

7.1: DISCHARGE OF HH
FIELD MECHANIC WHO
DIVERTED ENERGY PRIOR
TO DISPATCH SUSTAINED
BY ARBITRATOR. CO. MAY
TAKE ACTION WHEN IT
DISCOVERS A HISTORY
THAT PRECLUDES
CONTINUED EMPLOYMENT.

DECISION AND AWARD

PACIFIC GAS & ELECTRIC, *
Employer, *
*
and * Re: Discharge
*
INT'L. BROTHERHOOD OF *
ELECTRICAL WORKERS, *
LOCAL 1245, * PG&E Arb. Case #223
* Union *

For the Employer: Stacy A. Campos, Esq.
Legal Department
Pacific Gas & Electric
San Francisco, California

For the Union: Tom Dalzell, Esq.
I.B.E.W. Local 1245
Walnut Creek, California

Chairperson: Thomas Angelo
Mill Valley, California

Union Panel: Roger Stalcup, Asst. Business Manager
Frank Saxonmeier
Business Representative

Company Panel: Margaret Short, Director
Industrial Relations Services
Patricia Medrano
Human Resources Advisor

August 14, 1998

SUMMARY

This dispute arises out of a bargaining relationship between Pacific Gas & Electric (hereinafter "Employer" or "Company") and the International Brotherhood of Electrical Workers, Local 1245 (hereinafter "Union"), and concerns the termination of Mr. M (hereinafter "Grievant"). The Company contends it had just cause to terminate the Grievant when it discovered that prior to being hired out of the Union hiring hall he had diverted (stolen) electricity by manipulating his residential meter. The Union contends that although the charge is true the Company may not rely on pre-hire conduct to support termination of hiring hall referrals.

For the reasons set forth below the grievance is denied. While some pre-employment conduct may be overlooked due to the passage of time or lack of nexus, the Grievant's theft of the Company's product does not fall within that category. The hiring hall agreement does not preclude the Company from disqualifying employees whose prior behavior is fundamentally inconsistent with their employment obligations.

STATEMENT OF ISSUES

The following issues are presented for resolution by the Arbitrator:

Was the Grievant, M. , terminated for
just cause? If not, what should the remedy be?

The parties also stipulated the matter is properly before
the Arbitrator for resolution and that jurisdiction shall
be retained to resolve any disputes over the meaning or
application of the Decision and Award.

STATEMENT OF FACTS

In early 1995 the Company was experiencing difficulty
in obtaining temporary, skilled labor. As a consequence,
commencing in May 1995 the parties agreed that the Union's
hiring hall would be used to fill temporary positions. One
notable aspect of this arrangement was that background
checks would not be performed on these temporary employees
unless they were expected to have contact with customers.
At the time of hearing the Company employed some 2000
temporary employees and since the inception of the program
it has employed thousands of hiring hall referrals.

The Grievant was referred by the Union on March 22,
1996, to fill a temporary field mechanic position.^{1/} As it
happened, only eight days prior to the referral a Company
revenue protection representative discovered the Grievant

^{1/}

As a Field Garage Mechanic the Grievant worked on gas and electric
trucks and would have access to vehicles that carried seals, rings and
meters.

had tampered with his residential meter and was stealing energy from the Company.^{2/} Since there was no background check performed at the time the Grievant was dispatched, his activities were not discovered by the Company for several months. In addition, the Company was completing its audit of the matter and did not finally notify the Grievant of the amount due until August 14, 1996.

It appears that the Grievant's actions came to the Company's attention because the revenue protection representative recognized him while he was at work. His status was brought to the Company's attention at that point. On September 11, 1996, he was removed from the payroll and the Union was advised that he should not be referred for additional positions for at least one year.^{3/} On September 11, 1996, the instant grievance was filed protesting the Company's action on the basis the diversion of energy took place prior to his dispatch. The Company denied the grievance on the grounds that energy diversion

^{2/} The Grievant was billed for the diverted energy as well as for the costs associated with the investigation of the matter. It appears from the record that he paid both charges. Criminal charges were not pursued because, among other reasons, prosecution is declined where the amount involved is under \$100,000.00.

