International Brotherhood of Electrical Workers Local 1245

and

Pacific Gas & Electric Company

Review Case #229

East Bay Grievance #158

Arbitration Case #11

Issue:
1. Did grievant quit his employment as contended by the Company, or was he discharged as contended by the Union?
2. If it is found that he was discharged, did the Company have justification in terminating his employment?
3. If it is found that he was unjustifiably discharged, should he be reinstated in the employ of the Company, and what conditions shall govern his reinstatement?

Date of Opinion: August 8, 1960

BACKGROUND

The grievant was employed for nine years as a Lineman for PG&E. In July 1959 he began secondary employment as a part-time bartender. On February 17, police officers found that a pinball machine in the tavern where grievant was tending bar was being used illegally as a gambling device. Grievant, who was serving drinks at the time, was arrested, together with the owner of the tavern. Reports of the arrest appeared in three local newspapers serving the area. On February 23, 1960, the local manager informed the grievant he would have to give up his secondary employment or leave PG&E. He was given the few days until February 26, 1960 to make a decision. On this date, he was called by the local manager to learn his answer. The grievant stated he did not want to give up either job. The local manager then told him that he should not report for work Monday (February 29, 1960).

The Union then instituted a grievance requesting reinstatement and payment for time lost. The Company insisted that the grievant had quit and thus no grievance existed. No settlement could be reached through this procedure and the case was submitted to arbitration.

The above three questions were submitted to the Arbitrator. Referring to question No. 1 (the nature of the severance) - the Arbitrator says, "A resignation is a severance which originates with the employee - either through a formal notice of quitting or through an absence which signifies that he has given up the job. A discharge is a severance which originates with management.... The evidence is clear that the severance was both proposed and initiated by the Company, not by the grievant.... If he did not take action to abandon his work in the tavern, the Company would take action to sever him from its employment. This was a clear threat of discharge...."

Since the employee did not notify the Company that he was quitting or that he agreed to accept its proposal that he quit its employment, and since the Company clearly instituted the severance on its own volition after a plain indication of its intention to do so, the severance must be construed as a discharge.

Referring to the second question (justification of the discharge) - two basic questions were raised. Question (A): Did Company have any right to exercise control over off-duty employment? On this, the Arbitrator says, "...THERE CAN BE NO QUESTION THAT THE COMPANY HAS A RIGHT TO TAKE ACTION IN INSTANCES OF SECONDARY EMPLOYMENT WHICH IMPAIR THE QUALITY AND EXECUTION OF THE WORK TO WHICH IT IS ENTITLED UNDER THE AGREEMENT. ALSO, THE COMPANY HAS A RIGHT TO TAKE ACTION IF SECONDARY EMPLOYMENT DAMAGES ITS LEGITIMATE BUSINESS OR INTERFERES WITH THE PROPER EXECUTION OF ITS BUSINESS.... SINCE THE APPLICATION OF THESE PRINCIPLES IS NECESSARILY AN ENTRY INTO THE ARENA OF PRIVATE LIFE, WHICH IN GENERAL IS INVIOLABLE, THE APPLICATION HAS TO BE CAREFUL, REASONABLE, AND CONVINCINGLY SUSTAINED.... The only question is whether in severing the grievant from employment the Company made a proper and reasonable application of the principles. This leads us to a consideration of the second major question."

Question B: Did the Company exercise that right properly and reasonably? Three of the four grounds advanced by the Company to justify the severance fall under the right to take action if secondary employment impairs the quality and execution of the work to which the Company is entitled. The three grounds are: (1) that grievant's continued work as a bartender could have endangered him and his fellow workers; (2) that such work would have made uncertain his availability for emergency work; and (3) that such work constituted a hazard to his health, affecting the performance of his work and the fulfillment of his obligations as an employee.

All three of the grounds refer to and depend on the same set of conditions, namely the number of hours spent by the grievant in his work as a bartender, and the drinking he was expected to do in this work.

The actual work record of the grievant with the Company shows, in itself, no evidence of ineffective performance or impaired efficiency.

