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IN ARBITRATION PROCEEDINGS PURSUANT TO
AGREEMENT BETWEEN THE PARTIES

In the Matter of a Controversy Between:)	
)	
INTERNATIONAL BROTHERHOOD OF)	Arbitrator's
ELECTRICAL WORKERS, LOCAL UNION 1245)	File No. 89-134-LA
)	
and)	
)	
PACIFIC GAS & ELECTRIC COMPANY)	ARBITRATION
)	<u>OPINION AND AWARD</u>
[Re: D Termination, Case No. 166])	(January 12, 1990)
)	

Appearances: Tom Dalzell and Jane Brunner, attorneys for International Brotherhood of Electrical Workers, Local Union 1245; Tim J. Emert (Corbett & Kane), attorney for Pacific Gas & Electric Company.

INTRODUCTION

This arbitration arises pursuant to a collective bargaining agreement between the International Brotherhood of Electrical Workers, Local Union 1245, and the Pacific Gas & Electric Company. The dispute involves the termination grievance of D . D was discharged for a series of invoice and

contract processing errors committed while serving as a field clerk. The union argues that the errors were not as serious as the company claims, and that supervisory failures mitigate or justify any performance problems on D 's part.

The undersigned was selected by the parties to conduct a hearing and to render an arbitration award. In this capacity, the arbitrator has served as the neutral chair of a five-person panel authorized by the bargaining agreement.¹ The hearing was conducted on September 7, 1989 in San Francisco, and was concluded on October 23, 1989 in Oakland. At the hearing, the parties were afforded the opportunity to examine and cross-examine witnesses, and to present relevant exhibits. The matter was submitted for decision on December 26, 1989, the date of the parties' posthearing briefs.

RELEVANT CONTRACT PROVISIONS

Section 7.1 of the current collective bargaining agreement between the parties establishes that management may discharge an employee only "for just cause." (Joint Exh. B, p. 10.)

¹ The other panel members are: Roger Stalcup and Joel Ellioff for the union; and, Richard Bolf and Rick Doering for the company.

ISSUES

The parties stipulated that the following issues are the subject of the arbitration: "Was the termination of the grievant for just cause; if not, what remedy?" (Tr. 5.)²

POSITIONS OF THE PARTIES

The company contends that D , a field clerk with 12-plus years of experience, made serious errors in carrying out his primary assignment to process orders and invoices involving local vendors who supply materials and services to the PG&E facility to which D was assigned. These errors included extensive delays that resulted in vendor payments far beyond the standard 30 day payment period established by the company. Additionally, the company maintains that D failed to complete the processing of a contract authorizing an outside company to do work on PG&E property. This failure allowed the outside contractor to work without getting paid, and exposed PG&E to added liability.

According to the employer, D was properly discharged because of these errors since he had been the subject of a five-day

² The record reflects that at an earlier stage the parties also disputed the timeliness of the grievance. The company stipulated at the hearing that the matter was properly at arbitration, and that previous procedural objections were waived. (Tr. 3-4.)

disciplinary suspension for similar wrongdoing only the year before. To support the company's case against D , it cites evidence of specific processing failures, his admissions of wrongdoing during the employer's investigation, the grievant's failure to ask for assistance from supervisors, and his evasive and inadequate explanations regarding key errors that were found.

The union concedes that D made certain processing errors, including incomplete paperwork that resulted in payment delays for outside vendors. The union believes, however, that the errors have been exaggerated by the employer and that, in any event, managerial shortcomings mitigate or justify the problems identified with the grievant. In particular, it is the union's position that management abdicated its supervisory responsibility by failing to closely monitor D 's work and by allowing company engineers to give him special assignments that conflicted with D 's main priorities of local order and invoice processing. According to the union, these supervisory failings precluded a fair opportunity for D to improve after the previous disciplinary suspension, leading to a deterioration in his performance. Based on the above, the union urges that the grievant be reinstated with full make-whole relief.

FACTUAL ANALYSIS AND DISCUSSION

1. The Grievant's Employment History

D was hired in January 1974 as a field clerk after having worked for the company for brief periods while in school. D 's father and brother also had been long-time company employees. Throughout D 's regular employment he continued working as a field clerk in the General Construction department, undertaking a variety of support and service assignments. (Tr. 234-235.) At some point during his employment, D was promoted to "first field clerk," one step below the "senior field clerk" designation that is the highest ranking bargaining unit position for this type of work. (Tr. 118-122.)

