

A MATTER IN ARBITRATION

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS (IBEW)
LOCAL UNION 1245,

UNION

And,

PACIFIC GAS & ELECTRIC COMPANY
(PG&E)

EMPLOYER

Grievance: [REDACTED]
(Demotion)

Award: June 9, 2021

Hirsch Case #: H20-085

**DECISION AND AWARD
ROBERT M. HIRSCH, ARBITRATOR**

Appearances By:

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STATEMENT OF PROCEDURE

This matter arises as the result of a dispute between the International Brotherhood of Electrical Workers, Local 1245 (IBEW or Union) and Pacific Gas & Electric Company (PG&E or Employer). The parties are bound to a collective bargaining agreement (CBA) which requires all disputes over the application or interpretation of CBA be submitted to binding arbitration.

This matter is properly before the Arbitrator and all procedural requirements have been met. The dispute involves the demotion of [REDACTED]. The Union and Employer determined that there were no disputed material facts in this matter and therefore, have stipulated to all facts and waived any evidentiary hearing. The parties agreed to file closing briefs based upon the stipulated evidentiary record, which they have done. Having had the opportunity to review the record in its entirety, this Arbitrator is prepared to issue a decision.

ISSUE

The parties could not agree upon a statement of the issue and therefore left it to the Arbitrator to frame it. There are two issues to be addressed here:

- 1) Whether the issue of PG&E's contractual right to demote the Grievant is properly before the Arbitrator?¹
- 2) If so, did PG&E have the right to demote the Grievant based upon the facts of this case?

RELEVANT CONTRACT LANGUAGE

A. Title 7.1 – Management of Company

The management of the Company and its business and the direction of its working forces are vested exclusively in [the] Company, and this includes, but is not limited to,

¹ PG&E raises this procedural question which must be addressed.

the following: to direct and supervise the work of its employees, to hire, promote, demote, transfer, suspend, and discipline or discharge employees for just cause; to plan, direct, and control operations; to lay off employees because of lack of work or for other legitimate reasons; to introduce new or improved methods or facilities, provided, however, that all of the foregoing shall be subject to the provisions of this Agreement, arbitration or Review Committee decisions, or letters of agreement, or memorandums of understanding clarifying or interpreting this Agreement. (Jt. Ex. 1) (emphasis added).

B. Title 102 – Grievance Procedure

102.2 Grievance Subjects

Disputes involving the following enumerated subjects shall be determined by the grievance procedures established herein: (a) Interpretation or application of any of the terms of this Agreement, including exhibits thereto, letters of agreement, and formal interpretations and clarifications executed by Company and Union. (b) Discharge, demotion, suspension or discipline of an individual employee. (c) Disputes as to whether a matter is proper subject for the grievance procedure.

Positive Discipline Guidelines²

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Note: For some types of performance problems, caused by an ability deficiency, demotion to a lower classification may be the appropriate action rather than implementing any step of Positive Discipline.

BACKGROUND

Grievant [REDACTED] ([REDACTED] or Grievant) worked as an Electric Crew Foreman at the Employer’s Richmond, CA yard in October 2018. [REDACTED] was leading a crew of two other PG&E employees on an Emergency Overtime shift. The parties stipulated that the Employer conducted an investigation into the Grievant’s conduct relative to that shift, based upon information it received. It was determined that [REDACTED] inaccurately reported his time and falsified his overtime, directing his 2-man crew to sleep during their shift as well.

² Joint Exhibit (JX) 2, p10

The Grievant was disciplined with a Decision Making Leave (DML)³ and also demoted from foreman to lineman for a 12 month period, subject to consideration at the end of that time period.

The Union, in this grievance, does not take issue with the discipline meted out by the Employer. Rather, the IBEW challenges PG&E's right, under the CBA, to demote ██████████ for time theft and alleged fraud. It argues that the quoted note above, from PG&E's Positive Discipline Guidelines, limits the Employer's ability to demote workers to those circumstances where "performance problems" are "caused by ability deficiency."⁴ The IBEW states that demotion is not discipline under the CBA and should not be assessed under the "just cause" standard applied to discipline.

It is the Union's contention that demotions are judged under a "cause" standard, which is not the same as "just cause." According to the Union, cause means "performance problems *caused* by an ability deficiency (emphasis added)." Here, the demotion was for time theft and fraud, which the IBEW says is not an "ability deficiency." The Union cites a grievance decision (Pre-Review Committee decision) from September 2013 to support its position. There, a gas service representative failed to properly check a gas leak and was issued a DML and demoted. The parties agreed to an award which concluded that the employee had "demonstrated an inability to perform the work..."⁵ The Union submitted four other Review committee or Pre-Review Committee decisions which it argues support its view of the contract provisions at issue here. There was insufficient cause to demote ██████████ concludes the IBEW.

