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IN ARBITRATION PROCEEDINGS PURSUANT TO TITLE 102 OF THE  
CURRENT COLLECTIVE BARGAINING AGREEMENT BETWEEN THE PARTIES

In the Matter of a Controversy )  
between )  
INTERNATIONAL BROTHERHOOD OF )  
ELECTRICAL WORKERS, LOCAL UNION )  
NO. 1245, AFL-CIO, )  
Complainant, )  
and )  
PACIFIC GAS AND ELECTRIC )  
COMPANY, )  
Respondent, )  
Involving discharge of )  
W and suspension )  
and/or demotion of H )

OPINION AND AWARD  
OF THE  
BOARD OF ARBITRATION

This Arbitration arises pursuant to Agreement between  
the INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION  
NO. 1245, AFL-CIO, hereinafter referred to as the "Union," and  
PACIFIC GAS AND ELECTRIC COMPANY, hereinafter referred to as the  
"Company," under which ADOLPH M. KOVEN was selected to serve as  
Chairman of a Board of Arbitration whose members also included  
LAWRENCE N. FOSS, Union Board Member; ORVILLE OWEN, Union Board  
Member; PAUL E. PETTIGREW, Company Board Member; and LEONARD A.  
WEST, Company Board Member; and under which the Award of the  
Board of Arbitration would be final and binding upon the parties.

Hearing was held December 6, and December 18, 1979 in

1 San Francisco, California. The parties were afforded full oppor-  
2 tunity for the examination and cross-examination of witnesses,  
3 the introduction of relevant exhibits, and for argument. Both  
4 parties filed post-hearing briefs.

5 APPEARANCES:

6 On behalf of the Union:

7 MAUREEN C. WHELAN, Attorney  
8 Marsh, Mastagni & Marsh  
9 1351 Mangrove Avenue  
10 P. O. Box 1772  
11 Chico, California 95927

12 On behalf of the Company:

13 LAWRENCE V. BROWN, ESQ.  
14 Pacific Gas & Electric Company  
15 145 Market Street  
16 San Francisco, California 94106

17 ISSUES

- 18 1) Was the discharge of  
19 W in violation of the  
20 Physical Labor Agreement? If  
21 so, what is the remedy?
- 22 2) Was the disciplinary suspension  
23 and/or demotion of H  
24 in violation of the Physical  
25 Labor Agreement? If so, what  
26 is the remedy?

27 RELEVANT SECTIONS OF THE CONTRACT

28 Section 7.1

29 The management of the Company and its business  
30 and the direction of its working forces are vested  
31 exclusively in Company, and this includes, but is  
32 not limited to...suspend, and discipline or dis-  
charge employees for just cause....

33 Section 500.5

34 Any provision of this Agreement which may be  
35 in conflict with any Federal or State law, regula-  
36 tion or executive order shall be suspended and in-  
37 operative to the extent of and for the duration of  
38 such conflict.

39 FACTS:

40 Grievant H worked for the Company as a Subforeman  
41 and W worked as a Lineman. On May 10, 1979, both grievants

1 volunteered to work overtime to replace a pole which was down  
2 because of a car accident. H was suspended for 9 days and  
3 demoted to Lineman because of his alleged violation of Company  
4 rules in the performance of the job, and because he was charged  
5 with demonstrating poor leadership. W was discharged be-  
6 cause of his behavior in an altercation between himself and  
7 General Foreman Wi at the job site.

8 The accident was reported to the Company's Santa Cruz  
9 headquarters by R, a Troubleman and Field Line Foreman,  
10 about 3:30 p.m. The replacement of the pole was necessary to  
11 restore service, and R, who remained at the job site,  
12 gave the dispatcher at the service center a list of the material  
13 necessary to replace the pole. Wi told H to gather the  
14 material and proceed to the job site. He also told W that  
15 there was no hurry, and W told H of Wi's remark.  
16 The grievants left the yard either at 4:45 p.m. (according to  
17 the Company) or at 5:10 p.m. (according to the Union). Wi  
18 notified R that the crew was on its way.