In 1985, when D was assigned to the Diablo Canyon facility, he was counseled and warned about performance and attendance problems. (Jt. Exh. A-26.)³ In October 1985, the company suspended D for five days for payroll processing delays and for tardiness. When suspended, D was expressly cautioned

³ Joint Exhibit A contains the report of the labor-management "Local Investigating Committee" (LIC) and a series of attachments to the report. When the report is cited in this decision, the appropriate page reference will be stated. For exhibits, the number will be noted, as in the text above. Under the parties' contract, the LIC report represents a mutually agreed narration of events and findings. (Jt. Exh. B, tit. 102, pp. 25, 39.)

that continued problems could result in further discipline, including discharge.⁴

Following the October 1985 discipline, which was not grieved, D was transferred. (Tr. 234-235.) After brief transition assignments, in February 1986 he began working as a field clerk in the special Low Load Project at the company's Moss Landing power plant. His main responsibility at Moss Landing, described in greater detail below, was processing orders and invoices for local vendors who supplied materials to the company.

D was employed at Moss Landing until he was fired in January 1987. His discharge followed an investigation in December 1986 and January 1987 of work he had been assigned in the preceding several months. After the investigation, a senior supervisor concluded that termination was warranted, stating that D had,

...failed to follow Company procedures, failed to provide timely processing, shown a total lack of concern in processing payments and a general disregard to notify your supervision of needing any assistance. (Jt. Exh. A-30, p. 2.)

In the termination notice, the supervisor also commented that D had not explained or justified his performance failings,

⁴ Indeed, it seems that Dabney narrowly escaped termination in 1985. One high-ranking superior had recommended his discharge, but the lesser penalty was imposed instead. (Jt. Exh. A-28, p. 21; Tr. 140.) In addition, by its terms the suspension did not apply to certain contract processing errors that the company was then still assessing. However, nothing further arose out of this aspect of the earlier disciplinary stage.

and that the previous disciplinary action in October 1985 had little impact in improving his work in the several months thereafter. The union's grievance on D 's behalf followed his termination, eventually leading to this arbitration.

2. The Moss Landing Employment Setting

At Moss Landing, D worked as a field clerk in the General Construction department. In this capacity, he was assigned to the Low Load Project directed by Robert Hindmarsh, a senior construction engineer, and Robert McGuire, a resident engineer. D was one of four clerks working on the project through the balance of 1986. (Tr. 240-243.)

Pursuant to a reorganization of administrative work at Moss Landing at the start of 1986, D was given primary responsibility for local materials acquisition orders and for invoice processing. (Tr. 134-135.) He worked to a lesser extent on preparing contracts for suppliers and contractors who performed jobs on the Moss Landing site. From time to time, D also was given special assignments by Hindmarsh and McGuire.

The senior field clerk at Moss Landing was M an employee in the bargaining unit. In M 's role as a lead man,

he was supposed to oversee office administration while also working on contract preparation, payroll and other clerical matters. (Tr. 120-122, 220-221.) Other field clerks at Moss Landing kept tabs on project costs, organized and filed a steady stream of revised blueprints and drawings, and carried out secretarial functions. (Tr. 239-242.)

The Moss Landing clerical staff was under the supervisory and managerial authority of Bob Bowers, a supervising field clerk, and Kae Edwards, the field office supervisor. Both were based in San Jose. Bowers was the immediate supervisor of a number of field clerks at about 10 company sites. (Tr. 130-131.) At these various locations, the company employed four or five senior field clerks, including M . At Moss Landing, field clerks numbered 18 to 20, dispersed throughout that location in smaller working groups such as the Low Load Project. (Tr. 24.)

In carrying out his supervisory function, Bowers spoke on the phone on a regular basis to employees at the several sites he oversaw. Once every week or two he also visited each site to discuss and review ongoing activity, thus spending most of his time on the road. (Tr. 131, 144-145.) Once a year, Bowers also conducted field audits for each work group, checking examples of work that had been produced. A field audit was conducted at Moss Landing in April 1986. (Tr. 146-148, 150.) There is no evidence that prior to late December 1986 Bowers had expressed any

complaint about D 's work after the latter's suspension and reassignment.

