

In the Matter of an Arbitration

between

LOCAL UNION NO. 1245 INTERNATIONAL
BROTHERHOOD OF ELECTRICAL WORKERS,

Complainant,

and

PACIFIC GAS & ELECTRIC COMPANY,

Respondent.

Re: Arbitration Case No. 137

OPINION & DECISION

of

Board of Arbitration

San Francisco, California

RECEIVED FEB 3 1986

BOARD OF ARBITRATION:

On Behalf of the Union:

Messrs. Larry Pierce & Roger Stalcup
Local Union No. 1245, IBEW
P.O. Box 4790
Walnut Creek, CA. 94596

On Behalf of the Employer:

Ms. Margaret Short & Mr. I. Wayland Bonbright
PACIFIC GAS & ELECTRIC COMPANY
245 Market Street
San Francisco, California 94106

Chairperson:

Barbara Chvany, Arbitrator
110 Sutter, Suite 806
San Francisco, California 94104

APPEARANCES:

On Behalf of the Employer:

L.V. Brown, Jr., Esq.
PACIFIC GAS & ELECTRIC COMPANY
245 Market Street
San Francisco, CA. 94106

On Behalf of the Union:

Tom Dalzell, Esq.
IBEW LOCAL 1245
P.O. Box 4790
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INTRODUCTION:

This dispute arises under the Collective Bargaining Agreement between the above-captioned Parties (Jt. Ex. 1A, B). Pursuant to the Agreement, the Board of Arbitration was constituted and hearings were conducted on June 27 and July 16, 1985 in San Francisco, California. At the hearing, the Parties had a full opportunity to examine and cross-examine witnesses and to present relevant exhibits. A verbatim transcript of the proceedings was taken (cited herein as Tr.__). The Parties stipulated that the prior steps of the grievance procedure have been followed or waived and the matter is properly in arbitration (Tr. 4). Post-hearing briefs were submitted by the Parties.

This case involves three discharges and a five-day suspension that were combined for hearing. P R , and
. C . were the Employees discharged and Mc
was issued the five-day disciplinary layoff. All of the Employees were Collectors in the Company's Belmont office during the relevant time period. Another Collector, M. , was issued a

one-day disciplinary layoff as a result of the same investigation which led to the discipline of the Grievants in this matter.

Mr. M. did not grieve.

ISSUE:

Were the discharges of C , R , and P in violation of the Agreement? If so, as to any or all of them, what is the remedy?

Was the disciplinary layoff of Mc in violation of the Agreement? If so, what is the remedy? (Jt. Ex. 2; Tr. 3)

AGREEMENT PROVISIONS:

Section 24.1 of the Agreement vests in the Company the right to "discipline or discharge Employees for just cause" (Jt. Ex. 1A).

COMPANY RULES:

Company Standard Practice 735.6-1 governing Employee conduct includes the following:

STATEMENT OF POLICY:

1. It is the policy of the Company that employees shall at all times practice fundamental honesty. Employees shall not, nor attempt to: ... take or misuse Company property, funds, or service ...

* * *

SUPPLEMENT, SECTION 20, COMPANY FUNDS ...

*20. All funds collected on behalf of the Company shall be promptly and properly reported, deposited and credited to the proper accounts. Employees shall factually report time worked or not worked including accurate details of work performed,

materials used and money spent when applicable... .

Some examples of violations:

-Misappropriation of funds by theft or falsification of records related to such funds.

-"Temporary borrowing" of funds by unauthorized IOU's or lapping of customers' payments.

* * *

-Entering falsified and untruthful information on time cards for the purpose of gaining unearned pay or concealing unauthorized absences.

(Co. Ex. 1)

Each Grievant acknowledged receipt of the foregoing Standard Practice (Co. Ex. 4A, 5A, 6A and 7A).¹

BASIS FOR DISCIPLINE:

All four Grievants were disciplined for activities related to their collection duties in the Belmont office. The following are the charges issued each Grievant by letter:

P : violation of Company Standard Practice 735.6-1, "specifically withholding Company cash collections, falsification of Company records and misuse of Company time." (Co. Ex. 4C)

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A standard practice governing collection procedures was admitted into the record as well as a document delineating the Collector function (Co. Ex. 10, 11). It was not established that the Grievants either received or were trained in the specifics of these two documents, however.

R : violation of Company Standard Practice 735.6-1,
"specifically withholding Company cash collections, falsifi-
cation of Company records and misuse of Company time."
(Co. Ex. 5C)

C : violation of Company Standard Practice 735.6-1,
"specifically withholding Company cash collections, falsifi-
cation of Company records and misuse of Company time."
(Co. Ex. 6C) C 's letter also references his disci-
plinary history.

MC : violation of Company Standard Practice 735.6-1,
"specifically falsification of Company records and misuse of
Company time" (five-day disciplinary layoff) (Co. Ex. 7C).

GENERAL BACKGROUND:

Each of the Grievants had been assigned as a Collector in
Belmont for two years or more at the time of the events at issue.

G , Customer Services Supervisor, was the Grievants'
first line Supervisor during the relevant period, having succeeded
J G in June 1983 (Tr. 17, 143). Rosemary Stuebing was the
District Customer Services Supervisor over Ms. G (Tr. 8, 9).

