

In the Matter of an Arbitration

between

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 1245,

Complainant,

and

PACIFIC GAS AND ELECTRIC COMPANY,

Respondent.

RE: Arbitration Case No. 144 -
Discharge

Opinion & Decision

of

Board of Arbitration

San Francisco, California

BOARD OF ARBITRATION

Union Board Members:

Mr. Perry Zimmerman

Ms. Dorothy Fortier

Company Board Members:

Mr. Chris Kovach

Mr. Rick Doering

Neutral Board Member:

Barbara Chvany

APPEARANCES

On Behalf of the Union:

Tom Dalzell, Esq.
IBEW LOCAL 1245
P.O. Box 4790
Walnut Creek, CA 94596

On Behalf of the Employer:

Mr. Ken Yang
PACIFIC GAS & ELECTRIC COMPANY
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San Francisco, CA 94106

INTRODUCTION

This dispute arises under the Collective Bargaining Agreement between the above-captioned Parties (Jt. Ex. 1). Pursuant to that Agreement and the Submission Agreement between the Parties (Jt. Ex. 2), the Board of Arbitration was constituted and a hearing was conducted on March 9, 1987 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. 9; Jt. Ex. 2). Post-hearing briefs were submitted by the Parties.

The Grievant, R. , has a seniority date of September 13, 1983. She was suspended on August 1, 1985, and the suspension was converted to a discharge on August 5, 1985

(Tr. 10).¹ During her employment, she was a meter reader assigned to the Stockton Division (Tr. 129-130).

ISSUE

Was the suspension and later discharge in violation of the Clerical Labor Agreement? If so, what is the remedy? (Tr. 9; Jt. Ex. 2).

REMEDY REQUESTED

On behalf of the Grievant, the Union requests her reinstatement with full backpay, seniority and benefits (Un. Bf. 14; Tr. 11).

The Company requests denial of the grievance in its entirety (Co. Br. 24-25; Tr. 14).

BASIS FOR DISCHARGE

The Grievant was discharged for "curbing," defined as intentionally entering a false reading for a meter (Tr. 20, 37, 42, 65). Specifically, the Company alleges that on July 8 on the Grievant's assigned route FXT 78, she entered a meter reading of 9353 for meter #026902 located at 128 North Wilson Way, Stockton, and indicated the customer had used 1011 kilowatt hours of electricity when the meter had not, in fact, been read (Tr. 16, 20; Co. Ex. 6).

¹

All dates hereinafter are 1985 unless otherwise specified.

The Grievant denies that on July 8, or at any other time, she intentionally curbed a meter reading (Tr. 151). The suspension and subsequent discharge were grieved on August 5 (Jt. Ex. 3; Tr. 10). The grievance was not resolved in the course of the grievance procedure, leading to this arbitration.

COMPANY RULES

Company rules require that a meter actually be read by the meter reader before a reading is entered in the meter book, and this requirement is covered in training (Tr. 37). The Meter Reader Responsibility Summary, reviewed annually with employees, includes the following:

Under NO CIRCUMSTANCES is a reading to be entered unless the meter ... is actually read. Failure to observe this rule will be considered sufficient grounds for severe disciplinary action, including termination.

(Co. Ex. 16-18; Tr. 37) (emphasis in original)

There is no dispute that the Grievant had been apprised of the Company's policy against curbing (Tr. 113, 131, 152, 158-159). She signed a statement of the rule which also refers to the disciplinary consequences of a violation (Co. Ex. 16).

BACKGROUND

Job Duties:

As a meter reader, the Grievant had assigned routes she was required to read. This involves checking gas and electric meters at the addresses listed in the meter book, verifying the meter number, and placing the meter reading on the corresponding page of

the meter book (Tr. 34, 35, 154-156).² Once the appropriate notations are made, a subtraction is performed from the prior reading to obtain the customer's usage (Tr. 156). The Grievant was educated in these meter reading techniques (Tr. 157), although she states she would have difficulty completing her route in the assigned time if she verified every meter number before entering a read (Tr. 173).

A meter reader is to try to read every meter on his or her route. If unable to read a meter, the meter reader is to enter particular codes that indicate the meter was missed and the reason therefor (Tr. 36, 40). The Grievant was familiar with these missed meter codes (Tr. 162).

Bills to customers are generated by the Accounting Department based upon the information taken from the gas and electric meters by the meter readers (Tr. 38). Accordingly, there is a direct relationship between the accuracy of a bill and the accuracy of the reading for that account (Tr. 38).