As of April 1986, Bowers' supervisor was Edwards, promoted from another managerial post. Years before, Edwards had herself been a field clerk prior to a series of new higher level assignments. (Tr. 121.) After assuming her new position in 1986, Edwards also traveled, though not as often as Bowers, to the various sites within her geographical territory. (Tr. 131.) In December 1986 and January 1987, Edwards led the investigation and signed D 's discharge notice. (See, e.g., Jt. Exh. A-21 - A-23, A-30.) At the time, she was taken aback by the scope of the problems she discovered. (Tr. 112, 142-144, 168.) Among other things, it was only then that she learned from Bowers and her own superior that D had previous performance problems and had been given a suspension 14 months before.

At Moss Landing, although M had a leadership role, he and D kept their distance. M had his own assignments and apparently viewed D 's work as a nuisance to be avoided. (Jt. Exh. A-21a; Tr. 249-250.) There also is hearsay evidence that M and D were not above squabbling. In one instance, McGuire recounted that he had to intervene when each refused to pick up an order that McGuire wanted, and that M had asked D to get. (Jt. Exh. A, p. 13.) Perhaps, too, as events unfolded M resisted being in a quasi-supervisory role that

would require reporting on D 's work place problems. (Tr. 155; Un. Exh. 3.)

During this period, M also had problems of his own to keep in mind. Earlier in 1986 he had been counseled about a variety of performance issues and warned of potential discipline.

Eventually, at the time of D 's discharge, M was demoted to a first field clerk assignment. In significant measure, the demotion was based on M 's negligence in monitoring D 's work. (Un. Exh. 3.)

Evidence offered at the hearing demonstrated that there was a degree of confusion about the lines of authority for the field clerk staff at Moss Landing. Edwards and Bowers were based at the company's personnel and administrative services office in San Jose. According to Edwards, field clerks were assigned their particular administrative staff duties, and, once those were complete, field clerks were free to take on other assignments as directed by the local, on site engineering managers. (Tr. 24-25.) In D 's testimony, supported in part by a job description, the project engineers Hindmarsh and McGuire were the dominant authorities in the Moss Landing group, requiring D to put regular tasks on the back burner if they gave him other special assignments to carry out. (Tr. 261-263, 304; Co. Exh. 5.)

As a practical matter, the Moss Landing work place probably reflected in microcosm the blurred lines of authority that inevitably arise in large and complex forms of organization. On the one hand, since D and others were assigned to work on the Low Load Project, Hindmarsh and McGuire could be expected to view the work of these employees as something to be harnessed to the immediate needs of their project. For example, the resident engineers placed a high priority on materials acquisition when preparing for scheduled outages during which power plant construction work took place. (Tr. 251.)

On the other hand, the overriding reality was that Bowers' and Edwards' regular visits and phone calls, and the well established clerical routines followed by D and others, underscored the service-providing function overseen by Bowers and Edwards for various facets of company work. D was aware of this, and regularly discussed his work with Bowers. (Tr. 246.) The variety of work to be performed meant that the field clerks were really agents and emissaries of central corporate functions, organized to provide payroll and accounting data for the headquarters organization, and to insure the use of uniform standards for many kinds of paperwork. In circumstances such as these, it can be expected that the primary performance oversight would be the responsibility of the administrative services section. (Tr. 124-125, 131.) In carrying out this function, managers such as Bowers had to be adept and flexible to avoid stepping on toes, and to

respond to the special needs of the construction division engineers.

Two incidents involving D reinforce the conclusion that Bowers and Edwards were his key supervisors, and that he knew that to be the case. Earlier in 1986, only a few months after D 's transfer, he told Bowers that he was unable to do all of his work because of the large volume of print document filing that was required. (Tr. 246-249.) Bowers responded by arranging for the transfer of another clerical employee to Moss Landing to assume that particular responsibility.

The second telling incident occurred in the beginning of December 1986, shortly before D s vacation later that month. During a Moss Landing visit by Edwards in early December, D told her of his anticipated vacation and, responding to her inquiry, told her that he was caught up on his work. At the hearing, Edwards testified about this interchange and D 's comment. (Tr. 54-55.) D did not deny the remark, stating only that he could not recall it. (Tr. 245.)⁵

⁵ Corroboration related to Edwards' testimony also is provided by hearsay accounts, which normally would not support material findings of fact standing alone. While there was no testimony from Bowers, who is now dead (Tr. 67), nor M , who was not called as a witness by either party, the investigatory record of their remarks adds to the finding that, with the exception noted in the text, D did not report work place back logs or ask for assistance. (Jt. Exh. A, p. 11; A-21a.)