The function of a Collector is performed primarily in the
field. Collectors receive a computer-generated collection packet,
segregated by geographic area. After checking in the office to
ascertain if prior payment has occurred, those calls that are not

struck from the Collector's daily productivity report for this reason are then made by the Collector in the field. On the daily productivity report, the Collector is to note the time of the call and enter a code for the transaction, such as Code 1 for full payment, Code 2 for partial payment and other codes for other non-collection activities.

Upon returning to the office after the day's assignment, the Collector prepares a list of bills paid which is deposited with the Office Cashier along with the receipts, stubs and funds collected (cash, checks and money orders). Both the Collector and the Cashier sign off when the currency is transferred.

PRELIMINARY INVESTIGATION:

There is some conflict in the testimony as to the manner in which the suspicion of discrepancies first came to the attention of Supervision. The record is clear, however, that in 1984, Ms. G commenced a preliminary investigation when some question was raised as to the Collectors' processing of payments (Tr. 144-145). Her investigation included examination of documents and interviews with the five Collectors and disclosed certain irregularities (Tr. 13, 14, 18, 19, 145, 147, 150). All five Collectors were examined in the preliminary investigation; improprieties were discovered for three Collectors, but not for Mc or M (Tr. 40, 41). Supervision did not obtain the clarification sought in the preliminary investigation and an internal audit was pursued (Tr. 14).

Under Standard Practice 735.6-1, the appropriate course of action by Supervision under circumstances where it suspected irregularities of this type would have been to make an immediate report to the Internal Auditing Department (Co. Ex. 1; Jt. Ex. 3, pp. 13-14). This did not occur. The report on the investigation by Internal Auditing, discussed further below, notes that the failure of Supervisory personnel to comply with Standard Practice 735.6-1 impeded their investigation (id.). It was not established, however, that actual prejudice resulted to the Grievants as a result of the preliminary investigation; and, there is no dispute that a thorough investigation did occur when Internal Auditing became involved.

AUDIT:

The investigation by Internal Auditing was conducted under the supervision of Robert J. Tarsia, Assistant Internal Auditor. It covered the period January 1, 1984 to April 13, 1984 (Tr. 56). The paperwork of each of the Collectors was examined and cross-checked, and interviews were conducted with all of them (Tr. 55-59, 60; Co. Ex. 4-7). Work sheets and summaries were prepared based upon the internal Company documents reviewed by Mr. Tarsia (Tr. 60, 61; Co. Ex. 4E, 4F, 5E, 5F, 6E, 6F, 7E, 7F). An Audit Report summarizing the findings of the Auditor's investigation was also prepared (Jt. Ex. 3).

The audit discovered that falsification of Company records had occurred on the part of all five Collectors: each of the Collectors had included calls on his daily productivity reports

which he did not, in fact, make (Jt. Ex. 3, p. 2; Co. Ex. 4-7F; Tr. 74-75, 76, 79-80). (This activity is referred to herein as "padding.") In the interviews conducted as part of the Auditor's investigation, each of the Grievants admitted to this activity, as did M (Co. Ex. 4B-7B, 8). Mc and C also admitted to misuse of Company time (Co. Ex. 6B, 7B). All five stated they had, on occasion, turned collections over to others to process (Co. Ex. 4B-7B, 8). Other findings involving withheld collections are set forth hereinbelow, under INDIVIDUAL SUMMARIES.

SUPERVISION AND TRAINING:

Prior to the time the discipline at issue was imposed, field observations or spot checks of the Collectors were infrequent, if conducted at all (Tr. 135, 148-149, 150). The Collectors were basically unsupervised during the course of the workday. The productivity reports were turned in to Supervision and reviewed periodically. The other documentation prepared by the Collectors was turned in to the Cashier: the list of bills paid, receipts and actual collections. Cross-checks of the productivity reports with that documentation were generally not performed (Tr. 21, 67, 135-136, 138-139, 150, 154).

The record reflects that cross-checking of the documentation filled out by Collectors would have revealed the abuses that were ascertained by the internal audit. Laxity in supervisory monitoring of Collector's work was established. However, the record fails to establish that members of Supervision condoned or were, in fact, aware of the practices that were being engaged in by the

Collectors on a regular basis, such as padding of productivity reports, untimely turn-ins and giving collections to others.²

The Audit Report notes that significant improvement was required in the supervisory direction and control of Collector activities in the Belmont office and makes specific recommendations for this purpose (Jt. Ex. 3). All of the Grievants testified that they received no training by Supervision but only training by other Collectors, most of whom also engaged in the questionable practices at issue in this case (Tr. 206, 207, 222, 189-190, 171, 172, 134, 147, 18, 66, 67).

The record indicates that written procedures as to cash handling, the completion of productivity reports and the handling of other documentation such as receipts and the list of bills paid were not specifically reviewed with or disseminated to the Collectors (Tr. 139, 140, 142, 147, 172, 190).

The foregoing factors may be regarded as mitigating in circumstances where failure to follow Company policy and procedure is involved. Such factors do not serve to excuse intentional misconduct, however.

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The Union cites some occasions in which a Collector was instructed by a Supervisor to give his collections to another to process. This does not establish blanket condonation of the practice of giving collections to others in the absence of supervisory approval to do so.

DECISION TO DISCIPLINE:

The Division Manager, in consultation with a Disciplinary Committee, made the decision to impose discipline against the Belmont Collectors (Tr. 46). The actions were based primarily upon the Audit Report, with consideration of recommendations from District Management and in consultation with the Manager of Industrial Relations (Tr. 47-48, 54, 124-125, 128, 153).