The Parties acknowledge that certain types of unintentional errors inevitably occur in meter reading, and they have negotiated performance standards which apply to those errors (Tr. 39, 40-41; Un. Ex. 1). The performance standards apply only to erroneous meter readings that were actually taken; they do not pertain to curbing (Tr. 160-161).

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Generally, pages in the meter book are in order of addresses, but there are separate sections within the book for different types of accounts, and some flipping back and forth within the book is required (Tr. 140-141, 146).

Events of July 8, 1985:

On this date, the Grievant was assigned to and read RTE 78 (Tr. 44-45, 48, 51, 54; Co. Ex. 4, 5).³ There is no dispute that the Grievant performed the meter readings on the 100 block of North Wilson Way (Tr. 150). The record establishes that she entered an electric meter reading of 9353 and a usage of 1011 for meter #026902, account #5123, for the service address of 128 North Wilson Way, Stockton (Co. Ex. 6). The reading was entered on a page from the route book the Grievant read on July 8 (Co. Ex. 6; Tr. 48), and the numerals were identified to be in her handwriting (Tr. 50, 109-110). The Grievant does not deny the entry is hers (Tr. 163, 164; see, also Tr. 115).⁴

From the reading taken by the Grievant on meter #026902 on July 8, a bill was generated to the customer (Tr. 53-54; Co. Ex. 7). The customer complained and reported the meter had been removed, leading to an investigation by the Company (Tr. 47-48, 98-99).

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The Grievant had read this route in June, as well (Co. Ex. 4; Tr. 47, 87-88; Co. Ex. 10, 138). The book the Grievant utilized in June was replaced in July, requiring new notations of account access information (Tr. 87).

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Evidence was presented that another meter reader picked up some of the missed meter readings on the Grievant's route that day; however, there is no evidence that this particular reading was one performed by the other individual.

Meter Removal:

Meter #026902 had been located in a storeroom to which entry was gained through a kitchen back door (Tr. 22-23; Co. Ex. 1, Pt. D). This meter had been removed on June 12 by an electric troubleman, who took an outread of 8342 at the time of removal (Tr. 23-24, 85, 90, 102-103, 104-105; Co. Ex. 12, 15). Meter #026902 was subsequently junked on June 17 (Tr. 85; Co. Ex. 15).

A new meter, #N50162, had earlier been installed at a panel of meters, approximately forty-five feet away (Tr. 22-23, 85; Co. Ex. 1, Pt. C). Although the new meter had been installed on May 15, it was not put into service immediately. When the old meter was removed, it was put into service (Tr. 85-86). Prior to June, a page had already been included in the meter book for the new meter #N50162; and this meter was read correctly by the Grievant in June and July (Un. Ex. 11; Co. Ex. 11; Tr. 92-93).

As of July 8, the page for meter #026902 was still contained in the meter book and there was no notation it had been removed on June 12 (Co. Ex. 6). Normally, the Records Department records meter changes, but due to a lack of manpower, such changes are not always entered prior to the next scheduled reading of that route (Tr. 75-77, 77-78, 105-106).

When a meter reader encounters a meter that has been removed and the meter page fails to reflect that fact, the proper procedure is to enter code M8. There is also a blue memo page in the meter book for noting such occurrences (Tr. 84, 106). The Grievant was aware of the code for a removed meter (Tr. 162).

Investigation:

The Customer Services Supervisor in charge of meter reading in the Stockton Office was out of the country in July 1985, and Barbara Kahl-Massey had temporarily assumed that position (Tr. 97). Because of scheduling constraints, she did not personally conduct the investigation of the customer complaint in this case. She assigned it to B , normally a meter reader but at the time temporarily upgraded to Customer Services Assistant (Tr. 55-56, 67). Ms. Kahl-Massey gathered materials regarding the Grievant's past performance (Tr. 66, 67), and Ms. B was instructed to read all of the accounts within a block radius to determine whether a reading of the wrong meter could have occurred. A correlation between the 9353 reading and another meter in the area could indicate inadvertent error as opposed to curbing (Tr. 57, 58).