19 Before leaving the yard, H arranged with the crew  
20 to meet for dinner at the Windjammer Restaurant, which is a  
21 30 minute drive from the job site, and 30 minutes from the yard.  
22 Under the Contract, the crew was entitled to a meal at 5:30, and  
23 four hours thereafter. H explained that he decided to allow  
24 the crew to eat first so that they could work four straight  
25 hours at the site.

26 The Union testified that it is not normal practice to  
27 seek authorization from the Company to take time for a meal where  
28 a meal is authorized by the Contract, while the Company testi-  
29 fied that in the case of an overtime emergency assignment, the  
30 Subforeman must obtain permission to stop for a meal on the way  
31 to the job site.

32 R remained at the job site awaiting the crew.

1 He hung the line in the trees to allow cars to travel over the  
2 road past the scene of the accident. However, he testified that  
3 the site was still dangerous because the line hung down as low  
4 as four feet at one point. This evidence was contradicted by  
5 H , who stated that the line did not hang down as low as  
6 four feet. Both R and Wi testified that in the case  
7 of a car pole accident, the first action the crew must take is  
8 to ground the line to prevent electrocution.

9 H and the crew arrived at the site after their meal  
10 at around 7:30 p.m., and the crew was reported in on the job at  
11 7:47. H discovered that brackets which were needed for the  
12 job had been forgotten, and he sent a crew member back to the  
13 yard for the brackets. The Union testified that it was not un-  
14 common to forget to bring all the necessary equipment to repair  
15 a line after a car-pole accident.

16 H "tailboarded" the crew members who were left (i.e.,  
17 he outlined to them the means by which the job would be accomplish-  
18 ed). He told them that he planned to frame the new pole on the  
19 ground, dig out the stump of the old pole, and set the new pole  
20 at the same time. One lineman would be sent up each pole to  
21 ground the lines, and then the lines would be tied in and the  
22 grounds would be removed and the taps closed. The groundman  
23 proceeded to drill holes in the pole in preparation. H  
24 testified that he did not feel it necessary to ground the line  
25 because it was out of the way. H told W to stay in  
26 the truck and rest because W was not needed for the time  
27 being, and because he was tired. The Union testified that a  
28 crew member was often allowed to rest if he is not needed on an  
29 overtime job, while the Company testified to the contrary.

30 Shortly after 7:00 p.m. R called Wi at home  
31 to report that the crew had not yet arrived. Wi arrived at  
32 the site about 8:00 p.m. H told Wi about the missing

1 part and that he had sent a crew member back to the yard for the  
2 part. Wi asked where W was and H said that he had  
3 instructed W to rest in the truck because W was tired  
4 and because he was not needed to work for the time being. Ac-  
5 cording to H, Wi was angry, criticized the planning of  
6 the job, and relieved H of his duties. Wi testified that  
7 he did not relieve H until later. Wi then went over to  
8 the truck where W was sitting in the front seat with his  
9 eyes closed. Considerable conflict in the evidence arises as to  
10 what then occurred.

11 (a) Union's Version

12 Wi attempted to open the door of the truck, and said  
13 to W "I see you are still strapped in." Wi accused  
14 W of sleeping. W denied that he was asleep and said  
15 he was just resting with his eyes closed. Wi then told  
16 W that he should have been working and that he was suspend-  
17 ed, and instructed him to get into his (Wi's) car. Thereupon,  
18 W replied that he was not going anywhere with Wi. Wi  
19 grabbed W's wrist, or arm, and W said, "Don't put your  
20 hands on me." Wi denied to W that he had touched  
21 W, and W warned, "Don't ever put your hands on me  
22 again." Wi then said another crew member would take W  
23 in. W went to get his bag. H asked Wi why he had  
24 been relieved. H and W argued with Wi; and their  
25 voices were raised. W became angry, and his fists were  
26 clenched at his side. Another crewman placed his arms around  
27 W to restrain him, but W wrenched free and grabbed  
28 Wi's collar with both hands. At this point, W and Wi  
29 were standing at the center line of the road. Wi backed up  
30 toward an embankment, as W held on. W testified that  
31 he released his right hand, made a fist, and then regained con-  
32 trol of his emotions and released Wi, intending to end the