The individual disciplinary actions were as follows: P and R were discharged for misuse of Company funds, misuse of Company time and falsification of Company records; C was discharged for misuse of Company funds, misuse of Company time, falsification of Company records and his past disciplinary record (Tr. 47); and Mr. Mc and Mr. M received disciplinary time off (five days and one day, respectively) for misuse of Company time and falsification of Company records (Tr. 47).

According to Daniel J. Coyne, Regional ^{Industrial} Relations Supervisor, these disciplinary decisions were based primarily upon the actions of each Collector as reflected in the Auditor's investigation and upon past disciplinary history, if appropriate (Tr. 47-48). Length of service with the Company was not a direct factor in the decision, although the fact that M was a new Collector and had recently been trained by Mc was considered (Tr. 47).

Mr. Coyne testified further that the Committee took into consideration the finding in the Audit Report that R and P had intentionally withheld cash collections on several occasions (Tr. 48-49). C was held accountable for withheld cash collections on two occasions where he had given those collections

to another Employee to turn in (Tr. 51). Mc and M were not disciplined for withholding cash but for misuse of Company time and falsification of Company records, all relating to the productivity report (Tr. 52, 53).

INDIVIDUAL SUMMARIES

 P :

Mr. P was hired by the Company in June, 1973 and had been working as a Collector for two years at the time of his discharge (Tr. 206). He received one day of training by Mr. Mc (Tr. 206).

The Audit Report concluded that Mr. P "knowingly withheld cash collections on several occasions by not turning them in on the same day." The time for which the cash collections were withheld ranged from one to several days. The Audit Report concluded adequate explanation for these delays was not offered.

Specifically, 8 cash collections made by Mr. P were turned in late, with the lag including a weekend in 3 of 8 cases. Three of these P had given to another Collector to turn in (C on 2 occasions and R on 1 occasion). In the remaining 5 cases where P was personally responsible for the late turn-ins, the delay exceeded 1 business day in 3 cases (Co. Ex. 4E).

The Audit Report notes with regard to the 3 cases where the collections were given to others that "it is therefore not possible to determine who was directly responsible for withholding the funds" (Jt. Ex. 3, p. 5).

With regard to P , the Audit Report finds that "in most, if not all, of these cases [the P cash collections], only part of his day's collections were withheld" (id.). The amounts in question ranged from \$20 to \$185. At the hearing, Mr. P could not recall the specifics of any of the incidents (Tr. 208).

He admitted that he "neglected on occasion to turn in some of [his] collections on the same day," explaining that he sometimes left cash and the receipts stashed in the car (id.). He also admits that on several occasions he gave his collections to other Collectors to process, stating this was a common practice in the Belmont office (id., Tr. 208).

Mr. P testified that, prior to the time he was disciplined, he had not been instructed that late turn-in of full or partial collections was improper or was a dischargeable offense (Tr. 207, 209).

R :

Mr. R was hired in November 1982 and had worked two years as a Collector in the Belmont office prior to his discharge (Tr. 222). He had been trained one day by Mr. Mc and one day with a prior Collector, Mr. O (Tr. 222).³

The conclusion reached in the Audit Report with regard to Mr. R is the same as that involving Mr. P : that he knowingly withheld cash collections on several occasions for a period

Prior to his retirement in 1983, Mr. O'Halloran was orally reprimanded for padding his productivity report (Tr. 137, 138, 193, 224-225).

ranging from one to several days without adequate explanation (Jt. Ex. 3, pp. 1-2).

Specifically, 11 instances were identified in which cash collections were withheld by Mr. R for 1 or more days, with the lag including a weekend in 6 of the cases.

Although Mr. R admitted to giving his collections to other Collectors to process on several occasions (Co. Ex. 5-B; Tr. 223-224), none of the 11 late cash collections in question were turned in to others, based upon the record presented.

The Audit Report includes the following with regard to Mr. R :

In the vast majority of these instances [the 11 cash collections withheld by R], part of the day's collections were turned in on the day collected, while the remainder (always cash) was not turned in until sometime later. Amounts of individual collections ranged from \$61 to \$300.

(Jt. Ex. 3, p. 5).

Mr. R admits failing on occasions to turn in his collections on the same day they were collected (Co. Ex. 5-B; Tr. 225). He explained that he sometimes left cash and receipts in his wallet or car and forgot to retrieve them. At the hearing, he testified he could not recall any of the specific incidents that led to his discharge (Tr. 225).

According to R , he had not been instructed prior to his discharge that giving part or all of his collections to others to turn in, or accepting collections from others to turn in, was improper or was a dischargeable offense (Tr. 224); and he had not

been instructed with regard to late turn-in of full or partial collections (Tr. 223).

C _____
C _____ was hired by the Company in October 1972 and worked as a Collector for eight years until his discharge (Tr. 188). He was trained for three days by two Collectors, W _____ and O _____, when he began (Tr. 189-190).

The Audit Report concludes with regard to Mr. C _____ that he "may have withheld cash collections for several days on at least two occasions" (Jt. Ex. 3, p. 2). The two collections in question, one for \$20 and one for \$40, were each given to another Collector to process (Mr. R _____ and Mr. P _____, respectively). As a result, the Audit Report concludes that it is not possible to determine who was directly responsible for withholding the funds (Jt. Ex. 3, pp. 2-5). The \$20 collection was the only collection C _____ made that day and it was cash. The \$40 cash collection was one of several cash and check collections for that day; and, the others of that date were timely turned in (Co. Ex. 6F). Both the \$20 and \$40 collections were turned in almost a week late.