"The Company acknowledges him to be a good lineman. There have been no complaints about unsafe performance of his work. There is no record that he ever reported in an intoxicated condition. He has placed himself on the voluntary roster for emergency work; no evidence is submitted to indicate that he failed to respond to calls for such work. The evidence on illness off from work may point strongly to an abuse of sick-leave privileges (which is not an issue), but it does not constitute reasonable proof of an increased disposition to sicknes or a reduced recovery rate, arising from his work as a bartender....

"However, the three charges do not arise from anything that grievant did, or failed to do, on the job. Instead, they express the Company's belief and apprehension of what he would do on the job, if he continued his secondary work in the tavern. The charges, thus, are in the nature of suppositions of what would likely occur. Having this nature, in order to be sustained, the case on their behalf must be established beyond any reasonable doubt....

"Since there is nothing in the actual work record of grievant to sustain the three charges and since there is reasonable doubt that the conditions of his work in the tavern would sustain them in the future, this Arbitrator is forced to disallow the three contentions.

"The fourth ground advanced by the Company to justify its dismissal of grievant is that his continued employment as a bartender, following his arrest, would have been injurious to the Company because of unfavorable publicity....

"This Arbitrator recognizes the right of the Company to protect itself against appreciable harm to its business that might arise from secondary employment of its employees. Since the exercise of this right is an inroad into the area of private life, the alleged harm must be shown to exist beyond reasonable doubt.... In the present case the Company identifies the harm as unfavorable publicity bringing discredit to the Company....

"The peculiarities of the present case made it necessary to identify quite precisely the alleged unfavorable publicity used by the Company to justify its dismissal of grievant....

"Thus, in identifying the 'unfavorable publicity' which was used to justify the dismissal, we have to put aside (a) that which might arise from the mere fact of secondary employment as a bartender, (b) that which actually occurred as a result of the arrest, and (c) that which might be occasioned by the mere continuation of employment of the grievant. Thus, we cannot include in such 'unfavorable publicity' public disapproval of secondary work as a bartender, public indignation over the arrest, or public censure of the Company for continuing grievant in employment. The 'unfavorable publicity', used as a basis of dismissal, was confined solely to that which might be brought forth by the additional factor of continued work in the tavern accompanying continued employment with the Company. The issue is whether the anticipated adverse publicity, so confined, constituted proper cause for dismissal....

"There is no evidence of any conversations held, or any sort of inquiry having been made, to sound out what might be the community response to the alternative of continued employment and retention of secondary bartending, as against mere continuation in employment. Where the fate of a man's employment hinges on the difference in anticipated adverse publicity between such two alternatives, there should be some reasonable body of evidence to support the difference. This Arbitrator does not find such evidence in the record. Accordingly, he is required to disallow the fourth and remaining ground offered by the Company in support of the dismissal of grievant."

In the following statement the Arbitrator sounded a warning: "...the disallowal should not be misconstrued as meaning that the grievant, on reinstatement to employment, is to be immune to any future action by the Company against him should he continue his work in the tavern. Obviously, if the Company finds evidence that the quality or execution of the work to which it is entitled from grievant suffers from such continued secondary employment, it would be fully justified in requiring him to surrender the secondary employment or leave its employ. Also, if the Company finds reasonable evidence that a continuation of his employment in the tavern, after his reinstatement in the employ of the Company, is occasioning appreciable adverse public judgment of it, it would similarly have proper warrant to demand that he surrender such secondary employment or leave the employ of the Company.

"This Arbitrator finds insufficient cause for the dismissal of grievant from the employ of the Company."

Concerning question No. 3 (conditions of reinstatement) - the Arbitrator states: "Since there are no extenuating circumstances, this Arbitrator rules that grievant be reinstated to employment with full seniority privileges as of February 29, 1960.

"He shall be entitled to back pay for time lost, beginning February 29, 1960, minus certain earnings from all gainful employment, beginning February 29, 1960. These latter earnings shall be calculated on the basis of the paid hours worked by grievant during the week days (Monday through Friday), irrespective of when during the twenty-four hours of a day the paid hours come, except that no paid hours in excess of eight in a single day shall be included."

## AWARD

This Arbitration Board finds insufficient cause for the dismissal of grievant. He shall be reinstated to employment by the Company, with full seniority privileges, as of February 29, 1960. He shall be entitled to recovery of pay for time lost, in the manner specified in the discussion of issue No. 3.

