

IN ARBITRATION PROCEEDINGS PURSUANT TO THE CURRENT
COLLECTIVE BARGAINING AGREEMENT BETWEEN THE PARTIES

In the Matter of a controversy
between
PACIFIC GAS AND ELECTRIC COMPANY
and
INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS, AFL-CIO, LOCAL UNION 1245,
Involving the demotion of

CASE NO. 48

OPINION BY
ROBERT E. BURNS
CHAIRMAN

ARBITRATION BOARD:

ROBERT E. BURNS, Esq., 155 Montgomery Street, San
Francisco, California 94104; Chairman.

ED FORTIER, Business Representative, IBEW Local Union
1245, Post Office Box 4790, Walnut Creek, California,
94596; Union Board Member.

DARREL L. MITCHELL, Business Representative, IBEW Local
Union 1245, P.O. Box 4790, Walnut Creek, California,
94596; Union Board Member.

DAVID BERGMAN, Industrial Relations Representative, PG&E
245 Market Street, San Francisco, California 94106;
Employer Board Member.

I. WAYLAND BONBRIGHT, Manager of Industrial Relations,
PG&E, 245 Market Street, San Francisco, California
94106; Employer Board Member.

APPEARANCES:

ON BEHALF OF THE UNION:

Messrs. BRUNDAGE, MEYHART, GRODIN & BEESON, by JOHN L.
ANDERSON, Esq., 100 Bush Street, San Francisco,
California 94104.

ON BEHALF OF THE EMPLOYER:

**LAWRENCE V. BROWN, Esq., Room 438, 245 Market Street,
San Francisco, California 94105.**

The Parties and the Issue

Pacific Gas & Electric Company (the "company") and Local Union No. 1245 International Brotherhood of Electrical Workers (the "union") are parties to a collective bargaining agreement dated September 1, 1952, as amended (the "agreement").

Pursuant to the agreement the parties executed on December 10, 1973 a submission agreement submitting the following issue in arbitration case No. 48 relating to E. M. as follows:

Is the demotion sustained? If not, what is the remedy?

A hearing was held in San Francisco on December 10, 1973, and at the conclusion of the hearing the issue was submitted upon the filing of briefs by the parties. The briefs were filed on February 8, 1974.

Review of the Evidence

Grievant E. M. 's employment date with the company is February 15, 1956. In 1958 grievant was employed by the company as a Ditch Patrolman and worked in that classification until July, 1961 when he became a Second Operator at Spaulding. In September, 1963 he was promoted to Station Attendant at Deer Creek

Powerhouse and held that position until October 6, 1969. On that date the Deer Creek Powerhouse was automated and his job was eliminated. Prior to October 6, 1969 he was offered the opportunity to transfer in grade to other stations which he was qualified to operate. He declined to accept these transfers. Grievant was demoted pursuant to the agreement to Second Operator, Drum Powerhouse on October 6, 1969.

From October 6, 1969 until March 9, 1970 grievant served as Second Operator at the Drum Powerhouse, on the latter date he was demoted to helper. It was this demotion which gave rise to the issue before the Board of Arbitration.

While grievant was at the Spaulding Powerhouse as Second Operator, he took care of the dam, the trash racks, the canal, helped grease the turbines and brushed out the trails. He assisted outside in the operation of the plant. As Station Attendant at Deer Creek, grievant watched the equipment, worked on the lake tender and the canal leading into the forebay. The Deer Creek Powerhouse was at the end of the line. Any time there were problems grievant was contacted from the Drum Powerhouse, would be told the applicable page of the operating manual, and an attempt would be made to get the plant back on the line. When the company determined to automate Deer Creek, grievant was informed of his bidding rights for several jobs at other stations including the Second Operator's job at the Drum Powerhouse. General Foreman George L. Fee suggested that grievant not bid the Second Operator's job at Drum because it would be necessary for him to attend the Basic

Electric School as a Second Operator. Grievant was also told by General Foreman Fee that the Second Operator's job at Drum involved operating duties which were beyond his present abilities and that grievant might have a difficult time attaining technical competence to fulfill the requirements of Second Operator at Drum. Grievant informed Foreman Fee that it would be no problem for him to go to school. Grievant was also told that the attendance and successful completion of the Basic Electric School was a necessary requirement to remain as Second Operator at the Drum Powerhouse.