1 incident. Wi according to the Union, took another step back-  
2 ward, tripped, lost his balance and fell over the edge of the  
3 embankment. Wi suffered external injuries and back pains  
4 following the injury. He had had some back problems before the  
5 incident. W did not hit Wi during the altercation, and  
6 he did not push Wi over the embankment. The entire incident  
7 took less than five seconds.

8 (b) Company's Version

9 Wi first shouted to W as he sat in the truck and  
10 when W failed to respond Wi knocked on the door and win-  
11 dow of the truck. W emerged from the truck. An exchange of  
12 words followed and W accused Wi of grabbing him, at which  
13 point Wi told W that he was "taking him in." W  
14 replied, "You ain't taking me no place...I've had it with you,  
15 Wi ...I'm getting sick and tired of people telling me what to  
16 do." Wi then told H that H was also relieved of  
17 responsibility for the job. W hit Wi in the chest;  
18 grabbed Wi by the front of his jacket while two crew members  
19 attempted to restrain W. During the course of this alterca-  
20 tion, Wi was walking backwards toward the road. W pushed  
21 Wi toward the embankment until Wi pitched over the bank  
22 head first to ten feet below. W yelled at Wi as Wi  
23 attempted to climb out of the embankment, "I hope you die."

24 On the morning following this incident, the grievants  
25 and other members of the crew were interviewed by two Company  
26 representatives, the District Electric Superintendent and the  
27 District Manager. Two shop stewards requested that they be  
28 allowed to be present at the interview to represent the grievants,  
29 but Wi told them that shop stewards were not allowed to be  
30 present since no discipline would be imposed in the discussions.  
31 The interview with the grievants then proceeded without the  
32 presence of the shop stewards.

1 H was employed for 25 years. He had previously  
2 suffered two disciplinary layoffs, one for three days for disre-  
3 garding Company safety rules, and one for two days for making an  
4 unauthorized stop at a coffee shop for refreshments. He was also  
5 reprimanded on one occasion for violation of safety rules. W  
6 was employed for 13 years. He had received one warning for making  
7 an unauthorized stop going to and coming from a job site and for  
8 drinking beer during business hours, and on another occasion he  
9 was suspended for ten hours for drinking beer during his lunch  
10 hour.

11 POSITION OF COMPANY:

12 The Union will no doubt rely on the rule stated in NLRB v.  
13 I. Weingarten, Inc. (1975) 420 U.S. 251, which holds that if an  
14 employee is required to attend an investigatory interview with  
15 management and he reasonably believes that the interview will lead  
16 to disciplinary action, he is entitled to have a shop steward  
17 present if he so requests. Denial of the employee's request for  
18 a shop steward is an unfair labor practice.

19 However, the Weingarten rule does not apply in the present  
20 case. The actual meeting with the grievants was with Fisher and  
21 Huxhold representing management and once the interview commenced,  
22 neither grievant requested the presence of a shop steward. No  
23 evidence was produced that Wi conveyed to the Company repre-  
24 sentatives who interviewed the grievants the request for the pre-  
25 sence of a steward at the interview. Since no charge of unfair  
26 labor practice was filed with the NLRB, it is not necessary for  
27 the Board of Arbitration to decide the question of unfair labor  
28 practice. (Cf. Spielberg Mfg. Co., 112 NLRB 1080, 36 LRRM 1152  
29 (1955); Duba Mfg. Co., 53 LRRM 1070 (1963).)