/s/ Herbert Blumer, Chairman

/s/ Juventino Garcia, Union Member (concur)

/s/ Edward A. James, Union Member (concur)

/s/ R. J. Tilson, Company Member (dissent)

/s/ J. Lytle Gibson, Company Member (dissent)

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# ARBITRATION AWARD

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| In the Matter of the Arbitration<br>between<br>INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1245<br>and<br>PACIFIC GAS AND ELECTRIC COMPANY | Arbitration Case No. 11.<br>Severance of [illegible] from employment<br>Date of Award: August 8, 1960 |

By virtue of authority conferred by the Parties under their Agreement, effective July 1, 1959, and as covered by their joint submission of June 28, 1960, the Arbitration Board hereby awards as follows

## AWARD

This Arbitration Board finds insufficient cause for the dismissal of [illegible] He shall be reinstated to employment by the Company, with full seniority privileges, as of February 29, 1960. He shall be entitled to recovery of pay for time lost, in the manner specified in the discussion of issue No. 3.

Herbert Blumer
(Herbert Blumer, Chairman)

Juventino Garcia concur
(Juventino Garcia, Union Member)

R. J. Tilson
(R. J. Tilson, Company Member)
DISSENT

Edward A. James concur.
(Edward A. James, Union Member)

J. Lytle Gibson
(J. Lytle Gibson, Company Member)
DISSENT.

# O P I N I O N

## Background

Mr. L was employed for nine years as a lineman by the Pacific Gas and Electric Company until February 29, 1960. Approximately in July, 1959 he began secondary employment, during his off hours, as a part-time bartender in Clancy's Tavern in El Sobrante, California. On February 17, 1960 police officers found that a pinball machine in Clancy's Tavern was being used illegally as a gambling device. Mr. L , who was serving drinks at the time was arrested, together with the owner of the tavern. Reports of the arrest appeared under date of February 18, 1960 in three newspapers serving the area. (Subsequently, March 8, 1960, Mr. L and the owner of the tavern were found guilty and fined.) On February 23, 1960 Mr. James Keys, Manager of the PG&E Rodeo Office and Pinole Service Center where Mr. L was employed, informed Mr. L that he would have to give up his work as bartender in Clancy's Tavern or leave the employ of PG&E. He was allowed a few days in which to make a decision. On the late afternoon of Friday, February 26, 1960 Mr. Keys telephoned Mr. L to learn his answer. There is some disagreement as to the details of the telephone conversation, but it is evident that Mr. L indicated an intention

to retain his off-hours work in Clancy's Tavern. He was then informed by Mr. Keys that he need not report to work on the following Monday (February 29, 1960). Mr. L was severed from the Company's payroll, effective February 29, 1960. On this day, the Union instituted a grievance requesting the reinstatement of Mr. L and payment for all time lost. Failing settlement through the grievance procedure, the grievance was submitted to arbitration, in due accordance with the terms of the Labor Agreement of the parties.

The parties have jointly submitted the following stipulation:

"As applied to the facts of this case, the sole and specific issues to be decided are:

1. Did L quit his employment as contended by the Company, or was he discharged as contended by the Union?
2. If it is found that he was discharged, did the Company have justification in terminating his employment?
3. If it is found that he was unjustifiably discharged, should he be reinstated in the employ of the Company, and what conditions shall govern his reinstatement?"

## Discussion of the Issues

1) Nature of the severance.

The nature of Mr. L 's severance from FG&E is ambiguous because the customary procedures in the case of a discharge or resignation were not followed. The Company argues that the severance was a resignation or quit. It points out that Mr. L was given the option of abandoning his employment in Clancy's Tavern or of leaving the employ of the Company. The proposal was carefully explained to him, and he was given reasonable time and unhampered opportunity in which to make his choice. His decision to continue work in the tavern meant, the Company argues, that he elected to leave his employment with the Company, and hence that his severance was equivalent to a resignation. At no time, the Company declares, did its officials say to Mr. L that he was discharged.