Two of the Station Attendant positions which were open to grievant pursuant to the provisions of the demotion procedure of the agreement involved the bumping of other employees junior to him. These jobs paid the same salary and involved the same type of work that he performed at Deer Creek. Grievant's election to transfer to the Drum Powerhouse involved a reduction in salary.

The Second Operator's job definition in Hydro Generation Departments of the company, as revised in January, 1964 is as follows:

"A shift employee whose primary duties are to operate, take readings, tend equipment, and care for buildings and grounds under the supervision of a First Operator. In addition he may be required to assist in the maintenance work about the plant and perform the duties of a Ditch Patrolman or Lake Tender on the related water systems. His educational and general qualifications must be such that he is capable of progressing to First Operator."

The definition of "Second Operator - Hydro" has been carried forward since 1964 in substantially the same form.

By agreement in 1968 the parties abolished the classi-

fication of Apprentice First Operator and consolidated all Second Operator classifications into "Second Operator - Hydro" and "Second Operator - Substation". After this change the only means of progressing to First Operator was from Second Operator. Classifications above Second Operator within the line of progression were deemed to be journeyman classifications. Journeymen could not be demoted to the non journeyman Second Operator position.

The 1968 agreement listed all incumbents in the Second Operator classifications and the parties agreed that certain training and testing requirements could be imposed by the company upon persons entering the Second Operator classification after the effective date of the agreement, which was June 10, 1968.

I. Wayland Bonbright, Industrial Relations Manager of the company, testified as follows:

"Q. Was it your testimony then that these employees on this list would be forever after second operators even if they could not progress to first operator?

A. That is correct.

Q. The station attendants are not included, is that correct?

A. That is correct.

Q. Was there a reason for not including them?

A. I would say that there were two reasons.

One is that they were above the classification of second operator to begin with and it was presumed that something like this wouldn't be necessary.

In the second place, this list, like all grandfathered-in lists, was bargained and I doubt that the Company started with this position.

Q. Was it your testimony then that the station attendants do not appear on this list because they simply wouldn't bargain to be grandfathered-in?

A. That is correct."

.

"Q. (By Mr. Anderson) I was interested in your response with respect to the reason for not including station attendants in the 1968 letter agreement.

At first you said, 'Well, that was a classification which was above second operator. It wasn't necessary to put them in.'

Is it a fair characterization that nobody contemplated that somebody who was in a higher classification would be demoted down to second operator and it just really wasn't discussed?

A. I think that is probably fair, although I can't speak for what the Union did."

Assistant Business Manager Larry Foss of the Union testified:

"That only left station attendant as the classification in the normal line of progression that would demote into second operator.

Q. Was there any other discussion about station attendants whatsoever?

A. No, other than the fact that should a lack of work situation develop they would demote into the second operator and they would not be considered as entering the classification anew, primarily because, for the most part, they had been second operators before becoming station attendants.

Q. The normal line of progression for station attendant would be second operator and that was the beginning class; is that correct?

A. That is correct.

Q. The normal line of progression would be second operator and then station attendant?

A. If you are going from the next lower to the next higher, yes.

That would not preclude someone from a higher classification such as first operator, moving operator, bidding a station attendant job, also."

The grievance filed in this case states:

"On Monday 3-9-70 the Orlevant was demoted from his Second Operator position to a Helper's vacancy at Drum P.H. under the terms of Contract Section 206.15. Company's reasons given for the demotion was the Orlevant's alleged inability to demonstrate he was capable of attaining the position of First Operator, should such a vacancy occur. (See job description, Second Operator). In October 1969 the Orlevant was demoted from Station Attendant, Deer Creek P.H. to the Second Operator position a beginning classification. Since he was originally demoted due to lack of work (Station Attendant's job was eliminated) into a beginning classification, Union contends he should be allowed to remain as a Second Operator in that he was performing these duties satisfactorily.

"CORRECTION ASKED FOR: That the Orlevant be reinstated as a Second Operator at Drum P.H. with retroactive pay back to the date of the demotion."

The answer of the company to the grievance was:

"The Second Operator job description states in part: 'His educational and general qualifications must be such that he is considered capable of progressing to First Operator.'"