³ DML is similar in nature to a "Last Chance Agreement."

⁴ JX 2, p10.

⁵ Union Exhibit (UX) 1, p1.

PG&E challenges both procedure and substance in this case. First, it contends that the Arbitrator should deny the grievance on procedural grounds. The parties previously stipulated that just cause existed for the discipline issued. The Union, argues the Employer, never separately challenged the demotion under a different contractual provision. Thus, says PG&E, the IBEW is barred from now asserting a new claim, not previously articulated in its grievance form or at prior steps in this process.

The Employer also contends, to the extent the underlying merits of the grievance are addressed by this Arbitrator, that the CBA and clear past practice support PG&E's decision to demote ██████████ for his actions. The Employer asks that the grievance be denied.

DISCUSSION

This case seems to be presented in a complicated fashion, when in fact it is not that complex. First, we address the procedural issue raised by the employer. The initial grievance filed by the IBEW clearly challenges both the discipline and the demotion as being “without cause.” Nothing in the CBA or the record here prohibits the Union from withdrawing its challenge to the discipline while maintaining its attack on the demotion. The definition of the term “cause,” addressed below, does not control whether the Union may pursue its challenge of the demotion for lack of “cause.” Thus, the Union prevails on the procedural issue – it has the right to challenge PG&E's contractual right to demote the Grievant.

The second issue is a different matter. This Arbitrator cannot agree with the Union that the term “cause” used in the Positive Discipline Guidelines (PDG) has a completely different meaning than the term “just cause” has in the CBA. The CBA gives the Employer the power to

“demote” and “discipline or discharge employees for just cause.”⁶ The PDG cover letter of September 21, 1987, expressly refers to “active counseling” as including “...a demotion for cause.”⁷ In fact, the Union’s grievance in this matter challenged both the discipline and the demotion as being “without cause.” It drew no distinction between the two adverse actions and used the term “without cause” to challenge both. It clearly used the term “cause” interchangeably with the term “just cause” found in the CBA (Title 7.1) cited above.

Arbitrators routinely and consistently use the terms “just cause” and “cause” interchangeably.⁸ I find nothing here compelling a different definition for the two phrases. The PDG references the fact that, “For some type of performance problems, caused by ability deficiency,” “demotion.” “...may be the appropriate action” rather than another step of Positive Discipline. This language does not prohibit demotion in other circumstances. It merely offers a suggestion as to when demotion may be used *rather than* discipline. Nor does the language compel a definition for the term “cause” which only encompasses “ability deficiencies.” The word “caused” in the quoted section of the PDG only qualifies when a demotion might be used rather than discipline.

Finally, a compelling argument can be made that the Grievant did in fact display an “ability deficiency.” He clearly failed to show an ability to lead with integrity and by example. He falsified his time-card – fraudulently claiming he worked when he did not, and claimed he was entitled to be paid when he was not. He also encouraged the two employees he was supervising to sleep while they were on the Employer’s clock. That is a leadership deficiency

⁶ JX 1, Title 7.1

⁷ Id., p 2.

⁸ Elkouri & Elkouri, *How Arbitration Works*, Ch. 15.2.A.i-ii (BNA 8th Ed. 2017). (Quoting from *Worthington Corp.*, 24 LA1, 6-7 (“(I)t is common to include the right to suspend and discharge for ‘just cause,’ ‘justifiable cause,’ ‘proper cause,’ obvious cause,’ or quite commonly simply for ‘cause.’ *There is no significant difference between these various phrases.* (Emphasis added).

and justified the Employer's decision to demote ██████████ for a minimum of 12 months under the just cause standard as well as the standard propounded by the Union.

I conclude that PG&E had the contractual right to demote the Grievant based upon his actions in October 2018, which also lead to a 12-month DML. The just cause standard applies to that decision.⁹

AWARD

Based upon the evidence presented and the arguments of the parties, I find the following:

- 1) The issue of whether the Employer had the right to demote the Grievant is properly before this Arbitrator.
- 2) The Employer had the right to demote the Grievant under the CBA.
- 3) Accordingly, the grievance is denied.

IT IS SO ORDERED.

Date: June 9, 2021



Robert M. Hirsch, Arbitrator

⁹ The parties stipulated that if the just cause standard applied to the decision to demote, PG&E prevails in this grievance/arbitration.