

1 DAVID A. CONCEPCION
2 Arbitrator
3 65 Stevenson Avenue
4 Berkeley, California 94708
5 Telephone: (415) 849-3832

Arbitrator's Case No. 05-02-85
PG&E/IBEW Arbitration Case No. 129

6
7 IN ARBITRATION PROCEEDINGS PURSUANT TO
8 AGREEMENT BETWEEN THE PARTIES

9
10 In the Matter of a Controversy)
11 between)
12 INTERNATIONAL BROTHERHOOD OF)
13 ELECTRICAL WORKERS, LOCAL 1245,)
14 AFL-CIO,)
15 and)
16 PACIFIC GAS AND ELECTRIC)
17 COMPANY,)
18 Involving the discharge of)
19 J , Grievant.)

ARBITRATOR'S
OPINION AND AWARD

19 This Arbitration arises pursuant to Agreement between
20 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1245,
21 AFL-CIO, hereinafter referred to as "Union," and PACIFIC GAS AND
22 ELECTRIC COMPANY hereinafter referred to as "Company," under
23 which a Board of Arbitration was selected consisting of DAVID A.
24 CONCEPCION as Chairperson, ROGER STALCUP and BOB CHOAT as
25 Appointees for the Union, and I. WAYLAND BONBRIGHT and DAVID
26 BERGMAN as Appointees for the Company; and under which the
27 majority decision of the Board shall be binding upon the parties.

28 Hearing was held in San Francisco, California on Thursday,

1 May 2, 1985 at which time the parties were afforded the opportunity,
2 of which they availed themselves, for examination and cross-
3 examination of witnesses, for introduction of relevant exhibits,
4 and for argument. Further, the parties agreed to submission of
5 post-hearing briefs which were received in a timely fashion.
6

7 APPEARANCES:

8 On behalf of the Union:

9 Thomas Dalzell
10 Attorney at Law
11 International Brotherhood of Electrical Workers
12 Local 1245
13 Post Office Box 4790
14 Walnut Creek, California 94596

13 On behalf of the Company:

14 Lawrence V. Brown, Jr.
15 Attorney at Law
16 Pacific Gas and Electric Company
17 245 Market Street
18 San Francisco, California 94106

18 CONTRACT PROVISIONS

19 TITLE 9. GRIEVANCE PROCEDURE
20 Step Six - Arbitration

21 A. Tripartite Board

22 Either Company or Union may request, within the time limits
23 provided in the foregoing steps, that a grievance which is not
settled at one of the steps provided above be submitted to arbi-
tration.

24 An Arbitration Board shall be appointed on each occasion that
25 a grievance is timely submitted to arbitration pursuant to the
26 foregoing provisions of this Title. The board shall be composed
27 of two members appointed by Company, two members appointed by
28 Union, and a fifth member appointed pursuant to the procedure set
forth in the following Subsection B. Such fifth member shall act
as Chairman of the Arbitration Board and conduct hearings and
render a decision in accordance with the appropriate Submission
Agreement.

1 TITLE 24. MANAGEMENT OF COMPANY AND MISCELLANEOUS

2 24.1 Management of Company

3 The management of the Company and its business and the
4 direction of its working forces are vested exclusively in Company,
5 and this includes, but is not limited to, the following: to
6 direct and supervise the work of its employees; to hire, promote,
7 demote, transfer, suspend, and discipline or discharge employees
8 for just cause; to plan, direct and control operations; to lay off
9 employees because of lack of work or for other legitimate reasons;
10 to introduce new or improved methods or facilities, provided, how-
11 ever, that all of the foregoing shall be subject to the provisions
12 of this Agreement, arbitration or Review Committee decisions, or
13 letters of agreement, or memorandums of understanding clarifying
14 or interpreting this Agreement. (Relocated from 1.3 on 1-1-80)

11 ISSUE

12 Was the Grievant's discharge in violation of
13 the Agreement? If so, what is the remedy?

16 BACKGROUND

17 The Grievant was hired by the Company on February 26, 1979
18 as a Plant Assistant in the Company's meter shop located in Fre-
19 mont, California. The Grievant worked as a Plant Assistant until
20 she suffered an on-the-job back injury on October 9, 1980. The
21 Grievant was returned to work in early 1981 but after a few months
22 she went back on workers' compensation. In November 1983 the
23 Grievant was returned to work as a Meter Reader in Hayward,
24 California. The Grievant was provided training necessary to the
25 performance of her new duties. Subsequently, on January 16, 1984
26 the Customer Service Supervisor, P. , who supervised
27 the Grievant conducted an impromptu field audit, known as a Class
28 I audit, on the Grievant and the Grievant's work was deemed
satisfactory.