There are no other charges of cash collections turned in late by Mr. C _____ and he was terminated based upon the two late turn-ins discussed above.

Mr. C _____ admits that he has on occasion neglected to turn in collections on time, not because he forgot but as "a matter of convenience" on busy days (Co. Ex. 6B; Tr. 191). He states that, when he did not turn in his collections on the same day, he kept them in his pouch in the safe (id.).

According to C , he had never been advised that he was responsible for collected funds until another Collector turned them in (Tr. 193). He admits he did occasionally give his collections to others to turn in (Co. Ex. 6B; Tr. 191). He explained that he had certain duties he had to run prior to 5:00 p.m. on a daily basis which caused a time conflict with completing his paperwork (Tr. 191).

Mr. C also testified that he did not recall being instructed that it was improper to turn in part or all of a collection late. He also states that he was instructed by Mr. G on two occasions to turn his collections in to another Collector (Tr. 192).

Mr. C 's past disciplinary record was considered by Management as a factor in the action taken against him in this case (Tr. 47-48; Co. Ex. 6C, 6I). His past record includes the following:

- (a) 10/28/75 a reprimand and one-day disciplinary layoff for violation of Company Policy (helping another meter reader, being off his assigned route, being out of uniform; and a second violation of being off his assigned route, tardiness, improper use of carpool vehicle;
- (b) 1/8/76 a letter of reprimand and denial of pay for a day taken off as well as a denial of holiday pay for failing to report as scheduled;
- (c) 1/18/77 a five-day disciplinary layoff and letter of reprimand for failing to report an automobile accident, falsification of Company records and being outside his assigned work area and using a Company vehicle and time for other than Company purposes;
- (d) 2/25/77 a two-day disciplinary layoff and letter of reprimand for failing to report to work and absence without permission;

(e) 4/2/81 a letter of reprimand and three-day disciplinary layoff for misuse of Company time and equipment and endangering Company funds

(Co. Ex. 6-I, pp. 1-6)

Mc :

Mr. Mc has the longest tenure with the Company, having been hired in July 1962. He worked for eleven years as a Collector in the Belmont office (Tr. 170).

Mr. Mc was given a five-day disciplinary layoff and has since retired from his position. He was initially trained by a Mr. H and Mr. O for two or three days (Tr. 171).

The Audit investigation disclosed some instances of collections submitted late by Mr. Mc ; but, because of the surrounding circumstances the conclusion was reached that they represented "a failure to follow proper procedures rather than an intentional withholding of funds" (Jt. Ex. 3, p. 2). The circumstances taken into consideration included the length of time the funds were withheld and the number of collections involved (id.).

Specifically, the Auditors identified three of Mc 's collections as submitted late. In each case the lag involved one business day. Once a weekend was included. The Audit Report notes that "in each case, it appears that all of Mr. Mc 's collections for the day (mostly checks) were turned in late. Thus, no partial retention of funds occurred. The cash amounts ranged from \$40 to \$80" (Jt. Ex. 3, p. 6). Management considered it significant that Mr. Mc 's late collections did not involve

retaining only cash (Tr. 43, 52). However, one of the collections turned in late by Mc was cash only (Tr. 71, 72; Co. Ex. 7F).

Although Mr. Mc admitted that, on several occasions, he had given collections to other Collectors to process, none of his late collections in the audit period involved others (Co. Ex. 7B, 7E). He also admitted occasionally turning in collections late (Tr. 172-173). He explained that the reason for this was that he did not always have time to process his paperwork when he got to the office. His unrebutted testimony was that, on these occasions, he would advise the cashier he would turn in his collections in the morning, which he did (Tr. 173). His testimony in this regard is supported by the fact that in each instance of late turn-in, he was no more than one workday late (Co. Ex. 7E).

Mc testified that he was never told that it was wrong to turn in cash for another and stated he had never been advised about late, partial or complete turn-in of collections (Tr. 172). However, his written statement to the Auditor includes an admission that he knew giving collections to others was not allowed by the policy on transferring of funds (Co. Ex. 7B).

Mr. M began as a Collector in August 1983. Previous to that time he was a Service Representative (Tr. 228, 229). He was trained by Mr. P for two to three days (Tr. 230).

The Audit Report reaches a similar conclusion with regard to M as it does for Mr. Mc. One instance of a collection submitted late was found on the part of Mr. M (Jt. Ex. 3, pp. 2, 6). However, based upon the surrounding circumstances (e.g., length of time, number of collections) the Auditor concluded that this represented "a failure to follow proper procedures rather than an intentional withholding of funds" (Jt. Ex. 3, p. 2).

The collection at issue was in the amount of \$85. It was submitted one business day late but included a three-day holiday weekend. All of the collections of Mr. M for that date (mostly checks) were submitted late (Jt. Ex. 3, p. 6). Thus, there was no selective withholding of cash established. Regarding this collection, the Audit Report concludes that, "in this one case it appears that the office cashier may not have included these collections in the appropriate days' work" (id.).

Mr. Tarsia explained that he considered the following in reaching this conclusion: a productivity report dated February 16

M is not a Grievant in this matter. However, the Union has raised contentions that the discipline meted out by the Company was unfairly disparate among the Collectors. Accordingly, the specifics as to Mr. M are relevant for purposes of evaluating the comparative fairness of the levels of discipline given each Collector; but, the propriety of the discipline imposed upon Mr. M is not an issue before the Board.

showing certain collections; the fact that, normally, the receipts for collections on February 16 would be banked on February 17, but, M 's entire collection packet for that date was not deposited until February 21, the next business day after the holiday weekend (Tr. 64-65); and the list of bills paid and the work was dated on the date he reported the collections (Tr. 64).