3. Evidence of Unacceptable Performance

a. Processing errors

Several examples of invoice and contract processing errors discovered in the course of the company's investigation were offered to support the termination decision. Key points will be summarized below.

One of D 's most serious problems involved the Control Components contract. (Jt. Exh. A, pp. 6-7; Tr. 61-66.) This outside company began providing service in 1985, but without the required contract being in effect. Some months after D was assigned to Moss Landing, he undertook to complete the processing so that the contract could be submitted to headquarters for final approval. Once approved, the contractor could be paid and PG&E would have liability protection for work undertaken by others on company property.

The contract was rejected, however, because of various omissions, largely of a ministerial nature. D also had a phone call with a central office staff person about the problems that were identified. (Tr. 297.) Thereafter, the almost-completed contract was placed in D 's file drawer. It remained there until late December 1986. At that time it was discovered by Hindmarsh and

M who were trying to answer a question about the contract's term and needed to find it while D was on vacation.

The discovery of the Control Components problem, along with other materials on and inside D 's desk, prompted the investigation by Edwards and Bowers in the weeks following.⁶

Another major series of errors involved D 's handling of the of local order preparation and invoice processing. This activity was D 's principal assignment at Moss Landing. It involved work that he had performed at other locations. (Tr. 236-237.) From the ease of his testimonial descriptions and his ability to flip back and forth among documents pinpointing particular numbers and signatures, it is concluded that D was very familiar with local order processing and requirements.

Normally, under company procedure, if supplies and other smaller cost items are not available from an internal company distribution source, they may be bought from a local supplier once a local order number is assigned. (See, generally, Tr. 25-45.) Further, if several items are routinely needed from a single source, they may be purchased pursuant to an open, standing local order number. Regardless, once the goods are received, various

⁶ Oddly, D 's failure to pursue the few steps needed to complete the contract processing was compounded by his attempt to have the contractor paid some of the money owed by using an alternative invoicing procedure. This approach also was rejected. (Jt. Exh. A, p. 7.)

approval and logging steps are followed prior to submission of the vendor's invoice statement to the accounts payable department. The company's goal is to pay vendors within 30 days of being billed.⁷

In the Valley Rubber Stamp Company case, however, standard procedures were flaunted. (Jt. Exh. A, p. 8; Tr. 72-85.) D allowed many Valley Rubber invoices to accrue during his first several months at Moss Landing. Eventually, in July 1986 he submitted a number in bunched fashion for payment. Bunching invoices for delayed payment was contrary to PG&E practice. Some of the invoices were six months old, well beyond a 30 day schedule, and involved purchases that had occurred even before D was on the scene. In any event, the July payment submission was kicked back by the accounting unit because of processing omissions and errors committed by D and others. Unfortunately, the return of the Valley Rubber materials to Hindmarsh at Moss Landing, via a clerk in Edwards' office, was treated as an isolated incident and did not trigger a deeper probing into D 's situation. (Tr. 172-173.)

⁷ At the hearing there was a dispute whether the standard was 30 days from the invoice date (Edwards' view), or from the date of receipt (D 's understanding). (Compare Tr. 46 with Tr. 300.) It is not necessary to resolve this difference because even under D 's understanding most of his processing delays exceeded a 30 day limit.

The company points out in its brief that the Valley Rubber submission seems to have been prompted by a comment of Bowers. According to D , he believes that Bowers on one of his regular site visits may have observed some unpaid invoices and asked D to deal with them. (Tr. 325.) If so, in the company's view, D 's subsequent submission to accounts payable of obviously deficient material supports an inference, if not a finding, of intentional wrongdoing on his part. While D 's underlying state of mind may be debated, his proficiency with the materials is strong evidence that he knew or should have known, even without a comment by Bowers, that the material he submitted would not pass muster.⁸

Other problems were cited at the hearing based upon the company's investigation. (Jt. Exh. A, pp. 9-10; Tr. 86-99.) For example, for the Andrews Blueprint account, November 1986 invoices had been partially processed but not forwarded. For Newark Electronics, an invoice from March 1986 had not been paid, and billing was repeated months later (along with a second overdue