1 On March 22, 1984 a Senior Meter Reader named U I
2 was assigned the task of reading a gas meter located at 27605
3 Gainsville Avenue on the Grievant's route. The meter was not read
4 by the Grievant in the normal course of her work the day before
5 because it was somehow blocked from view. The Senior Meter Reader
6 was not able to gain access to yard at 27605 Gainsville Avenue
7 so he read the gas meter through the fence of the adjoining
8 property located at 27593 Gainsville Avenue. After the Senior
9 Meter Reader had taken a reading of the gas meter for 27605
10 Gainsville he routinely read the gas meter at 27593 Gainsville.
11 The Senior Meter Reader noticed that his reading of the gas
12 meter at 27593 Gainsville Avenue was significantly different from
13 the reading recorded by the Grievant the day before. The Senior
14 Meter Reader's reading of the gas meter at 27593 Gainsville
15 Avenue was 7992 compared to the Grievant reading of 8020 and
16 compared to the reading of 7949 for the month of February 1984.
17 The Senior Meter Reader observed that Grievant's reading was
18 off in 1000's, 100's and 10's, a condition which lead him to
19 believe that the Grievant had not actually read the meter but had
20 "curbed" the meter by entering an estimate instead. The Senior
21 Meter Reader reported his suspicion to Customer Service Supervisor
22 P .. The Grievant was not confronted with the latter infor-
23 mation or a concomitant allegation of "curbing."

24 On the morning of March 27, 1984 Customer Service Supervisor
25 P informed the Grievant that he would be joining her later
26 on her route to conduct a Class II audit of her work. The latter
27 audit is where a supervisor walks along the route with a meter
28 reader and the supervisor reads the meter after it is read by the

1 meter reader. Customer Service Supervisor P joined the
2 Grievant on her route around 11:00 a.m. At the time the Customer
3 Service Supervisor joined the Grievant he had already read
4 approximately 150 meters at the beginning of her route. The route
5 consisted of approximately 700 accounts involving both gas meters
6 and electric meters. After the Customer Service Supervisor had
7 walked along with the Grievant for an hour he took the first half
8 of the Grievant's account book and left her to complete her route.
9 The Customer Service Supervisor then compared his earlier readings
10 with her earlier reading and he found numerous discrepancies and
11 he concluded that some of the errors involved "curbing." The
12 Customer Service Supervisor later rejoined the Grievant and com-
13 pleted her route with her but he did not confront the Grievant.

14 On March 28, 1984 the Customer Service Supervisor verified
15 the meters he believed were "curbed" and he checked the remainder
16 of the Grievant's route. The Customer Service Supervisor con-
17 cluded the Grievant had "curbed" 17 meters. Meanwhile, in the
18 afternoon of March 28, 1984 the Grievant reported back to the
19 office where she asserted she had aggravated her back condition
20 while seeking to open a heavy metal gate and so she was released
21 to see her doctor. The Grievant, as a result of her doctor's
22 examination, did not again return to work but was returned to
23 workers' compensation.

24 On April 9, 1984 a meeting was held with the Grievant and
25 her Union representative where she was confronted with the find-
26 ings of the Company. On April 14, 1984 the Grievant was termin-
27 ated for "curbing." The Grievant denied any wrongdoing and
28 challenged the propriety of her discharge. The matter was submitted

1 to the grievance process and it proceeded to this Arbitration.
2

3 POSITION OF COMPANY

4 The Grievant's discharge was not in violation of the Agree-
5 ment. The Grievant was discharged for just cause. The Grievant
6 was fully aware that it was against the Company's rules governing
7 employee conduct to make false entries in the Company's account
8 books and yet she did so. The Company has consistently terminated
9 employees who have "curbed" on the first offense. The entries
10 made by the Grievant which were identified as "curbed" were so
11 identified because those readings were not consistent with the
12 typical reading error which would involve discrepancies involving
13 1000's, 100's and 10's. The judgment that "curbing" occurred is
14 made by two highly experienced personnel, that is, a Senior Meter
15 Reader with 32 years service and a Customer Service Supervisor
16 who had 9 years of experience reading meters before being promoted
17 to a supervisory position. The meters "curbed" by the Grievant
18 involved accounts where it was difficult to read the meters.
19 Moreover, at least one of the meters involved could not have been
20 read in the manner claimed by the Grievant. The Grievant "curbed"
21 one meter on March 22, 1984 and she "curbed" seventeen other
22 meters on March 27, 1984. Thus, for the reasons stated the
23 grievance should be denied.