30 Nevertheless, assuming arguendo that the Arbitrator feels  
31 compelled to determine whether the May 11 interview conflicts with  
32 federal law because of the provisions of Section 500.5 of the

1 Contract, the Weingarten rule was not violated in the present  
2 case.

3 The right to representation of the grievants did not  
4 attach until the interview commenced. (Roadway Express, Inc.,  
5 103 LRRM 1050.) Neither the grievants nor any other member of the  
6 crew requested the presence of a steward after the interview be-  
7 gan. Moreover, the Union representatives did not pursue the  
8 matter with the Company representatives who conducted the inter-  
9 view.

10 In a similar case, an arbitrator held that the Weingarten  
11 rule was not violated. In Lennox Industries, Inc., 102 LRRM 1298  
12 (1979) a request for Union representation was made of the Fore-  
13 man on the production line. The dispute moved to the Plant Super-  
14 visor's office, and no further request was made for Union repre-  
15 sentation. In denying a charge of unfair labor practice, it was  
16 held that the record was insufficient to establish that the  
17 Company was aware prior to the discussion in the Plant Superin-  
18 tendent's office that the grievants had requested Union repre-  
19 sentation.

20 The H grievance:

21 According to the negotiated job requirements, the Subfore-  
22 man must have leadership and supervisory abilities, and be famil-  
23 iar with safety standards. Wi progressed from a bargaining  
24 unit job to his present position, and therefore his judgment of  
25 H 's method in carrying out the assignment must be viewed in  
26 the light of his great familiarity with the job. Thus, his  
27 evaluation of the sufficiency of H 's tailboard briefing and  
28 the failure of the crew to ground the de-energized line must be  
29 given great weight. Although Wi admitted candidly that he is  
30 short-tempered, no testimony was put forward that he was angry  
31 during the ride out to the job site. Moreover, no evidence was  
32 produced that he raised his voice when he criticized H at the



1 site or later when he addressed W . He did not even attempt  
2 to defend himself against W 's physical assault.

3 The first criticism to be made of H is that he forgot  
4 to load the transformer brackets on the way to the job site, re-  
5 quiring a one-hour round trip by a crew member to obtain that  
6 part. Although this oversight is a minor one, it must be con-  
7 sidered together with other shortcomings which H demonstrated

8 Next, H decided to feed the crew before proceeding  
9 to the scene of the accident. Even if Wi told W that he  
10 need not hurry, the statement was made by Wi before R  
11 telephoned the yard with the list of the required material for  
12 the job. Wi ' order after the truck was loaded was to "get your  
13 stuff loaded and then go out there," which amounted to an order to  
14 H to proceed directly to the job site.

15 The third criticism of H 's performance is that he  
16 allowed his crew to have a meal before they went to the job site.  
17 Common sense dictates that the Subforeman look first to the job  
18 to insure that no hazards exist and that the lines were grounded  
19 before feeding his crew. The evidence established that under  
20 Company policy, H was required to obtain permission from the  
21 General Foreman before stopping to eat instead of proceeding  
22 directly to the job. The crew did not become entitled to a meal  
23 until after 5:30 p.m., and even after that time, Section 104.1  
24 provides that the meal policy shall be interpreted in a practical  
25 manner and that the meal shall be provided at approximately one  
26 hour after regular quitting time. While H 's concern for his  
27 crew was commendable, he showed a lackadaisical attitude toward  
28 the needs of the public for restoration of electric service by  
29 his choice of restaurants (one half hour from the job site) and  
30 the more than three hour delay in arriving at the site.

31 H 's performance at the job site is also open to  
32 criticism. Not only did he fail to ground the lines first, but

1 when Wi arrived at the job, H was merely standing near the  
2 Groundman to instruct him in preparing the pole. Notwithstanding  
3 the considerable work to be done in grounding, fitting the trans-  
4 former, braces, etc., to the new pole, removing the stub, setting  
5 the pole, and attaching the conductors, when Wi arrived W  
6 was asleep in the truck, one crewman had returned for the bracket  
7 and only a non-qualified Groundman was working on the new pole.