The readings taken by Ms. B were entered into the record (Co. Ex. 8, 9; Tr. 58-59). Ms. Kahl-Massey received this information from Ms. B and checked two close readings, but determined one was a gas rather than an electric meter and the other was a power account (Tr. 60). Power accounts are contained in a different section of the meter book with different colored pages, and the meter is of a different type (Tr. 61). Ms. Kahl-Massey determined the likelihood of error involving these accounts was extremely remote; and, she concluded that the other readings in the immediate vicinity did not indicate inadvertent error had caused the 9353 notation on July 8 (Tr. 61-62). No evidence of curbing additional accounts was found (Tr. 82).

When the regular Customer Services Supervisor, Craig Downing, returned, he reviewed the information that had been gathered and conducted his own investigation (Tr. 100, 102). From Company documentation, he determined that meter #026902 had been removed and junked in June; he visited the customer and the location, and he also reviewed the readings of other meters to determine the probability of a mistaken entry (Tr. 102-113, 116, 127). This information and a page-by-page review of the meter book failed to indicate to Mr. Downing that a mistake, versus curbing, had occurred on July 8 (Tr. 110-113). He concluded the Grievant had curbed the reading in question and recommended discharge (Tr. 114; Co. Ex. 19).

Prior to recommending discharge, Mr. Downing discussed the incident with the Grievant and her shop steward, and the shop steward had the opportunity to review the meter book (Tr. 112, 114). When confronted with the reading, the Grievant could not recall what had happened (Tr. 115).

Past Performance:

The record reflects that the Grievant had experienced past problems with certain reading error standards (Tr. 44, 67, 118). She was considered "a little below average" in terms of performance (Tr. 97); however, she had a "good attitude" (Tr. 68, 117). There was no suspicion of past curbing by the Grievant, and the discharge in this case was based upon the single alleged instance of curbing on July 8 (Tr. 82, 127).

Grievant's Testimony:

As noted above, the Grievant denies that she curbed the reading at issue (Tr. 151). According to the Grievant, she went to the service location in question on July 8 and had a discussion with the customer while she was reading some other meters (Tr. 170, 171; Co. Ex. 1, Pt. C). The Grievant testified to the unpleasant conditions involved in reading some of the meters in that block of North Wilson (see, e.g., Tr. 140). She further testified she was required to flip pages back and forth within the meter book (Tr. 146). She was concerned about the number of meters she had missed on July 8, although she states she was not concerned about being disciplined because she had legitimate reasons for the misses (Tr. 151).

July 8 was the second time the Grievant had read this particular route (Tr. 133, 171-172). However, she also states that she "pretty much knew where [she] was" (Tr. 172). On a prior occasion while reading accounts on North Wilson Way, she had witnessed a fatal shooting (Tr. 141-142); and, she testified she was nervous in that area because it was dingy and unpleasant (Tr. 142).

POSITIONS OF THE PARTIES

The Company:

According to the Employer, the Grievant violated the prohibition against curbing by entering a false meter reading for account #5123 on July 8. In the Company's view, there is no dispute with regard to the Grievant's responsibility for making the entry, the Company has established that the reading was not a result of

inadvertent error, the meter could not have been read because it had already been removed, and the entry of this false meter reading constitutes a dischargeable offense.

The Union raises a number of excuses in an attempt to minimize the severity of the Grievant's misconduct, but a review of them fails to mitigate the violation, the Employer contends. The evidence fails to establish that the entries in question were readings from another meter incorrectly entered on the wrong page. The Union's general contentions with regard to the undesirable neighborhood or the Grievant's past upsetting experiences do not explain or excuse the entry of a false reading. Similarly, her actions are not excused by the fact that the meter change notations had not yet been made by the Records Section on the meter page. The Company asserts that, if the Grievant discovered a discrepancy, this should have been appropriately noted by her.

With regard to the alleged lack of a proper investigation, the Company contends that it conducted a full and fair investigation, in which three different people reviewed the facts. The meter book was produced for review by the Grievant's shop steward; the service location, customer and meter book were investigated, the Employer notes.

The Company policy is clear, the Grievant had notice of it, and the adverse impact of this type of activity is manifest. Under the circumstances, according to the Company, discharge is appropriate. Discharge based upon a single curbed reading has been sustained in a prior arbitration decided in August, 1985 (Co. Ex. 3; Arbitration Case No. 129, Arbitrator Concepcion).

Also in 1985, while this case was under investigation, another Stockton Division meter reader was discharged for curbing the same meter three times, and the discharge was upheld by the Pre-Review Committee in Decision 1074 (Co. Ex. 2). Under the circumstances, the Company argues the Union's claim of disparate treatment lacks merit. The earlier disciplinary suspensions relied upon by the Union are remote in time; and, since those actions, the Company has stiffened its policy on curbing as evidenced by the later cases submitted by the Company.

