

CONFIDENTIAL

In the Matter of Arbitration)
)
Between)
)
PACIFIC GAS AND ELECTRIC COMPANY,)
)
Employer,)
)
and)
)
INTERNATIONAL BROTHERHOOD OF)
ELECTRICAL WORKERS, LOCAL 1245,)
)
Union.)

OPINION AND AWARD

Involving the Discharge of
a Meter Reader

ARBITRATION CASE NO. 54

Before an Arbitration Board Consisting of

Morris L. Myers, Chairman

Union-Appointed Members:

Lawrence N. Foss, Assistant Business Manager
Darrel L. Mitchell, Business Representative

Employer-Appointed Members:

I. Wayland Bonbright, Manager, Industrial Relations
Paul Matthew, Manager, Steam Generation Department

Appearances for the Parties:

For the Union

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San Francisco, California 94104

For the Employer

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245 Market Street
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PARTIES TO THE DISPUTE

PACIFIC GAS AND ELECTRIC COMPANY (herein called "Employer" or "Company") and LOCAL UNION NO. 1245 of INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO (herein called "Union") are parties to a collective bargaining agreement (herein called "Agreement") (Jt. Ex. 1).

Pursuant to that Agreement, a hearing was conducted on February 27, 1975, in San Francisco, at which hearing evidence was presented with respect to the issue as set forth below. It was stipulated at the hearing that the prior steps of the grievance procedure had been followed and that the matter was properly before the Arbitration Board (Tr. p. 6). Post-hearing briefs were submitted by the parties on or about April 8, 1975. Based upon such evidence and argument, the Arbitration Board decides as follows:

ISSUE

Is the discharge of the grievant sustained?
If not, what remedy does the Board order pursuant to the provisions of the parties' labor agreement?

(Jt. Ex. 3)

RELEVANT CONTRACTUAL PROVISIONS

1.3 Management of Company

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

DISCUSSION

Grievant (hereafter Mr. G) had been employed by the Employer as a Meter Reader for some 7-1/2 years when he was discharged from employment effective August 12, 1974. Mr. G was discharged following an investigation by the Employer with respect to a complaint from a customer that Mr. G was looking into her windows as he was making his meter-reading rounds on July 16 or 17, 1974 (Tr. pp. 56, 131). According to the customer, this was the second time that she had

observed Mr. G looking into her windows, the first instance having been in September, 1973.

These incidents were described by the customer as follows: In September, 1973, she saw Mr. G standing in the driveway in front of her house, some 5 feet away from her bedroom window, holding a black book open in his hands and looking into her bedroom window; she then stepped out of view to dress, and when she looked out her front window again some five minutes later she observed Mr. G crossing over and down the street. She reported this incident to the police, who in turn questioned Mr. G and apparently did no more than to report back to her that the man about whom she was concerned was a PG&E meter reader. The customer also testified that it was possible, because of the way in which the sun hit the windows at this time (around 10:30 a.m.), that Mr. G was not able to see into the bedroom.

On July 16 or 17, 1974, the customer again observed Mr. G, around 10:30 a.m., in about the same place in the driveway as she had observed him to be in September, 1973, again looking into her bedroom window. On this occasion, the customer drew the drapes on the bedroom window and went into the bathroom to dress. Upon coming out of the bathroom, about three minutes later, she observed Mr. G at the rear of the house, near the meter box, looking not at the meters but into her dining room window.

Mr. G's testimony with respect to these incidents is as follows: On September 12, 1973, he was doing the route in question for the first time. He went through the customer's driveway in the mistaken belief that it was necessary to do so in order to read the meter for a rear apartment. (The driveway in fact does not provide access to any PG&E meters.) He does not recall stopping in front of the customer's house or window on that day but it is possible that he

did so while looking at his meter book and coordinating its pages with his location, which at that point was confusing to him (Tr. pp. 109-110). Mr. G recalls having been questioned by the police with respect to the complaint made by the customer that he was looking in her window on this occasion. As to the July 16 or 17, 1974, incident, Mr. G testified that he was not in front of the customer's house, that he went no further into the driveway than he had to go in order to walk alongside of the house and into the backyard where the meters are located (Tr. p. 114).

The record also discloses that the Employer had received two or three customer complaints, anonymously made, in 1972 that Mr. G was looking into customer windows (Emp. Ex. 3). Head Meter Reader Robert Williams testified that one customer had complained that someone in a PG&E car was parked in front of their house and was staring at their living room window (Tr. p. 24) and another complained that the meter reader in passing a window in the rear of the house had looked in (Tr. p. 24). When these complaints were discussed with Mr. G on November 29, 1972, by Williams, Mr. G denied any impropriety and could not recall any place where his actions could have been considered unusual. Williams also testified that complaints are received from time to time with respect to other meter readers but that the connotation had been in the nature of a "glancing into windows" and not, as in this case, a "peeping into windows" (Tr. p. 28).