8 H knew from past disciplinary action that he was  
9 skating on thin ice, and he contrived a story that he ordered  
10 W to stay in the truck in order to avoid punishment. H's  
11 castigation of his superior in the presence of the crew is also  
12 open to criticism, since his proper remedy for any complaint he  
13 might have had was to turn to the grievance procedure.

14 The W grievance:

15 W was caught sleeping on the job, and he was the  
16 aggressor in the assault against Wi. He was not provoked by  
17 Wi, and he continued to press the assault even when it was  
18 clear that Wi would not defend himself. If W had not  
19 pushed Wi, Wi would not have fallen off the embankment.

20 The only real question with regard to W is whether  
21 the punishment of discharge is appropriate. Line personnel are  
22 engaged in potentially dangerous work, and harmony in the work  
23 force is an essential to the performance of the job. The temper-  
24 mental unsuitability of W for such work is demonstrated by  
25 his own testimony that he grabbed Wi around the collar, con-  
26 sidered hitting Wi with his hand, and then decided that he  
27 could not hit Wi and let him go. W dropped his right  
28 hand, and was waiting to see what Wi would do and he admitted  
29 that he "probably" would have hit Wi if Wi had struck him.

30 POSITION OF UNION:

31 The rule in Weingarten was clearly violated by the  
32 Company because the Company denied the grievants the right to

1 be represented by a shop steward during an interview which they  
2 reasonably believed could lead to discipline. Section 500.5 re-  
3 quires compliance with state and federal law. In other cases,  
4 arbitrators have granted reinstatement, sometimes with full back  
5 pay, in compensation for an employer's failure to comply with  
6 Weingarten, (Combustion Engineering, 67 L.A. 349, Eaton Corp. &  
7 International Union of Allied Industrial Workers, 66 L.A. 58;  
8 Briggs & Stratton Corp., 66 L.A. 758; see Cameron Iron Works &  
9 International Association of Machinists & Aerospace Workers,  
10 64 L.A. 67.)

11 The H grievance:

12 None of the Company's charges against H have any sub-  
13 stance.

14 1) Tailboard briefing: H 's crew was very ex-  
15 perenced, and abbreviated tailboard briefings are common with  
16 an experienced crew. Car-pole accidents are a common occurrence,  
17 and the crew testified that they were aware from the tailboard  
18 briefing given by H of the purpose of the job and of their  
19 duties in making the repair.

20 2) Brackets: Breakdowns in equipment occurred prior to  
21 leaving the yard, so it is understandable that the brackets were  
22 left behind. Furthermore, testimony was produced that omitting  
23 to take needed equipment to a job is a common occurrence.

24 3) Meals: The Subforeman has discretion to decide when  
25 a crew will take its meal if the crew is entitled to a meal under  
26 the Contract. Although a conflict in the testimony arose regard-  
27 ing the necessity for Company approval for the meal when the crew  
28 is on an emergency assignment, the weight of the testimony sup-  
29 ports the Union's version that Company policy did not require  
30 prior approval for a meal stop. H properly exercised his  
31 discretion regarding the meal since he was not told that R.  
32 was waiting at the job site and had heard Wi tell W. that

1 there was no hurry. Since the meal was scheduled for 5:30 p.m.,  
2 it would have made little sense to arrive at the job and leave  
3 immediately for dinner. The job took eight hours to complete and  
4 the crew would obviously have had to leave the job to eat in any  
5 event.

6 4) Grounding the lines: Although ordinarily the first  
7 job of a line crew is to ground the lines in a car-pole accident  
8 so that electrocution does not occur, R had moved the  
9 lines out of the way by tying them to a tree. H planned to  
10 do the job so that linemen would not be required to touch the  
11 lines until after the pole was framed, and no reason arose to  
12 ground the lines at the beginning of the job since they were out  
13 of the way. The procedure used by H did not violate safety  
14 rules.