The Union:

The Union does not dispute the Grievant entered a read on the meter sheet for a meter that had been removed, however it takes the position that the action was an unintentional error rather than curbing. In support of its position, the Union relies upon several factors. Generally, the Union notes that some degree of error is inherent in meter reading, as demonstrated by the performance standards negotiated by the Parties. Meter readers are required to flip pages back and forth in the meter book, which may result in entries on the wrong page. The Grievant's past performance indicates that she committed a number of reading errors, although she had a good attitude.

In July, the Grievant was required to make new notations regarding meter locations and hazards on the fresh pages of the meter book. The account in question was confusing for a number of reasons, including the former existence of two meters for the same account, and the numbers of accounts and addresses for the particular customer in that same block, among other factors. In addition, the Union contends that the Grievant's mental state must be

taken into consideration. She had anxiety due to earlier experiences, the nature of the neighborhood and some of the meter locations.

The Union submits that the common motivations for curbing were not present in this instance. The Grievant was physically present at the premises on the date in question and accurately read the ten other meters in the alley. The meter involved was not difficult to reach or unpleasant, and the Grievant had read the most difficult meters in that vicinity. At the time, the Grievant's performance was above average with regard to misses, and she had valid excuses for the meters she missed that day. Finally, the Grievant knew that the old meter was going to be removed and she would not choose this account to curb.

According to the Union, the Grievant was not the type of employee who would engage in curbing. Company witnesses testified to her good attitude, and audits of her work had failed to uncover any evidence of other curbed readings. These facts must be contrasted with those involved in Arbitration Case No. 129.

In the Union's view, the investigation conducted by the Company was flawed from start to finish and failed to turn up convincing evidence the Grievant acted intentionally. An individual with virtually no supervisory experience and limited meter reading experience was assigned to conduct the initial phase of the investigation; and, she relied upon a meter reader who failed to carry out thoroughly the instructions she had been given regarding taking readings of other meters in the area.

Mr. Downing compounded the problems in his investigation by failing to focus on accounts which the Grievant had missed in

July, since it is likely that if the correct entry had resulted from her reading another meter onto the wrong page, a missed account would be the source of that reading. The Union also points out a June reading of 9352 on another account (Un. Ex. 4), which reading is similar to the reading entered by the Grievant on July 8. The Union suggests this figure may have caught her eye as she went through the meter book trying to find the correct page.

In conclusion, the Union submits the Company has failed to establish by a preponderance of the evidence that the Grievant intentionally entered an incorrect reading on the meter page for the account in question. The circumstantial evidence presented strongly supports the Union's contention that the incorrect entry was unintentional and should not have subjected the Grievant to discipline, the Union concludes.

DISCUSSION

Nature of Entry:

It is undisputed that the Grievant entered a reading for a meter that was no longer in existence on July 8. The primary area of dispute is whether or not that entry is attributable to inadvertent error. If the reading is due to unintentional inaccuracy on the Grievant's part, discharge would be an excessive penalty. If the entry is not explained by error, the serious offense of curbing has occurred. There is no dispute that there is a specific and well-publicized Company rule against entering readings for meters that have not, in fact, been read. Further, employees are apprised of the serious consequences of a violation of this

rule. The Grievant was aware of this information in July 1985 when the events at issue took place. Accordingly, the record must be scrutinized to determine whether the Employer has met its burden of establishing the intentional nature of this entry.

There are many different types of errors that can be committed by a meter reader. However, because this meter had already been removed, it is clear this case does not involve the actual reading of the correct meter and the recording of an incorrect number from that reading. The only way an unintentional reading error could occur in these circumstances is if the Grievant read another meter and incorrectly entered that reading on the meter book page for the removed meter.

The Employer has produced evidence to refute this explanation. Meter readings taken in the immediate vicinity in the course of the investigation failed to indicate other electric meter readings of a similar type and number that would explain the source of the entry. The Union contends that these other readings were not thorough in that a number of accounts were missed by Ms. Brooks' investigation. However, a review of the additional accounts included within Union Exhibit 3 fails to indicate a correlation between readings that would indicate the source of the 9353 notation.