The evidence in the case makes it impossible to accept the Company's interpretation of the severance. A resignation is a severance which originates with the employee--either through a formal notification of quitting or through an absence which signifies that he has given up the job. A discharge is a severance which originates with management. There is no evidence that Mr. L gave notification that he was quitting. Nor did he absent himself from his job in such a way as to

signify that he was quitting; his failure to report for work on February 29 was in response to Mr. Keys' statement, "...there would be no need to come to work Monday." On the other hand, the evidence is clear that the severance was both proposed and initiated by the Company, not by Mr. L . The option presented to Mr. L meant that if he did not take action to abandon his work in the tavern, the Company would take action to sever him from its employment. This was a clear threat of discharge--a clear declaration of intention to deprive him of his job if he did not give up his work in the tavern.

The severance could still be construed as a resignation if Mr. L had agreed that in continuing work in the tavern he was quitting the employ of the Company. However, the evidence does not sustain such an interpretation. All that is advanced to support such an interpretation are two items from the telephone conversation of Mr. Keys with Mr. L on February 26. The first is an assertion by Mr. Keys that after asking Mr. L , "Your decision is to remain at the bar?" the latter replied, "Yes, this job with the Company does not mean that much to me." (Company Exhibit No. 5). Mr. B , General Foreman, who was present in the office with Mr. L at the time of the telephone conversation, declared in the official interview made of him that he heard L say, "...this job does not mean that much to me." (Company Exhibit No. 1). The second item is an

assertion by Mr. Keys that after he had told Mr. L that there was no need for him to report on Monday (February 29) the latter replied, "O.K. That's it then." These two alleged remarks by Mr. L offer meant support to a claim that Mr. L acquiesced in the Company's decision. Either remark separately, or both together, could have meant something other than such acquiescence. They do not constitute reasonable proof that Mr. L was accepting an offer or demand to quit. Indeed, the very testimony of Mr. Hake, a Company official, must be given decisive weight as suggesting that the opposite was true. In the afore-mentioned interview, Mr. Hake declares that Mr. L on hanging up the phone following his conversation with Mr. Keys, "said he was fired." This first-hand observation made by a presumably hostile witness at the very time of the telephone conversation directly contradicts a contention that Mr. L had agreed to a severance on a quit status.

Since Mr. L did not notify the Company that he was quitting or that he agreed to accept its proposal that he quit its employment, and since the Company clearly instituted the severance on its own volition, after a plain indication of its intention to do so, the severance must be construed as a discharge.

2) Justification of the discharge.

There are two major or fundamental questions set in considering whether Mr. L 's discharge was justified: (A) did the Company have any right to exercise control over the off duty or secondary employment of Mr. L , and (B) if so, did it exercise that right properly and reasonably?

(A) In the case of the first of these questions the Company declares that the right is clearly given by item 13.01 of its EMPLOYMENT GUIDE, which reads

> "13.01 Outside Employment. Regular employees may not accept employment with another employer without General Office Executive approval."

The Company asserts that it has the authority to establish reasonable rules governing the conduct of its employees; declares that the cited rule is long established, antedating contractual relations between the parties; and contends that there is nothing in the Agreement which forbids the Company from the making of such rules. The Union raises questions as to the valid status of this rule under the Agreement. This arbitrator refuses, without prejudice to either party, to make a determination of the validity of this rule under the Agreement. It is obvious that the parties have not built up a sufficient record in this case to permit a properly grounded determination. Nor is it necessary to pass on the contractual validity of the rule in order to make a proper determination of the instant case.

The rule cannot be found to have an application to the present case. It is established that Mr. L was not informed of the rule at the time of his hiring nor at any time during his employment. It is established also that the Company did not make the existence of this rule known generally or regularly to the employees under the Agreement; consequently, Mr. L could not be expected to learn of it from fellow workers. It is further established that Mr. Hays, the acting Company official in this case, did not know, himself, of the existence of this rule at the time that he severed Mr. L from employment; and thus that he did not introduce it or use it as a basis of his action. In the light of these facts, one cannot grant that the rule has relevance or application to the present case.

However, without any regard to the above mentioned rule, there can be no question that the Company has a right to take action in instances of secondary employment which impair the quality and execution of the work to which it is entitled under the Agreement. Also, the Company has a right to take action if secondary employment damages its legitimate business or interferes with the proper execution of its business. These two principles are a matter of reason and have been upheld in numerous arbitration cases. Since the application of these principles is necessarily an entry into the arena of private life, which in general is inviolable, the application has to be careful, reasonable, and convincingly sustained.