^{3/} Under the Hiring Hall agreement the Company's disqualification of an employee lasts for 12 months.

is the type of misconduct for which summary discharge is appropriate, and that it should not be forced to hire an individual who has engaged in energy theft.⁴

When the matter could not be resolved the Undersigned was selected to serve as arbitrator. A hearing was conducted on May 15, 1998, at which time the parties were afforded a full opportunity to present evidence and examine witnesses. A transcript of the proceedings was prepared and has been fully reviewed. The parties submitted timely post-hearing arguments and the matter was submitted on August 3, 1998.

DISCUSSION

Although the Grievant denied that he engaged in energy theft in 1988 and 1996 the evidence and stipulations of the parties establish that he was guilty in both cases. Moreover, this is not a case where the Company has uncovered a single instance of youthful indiscretion. Rather, the Grievant has demonstrated a propensity for tampering with his meter in order to avoid electricity charges.

^{4/} Subsequently the Company learned the Grievant had been caught stealing electricity in 1988 as well.

After considering the record and arguments of the parties it is apparent that nothing in the hiring hall agreement or the just cause standard requires the Company to retain the Grievant on its payroll. There is no dispute that energy diversion is an offense for which a regular employee may be summarily discharged. The fact the Grievant engaged in the same activity before he was hired does not insulate him from removal.

Although the Company has agreed to accept most hiring hall referrals without background checks, it is not precluded from taking action when it discovers a temporary employee has a history that precludes continued employment. This has certainly been true where pre-employment criminal activity has been discovered, and the fact the Grievant has not been charged or convicted does not negate the fact he has twice stolen the Company's product in the past.

While the absence of a criminal record in some circumstances would warrant consideration as a defense, it is not persuasive here. The nature of the Grievant's prior conduct adversely affects the trust and reliability necessary to maintain the employment relationship. The Company should not be forced to employ the Grievant and then wonder whether he is performing assigned tasks or merely honing his energy diversion skills.

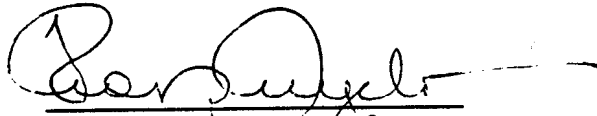
The Union is justifiably concerned with the possibility of unilateral changes to the 1995 hiring hall agreement. However, there is nothing about this case to suggest the Company has invoked a policy of background checks for hiring hall referrals, or that it seeks to adjust what the Union has termed a "carefully crafted set of trade-offs" between the parties. To the contrary, the evidence demonstrates the Grievant was caught by pure happenstance rather than on the basis of some systematic review of his background. Therefore there is no indication the Company has changed the nature or operation of the hiring hall agreement.

On balance there is no need to extend this opinion or increase the costs to the parties in doing so. The Grievant's personal history made him unsuitable for employment as a temporary hire and the Company had just cause to terminate his services. Accordingly the grievance is denied.

AWARD

The grievance is denied.

August 14, 1998

A handwritten signature in cursive script, appearing to read "Thomas Angelo", written over a horizontal line.

Thomas Angelo
Neutral Chairperson

AWARD

The grievance is denied.

August 14, 1998:

Thomas Angelo, Neutral Chairperson

Concur/Dissent Date: _____

Roger Stalcup
Roger W. Stalcup, Union Board Member

~~Concur/Dissent~~ Date: 10/28/98

Frank Saxsenmier
Frank Saxsenmier, Union Board Member

~~Concur/Dissent~~ Date: 11/12/98

Margaret Short
Margaret Short, Company Board Member

Concur/Dissent Date: 10/28/98

Patricia Medrano
Patricia Medrano, Company Board Member

Concur/Dissent Date: 11/18/98