⁸ The Valley Rubber problem was compounded because at least some of the billing still was not fully processed by the time of the official investigation into D 's performance, during which Edwards had discovered Valley Rubber invoices in an envelope on D 's desk. Although the envelope bore the name of another employee, the evidence suggests the strong possibility that the vendor may have supplied the material to D via an intermediary. (Tr. 310-311; Jt. Exh. A-23, pp. 1-2.) It is not surprising that during Edwards' subsequent contacts with the vendor she was told of the trouble and frustration they had experienced in trying to get their bills paid in a timely fashion. (Tr. 83; Jt. Exh. A-21b, pp. 3-4.)

statement). Other invoices had been received from AWC, but there was no record of a local order having been opened. An envelope addressed to Sierra Springs containing a completed local order from early December was found, ready for mailing, in D 's desk. D 's records reflected that in August he had started a tracer on a billing from ITT Grinnell, but thereafter had done nothing.⁹

b. Other evidence

During the course of Edwards' and Bowers' investigation they had lengthy interviews with D . These sessions were not transcribed, but detailed notes were made. (Jt. Exh. A-22, A-23.) D 's admissions of errors, as well as incomplete and evasive explanations, were described in Edwards' testimony and in the supporting documentation. (See, e.g., Tr. 64, 84-85, 99-100; Jt. Exh. A-23.) According to Edwards, the grievant conceded that he had "pushed his luck," that he knew how to do the work, and asked that he not be fired. (Tr. 115-116.) D told the LIC that he had neglected to follow through on the Control Components

⁹ Two shortcomings alleged by the company are not accorded much weight based on the evidence presented. In one case, D could have completed an expense reimbursement form for an employee, but did not. He testified that another field clerk was going to follow up on this while D was on vacation. (Tr. 289.) Although the other clerk contradicted D 's claim, the denial was in the form of hearsay contained in the investigatory report. (Jt. Exh. A-22, p. 4; Tr. 99.) The other matter involved P.W. Industries. Rather than submit two bills just a month or two apart, D waited for a later debit invoice to arrive before forwarding the vendor's final statement. (Tr. 86, 293-296.)

contract and that he had let other matters slip through the cracks. (Jt. Exh. A, pp. 7, 11.)

During the investigation and at the hearing, D described the details of local order and contract processing, thereby demonstrating that he knew how to carry out his work activity. He admitted, however, that despite his generalized claims of too much work and conflicting priorities, he never asked for assistance, with the one exception mentioned above. (Tr. 300-301.) This was so even though D was aware that he was behind in his work. (Tr. 260-261, 305-306.) His explanations for the processing shortcomings noted in the investigation were either non-existent or wavering, with his lack of responsiveness being observed by the LIC. (Jt. Exh. A, p. 11.)

3. Evidence of Justification and Mitigation

The union and the grievant raised three grounds as justification and mitigation for processing errors that occurred.

One major area involved special projects and assignments undertaken by D for Hindmarsh and McGuire. (Jt. Exh. A, pp. 9, 11-13; A-24; Tr. 107-110, 252-260.) These assignments included a master plan to reorganize the project's material acquisitions procedure, a function that had been in some disarray before

D. 's posting to Moss Landing. A second special project was D 's preparation of the company's preliminary response to a vendor's \$400,000 claim for work that had been undertaken. In addition to these projects, D worked on other matters for Hindmarsh and McGuire, many of which were not directly related to his local order processing function.

Overall, these assignments involved commitments of D 's time between March and October 1986. In some periods, he spent weeks devoted to a particular project, letting other work wait. On other occasions, his involvement was of an intermittent nature. Given the subject matter, D understandably found that his special assignments were more challenging than the routine, if not boring, local order work he had been given. (Tr. 308-309.) Nonetheless, even the account provided by D to Edwards and Bowers during the investigation conceded that these special projects reduced but did not preclude his ability to carry out other job tasks. (Joint Exh. A-24, p. 6.) In light of this admission and the related circumstances, an inference can be drawn that D did not expressly voice concerns about possible conflicting priorities that interfered with his regular work because he wanted to continue participating in the more intriguing projects that directly involved Hindmarsh and McGuire.¹⁰

¹⁰ McGuire's comments to the LIC support this inference, although also observing that D had problems executing the work. McGuire was asked,

A second principal area of mitigating evidence involved the grievant's claims that others shared responsibility for the procedural shortcomings that have been attributed to him. In this regard, the union asserts that the employer's allegations are hyperbolic. Hence, in connection with the Control Components example, the union notes that the incomplete state of the contract preceded D 's transfer to Moss Landing, and that the ultimate responsibility for contract approval rested with Hindmarsh. (Tr. 296-297; Jt. Exh. A-7.) Additionally, the union elicited testimony that as to several of the local order processing errors, other employees had played a role in failing to properly complete or to signify approval of hand-tags and invoices before they were forwarded to D for final processing. (Tr. 273-276, 282-283.)