According to Mr. Tarsia, there are two possible scenarios under the circumstances: one, that Mr. M submitted the collections late on February 17 or February 21 and back-dated the list of bills paid; or, two, that the Cashier made a mistake and failed to include the collections with the deposit on February 17th (Tr. 65). Mr. Tarsia concluded it was the latter since this was the only instance of all the work reviewed in which an entire day's work along with a list of bills paid ended up in a later day's work (Tr. 65-66).

Mr. Tarsia also investigated the matter with the Cashier and determined it was possible that her error had caused the delay (Tr. 66). In his interview, Mr. M did not recall any instances in which he had turned in cash collections late (Tr. 66). He does admit that, on several occasions, he turned over his collections to other Collectors to process (Co. Ex. 8; see, also, Tr. 95, 96). No late turn-ins resulted from that practice, based upon the record presented.

At the hearing, the Union presented the testimony of the Cashier at the time, Anna Anderson, that this work would normally have been banked on February 17th; and that, to her knowledge, she never neglected to include an entire collection packet in the

deposit. However, she also testified that it is possible she could have erred (Tr. 166).

Union Representative Roger Stalcup arrives at a different conclusion than the Auditor as to the explanation for the late turn-in in this instance. He conducted a review of the recap package for February 17, which includes other Collectors' receipts for the preceding workday (February 16) but not Mr. M 's (Tr. 101). The recap for February 21 includes other Collectors' receipts for February 17 and M 's for February 16. Although M 's list of bills paid is dated February 16, Mr. Stalcup concludes from the foregoing that M . turned in his list of bills paid for February 16 on February 17. He also testified that his review indicated Mr. M did not turn in a list of bills paid or a productivity report for February 17, although time records indicate he was at work on that date (Tr. 101-102).

SUMMARY OF PARTIES' POSITIONS:

Position of the Company:

Briefly summarized, the position of the Company is that the violations charged against the Grievants have been established by their admissions and un rebutted evidence. The discharges all involve conversion of Company funds as well as falsification of the daily productivity reports; and the disciplinary layoffs involve only the latter offense. In all cases, however, the misconduct is contrary to established policy of which the Grievants were aware, the Employer asserts.

Management takes the position that reinstatement or mitigation of the discipline imposed is proper only if the Board finds from the evidence that a violation of a Company rule had not occurred or that the individual disciplines were disparate, arbitrary, or capricious. The Company denies that the Union has been able to establish that the discipline imposed must be overturned or reduced on those grounds.

With regard to the alleged lack of training, supervision, and notice, the Company contends² that misconduct such as withholding cash and padding accounts is of a type which an Employee knows or ought to know is improper. The misconduct involved here breaches the basic principle of honesty in the Employer/Employee relationship. Management cites arbitral authority to support a conclusion that honesty on the part of the Employer and Employee is an implied condition of the employment contract.

The Company also cites arbitral authority to stand for the proposition that the Board is not permitted to mitigate discipline arising from conversions of Company funds. On all of these grounds, the Company takes the position that the discharges of P , R , and C . and the disciplinary layoff of Mc were for just cause within the parameters of Review Committee Decisions No. 1451 and No. 1452 and Arbitration Case No. 124.

With regard to the contentions raised by the Union as to alleged misconduct on the part of the only non-Grievant, M , the Company contends that his offenses are distinguishable. The Union has failed to establish that Management did not fairly

consider the totality of the circumstances and the type of misconduct involved prior to imposing discipline, according to the Employer. The three who were terminated were guilty, in the Company's view, of misusing and converting Company funds as well as padding. Mr. M is guilty only of the latter charge and that justifies the distinction in the penalty.

In further support of the distinction in the penalty applied, the Company points out that M was recently trained by Grievant P to follow the improper practices observed by the more senior Belmont Collectors and admitted he succumbed to peer pressure. In addition, M did not admit to misusing the free time but stated he utilized it to familiarize himself with his territory and to perform other duties. The Union's attempt to establish Mr. M performed another part-time job while on duty was unsuccessful, in the Company's view.

In conclusion, the Company asserts any disparity between the penalties imposed among the Grievants, and as compared with M, are reasonable and must be sustained.

Position of the Union:

The Union first contends that any evaluation of the Grievants' conduct must be in light of the lack of supervisory training and direction. The Union also notes the absence of standardized written procedures for the Belmont Collectors. The Union recognizes these factors may not absolve an Employee guilty of intentional misconduct, but it claims that these factors are significant in assessing the conduct charged here, which the Union views as falling in the "grey shadows between a failure to follow

proper procedure and an intentional withholding of funds" (Un. Bf., p. 28).

With regard to the matter of padding, the Union contends that laxity in the discipline imposed upon prior Collector O'Halloran indicated condonation of this practice. Further, in the Union's view, there is no basis for differentiating M from the other Grievants regarding this offense. M's claim that he stopped padding sometime in early March is refuted, the Union contends, by Company records presented by the Union. Accordingly, in the view of the Union, the discipline imposed upon M for this violation, a one-day suspension, is the appropriate discipline for each of the Collectors for proven padding of their productivity reports.