15 5) H's order to W to stay in the truck: There  
16 was nothing for W to do until the crewman returned with the  
17 bracket from the yard. Even Wi recognized that it was per-  
18 missible to allow a crew member to rest in overtime situations  
19 if he was not needed immediately.

20 6) The Company presented no evidence that H's  
21 method of planning the job was inadequate.

22 7) The evidence shows only that H asked Wi why  
23 Wi had relieved him. H was not present in the immediate  
24 vicinity during the altercation with W, and could not have  
25 prevented the fight.

26 The W grievance

27 While a physical altercation with a supervisor is a  
28 serious matter, the penalty of discharge is too severe under the  
29 circumstances of this case. W had a long and virtually un-  
30 blemished work record, and Wi provoked the dispute.

31 1) W did not force Wi off the edge of the em-  
32 bankment. Only Wi testified that W forced him over the

1 edge, and his objectivity is obviously open to question both be-  
2 cause he stated that he would do everything in his power to see  
3 that the grievants were discharged, and because of the conflicts  
4 in his testimony as a whole. While the versions of the events of  
5 May 10 given by the crew differed in some respects, none of the  
6 crew confirmed the Company's assertion that W pushed Wi  
7 over the embankment. H testified that Wi was backing up,  
8 dragging W, and W let Wi go before they reached the  
9 side of the road, and that Wi tripped and fell. Another crew  
10 member testified that W pushed Wi, who was backing up, and  
11 that W released Wi one step from the edge, and Wi lost  
12 his balance and fell. He stated further that it was his impres-  
13 sion that Wi's fall was an accident. W himself stated  
14 that Wi was backing up while W held on to him, and that  
15 W voluntarily decided to release Wi, who then lost his  
16 balance. W did not know that he and Wi were close to the  
17 embankment. Thus, the Company failed to prove that W forced  
18 Wi over the embankment.

19 2) A number of factors serve to mitigate W's con-  
20 duct. What happened was spontaneous and unpremeditated, and  
21 arbitrators consider the spontaneous nature of the employee's  
22 conduct as mitigation of punishment for an assault. (Libby-Owens  
23 Glass Co., 44 LA 497; General Tire & Rubber, 69 LA 1084; Charles  
24 Taylor & Sons, 57 LA 1168.) Moreover, W gained control of  
25 himself quickly, and Wi was not seriously injured.

26 3) In the 13 years of W's employment with the  
27 Company he has had a clean record with the exception of two minor  
28 matters, neither of which involved a display of temper on his  
29 part. Even Wi testified that W was a good lineman.  
30 Furthermore, evidence was put forward that W was under stress  
31 because of personal problems and that he was tired from a stress-  
32 ful work day. Wi acted unreasonably in suspending W when

1 he knew that W was sitting in the truck on instructions from  
2 his supervisor, H . Wi acted unfairly and in anger, and  
3 overreacted to what he perceived to be a challenge to his authority.  
4 Furthermore, Wi provoked W by grabbing his arm when  
5 W indicated that he did not wish to return to the yard with  
6 Wi .

7 CONCLUSION:

8 A threshold issue is whether the Company violated the  
9 Weingarten rule when Wi refused to allow Union stewards to  
10 represent the grievants at the interview by Company representa-  
11 tives on the day after the incident. The Company claims that  
12 Weingarten was not violated because the grievants did not repeat  
13 their request to have a steward present. It cites Lennox In-  
14 dustries, Inc., 103 LRRM 1298 (1979) for the proposition that the  
15 right to the presence of a Union representative at the interview  
16 was waived because the request was not renewed after the interview  
17 commenced. In fact, Lennox stands for the contrary proposition.  
18 There, an employee requested Union representation from a super-  
19 visor who requested the employee to go to the office of another  
20 supervisor. The first supervisor (as did Wi ; in the present  
21 case) said, prior to the beginning of the interview, that the  
22 employee did not require representation. The employee repeated  
23 his request for Union representation to the second supervisor,  
24 who also refused the request. It was held that there were two  
25 separate Weingarten violations: one prior to the interview, and  
26 a second during the interview.<sup>1/</sup>