24
25 POSITION OF UNION

26 The Grievant's discharge was in violation of the Agreement.
27 The Grievant was not discharged for just cause. On November 9,
28 1983 the Company's Workers' Compensation Rehabilitation Specialist

1 sought to learn from the Grievant's doctor whether the Grievant
2 could perform work as a Meter Reader. The Grievant's doctor
3 responded on November 11, 1984 that he did not believe the Grie-
4 vant could work as a Meter Reader. The latter notwithstanding,
5 the Grievant wanted to try to do the work so on November 14, 1984
6 the Grievant's doctor acquiesced to a 90 day trial and the Grievant
7 was returned to work. The Grievant was taking prescription pain
8 killers and muscle relaxants and she so informed Senior Meter
9 Reader Ulstad, who was her on-the-job trainer, and her supervisor,
10 Customer Service Supervisor Peirson. Despite her condition the
11 Grievant committed herself to learning to be a Meter Reader. On
12 the morning of March 27, 1984 the Grievant took Tylenol with
13 Codine, a pain killer, and Robaxin, a muscle relaxant.

14 The accuracy of the readings made by the Customer Service
15 Supervisor must be doubted. A usage comparison on a year to date
16 basis show considerable differences. As the record establishes,
17 the Customer Service Supervisor does not have a propensity for
18 accuracy. Moreover, certain single dial differences can be
19 accounted for by the time lapse between the Grievant's reading
20 early in the morning and the Customer Service Supervisor's read-
21 ing later. Further, the notion that all of the meters in question
22 were difficult reads, so to speak, is not supported by the evidence.
23 Further, in those cases where the electrical meter and the gas
24 meter are in the same location the Grievant properly read the
25 electrical meter. The fact is that gas meters are five times
26 harder to read than electrical meters according to the Company's
27 statistic that for every 3 electrical meter errors there are 14
28 gas meter errors.

1 Another feature which must be considered is that the Grievant
2 knew she was being audited before she started her route on March
3 27, 1984 and it is incredible to believe that she would falsify
4 her readings under those circumstances let along normal circum-
5 stances.

6 The Grievant, as a new meter reader, did make an error on
7 March 22, 1984 and she made several errors on March 27, 1984
8 while she was in pain and under the stress of being audited but
9 she did not "curb" any meter and the Company did not prove she
10 "curbed" any meter. Thus, for the reasons stated the grievance
11 should be sustained.

12
13 DISCUSSION

14 The Company's position relies first on the accuracy of the
15 readings made by Senior Meter Reader U. and Customer Service
16 Supervisor P. The Union does not challenge the single
17 reading done by the Senior Meter Reader and it attributes the
18 discrepancy found to an unintentional error by the Grievant. The
19 Union does challenge the readings done by the Customer Service
20 Supervisor on the basis that he is not prone to accuracy. The
21 Union cites various aspects of the evidence in which the Customer
22 Service Supervisor made error regarding dates not only in his
23 testimony but in documentary evidence as well. There is no doubt
24 about the Customer Service Supervisor's errors regarding dates;
25 however, the latter is not sufficient to draw the correlation sought
26 by the Union. In the matter of dates the Customer Service Super-
27 visor is originating information but in the matter of meter read-
28 ings the Customer Service Supervisor is viewing dials and then

1 recording what he has seen. Moreover, there is no evidence that
2 the Customer Service Supervisor was prone to meter reading errors
3 when he was a Meter Reader himself. In addition it is the testi-
4 mony of the Customer Service Supervisor that he double check the
5 meter in question and there is no reason to doubt him on the
6 latter point. The readings done by the Senior Meter Reader and
7 the Customer Service Supervisor are accepted as accurate.