"Mr. M is not considered capable of progressing to First Operator. By his own admission he has indicated that he is too old to learn. He made this statement in connection with his refusal to go to Basic Electricity School. Beyond this, though, he does not demonstrate that he has the capacity to learn to be a First Operator."

The opinion of the company dated August 27, 1973 as the

result of the last meeting of the Review Committee states in part:

"First, the Agreement provides that an employee must be qualified to meet the minimal requirements of the job at the time of his appointment. This is true whether it be through bid or through demotion procedure. He met this initial test. Secondly, in a situation such as this where there is no Apprenticeship leading to the Journeyman position, the incumbent must qualify for Journeyman status before he reaches the top of the rate of pay, or, as here, where the employee enters the Second Operator classification at pay rate higher than the bottom, he must obtain such qualifications in a commensurate period of time in the classification that it would have taken to progress from the bottom to the top rate of pay. The requirement that a Second Operator qualify for progression to First Operator is set forth in the job definition for Second Operator and is absolute. This the grievant did not do.

"The grievant's demotion occurred after he was offered the opportunity to attend the required basic electricity school to become and to demonstrate that he was fully qualified for promotion to First Operator. He refused to attend even though his attendance would have been fully paid by Company."

The union opinion dated August 8, 1973 states in part:

"Union contends that grievant was improperly demoted from his Second Operator position for failing to meet the requirements of the job definition, i.e., that he be capable of progressing to First Operator."

"Union's contention is based principally on two factors: 1) grievant had worked as a Station Attendant until he was demoted to Second Operator under Title 206 for lack of work five months prior to the demotion at issue, and 2) grievant is being demoted for reasons unrelated to the actual performance of his job duties. Because of these factors a strict application of the particular job requirement is inappropriate and an exception should be made."

"The Station Attendant's job definition includes performing all of the functions of First Operator. It is not contended that grievant's job performance at that classification was unsatisfactory. Any time an employee is demoted for lack of work, Title 206 establishes certain rights aimed at maintaining maximum job and wage security. For instance, employees demoted under that Title have bidding rights to facilitate their

return 'to their former status on an accelerated basis.' (Section 206.9) It is inconsistent with the purposes of Title 206 for an employee to be demoted further because he cannot adapt to a requirement that he qualify himself for promotion to a job other than his former job.

"The demotion at issue is especially unjust because the reason for demotion is unrelated to the actual performance of Second Operator duties. Grlevant was demoted for lack of work to Second Operator, and in fact, was qualified for that job. In such circumstances there is no cause for further demotion."

After Grlevant's transfer to the Drum Powerhouse as Second Operator he underwent a training program. His Foreman laid out a training program relating to the piping, the governor oil system, the line, the bus work, the reports for the dispatcher and the mathematics involved in figuring water, load, voltage bars and other equipment. Grlevant was asked to prepare a diagram of the governor oil system in the powerhouse in order to show whether he would be capable of correcting a malfunction. This is work, according to the management, of the Second Operator who, if the First Operator was otherwise engaged, would be required to operate on his own knowledge and to know the location and operation of the various valves and controls. The diagram prepared by Grlevant was not accurate or complete. Grlevant was unable to demonstrate to ^{Foreman} Welbourn his understanding of the governor oil system or switching functions.

Grlevant's training continued for about five months. He was then scheduled to attend the Basic Electric School, although Foreman Fee was of the opinion he could not qualify as a First Operator or perform the operating functions of the Second

Operator. By this time Grievant had decided that he was not emotionally or physically suited to work as a First Operator. In February, 1970 after reviewing a performance appraisal report and discussing it with Grievant, Grievant stated that he would not attend the Basic Electric School scheduled to begin on March 16, 1970, that it would be a waste of his time in addition to what the company would have to pay for board and lodging, that he was limited in his education, and that he was too old to go to school.

In an addendum to Grievant's performance appraisal report, Foreman Fee stated that:

"This employee is able to perform most of the Second Operator duties in a satisfactory manner, excepting the qualifications of ever being capable of progressing to a First Operator."

Grievant testified that he probably indicated to Foreman Welbourn that he did not want to become a First Operator, that he had told the First Operators at the Powerhouse that he did not wish to become a First Operator and that he had stated to supervision that it would be a waste of his time and the company's money to send him to Basic Electric School.