27  
28 <sup>1/</sup> The Company relies upon another portion of the opinion in  
29 Lennox which involved alleged Weingarten violations as to a  
30 second employee. In the first incident, the employee asked one  
31 supervisor for representation, but the supervisor merely told him  
32 to see another supervisor, without replying to his request. It  
was held that the employee should have repeated his request to the  
second supervisor, who actually did the interviewing. In the  
second incident, the grievant again asked a supervisor for repre-  
sentation, but the supervisor did not reply to the request because

1 Turning to the merits of the dispute, we consider first  
2 H 's performance of his assignment on May 10. The most  
3 serious charge against him is that he failed to ground the line  
4 immediately upon arriving at the scene of the accident. Evidence  
5 was put forward that the line was not unsafe because it was out  
6 of the way and no danger of electrocution arose. Although R  
7 testified that the line was four feet off the ground at one point,  
8 this testimony was contradicted by H . The record does not  
9 indicate that any danger would arise if the line was clearly out  
10 of the way. Since the Company has the burden of proof, it must  
11 be concluded that substantial evidence was produced to the effect  
12 that no significant danger arose from the failure to ground the  
13 line because it was strung high enough to avoid contact, and  
14 therefore H 's failure to ground the line did not present a  
15 danger.

16 Nor did the Company demonstrate in what respects H 's  
17 tailboard briefing was inadequate. The crew testified that he  
18 set out the nature of the job, and that they understood their  
19 function. The fact that the brackets were forgotten would clearly  
20 be insufficient to justify discipline, particularly in the light  
21 of ample testimony that such was a common occurrence. The Company  
22 did not sufficiently demonstrate in what respect the planning of  
23 the job was improper, and Union witnesses testified that no de-  
24 fects were present in the manner in which H planned the work.

25 Next, that H did not seek prior permission before  
26 directing the crew to eat their meal before going to the job must  
27 be placed within the context of Wi 's statement that there was  
28 no rush. H could therefore have assumed that the emergency

29  
30 he may not have heard it. It was held that neither incident in-  
31 volved a Weingarten violation. However, these two incidents are  
32 distinguishable from the present case because there was no express  
denial of the right to representation, as occurred here when  
Wi ; told the grievants that they did not need Union representa-  
tion in their interview with Company officials.

1 was not so acute as to justify going to the job first and allowing  
2 the crew to leave shortly thereafter for their meal. Moreover,  
3 the Company's evidence that its policy required permission to  
4 stop for a meal where an emergency was involved was vague and in-  
5 decisive.

6 A conflict in the evidence arose with regard to Company  
7 policy of allowing a crewman to rest on overtime jobs if the Sub-  
8 foreman concludes no immediate need is present for the services of  
9 a particular crew member. The Union testified that crew members  
10 often rested in these circumstances, while Wi testified that it  
11 was against Company policy to allow a member of the crew to rest.  
12 In view of this conflict in the evidence, a clear cut case for  
13 suspension or demotion does not arise.

14 The only remaining charge against H is that he made  
15 improper remarks to Wi during their dispute. Wi was ex-  
16 ceedingly vague regarding H's actual remarks. H ap-  
17 parently challenged Wi's action in relieving him of his duties  
18 and stated that he was the foreman of the job and was "getting  
19 sick and tired of people telling me what to do." Under the cir-  
20 cumstances, the last remark, made in the heat of an argument, was  
21 not so disrespectful as to warrant serious discipline.

22 The lack of substance to the charges against H, when  
23 added to the violation of his right to being represented by his  
24 Union, and the fact that H is a 25 year employee with a  
25 relatively clear record, leads to the conclusion that neither the  
26 suspension nor the demotion was justified.

27 The W grievance

28 W admitted that he seized We by the collar and  
29 walked with him toward the embankment. While a conflict in the  
30 evidence arises as to whether Wi touched W or whether  
31 W hit Wi, it is clear that W lost his temper and  
32 physically assaulted his supervisor.