While it is true that there were examples of slip ups that could be blamed on others in the work force at the Moss Landing project, it is also true that, in the end, the company has focused on particular and substantial failings that must be attributed to D . In the Control Components case, for example, D had been given a road map directing how the

...in retrospect do you think he was overloaded. McGuire said that no, he was not, and if he was he never let me know about it. My perception was that he would take one thing and do it extremely well, but when it came to handling many different tasks at the same time, he could not seem to handle it all. (Jt. Exh. A, pp. 12-13.)

contract processing should be completed, and even had a followup phone call on the subject. (Jt. Exh. A-8; Tr. 62-63, 297.)

Inexplicably, however, the contract went into a drawer. With respect to the local order mishaps, D was the final step prior to release to the accounts payable section. (Tr. 42-43.) As such, it was his task to spot the mistakes and have them rectified, not to forward packets with incorrect or missing information that he would have caught had he paid proper attention.

The union's related claim that the company's alleged wrongdoing is exaggerated also is unavailing. It may be estimated from the evidence that D was responsible for about 40 to 50 invoices per month, and for perhaps 20 new local orders each month. (Tr. 181-182, 264.) The evidence offered by the company demonstrated about 20-plus local order and invoice errors by D, as well as the contract lapse, in his 10 months at Moss Landing. This work, amply described in the record, is simple to execute. It should have been manageable for someone of D's obvious experience. Moreover, in the overall range of field clerk duties, which include payroll and cost accounting, local order processing is perhaps the easiest assignment in terms of technical requirements and knowledge. Under these circumstances, which show errors in up to five percent of D's processing activity, the employer has not exaggerated in presenting its case against the grievant.

Finally, as mitigation, the union and the grievant offered evidence involving alleged supervisory shortcomings. These shortcomings, in their view, undermine the company's disciplinary decision on the theory that the grievant's errors would not have occurred but for management's oversights and omissions.

One point raised by the union is that procedural failings weaken the employer's case. For example, although the company has a policy of evaluating employees annually, D was given performance reviews only twice, in 1983 and 1984. (Tr. 167.) Given the discipline assessed in 1985, however, D hardly can claim that he lacked notice about the company's underlying concern for the quality of his work. Rather, in light of the prior discipline and the transfer to a new site, D must have known that his disregard for basic work responsibilities all but invited his ouster as a field clerk.

Nor, contrary to the union's contention, can D reasonably assert that there was a degree of uncertainty about his primary work responsibilities because he was never given a formal, written specification of his duties. (Tr. 117-118, 246.) While a written job statement was not provided, the record nevertheless shows that D was placed in the Moss Landing project with a clear assignment to assume responsibility for local order and invoice processing. (Tr. 134-135, 299.) Regarding this work, of

the all the clerks in the office, only D handled the relevant mail and phone calls and submitted the appropriate papers. The other clerks were busy with their own primary areas of work.

Another point raised on behalf of the grievant is that M and Bowers presumably were aware of D 's ongoing problems with conflicting priorities and processing delays. (Tr. 261-262, 301-302.) D , however, admitted in the investigation and at the hearing that, as a general matter, he never actually asked for assistance. Instead, he assumed that Bowers and M were aware of his situation based on their knowledge of office priorities, occasional references he might have made to being behind in his work, and their observations in the office. From this, D believes he should have been told if he was working improperly.