Viewed in the light of these principles, the Company was acting in proper right in concerning itself with Mr. L 's secondary employment in the tavern. The only question is whether in severing Mr. L ' from employment the Company made a proper and reasonable application of the principles. This leads us to a consideration of the second major question.

(2) Three of the four grounds advanced by the Company to justify their severance of Mr. L fall under the first principle--the right to take action if secondary employment impairs the quality and execution of the work to which the Company is entitled. The three grounds are: (1) that Mr. L 's continued work as a bartender could have endangered him and his fellow workers; (2) that such work would have made uncertain his availability for emergency work; and (3) that such work constituted a hazard to Mr. L 's health, affecting the performance of his work and the fulfillment of his obligations as an employee.

All three of the grounds refer to and depend on the same set of conditions, namely, the number of hours spent by Mr. L in his work as a bartender, and the drinking he was expected to do in this work. The Company judged his working hours as a bartender to be on a 6:00 P.M. to 2:00 A.M. shift, and believed that "it is part of a bartender's job to drink with its patrons." It is reasonable to assume, the Company contends, that these lengthy hours, piled on top of the regular full-time

job with PG&E, together with the expected drinking, would impair the working efficiency of Mr. L . They would occasion fatigue, reduce mental and physical alertness, and increase susceptibility to sickness. The Company points out that the hazardous work of lineman, involving working with, or near, high voltage circuits demands a high order of alertness and muscular coordination; mistakes or under-par performance could lead to being burnt to death or crippled for life; not only is the employee, himself, endangered in these ways, but also are the members of the crew with which he works. The Company points out that it cannot afford to incur these serious risks as a result of Mr. L 's secondary employment as a bartender. Similarly, his continued work in the tavern would reduce his availability for emergency work. The Company explains that it is dependent on the availability of its linemen to restore service and protect the community in the event of storms, fires, accidents, etc. Finally, the Company contends that in trying to handle two jobs and in doing the drinking expected of a bartender, Mr. L would increase his susceptibility to sickness and reduce his speed of recovery from any illness incurred, to the disadvantage of his work with the Company.

The actual work record of Mr. L with the Company shows, in itself, no evidence of ineffective performance or impaired efficiency. The Company acknowledges him to be a good lineman. His immediate

supervisors agree that he "always puts in a good day's work on any kind of job" (Company Exhibit No. 1 - Interview with ' and ). There have been no complaints about unsafe performance of his work. There is no record that he ever reported in an intoxicated condition. He had placed himself on the voluntary roster for emergency work; no evidence is submitted to indicate that he failed to respond to calls for such work. The evidence on illness off from work may point strongly to an abuse of sick-leave privileges (which is not an issue), but it does not constitute reasonable proof of an increased disposition to sickness or a reduced recovery rate, arising from his work as a bartender. No one of the three Company charges is sustained by the actual work record of Mr. L .

However, the three charges do not arise from anything that Mr. L did, or failed to do, on the job. Instead, they express the Company's belief and apprehension of what he would do on the job, if he continued his secondary work in the tavern. The charges, thus, are in the nature of suppositions of what would likely occur. Having this nature, in order to be sustained the case on their behalf must be established beyond any reasonable doubt.

The evidence on the record does not satisfy this demand of being beyond any reasonable doubt. Concerning the hours worked, testimony on the basis of salary stubs indicates that during the months of January and February, 1960 Mr. L worked a weekly average of

29 hours in the tavern. Further testimony, supported by time cards, indicates that Mr. L regularly worked 3 hours an evening during the days of employment with the Company; these were from 6 p.m. to 9 p.m. The bulk of the hours were worked on Friday evenings, Saturdays, and Sundays. There are no indications that this program of work prevented a normal amount of sleep or compelled such sleep to be pieced together at odd times. Nor is there any evidence or suggestion that the work as bartender was heavy, demanding, or fatiguing. Instead, the suggestion is that much time was given to talking with known patrons about local community events and gossip. In short, there is reasonable doubt that the hours of work and the nature of the work were such as to lead to the impairing effects on Mr. L s work which the Company apprehends. Concerning drinking, nothing has been introduced on the record to challenge Mr. L 's assertion that he drank less behind the bar than he did before the bar. His employer in the tavern testified, "I have a strict rule that people that work for me cannot drink my whiskey" and "I frown upon the customers buying bartenders drinks and them drinking them because it always seems like that when the customer buys a bartender a drink he always expects about three back." No case has been established that Mr. L 's drinking as a bartender exceeds normal drinking. Concerning availability for emergency work, the record