As to misuse of Company time, the Union acknowledges that Company policy prohibits engaging in personal business on Company time; but it claims the Company permitted misuse of Company time to go on without taking action. According to the Union, these factors must be weighed in mitigation of the discipline on this basis. The Union asserts that no evidence was presented that R and P were guilty of misusing Company time and that no discipline is appropriate for them based upon this charge. It notes that C and Mc admitted this offense and that M's denials and explanations are unreliable and conflicting.

The factors, according to Mr. Coyne, that distinguished the discipline imposed upon Mc and M were (a) M was a relatively new Collector; and (b) Mc trained M to pad. The testimony indicated that P trained Mc, the Union

notes. According to the Union, M 's recent tenure as a Collector made him less susceptible to the claim that he had been lulled into believing padding was acceptable conduct, a claim that others can raise based upon the minimal action taken in the O case.

On the foregoing grounds, the Union takes the position that Management's rationale with respect to Mc and M is invalid; and that the Company must accept for the other Grievants the level of discipline which its Committee accepted as appropriate for M - a one-day suspension for misuse of Company time, served concurrently with the one-day suspension for padding.

With respect to turn-in of collections to others, the Union contends that no Company rule prohibits this conduct or expressly holds Collectors responsible for collections until they are turned in by another. This lack of notice and the fact that turn in by others was a common practice at the Belmont office indicate the practice was tacitly condoned by Management, in the Union's view. On two occasions a Supervisor told C to turn his collections over to another Collector, indicating explicit condonation of the practice. The absence of a rule, lack of notice and laxity in practice must be taken into consideration when evaluating Mr. C 's discipline, the Union asserts.

The Company failed to prove misconduct by C for the two late turn-ins he had given to others, according to the Union. As Management witnesses acknowledge, direct responsibility for the late turn-in could not be ascertained. The fact that C gave his collections to others to turn in is not a dischargeable

offense, the Union contends, and others who were not discharged admitted this conduct.

Finally, regarding the late turn-ins, the Union asserts that the primary issue is whether or not Grievants P and R intentionally withheld funds or failed to follow proper procedure. If the latter is found, according to the Union, the discipline is inappropriate. The Union acknowledges that the standard practice requires turning over funds promptly and prohibits temporary borrowing of funds; but, the Company failed to establish that these two Employees knew the content of standard practice. The proven lack of training and supervision must also be taken into consideration. It was not established that Employees were made aware that this conduct was a dischargeable offense, the Union asserts.

In support of its position against a finding of intentional misconduct by R and P, the Union relies upon the following:

- (a) the sloppy cash handling in general in the Belmont office;
- (b) Mc had a late cash turn in within the audit period and was not disciplined for this offense;
- (c) M was responsible for a late turn-in during the audit period, according to the Union, for which he was not disciplined;
- (d) R and P made no attempt to hide the fact they were turning collections in late, a factor inconsistent with guilt of intentional misconduct, the Union submits;
- (e) no personal use of the funds by the Grievants nor adverse consequences to customers were established.

On all these grounds, the Union contends that the penalty of discharge is not reasonably related to the misconduct proven by the Company;

and that intentional misconduct warranting discharge of R and P has not been shown.

The Union regards any reliance upon C 's past disciplinary history as misplaced due to the alleged staleness of those past actions.

In conclusion, the Union contends that the discipline against the four Grievants was not for just cause; that their service with the Employer mitigates in their favor, as well as the other factors discussed above. According to the Union, the Collectors were treated disparately for the same conduct: padding, misuse of Company time, turn-ins to others and late turn-ins. An equal suspension of one day for each is the appropriate penalty, the Union contends, applying the common denominator of the M discipline which the Board is without authority to increase.

DISCUSSION:

Conclusions as to Padding - Misuse of Company Time:

All five Collectors admit to padding their productivity reports by falsely including calls they did not make. The audit information in the record shows that this was done on a frequent basis by all of the disciplined Collectors.

Falsification of this sort is an activity that Employees know or ought to know is unacceptable. Further, notice that such actions are prohibited is spelled out in the Standard Practice disseminated to each of the Grievants: "Employees shall factually report time worked or not worked including accurate details of work performed" (Co. Ex. 1, Co. Ex. 4A-7A). Entering falsified

information of this sort is specifically included in the examples of violations (id.).⁵

With regard to misuse of Company time, two Grievants admitted misuse of the time gained by padding their reports. M claims, without substantiation, that he used the time to perform other Company work. Two other Grievants, P and R, neither admitted misusing the time nor explained how they used it.

M also claims he discontinued this practice in March, but the record contradicts this assertion.⁶ In light of the frequency and amount of padding, the lack of adequate explanation or substantiation for all Collectors regarding how the time was spent, it is fair to conclude that all five were guilty of misuse of Company time. This conclusion is supported by other evidence in the record, such as the collusion of the Collectors in setting a time to return to the office.

These charges properly form a basis for disciplinary action against all of the Grievants as well as M. The record discloses that M and Mc, who received disciplinary

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The Union contends that the Company failed to establish the Grievants had knowledge of the contents of the Standard Practice. It points out that Supervision in the Belmont office was not aware of the requirement in the Standard Practice that Internal Auditing be contacted immediately to investigate this matter. The Grievants may be charged with notice of the contents of the Standard Practice disseminated to them, just as Supervision may be expected to be familiar with its contents. The failure of Supervision to meet its responsibility with regard to contacting the Auditing Department is not before the Board, however, and does not absolve the Grievants of the responsibility to familiarize themselves with the contents of the policy.