Positions of the Parties

The Company

Grievant had an opportunity to transfer to other Station Attendant jobs which he was capable of performing and which were available to him. He was warned that he was choosing a job that required operating skills and knowledge. The evidence shows

that he did not have the operating skills or knowledge or the ability to acquire them to properly perform the duties of Second Operator.

Orlevant was not demoted for the single reason that he would not attend the Basic Electric School, although that is a requirement of the Second Operator's job. Orlevant could not be sent out by the First Operator to open or close a switch or to work on the governor oil system or to do any of the other operational functions that might be demanded in an emergency situation when the First Operator could not be present to oversee the operation. Orlevant has the ability to perform well the maintenance and caretaker functions performed by the Second Operator, but these are secondary functions to the operating function in the plant. The evidence with respect to Orlevant's inability to fulfill the operating functions of the Second Operator's job establishes not only that he is not capable of becoming a First Operator, but also does not qualify to be a Second Operator and thus was subject to demotion pursuant to section 206.15-16 of the agreement.

The letter agreement of 1968 and the grandfather provisions thereof do not apply to Orlevant because those Second Operators who were exempted from the requirements of the agreement are specifically named. Orlevant was not specifically named in that agreement and the Station Attendant classification is not named specifically.

"Any employee" as used in that agreement is not restricted to any particular class or line of progression. Station

Attendant is not listed in the line of progression to First Operator and was purposely excluded from preferential consideration for appointment to that position.

Grlevant was not, in fact, qualified to be a Second Operator, even if it be assumed that Grlevant would not be required to attend Basic Electric School or attain First Operator status.
Section 206.15-16 gives the company the right to demote employees other than in situations where there is lack of work.

The Union

The company's action was not founded on just cause. Grlevant should be restored to his position as Second Operator and be awarded back pay. Grlevant is protected by the June, 1968 letter by the parties.

When the Apprentice Operator classification was abolished, the only means of progressing to First Operator was by beginning as Second Operator. All classifications above Second Operator were deemed journeyman classifications and a journeyman could not be demoted to a non journeyman position, such as Second Operator. It was agreed, however, that persons occupying the Station Attendant position would be susceptible to demotion to the Second Operator position. The parties listed all incumbents in the Second Operator classifications and agreed that since the apprentice category was eliminated, certain training and testing requirements could be imposed upon persons entering the Second Operator classification after the effective date of the agreement. These new standards included the completion of Basic Electric School by

employees who entered the Second Operator classification after the effective date of the agreement. The Station Attendant classification was a more highly paid job and could not be attained except after one had reached the highest rate of pay as Second Operator. When the 1968 letter agreement became effective, grievant had been through the Second Operator classification and was a Station Attendant. By the testimony of the company witnesses, the company has admitted that it never contemplated that current Station Attendants would be subject to the new training requirements because Station Attendants were above the classification of Second Operator. The union witness testified to the same effect. As a Station Attendant grievant is entitled to the Grandfather status of the 1968 agreement.

The company's reason for demoting grievant has shifted. Prior to the arbitration hearing the company consistently took the position that the demotion was based upon Moore's failure to go to Basic Electric School and at no time gave a reason for demotion that Moore could not perform duties of a Second Operator. The company should be held to the reasons it initially advanced as the basis for its action.

The company evidence was directed to proving that grievant was incompetent to act as First Operator, but the company witnesses seemed to agree that he performed Second Operator operations satisfactorily. The complaints about grievant all involve his refusal to become a First Operator or his inability to act as a First Operator.

There is more than a mere suspicion that one of the motivating factors for demoting M was to secure the use of his Second Operator position to train others to progress to First Operator positions which were about to be vacated within the Drum Powerhouse.

Discussion and Opinion

Neither grievant nor his classification is specified in the agreement of June 10, 1968. As Station Attendant, grievant occupied a classification higher than that of Second Operator.