shows that Mr. L 's emergency telephone number is the house phone of his tavern employer; that the employer or his wife would notify Mr. L of a call, and that the employer would relieve Mr. L if he were working at the bar. These arrangements do not suggest that Mr. L could not have responded to emergency calls in the future any less than he had in the past. Concerning the alleged role of the work of bartender in conducing to sickness or in retarding the rate of recovery therefrom, the evidence points, as mentioned above, to an abuse of sick-leave privileges instead of to a delibitating effect of such employment.

Since there is nothing in the actual work record of Mr. L to sustain the three charges and since there is reasonable doubt that the conditions of his work in the tavern would sustain them in the future, this Arbitrator is forced to disallow the three contentions.

The fourth ground advanced by the Company to justify its dismissal of Mr. L is that his continued employment as a bartender, following his arrest, would have been injurious to the Company because of unfavorable publicity. The Company points out that its position as a public utility requires it, more than an ordinary business concern, to maintain favorable public regard. Large portions of the public, among whom are many PG&E customers, view bartending and gambling unfavorably; many of them would resent being required to come into contact with a

PG&E employee identified by them with such activities. According to the Company, Mr. L is well known in the small community of El Sobrante as a PG&E employee. His arrest was given ample newspaper publicity in this community. In the light of these conditions, to have continued him in dual employment would have reflected to the discredit of the Company.

This Arbitrator recognizes the right of the Company to protect itself against appreciable harm to its business that might arise from secondary employment of its employees. Since the exercise of this right is an inroad into the area of private life, the alleged harm must be shown to exist beyond reasonable doubt. In the present case the Company identifies the harm as unfavorable publicity bringing discredit to the Company. This Arbitrator recognizes that such unfavorable publicity, particularly to a company which is a public utility, may constitute a significant harm.

The peculiarities of the present case make it necessary to identify quite precisely the alleged unfavorable publicity used by the Company to justify this dismissal. In the first place, the Company acknowledges that the mere fact of secondary employment as a bartender, in itself, did not constitute a cause for action (Tr., 106). Certainly, Mr. L 's secondary employment in the tavern must have been known in the community of El Sobrante for several months prior to

the severance. Evidence indicates that Mr. Keys knew of this employment from at least the Christmas period of 1959. Mr. Keys has testified that he would have taken no action against Mr. L : because of such employment, were it not for the incident of the arrest (Tr., 108). It is clear, accordingly, that the "unfavorable publicity" serving as the basis of dismissal was not that occasioned by the mere fact that Mr. L was working as a bartender.

Nor, in the second place, was the "unfavorable publicity" that which was occasioned by the incident of Mr. L 's arrest. Mr. Keys has acknowledged that with the publicity of the arrest, "the damage had already been done as far as I am concerned" (Tr., 105). Despite this, the Company was ready, through the option presented to Mr. L , to continue him in its employment. This means, clearly, that the unfavorable publicity resulting from the arrest was not the basis of the dismissal. Instead, the "unfavorable publicity" that was used as a ground for action was the unfavorable publicity that was anticipated in the event that Mr. L continued his work in the tavern. The "unfavorable publicity" was future publicity--not adverse publicity which had actually occurred.

In the third place, the future adverse publicity which the Company anticipated was not tied to anything which Mr. L , himself, was expected to do if he continued his secondary employment. Mr. Keys has testified (Tr., 105) that in taking action against Mr. L he had no

thought of any future occurrences similar to the arrest. It is clear, instead, that the adverse publicity which the Company foresaw would be the formation of an unfavorable public attitude in the event that Mr. L were allowed to continue his work as bartender while remaining in the employ of the Company.

In the fourth place, the unfavorable public attitude was not that which might be occasioned by allowing Mr. L to remain in the employment, as such, of the Company. The Company had signified its willingness and intention to continue Mr. L as an employee.

