In the Matter of a Controversy]
]
between]
]
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. 1245, AFL-CIO,]
]
Complainant,]
]
and] Arbitration Case No. 77
]
PACIFIC GAS AND ELECTRIC COMPANY,]
]
Respondent.]
]
Re: Discharge of L]
]

OPINION AND DECISION

OF

BOARD OF ARBITRATION

SAM KAGEL, Chairman

DOROTHY FORTIER, Union Member

MANUEL A. MEDEROS, Union Member

I. WAYLAND BONBRIGHT, Company Member

GARY P. ENCINAS, Company Member

San Francisco, California

ISSUE:

Was the discharge of L in violation of the current Clerical Labor Agreement? If so, what shall the remedy be?

L was employed as of October 21, 1969. He was discharged effective June 8, 1978. At the time of the discharge, he was a Customer Services Clerk.

LETTER OF DISCHARGE:

The letter of discharge issued to L , dated June 8, 1978, is attached hereto and made a part of this Opinion, and it is noted as being Company Exhibit Number 1-g.

LOCAL INVESTIGATING COMMITTEE:

The Local Investigating Committee issued a Joint Statement of Facts in this case concerning the discharge of L on June 8, 1978, and the report is attached hereto and made a part of this Opinion, and it is noted as being Company Exhibit 5.

POSITION OF PARTIES:

Basically, the position of the Parties is reflected in the position of the Union Committee Members on the Joint Investigation of the grievance where, in their report, it

is stated that the Union Committee Members felt that the last incident, which is an incident that occurred on June 2, 1978, was not serious enough to warrant discharge. The Company Members of the Joint Investigating Committee believed that the June 2, 1978 incident was just another in a long history of continued irresponsibility on the part of L .

INCIDENT OF JUNE 2, 1978:

On that date, L was charged with changing his lunch hour without permission; returning from lunch 20 minutes late; and an unauthorized absence from his work station from 3:00 to 3:45 p.m.

L testified that his regular lunch hour was between 1:00 and 2:00 p.m.; that he had determined to change his lunch hour that day at approximately 10:30 a.m.; that he wanted to change it to 12:00 noon to 1:00 p.m. He claims he told A , that he was going to take an early lunch. A was not in the same position as Jones or Dolan who were in supervisory positions. L testified that there were no Supervisors available at ten minutes to twelve, though he was not claiming there were no Supervisors available earlier to be notified as to his change in his lunch period since he had made up his mind

at 10:30 in the morning to change his lunch period (Tr. 84-85, 99).

L testified that he wanted to change his lunch hour to call his realtor and was told that his realtor would be back in her office at approximately 1:00 p.m. (Tr. 86, 105). It should be noted that since he was aware that his realtor would not be available until one o'clock, it is difficult to understand why he wanted to change his regular lunch hour, which was from 1:00 to 2:00 p.m., to 12:00 noon to 1:00 p.m.

L admitted that he returned from lunch 15 minutes late on June 2, 1978 (Tr. 85).

Supervisor Jones testified that he could not find L between 3:00 to 3:45 p.m., on June 2, 1978. L returned after 3:45 p.m. and, according to Jones, refused to account for his absence. L , in response to a question by his Counsel, stated the following:

> "Q. By the way, did you tell Mr. Jones that afternoon, at 3:45 or so, why it was you were late from lunch?
>
> "A. No.
>
> "Q. Was there some reason you were holding that back?
>
> "A. Well, due to the anxiety and stuff, you know, I realized that I was late and I had -- I didn't stress the importance because I didn't really think it was that critical.

"Q. Had the previous layoff back in December of '76 or so, did that experience have any effect on how openly you related to Mr. Jones on this occasion?

"A. Well, after, at the end of it, you know, our conversation and, you know, after he told me about this and that he'd get back to me, I said, 'What the heck,' you know. It happened to me before. I tried to explain things and all it got me was five days, so I figured the best thing for me to do was just keep quiet." (Tr. 93-94)

* * *

"Q. [L 's Counsel] All right. Now my question is, right at that point why did you not protest more vigorously that you were working on company business and that you could prove it?

"A. I didn't think it was going to do any good.

"Q. And why was that?