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In addition, the Union attempted to show that M was working a second job during Company time, but the record is inadequate to support such a conclusion.

layoffs as opposed to discharges, engaged in this practice no less often than the other Collectors. Although M was given consideration on the basis of his shorter tenure as a Collector and the fact that he was trained by a Collector who engaged in this practice, countervailing considerations are present for the other Collectors: length of seniority, the fact that some of them were also trained by others who engaged in these practices. In short, factors which provide a reasonable basis for distinguishing among the Collectors for purposes of applying different levels of disciplinary action are not present, with an exception involving Mr. C , discussed separately below.

The Board is without authority to increase the level of discipline imposed and must ensure that discipline has been applied fairly and evenly among Employees responsible for the same offense. The Company determined that the appropriate level of discipline for M for these offenses was a one-day disciplinary layoff, and he was no less guilty of this activity than others based upon the record presented. In light of the foregoing, the Union's contention is accepted that the discipline imposed upon M must be regarded as the common denominator for discipline based upon these charges.

A one-day disciplinary layoff is a minimal level of discipline for the padding and time misuse offenses proven. Had the Company evenhandedly imposed greater discipline upon all the Collectors for these offenses, it may well have been sustained. This level of discipline is fully warranted for the Grievants for

padding and time misuse, notwithstanding alleged mitigating factors cited by the Union or its attempt to establish an aggravated violation by M .

Intentional Withholding:

The record establishes grounds for the conclusion in the Audit Report that R and P knowingly withheld cash collections on several occasions. It is not accepted that their offense amounts only to violation of policy and procedure, as opposed to knowing misconduct. Their offenses were both qualitatively and quantitatively different from the other Grievants'. Because of the significant difference, the assertion that these Employees ought to be treated the same as Mc or M is not supported by the record.

The Company reasonably relied upon such factors as the partial withholding of only cash collections and the length of time the money was withheld to conclude the violations were intentional. R has eleven withholding incidents for which he was fully responsible and P had five, plus involvement in three other late turn-ins where the collections were given to others, discussed below. The totality of the circumstances supports a conclusion that these Employees were frequently "temporarily borrowing" Company funds for various periods, without authorization. This conduct is expressly forbidden under the Standard Practice (Co. Ex. 1).

Furthermore, because the nature of the offense is intentional as opposed to a negligent failure to follow policy and procedure, alleged mitigating factors such as poor training have far less

weight. Other factors cited by the Union such as the lack of adverse impact upon customers, the absence of evidence of personal use of the funds by Collectors, and the lack of an attempt to hide the practice do not dictate a reduction in the discipline imposed.

Personal responsibility for knowingly withholding cash collections was established only with regard to these two Employees. Accordingly, their offenses do not parallel the other Collectors, discussed below, for purposes of comparing levels of discipline.

For all these reasons, it is found that the grounds cited for the discharges of P and R are supported by the record and provide just basis for the actions taken; and, further, that circumstances warranting a reduction in the discipline imposed are not present.

Giving Collections to Others:

All five individuals admitted turning over collections to others to process for them (Co. Ex. 4B, 5B, 6B, 7B, 8; Tr. 176, 191, 108, 224, 232). Discipline was not imposed for this activity unless a late turn-in of a collection was involved. Since permitting another to process a collection constitutes a violation of Company policy and procedure and does not necessarily indicate intentional misconduct, mitigating factors such as lack of a clearly articulated policy, laxity in supervision and lack of supervisory training may be taken into consideration.

During the audit period, only two Collectors had late turn-ins of collections where they had given the funds to another for

processing: P and C (Co. Ex. 4E, 6E). C was not singled out for discipline on this basis, as the Union contends. The late turn-ins for which P was held responsible under the Audit Report include three that were submitted by other Collectors (Co. Ex. 4E).

In terms of the seriousness of the consequences upon the Company, there is a clear difference between the immediate processing of collections on the day they were made, even if completed by another Collector, and the situation where a late turn-in occurs. The Company apparently elected not to discipline all of the Employees for turning over collections to others where no adverse consequences took place. However, it did include as part of the grounds for discipline those incidents where giving the collection to another resulted in a late turn-in of the funds. This distinction cannot be said to be without rational basis: the impact of this violation upon the interests of the Company is clearly more serious when Employer funds are withheld rather than turned in on the date collected. In the two instances where C turned funds over to others, a long delay occurred in the funds being turned in - almost a week in both cases.

Further, while it is true that direct personal responsibility for the late processing cannot be pinpointed in those situations where collections were turned in by another Collector, this does not absolve the original Collector from all responsibility for the consequences of having relinquished control of the funds. The Collector's actions in turning the funds over to another rather than submitting them personally on the date collected makes it

possible for the other party to retain them, if in fact that caused the delay.

It must also be noted that one of C's late turn-ins was given to P and two of P's were given to C (Co. Ex. 4E, 6E). It is clear that one or the other (or both) were responsible for the delay in those instances. Further, the \$40 C's collection given to P was a cash collection selectively withheld from other collections made by C that day (Co. Ex. 6F).

On the foregoing basis, it is found that the Company may legitimately rely upon late turns-ins of collections as a basis for discipline of Mr. C, even though the collections were given to another to process.⁷ However, it is recognized that this type of situation does not establish intentional withholding of collections on the part of the charged Employee, as the Audit Report concluded, and is qualitatively distinguishable from circumstances in which the Collector may be held directly, personally responsible for withholding cash collections. Mitigating circumstances may also be considered in light of the nature of the offense.