8 The Union's position is that the Grievant simply read the
9 meters in question wrong. The Union attributes the Grievant's
10 errors to the Grievant's claim that she was in pain, that she
11 was using a pain killer, as well as a muscle relaxant on March 27,
12 1984 and that she was under stress because she was being audited.
13 The Grievant's testimony is that at some time in the past she
14 told both the Senior Meter Reader and the Customer Service Super-
15 visor that she was taking prescription drugs. However, both the
16 Senior Meter Reader and the Customer Service Supervisor both deny
17 that they were ever told the latter by the Grievant. In any
18 event, the Grievant does not claim that she told either the
19 Senior Meter Reader or the Customer Service Supervisor that she
20 had taken the drugs described on March 27, 1984. The record
21 shows that the Grievant did not use the prescription drugs avail-
22 able to her on a regular periodic basis but that she used the
23 prescription drugs as necessary. Under the Company's rules,
24 which the Grievant understood, she had a responsibility to dis-
25 close her use of prescription drugs upon coming to work on March
26 27, 1984 and she did not do so. Further, there is no evidence
27 that the drugs supposedly used would impair the Grievant's ability
28 to perform her duties in an effective and efficient manner. The

1 Grievant may not be the beneficiary of her own failure to comply
2 with the Company's established rules regarding the use of drugs.

3 The Grievant's claim that she did use certain prescription
4 drugs implies that she was suffering a certain amount of pain;
5 however, again she never revealed her condition on March 27, 1984.
6 Moreover, no correlation was established between the existence
7 of pain and an ability to read meters. That is, the Grievant
8 evidently opened gates, bent and stooped or squated to read
9 meters on March 27, 1984. Thus, either the pain condition was
10 suppressed by drugs or it was not so severe as to prevent the
11 Grievant from working as usual.

12 The Grievant claims that she was under stress, because of
13 the audit, is not supported by the facts. The Grievant's errors
14 occurred on accounts before she was accompanied by the Customer
15 Service Supervisor. The notion that there was some crossover on
16 Roxanne is not totally clear because that is the street on which
17 the Customer Service Supervisor met the Grievant.

18 The Union properly notes, that contrary to the general
19 assertion by the Customer Service Supervisor, there was not an
20 access problem to every account where "curbing" is alleged.
21 Moreover, the Union observes that there are accounts where the
22 electrical meter as well as the gas meter are in the same loca-
23 tion and that a correct electrical reading was recorded. The
24 latter evidence supports the Union's contention that the Grievant
25 simply made a reading error.

26 The Company's case depends on its contention that reading
27 errors occur in terms of 1000's, 100's and 10's. Nevertheless,
28 the notion that errors always occur in the latter manner is not

1 advanced. The one area where the Union does not sufficiently
2 overcome the circumstantial evidence is the account located at
3 1136 Tirgen where the Grievant claims she read the gas meter
4 through the fence of the adjoining property. The evidence is
5 clear that the latter reading was not possible because the meter
6 faced to the rear of the yard. In the matter of the account at
7 1136 Tirgen all the circumstantial evidence support the finding
8 that the Grievant did "curb." The Company is not obligated to
9 prove that "curbing" occurred in every account under suspicion.
10 "Curbing" of one account is sufficient to establish the violation
11 of the Company rule against false reporting. Moreover, the fact
12 that the Company has consistently terminated employees for even
13 a single "curb" effectively eliminates the application of a
14 lesser penalty. The Grievant knew that "curbing" was absolutely
15 forbidden but she did so anyway. Therefore, for the latter rea-
16 son as well as the reasons contained in the foregoing the grie-
17 vance is denied. The Grievant's discharge was not in violation
18 of the Agreement.

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

AWARD

The grievance is denied. J. ...'s
discharge was not in violation of the Agreement.

Dated: August 27, 1985

DAVID A. CONCEPCION
Arbitrator

I. WAYLAND BONBRIGHT, Company Member

Concurs ~~Dissents~~
Dated: 9/4/85

DAVID BERGMAN, Company Member

Concurs ~~Dissents~~
Dated: 9-5-85

ROGER STALCUP, Union Member

Concurs ~~_____~~ Dissents
Dated: 9/9/85

Bob Choate, Union Member

Concurs ~~_____~~ Dissents
Dated: 9-9-85