Similarly, Mr. Downing testified that he reviewed the meter book page-by-page, and it failed to disclose any information that would indicate a reading from another meter had mistakenly been entered on the meter page at issue. The Union contends that the Company's investigation was not thorough in that it failed to

focus upon missed accounts; however no evidence was presented to establish any correlation between those missed accounts and the number entered on the page from meter #026902 on July 8.⁵

The general fact that errors in reading meters occur from time to time is accepted. However, the facts presented on this record are inconsistent with a finding of inadvertent error, for the reasons stated above. Normally, if there is an erroneous as opposed to a false entry, the mistake is ascertainable through a review of the documentation for such items as transposed figures, the entry of a correct read on an incorrect meter page and a corresponding missed account, etc. No such likely explanation is established by the facts presented here. A similar reading actually taken in June and recorded on the proper page of the meter book for another account fails to adequately explain the entry of this particular figure on July 8 for meter #026902.

The Union claims the Grievant's anxiety and discomfort must be taken into consideration. These factors would be relevant if there were evidence to support a theory that the entry was simply erroneous instead of false, since her state of mind would supply a reason for making an error. However, these factors do not excuse a false entry. Further, these factors failed to adversely affect the accuracy of her other readings in this particular block on the

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The meter book was made available for the Union's review.

date in question, although some of those meters were much more unpleasant to read.⁶

The Union relies upon the confusing nature of the accounts in the immediate vicinity, yet the Grievant testified she knew this particular meter and its location (Tr. 136-137), that she generally knew where she was and what she was doing (Tr. 172), and further, she accurately read the remaining accounts within that block. The Grievant did not testify that she became confused in the course of reading the meters in that block on July 8. Thus, the evidence fails to support a finding that the confusing nature of the accounts in the alley led to a mistaken entry.

In conclusion, a review of all of the evidence regarding the entry for meter #026902 fails to support a finding that is explained by a reading from another meter that was recorded onto the wrong meter page. Under the circumstances, the conclusion is required that the entry of 9353 for meter #026902 on July 8 was falsely made by the Grievant when she had not, in fact, read that or another meter to obtain that figure.

Investigation:

The Union has failed to establish that the Company's investigation was unfair or flawed such that the disciplinary action herein must be overturned. While the persons initially responsible for the investigation were less experienced than those conducting such investigations in some other cases, the entire investigation was reviewed by Mr. Downing upon his return.

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Her concern about unpleasant surroundings and dirty conditions did not pertain to the meter at issue.

The record fails to show the Grievant suffered any prejudice from any alleged defect in the investigation. The Company made a good faith and reasonable attempt to ascertain whether some other explanation for the entry in question was present, even though the Grievant was not forthcoming with any explanation for what had occurred. In the course of its investigation, the entire meter book was reviewed by Mr. Downing and made available for the Union, the premises were visited and the customer was interviewed, and Company records were checked.

The Company's conclusion that curbing had occurred is supported by the information reviewed in its investigation and by the record presented in the arbitration hearing.

Level of Discipline:

The final issue is the appropriate level of discipline for the proven offense. The Union contends that, prior to the Grievant's discharge, the Company had not treated curbing as an automatically dischargeable offense in the Stockton Division, but as one which would subject an employee to progressive discipline (Un. Ex. 6, 7, 8). The record reflects that the cases involving lesser discipline for curbing date back to 1982 and earlier. Since that time, the company has taken a stricter view of the offense and more recent cases have resulted in discharge. Within the same month of the Grievant's termination, the award in Arbitration Case No. 129 was issued upholding discharge for a single instance of curbing. This decision has subsequently been accepted by the Parties in Pre-Review Committee Case No. 1074, dated April 22, 1986 (Co. Ex. 2).

In training, the Grievant had been advised that curbing was a dischargeable offense (Tr. 31; Co. Ex. 17, 18, 20). There was no evidence that she had been lulled into a belief that she would not be subject to discharge for curbing based upon lighter discipline issued to employees for that offense before she had been hired by the Company. Under the circumstances, grounds for reducing the level of discipline are not present.

Accordingly, the following decision is made:

DECISION

The suspension and later discharge of the Grievant, R , is not in violation of the Clerical Labor Agreement. The grievance is denied.

Dorothy Fortier
Union Board Member

6/19/87

~~Concur~~/Dissent

Roger Statcup
Union Board Member

6/19/87

~~Concur~~/Dissent

M. Borlight
Company Board Member

6/22/87

Concur/~~Dissent~~

Paul Denny
Company Board Member

6/24/87

Concur/~~Dissent~~

Bonnie Conway
Neutral Board Member

6-16-87

Concur/Dissent