Evidence was also introduced in the form of a deposition taken on December 13, 1974, of Carl Dennis, Senior Security Representative for J. C. Penney Company in _____ (Jt. Ex. 2). According to Dennis, he observed Mr. G in his store at midday on three occasions during late April/May 1974; on one occasion, Dennis observed Mr. G

kneeling down looking at merchandise and stealing glances up the dress of a nearby clerk, that when Mr. G left the store he followed him into the shopping mall and observed him walk up to some women "like he was going to confront them, and would step to the side quickly as soon as he got up to them" (Jt. Ex. 2; p. 7-8), and that Mr. G then stationed himself at the bottom of the up-escalator in an adjacent store for several minutes and every time a woman went up the escalator with a skirt on, he turned to look up at her. Mr. G acknowledges that he was in the shopping center in question on May 17 and 22, 1974.

POSITIONS OF THE PARTIES

The Employer contends that there is just cause for discharge, that the record clearly establishes that Mr. G has been peering into customer windows on his meter-reading assignments, that he further violated strict Employer policy by leaving his assigned work area to go into a shopping center where, dressed in recognizable PG&E attire, he conducted himself in an "abhorrent", "socially unacceptable" manner. The Employer maintains that even though it deems his conduct to justify discharge, it considered other alternatives -- counselling, transfer, demotion -- but that no such alternatives were possible because Mr. G, having denied any improper activities, would not be amenable to counselling, nor were there any other non-public positions available for which Mr. G could qualify.

The Union maintains that Mr. G's reason for being in the customer's driveway in September 1973 was sound, that he was confused as to the layout of the route and may have been checking his bearings in the driveway, and that the customer's claim that he was looking into her window is purely an opinion and conclusion on her part; that there

is a conflict in the testimony with respect to the July 16 or 17 incident which, on the basis of the record, should be resolved in his favor. The Union contends that the customer would have had only a few seconds in the July, 1974, incident to identify Mr. G when she allegedly saw him at the bedroom window and then pulled the drapes; that the customer demonstrated that her memory is not overly good, that Employer representative Zagar testified that when he met with the customer he showed her a snapshot of a group with Mr. G in it but that the customer, when shown the snapshot at the hearing, testified that she had not seen it before (Tr. pp. 31, 63); that the driveway in question serves four dwellings so that while the customer may have seen someone in the driveway it could have been any number of persons other than Mr. G. As for his looking into the dining room window, the Union maintains that the normal position for reading the meter in question would put the meter reader in a direct line of vision into the dining room of the customer's house, and that it is only an opinion and conclusion on the customer's part that Mr. G was looking in the window rather than at the meters.

The Union maintains that the anonymous customer complaints deserve no consideration and that the incidents at the shopping center could as easily be described as normal male girl-watching as could be characterized as being sinister in nature. If Mr. G was off route at the shopping center, it was during his lunch hour; and if such is a violation of Employer policy, it has not in the past with respect to other meter readers who have been off their assigned routes warranted the harsh penalty of discharge. In sum, the Union maintains that the record may justify some concern on the part of the Employer as to his conduct, but that there is a doubt as to Mr. G's behavior which should

be resolved in his favor rather than to dismiss him for conduct which carries a stigma of general community disapproval.

OPINION

At the outset, the Board wishes to state its concurrence with the principle that in a case such as this, all reasonable doubts should be resolved in favor of the accused, for it is painfully aware of the stigma that attaches to a person having been found to be a "Peeping Tom." However, in the Board's judgment, the evidence in this case leads to that conclusion.

In reaching that judgment, the Board believes that the July, 1974 incident is the crucial one. There was a reasonable basis for the grievant to have been in the driveway in September, 1973, but not in July, 1974. By then, he knew the route in question and the location of the meters, and if he was in the driveway looking into the customer's bedroom window, as the customer says he was, he was there with that purpose in mind. While it is true that the customer saw him there only a few seconds before she closed her drapes, that is enough time for a positive identification, bearing in mind that this was not the first time that she had seen the grievant stopped in the driveway facing her window, which concerned her on the first occasion to the extent that she had called the police. In short, his face had been impressed into the customer's memory. Furthermore, it must be remembered that the customer saw the same face some minutes later looking through her dining room window.

The Board is also convinced that the grievant was deliberately looking into the customer's dining room window in July, 1974. The customer testified that the grievant was directly in front of the window,

which is to the left of the meter box, with his face about six inches from the window. Had the grievant been reading the meters that were near the dining room window, he would necessarily have had to have been to the right side of the meter box, since the door of the meter box opens toward the window, and he would have been at least two feet from the window and at an angle. The Board found the customer to be forthright and devoid of malice toward the grievant. There is no reason for the Board not to accept the customer's testimony as the truth.

Accordingly, the Award in this case is as follows:

AWARD

The discharge of the grievant is sustained.

BOARD OF ARBITRATION

Dated: July 7, 1975

s/ M. L. Myers
Morris L. Myers, Chairman

s/ L. N. Foss Dissent
Lawrence N. Foss, Union Member

s/ I. W. Bonbright
I. Wayland Bonbright, Employer Member

s/ D. L. Mitchell Dissent
Darrel L. Mitchell, Union Member

s/ P. Matthew
Paul Matthew, Employer Member