Mr. C was not shown to have knowingly withheld cash collections, as P and R did. The Company's assertion that Mr. C is guilty of converting Company funds is not borne out by the record. On these grounds, the offenses proven are more in the nature of a violation of Company policy and procedure

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Mr. P's violations of this type will not be discussed further in light of the conclusion reached, above.

rather than intentional misconduct, as the Audit Report concluded.

The foregoing factors should reasonably have been taken into consideration by the Company in imposing discipline upon Mr.

C While discipline is warranted for the offenses proven, the record fails to provide a just cause basis for his termination.

Mr. C 's culpability is also distinguishable from the Employees who received small amounts of disciplinary time off, however. M and Mc did not relinquish funds to others resulting in lengthy delays in the submission of those collections. Also, neither of them selectively removed cash collections from the daily packet, as Mr. C did in the instance of the \$40 collection. Finally, Mr. C has a poor past disciplinary record, which distinguishes him from the other Collectors.

The remoteness in time of a number of the elements of Mr. C 's past record is taken into consideration in terms of its strength to support a discharge action for the offenses proven on this record. However, his past record is sufficiently poor to warrant consideration in imposing some lesser form of discipline. The nature of the past actions supports a finding that more than a short term disciplinary layoff is necessary to impress upon Mr.

C the need to comply with Company policy and procedure. In reaching this conclusion, the following factors are taken into consideration: all five past actions involved time off without pay; a number of them set forth warnings that he could be terminated for any future violation of Company policy; the most recent

action in 1981 included the statement, "If you are found in violation of any Company rule in the future, disciplinary action will be taken up to and including discharge from the Company"; and at least two of the actions involved activities that may be considered related to the offenses involved in the instant case: falsification of Company records, misuse of Company time and endangering Company funds (Co. Ex. 6I).

In light of the foregoing, Mr. C. 's offenses of padding, misusing Company time, falsification of records and failure to follow Company policy and procedure with regard to collections are more serious. For all these reasons, his reinstatement is warranted but an award of back pay is not.

Mc _____ :

The Audit Report concluded that Mr. Mc _____ violated Company policies and procedures related to late cash turn-ins, although it concluded that intentional withholding of cash collections was not shown on his part. The record fully supports this conclusion. All three of the late turn-ins by Mc _____ involved only one business day and in no instance was cash selectively withheld. One collection was only cash, but this does not demonstrate an intent to withhold cash while timely submitting other collections.

In light of the finding of a violation regarding collection turn-ins on Mr. Mc _____'s part, no reasonable basis has been shown for the Company's failure to impose some level of discipline upon him on this basis. Although his actions are not of the same level of culpability as those of P _____ and R _____ and are distinguishable in type from the actions of Mr. C _____, they nonetheless justify

discipline in addition to that imposed for padding and misuse of Company time. Under the circumstances, the Board will not reduce the disciplinary layoff imposed upon Mr. Mc . His failure to follow Company procedure regarding prompt turn-in of collections, combined with the other proven violations discussed above, fully justifies that level of discipline.

M .:

The evidence fails to clearly show that M. was responsible for any withheld collections. On the one occasion during the audit period that a collection of his was late, it is unclear whether he or the Cashier failed to submit it on time. This is readily distinguishable from the circumstances involving P and R , where clear responsibility for withholding cash collections was established. It is also different from the circumstances involving C , who improperly gave his collections to others to process and they were turned in several days late. It is plausible that M gave the entire collection packet to the Cashier in a timely fashion on the date at issue. The Cashier is the authorized person to whom Collectors are instructed to turn over funds, and she signs off for receipt of the collections. The paperwork for the date in question was in order.

In light of the difference in the offenses proven, a comparison of the discipline imposed upon M with the discipline given the Grievants is inapposite. The record establishes collection-related improprieties of various types with regard to all the Collectors but M . This forms a rational basis for imposing lesser discipline upon him.

* * *

In light of the conclusions reached above, the following
Decision is made:

DECISION:

The discharges of P and R were not in violation of the
Agreement. As to those individuals, the grievance is denied.

The disciplinary layoff of Mc was not in violation of
the Agreement. As to him, the grievance is denied.

dissent / ~~concur~~ Roger Statcup 1/21/86
Union Board Member Date

dissent / ~~concur~~ Garry Pierce 1-21-86
Union Board Member Date

~~dissent~~ / concur W. Bonbright 1/15/86
Company Board Member Date

~~dissent~~ / concur M. A. Short 1/15/86
Company Board Member Date

~~dissent~~ / concur Burton Conway 1-28-86
Board Chair Date

The discharge of C was in violation of the Agreement and is hereby reduced to a suspension without pay. Mr. C shall forthwith be reinstated to employment without loss of seniority but without back pay.

dissent / concur	<u>Roger Stalup</u>	<u>1/21/86</u>
	Union Board Member	Date
dissent / concur	<u>Danny Pierce</u>	<u>1-21-86</u>
	Union Board Member	Date
dissent / concur	<u>W. Bonbright</u>	<u>1/15/86</u>
	Company Board Member	Date
dissent / concur	<u>M. A. Short</u>	<u>1/15/86</u>
	Company Board Member	Date
dissent / concur	<u>Basil A. Clumney</u>	<u>1-28-86</u>
	Board Chair	Date