Such an assumption might be reasonable if there was evidence that he clearly communicated workload conflicts to Bowers or M , or if D 's work area or the paperwork itself showed that he was swamped. To the contrary, D was evasive when recounting supervisory awareness of his situation, portraying M as peripherally involved (Tr. 301-305), and his desk was described as neat, except for a small mess apparently created by others while he was on vacation (Tr. 182-183). Even if M monitored the outgoing mail, a primary oversight technique cited by a

former senior field clerk (Tr. 221), most of D's problems would have gone unnoticed because they involved earlier processing steps. Moreover, the many examples of D's near-perfect hand printing that are in evidence also indicate that D must have been unusually deliberate and fastidious in executing his written assignments. (See, e.g., Jt. Exh. A-11, A-25, pp. 5-8.) From these physical signs, one could conclude that D had his work under control, an impression confirmed by others during the investigation. (Jt. Exh. A, pp. 12, 13, A-21a, A-21b.)¹¹

A last point put forward as mitigation alleges an absence of adequate monitoring and counseling. (Tr. 265-266.) To support the contention that D was deprived of an adequate opportunity to improve, the union has submitted a series of previous PG&E grievance and arbitration decisions. The decisions, however, have limited probative value because of the widely varying factual settings and the range of disciplinary actions.

With respect to the union's general claim, however, it was established that M for the most part abdicated his responsibility to oversee and direct D's work in the project

¹¹ Again, McGuire's observations to the LIC also are relevant:

McGuire said that grievant presented himself as being 'under control,' very quietly confident, kicking back, very relaxed, actually like he was under no pressure at all. (Jt. Exh. A, p. 13.)

office. D was assigned work that M did not care about, and the latter obviously did not like the role of being a traffic policeman for office work. M paid the price for this negligence in the form of a demotion. Regardless, since M was not a true supervisor, blame cannot fully be laid at his door.

Less clear is whether Bowers could have done more to carefully scrutinize M , who had ongoing problems, as well as D fresh from discipline because of poor performance at Diablo Canyon. Given Bowers' death, we only have his investigatory remarks to shed light on his view of events.

Viewing the evidence as a whole, the undersigned is not persuaded that Bowers should have been in closer touch with D 's work. Bowers had a large territory that included many field clerks and a variety of company operations. Company procedures were well-established and were incorporated in reference manuals. (See, e.g., Jt. Exh. A-5, A-6.) In this context, the grievant had been assigned relatively easy work that he had undertaken before. After the substantial warning in the form of a five-day suspension, one would expect D to be on the lookout to avoid a similar problem in the future.

Short of an audit such as the one conducted in April 1986, soon after D 's transfer, it is not clear how Bowers through the

exercise of greater diligence would have discovered the pattern of problems that had developed down the road. For day to day issues that arose, Bowers was available over the phone and on weekly visits to hear specific complaints or needs. D apparently engaged in regular discussions about his work. (Tr. 246.) Except for one instance, however, there is no indication that D ever sought assistance. On that occasion, Bowers responded by arranging for the transfer of additional personnel. There is no reason to believe that Bowers would have failed to arrange for additional help had D been forthcoming about his situation and needs.

4. Conclusion

In the end, the undersigned is convinced that D willingly and knowingly let himself get further and further behind in his processing work, and sought to obscure the extent of his declining performance from others. This conclusion is supported by three basic aspects of the case.

First, there are D 's admissions that he was aware of the untimely processing while he was undertaking other assignments that he knew were not part of his primary responsibility at Moss Landing. Second, despite this awareness of being behind, he did not ask for the necessary help even though he had numerous

opportunities to do so in the course of his regular contacts with Bowers and Edwards. On this point, Edwards testimony is credited regarding D's pre-vacation comment in December 1986 that he was caught up. Third, an inference is drawn from D's testimony and an examination of the content of the work that he preferred the Hindmarsh and McGuire assignments to his own routine ministerial duties.

Taken together, these elements of the case would support serious discipline, if not discharge, even for an employee with D's long employment with the company. Any reservation about the proper sanction is removed, however, when these elements are coupled with the ineffectiveness of the previous five day suspension as a corrective measure and a warning. With this in the background, D's poor performance and irresponsibility provide just cause for the ultimate penalty of termination.

AWARD

Based on the record of the hearing, and the analysis and discussion set forth above, the undersigned renders the following Award: The grievance on behalf of D is denied and his termination is sustained.

Date: January 12, 1990

Barry Winograd
BARRY WINOGRAD
Arbitrator

PANEL MEMBERS:

Roger Stalcup
ROGER STALCUP
Union Representative

~~concurring~~ / dissenting

Joel Ellhoff
JOEL ELLHOFF
Union Representative

~~concurring~~ / dissenting

Richard Bolf
RICARD BOLF
Company Representative

concurring / ~~dissenting~~

Rick Doering
RICK DOERING
Company Representative

concurring / ~~dissenting~~