Dissent

Dated: May 14, 1984
San Francisco, California

SETTLEMENT AND RELEASE OF ALL CLAIMS

This agreement is made as a compromise between the parties for the complete and final settlement of their claims, differences, and causes of action with respect to the dispute described below.

WHEREAS, F (hereinafter "F") has alleged and asserted against Pacific Gas and Electric Company (hereinafter "PG&E") various claims, rights and actions arising out of her employment relationship with PG&E and the termination of that employment relationship, including but not limited to wrongful discharge, intentional infliction of emotional distress, and negligent infliction of emotional distress;

WHEREAS, the International Brotherhood of Electrical Workers, AFL-CIO, Local 1245 (hereinafter the "Union") has, pursuant to its collective bargaining agreement with PG&E, filed a grievance on behalf of F ;

WHEREAS, PG&E denies and disputes any and all of said alleged and asserted rights, claims and actions of Ferrer and that it is liable to Ferrer in any manner; and

WHEREAS, PG&E wishes to avoid the expense of litigation and F desires to compromise, settle, satisfy, discharge and release in full any and all rights, claims, and actions whatsoever arising under contract or state or federal law or regulation which she has or may have against PG&E arising out of her employment relationship with PG&E and/or the termination of that employment

relationship;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, PG&E, F and the Union, with the express intent of extinguishing all of F 's rights, claims or actions against PG&E, hereby agree as follows:

1. PG&E will pay to F : a single lump sum settlement payment in the total amount of , DOLLARS (\$) following the execution of this Settlement and Release of All Claims.

2. PG&E will credit F : with all sick leave to which she would have been entitled had she not been terminated and fifteen (15) days of vacation for the period between her termination and reinstatement.

3. PG&E will modify its letter to F . dated December 22, 1983, by deleting the third enumerated condition.

4. PG&E, the Union, and F release each other from any and all claims, demands, and causes of action of any kind whatsoever, whether known or unknown, which either of them has had against the other relating to F 's employment relationship with PG&E and/or termination of that relationship. PG&E and the Union agree to withdraw the grievances filed by the Union from the grievance procedure without prejudice to either party. Each has read and understands and expressly waives the benefits of Section 1542 of the California Civil Code which provides that "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of

executing the release, which, if named by him must have materially affected the settlement with the debtor."

5. As a result of the complete release of PG&E from all claims and demands of F , F irrevocably binds herself never to commence at any time or at any place any action or suit, either in state or federal court or before any state or federal agency or before any arbitrator, for any claims for damages or for any type of relief whatsoever against PG&E arising out of her termination with PG&E in 1982. Additionally, F agrees to prohibit any entity or governmental agency from bringing any such action on his behalf. F expressly agrees and covenants that this instrument may be pleaded as a defense and as a bar to any action or proceeding that may be brought by F or on her behalf relating to the termination of her employment relationship in 1982.

6. The parties agree that nothing in this Settlement and Release of All Claims shall be construed as an admission of liability on the part of PG&E or used against it in any other proceedings. The payment set forth in paragraph 1 is not considered back wages but is considered to be a "nuisance settlement", tax free. Union specifically acknowledges that the settlement of this dispute is a "nuisance settlement" which may not be considered by any party as precedent in future interpretation of the collective bargaining agreement.

7. Each party agrees that it will not reveal, divulge, communicate or publicize the terms of this Settlement and Release

of all Claims.

For PG&E

John D. Wright Dated: *3/28/84*

For the Union

Tom Dalzell Dated: *6/26/84*

F

John D. Wright Dated: *6/1/84*