Thus, in identifying the "unfavorable publicity" which was used to justify the dismissal, we have to put aside (a) that which might arise from the mere fact of secondary employment as a bartender, (b) that which actually occurred as a result of the arrest, and (c) that which might be occasioned by the mere continuation of employment of Mr. L . Thus, we cannot include in such "unfavorable publicity" public disapproval of secondary work as a bartender, public indignation over the arrest, or public censure of the Company for continuing Mr. L in employment. The "unfavorable publicity," used as a basis of dismissal, was confined solely to that which might be brought forth by the additional factor of continued work in the tavern accompanying continued employment with the Company. The issue is whether the anticipated adverse publicity, so confined, constituted proper cause for dismissal.

Addressing the issue, as thus properly identified, this Arbitrator finds an insufficient showing on the record to uphold the Company's contention. All that is presented, bearing on this anticipated adverse publicity, are a sketchy account of reactions to Mr. L 's arrest, and a similar sketchy account of what entered into Mr. Keys' judgment as he sought to assess what would be the community reaction. The account of reactions to the arrest consists of Mr. Keys' statement that two individuals, the editor of the local newspaper and a local business man, had spoken to him, presumably adversely, about the arrest. Since these were two influential citizens their views must be given appreciable weight. It must be pointed out, however, that these views were reactions to the arrest, not expressions of how the two individuals would feel or think if Mr. L remained in the employ of the Company, while continuing his bartending, as over against just remaining in the employ of the Company. One may surmise that their reactions would be unfavorable, but admittedly the surmise is inconclusive. Next, the account given of what entered into Mr. Keys' judgment, as pertaining to the issue as defined, is presented in the following portion of his testimony: "...to leave the man in the Company and to leave him tending bar...to my way of thinking makes the Company sort of a laughing stock, or the Company has little or no control of its men" (Tr., 106). Full respect has to be

accorded to Mr. Keys' judgment. He is a responsible Company official. He was required by the nature of his position to remain in close touch with the community. Consequently, his judgment cannot be taken lightly. And to be "a laughing stock" would be definitely adverse publicity to the Company. However, with due respect for Mr. Keys' honest and sincere judgment, we are presented on the record with nothing of substance to indicate that the judgment was reasonably well grounded. There is no evidence of any conversations held, or any sort of inquiry having been made, to sound out what might be the community response to the alternative of continued employment and retention of secondary bartending, as against mere continuation in employment. Where the fate of a man's employment hinges on the difference in anticipated adverse publicity between such two alternatives, there should be some reasonable body of evidence to support the difference. This Arbitrator does not find such evidence in the record. Accordingly, he is required to disallow the fourth and remaining ground offered by the Company in support of the dismissal of Mr. L .

The disallowal of the four contentions advanced by the Company is made solely on the basis that an insufficient showing has been made on their behalf. Accordingly, the disallowal should not be misconstrued as meaning that Mr. L , on reinstatement to employment, is to be immune to any future action by the Company against him should he continue

his work in the tavern. Obviously, if the Company finds evidence that the quality or execution of the work to which it is entitled from Mr. L suffers from such continued secondary employment, it would be fully justified in requiring him to surrender the secondary employment or leave its employ. Also if the Company finds reasonable evidence that a continuation of his employment in the tavern, after his reinstatement in the employ of the Company, is occasioning appreciable adverse public judgment of it, it would similarly have proper warrant to demand that he surrender such secondary employment or leave the employ of the Company.

This Arbitrator finds insufficient cause for the dismissal of Mr. L from the employ of the Company.

3) Conditions of reinstatement of Mr. L .

Since there are no extenuating circumstances, this Arbitrator rules that Mr. L be reinstated to employment with full seniority privileges as of February 29, 1960.

He shall be entitled to back pay for time lost, beginning February 29, 1960, minus certain earnings from all gainful employment, beginning February 29, 1960. These latter earnings shall be calculated on the basis of the paid hours worked by Mr. L during the week

days (Monday through Friday), irrespective of when during the twenty-four hours of a day the paid hours come, except that no paid hours in excess of eight in a single day shall be included.

## Award

This Arbitration Board finds insufficient cause for the dismissal of [redacted]. He shall be reinstated to employment by the Company, with full seniority privileges, as of February 29, 1960. He shall be entitled to recovery of pay for time lost, in the manner specified in the discussion of issue No. 3.