1           The record does not persuasively support the charge that  
2 W       pushed Wi       over the embankment. The incident occurred  
3 in the evening, several men were involved in the walk backward  
4 toward the embankment, considerable excitement and confusion  
5 existed, and in view of the fact that the incident lasted only  
6 about five seconds, the evidence does not firmly establish that  
7 the participants could clearly observe what occurred. W  
8 stated that he had determined to end the altercation just short  
9 of the embankment, and that he did not push Wi       . Again, while  
10 the record is not clear on this score, the Company failed to sus-  
11 tain its burden of proving that W       deliberately pushed Wi  
12 over the embankment.

13           Some mitigating factors arise in W       's favor. Wi  
14 action in disciplining W       for being in the truck when W  
15 was following the orders of his supervisor, H       , was unreason-  
16 able. W       had a good record; he had worked for the Company  
17 for 13 years; he was admittedly a good lineman; and he had never  
18 been involved in a similar incident. Under these circumstances,  
19 and in view of the fact that the Company violated his right to  
20 Union representation when it interviewed him on May 11, leads to  
21 the conclusion that the penalty of discharge is too severe.  
22 W       should be reinstated but without back pay because he was  
23 at fault in assaulting Wi

24           This incident suggests an exception too in what appears  
25 to have been a harmonious working relationship both between the  
26 members of the crew and between the crew and Wi       . Even W  
27 testified that Wi       had treated him fairly most of the time.  
28 Wi       admittedly has a sharp temper, and he acted spontaneously  
29 and without malice in relieving h       and W       of their  
30 duties on May 10. The actions of the crew, tired after a day of  
31 work, and of Wi       , called at home from his dinner table, become  
32 understandable under all the circumstances even though his own

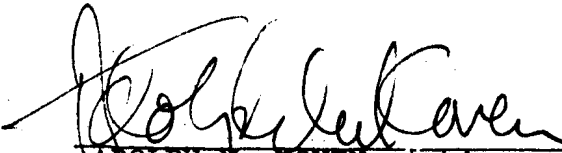
1 conduct contributed to the problem that arose.

2 Thus, for all the reasons set forth in the foregoing,  
3 grievant H is reinstated as a Subforeman with full back pay,  
4 including pay for the 9 days of suspension; and grievant W.  
5 is reinstated without back pay.

6 AWARD

- 7 1) The discharge of W. was  
8 in violation of the Physical Labor Agreement.  
9 He is reinstated, but without back pay.
- 10 2) The disciplinary suspension and/or demotion  
11 of H was in violation of the  
12 Physical Labor Agreement. He is reinstated  
13 as a Subforeman, with full back pay, in-  
14 cluding pay for the 9 days of suspension.

15 DATED: 9-9-80

  
 16 ADOLPH M. KOVEN, Chairman  
 17 Board of Arbitration

18 CONCUR:

19 /S/ LAWRENCE N. FOSS  
 20 LAWRENCE N. FOSS  
 21 Union Board Member

Dated: Sept. 2, 1980

22 /S/ ORVILLE OWEN  
 23 ORVILLE OWEN  
 24 Union Board Member

Dated: Sept. 4, 1980

25  
 26 PAUL E. PETTIGREW  
 27 Company Board Member

Dated: \_\_\_\_\_

28  
 29 LEONARD A. WEST  
 30 Company Board Member

Dated: \_\_\_\_\_

1 DISSENT:

2

3

4 LAWRENCE N. FOSS  
Union Board Member

Dated: \_\_\_\_\_

5

6

7 ORVILLE OWEN  
Union Board Member

Dated: \_\_\_\_\_

8

9 /S/ PAUL E. PETTIGREW  
10 PAUL E. PETTIGREW  
Company Board Member

Dated: 9-2-80

11

12 /S/ L.A. WEST  
13 LEONARD A. WEST  
Company Board Member

Dated: 9-2-80

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