"A. Well, like I said before, I complained or I protested my innocence in '76 and all it got me was five days." (Tr. 95)

The Investigating Committee report, Fact 5, reads:

"Mr. Jones stated that he suspected the grievant had been drinking because his speech was slurred, his eyes were red and glassy, he couldn't sit up straight, and he couldn't remember where he had been." (Co. Ex. 5)

In the same investigating report, Fact 15 reads:

"Mr. L didn't remember for sure where he had gone to lunch that day. He stated he did not come back to work drunk, nor did he drink excessively during lunch." (Co. Ex. 5)

At the Arbitration hearing L , on cross-examination, testified that Fact 15 of the Investigating Committee's report was false (Tr. 103), and that he had nothing to drink on June 2.

As to the specific incidents of June 2nd, it must be concluded that as to the testimony of Jones and L Jones' testimony is to be credited and the credibility of L 's testimony is in serious doubt. Accordingly, it must be found that he did on that day, June 2, 1978, change his lunch hour without permission; that he admittedly returned from lunch 20 minutes late; and that he was on an unauthorized absence from his work station from 3:00 to 3:45 p.m.

OTHER INCIDENTS:

L insists that only the incidents of June 2, 1978, should be considered by the Board in determining whether the discharge was for just cause.

The letter of discharge was not limited to the June 2, 1978 incidents, but very specifically included as a basis for the discharge a review of his personnel file and specifically set forth his past conduct with reference to his employment which the Company contends should be considered in determining whether the discharge was for just cause.

Clearly, where an Employee is discharged and the letter of discharge, as it is in this case, is specific in its details and not limited to a so-called final incident, all of those factors are to be considered with reference to the discharge itself.

Clearly, in this instance, L 's conduct going back to 1971, resulted in L 's being orally counseled concerning his poor attendance record and being told that unless there was an improvement he would subject himself to disciplinary action up to and including discharge.

Even if some of the items on his personnel file going back to 1971 are discounted, his conduct from 1976 is a proper factor to be weighed by the Board. Such conduct reflected in L 's personnel file included being observed drinking on the job in November of 1976; the five-day suspension resulting from a letter of December 14, 1976, again relating to L 's being under the influence of alcohol during working hours; being involved with Employee W in a disruption of work in the Tag Posting and ACDS Section; and being abusive and disrespectful to supervision. L was warned that he had to improve his attitude toward supervision and to correct what the Company contended was his irresponsible behavior toward his employment; that if he did not, he would be subjecting himself to further

disciplinary action up to and including termination of his employment. There was no grievance filed concerning the five-day disciplinary layoff or the confirming letter.

On February 10, 1978, L 's Supervisors indicated that L was on an unauthorized absence from work which resulted in a disciplinary letter being issued to him on February 24, 1978, with a further two-day disciplinary layoff; and in the February 24 letter relating to that situation, he was warned:

> "In the future, if you do not significantly improve your attitude toward your employment and maintain an acceptable attendance record, you may subject yourself to further disciplinary action up to and including discharge."

This discipline was not grieved.

SUMMARY:

The incidents of June 2, 1978, were established. L 's behavior in relationship to those incidents, when combined with his record going back even only to 1976, and not prior thereto, establishes a course of conduct on the part of L which adequately constitutes a basis for the Company's conclusion in its letter of discharge which reads:

> "Apparently previous counselling and disciplinary action taken to impress upon you the seriousness of your conduct have not produced the desired results."

In short, L was given a number of opportunities to conduct himself in a manner in conformance with reasonable Company rules and with expected proper conduct on the job. He failed to do so. The June 2, 1978 incidents were the final "straws," together with his previous record, which constituted the basis for the discharge. Based upon this entire record, there is no basis upon which the Board in this case can find any mitigation for the action taken by the Company.

DECISION:

The discharge of . L was for just cause. The grievance is denied.

Sam Kagel Chairman	Concur/~~Dissent~~	Aug 6, 1979 Date
Dorothy Fortier Union Member	~~Concur~~/Dissent	8-6-79 Date
Manuel G. Medeiros Union Member	~~Concur~~/Dissent	8-8-79 Date
W Babright Company Member	Concur/~~Dissent~~	8-6-79 Date
P. Emanuel Company Member	Concur/~~Dissent~~	8-6-79 Date