Grievant had been a second Operator before he advanced to Station Attendant. As evidenced by the testimony of the Industrial Relations Manager of the company and the Assistant Business Manager of the union, it was unnecessary to refer to Station Attendants in 1968 with respect to the training requirements for Second Operators because they were in a classification above that of Second Operators and most of them had been Second Operators before becoming Station Attendants. The parties did not discuss the inclusion of Station Attendants in 1968. To reform a contract because of mistake, generally, there must be proof that the mistake was mutual, that the parties agreed upon a certain thing to be embodied in their contract, and that by mutual mistake it was omitted. The evidence is not sufficient to show that Station Attendants or grievant were omitted from the 1968 agreement by

mutual mistake. Moreover, the naming of Second Operators also had the purpose of establishing their compensation as well as to exempt them from the test procedures for the employees who entered the Second Operator classification after June 10, 1968.

The job definition of Second Operator - Hydro as set forth in the 1968 agreement is substantially the same as that adopted in 1964 or prior thereto and as readopted in April, 1972. Grievant did not "enter" the Second Operator - Hydro classification at Drum in the sense that he was a beginner, but he did "enter" the classification in that by reason of his demotion he chose to accept this position in lieu of other jobs offered to him. To hold that Grievant was grandfathered into a Second Operator job and thereby exempted from the test procedures provided by the 1968 agreement in the same manner as these Second Operators specifically named in that agreement would be tantamount to reading into the agreement something which the parties did not specify and did not omit by mistake. The parties probably did not think that a Station Attendant occupying a job classification higher than Second Operator would be demoted to that position and would be unable to fulfill the requirements of the testing procedures. But the fact that the parties did not think that a situation such as the one here presented would arise is not a ground to write into the 1968 agreement or imply a grandfather exemption for Grievant. Assuming that Grievant did not "enter" the Second Operator classification, he nevertheless was not exempted from all the job qualifications of Second Operator because the 1968 agreement states that "Standards which

exist on this date shall continue to be applicable to these employees."

Grievant was demoted in March, 1970 because he refused to attend the Basic Electric School and because his supervisors believed that he did not have the educational and general qualifications to progress to First Operator. The company opinion of August 27, 1973 states that grievant met the minimal requirements of the job at the time of his demotion, but that grievant did not qualify for progression to First Operator as set forth in the job definition for Second Operator. At the hearing there was evidence by the company on grievant's inability to perform the work of a Second Operator as an assistant to the First Operator, although the General Foreman after reviewing grievant's performance appraisal report did say that he was able to perform most of the Second Operator duties in a satisfactory manner excepting the qualifications of ever being capable of progressing to a First Operator. The job definition of Second Operator includes the requirement that the Second Operator's educational and general qualifications must be such that he is considered capable of progressing to First Operator. The evidence indicates that grievant was not capable of progressing to First Operator and grievant, in effect, has conceded that such is the case. These educational and general qualifications to advance to a First Operator have been in effect since at least 1964. They are as much a part of the job definition of Second Operator - Hydro as the other requirements set forth in the definition.

Grievant is 61 years of age and has substantial seniority with the company. His demotion has reduced his compensation. A decision adverse to him will affect the amount of his pension. It is unfortunate that through no fault of his own he is unable to meet the job qualifications of Second Operator - Hydro. If an exception is to be made, then the parties must agree to that exception. The exception cannot be added to the agreement either by including grievant in the grandfather provisions of the June, 1968 agreement, or by disregarding an important part of the job definition of Second Operator - Hydro relating to educational and general qualifications.

Grievant was given a period of instruction and was unable to learn some of the essential job duties which would qualify him for First Operator. Neither the collective bargaining agreement, nor the agreement of June, 1968 relieved him of the obligation of meeting the job qualifications of the Second Operator - Hydro.

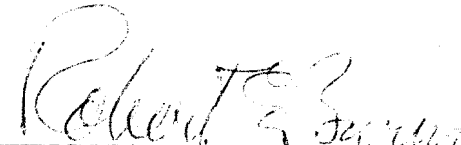
For the foregoing reasons, the demotion must be sustained.

Award

Pursuant to the agreement and the submission agreement, the Arbitration Board makes the following award:

The demotion is sustained.

BOARD OF ARBITRATION


Robert E. Burns, Chairman

We Concur:

David Bergman
David Bergman, Appointed by
the Company

I. Wayland Bobright
I. Wayland Bobright, Appointed
by the Company

We Dissent:

Ed Fortier
Ed Fortier, Appointed by the
Union

Darrel L. Mitchell
Darrel L. Mitchell, Appointed
by the Union