

ARBITRATION PROCEEDING

In the Matter of Arbitration)
 between)
INTERNATIONAL BROTHERHOOD OF)
ELECTRICAL WORKERS, LOCAL 1245) OPINION AND AWARD
 and) Grievance 23906
PACIFIC GAS & ELECTRIC COMPANY) ARB-342
Grievant: J. M. [REDACTED])

The Undersigned was selected by the parties, IBEW Local 1245 (Union) and PG&E (Company), to hear and decide a grievance of J. [REDACTED] " [REDACTED] " M. [REDACTED] (Grievant). A hearing was held on July 30, 2018 in Walnut Creek, CA. Union Board Members Kit Stice and Lloyd Cargo IV were present. Company Board members Claire Landoli and Phil Simpkins were absent. Alexander Pacheco, Esq. represented the Union. Damon Ott, Esq. and Philip Baldwin, Esq. represented the Company. At the conclusion of the hearing both parties elected to submit final arguments in writing. The matter was considered fully submitted upon my receipt of the post-hearing briefs. The parties consented to a brief delay in the issuance of this Award.

During the course of the hearing both parties were afforded a full and complete opportunity to present evidence, to cross-

examine witnesses and to develop argument. All witnesses were duly sworn. A transcript of the proceeding was prepared by Julieann Hamill, CSR.

ISSUES

The Issues presented were as follows;

1. Did the Company have just cause to discharge Grievant?
2. If not, what is the appropriate remedy?

STATEMENT OF RELEVANT FACTS

The facts in this matter are not in significant dispute and, as there is a transcript, they will be briefly laid out here.

At the time of the incident giving rise to his discharge, Grievant had been employed by the Company for approximately nine years and had no discipline current on his record.

Early on the morning of September 10, 2016 Grievant was returning to work after some days off. He was arguing with his wife on the way to work. During his absence the security gate to the facility was removed for maintenance and he believed that he had opened with his remote control. As a result, he sped right by the posted security guard and drove over a tall traffic-type cone which had reflective tape. Not being sure what he drove

over. He stopped and discovered the cone. Grievant continued to his work location.

The security guard called her supervisor to report the incident and he called Grievant. They had a heated exchange. Then Grievant descended several flights of stairs loudly cursing about the cone. As he crossed the area toward the security guard, he picked up two cones. One he threw toward her and the other into a ditch well behind her. During this period he was yelling at the security guard, J [REDACTED] F [REDACTED] (F [REDACTED]). According to F [REDACTED], Grievant said, "I'll throw this cone at your fucking head." According to Grievant, what he said was. "Why don't you put this cone on your head?"

Finally, Grievant walked over to the "man gate" and slammed it closed before walking back to his duty station still cursing. F [REDACTED] again reported to her supervisor who, in turn, reported to the Company. After an investigation that took some days to complete, the Company discharged Grievant by letter dated October 18, 2016 having found that {his} "actions violated the Employee Code of Conduct which includes threatening physical violence and intimidating the on-site Security Officer at McDonald Island."

The Union grieved the discharge and, when the grievance could not be resolved, moved it to this arbitration.

DISCUSSION

Fundamentally the Union argues that, although Grievant's anger led him to violate the Code of Conduct he was never out-of-control, did not threaten physical violence to F█████ and should have received lesser discipline pursuant to the positive discipline policies in place. The Company counters that Grievant engaged in egregious violations of the known Code of Conduct, that he intimidated F█████ and that the degree of his anger with its roots in a domestic issue, poses a risk for future incidents that it cannot tolerate.

Had this incident stopped with the phone call with the security supervisor, there would not have been just cause for the discharge despite the violations of the Code of Conduct to that point. However, it did not. The only reason for Grievant to return to where F█████ was located was to intimidate her, and it's irrelevant whether or not he succeeded.

The Grievant deserves recognition of the degree of control he exhibited. He expressed his anger verbally and did not do any actual physical damage. However, taking his anger out on someone who was simply doing her job, by threatening her and throwing a cone at her increases the seriousness of his misconduct. In mitigation, the length of Grievant's relatively clean service with the Company shows he's not a regular violator of the Code

of Conduct and is capable of avoiding a repeat of this type of misconduct.

Pursuant to the parties' agreed upon disciplinary guidelines, there was not just cause for his discharge and it will be ordered replace by a Decision-Making Leave (DML). If I thought I had the authority, I would have conditioned this reinstatement by requiring that Grievant participate in an anger management course, but I do not read the Positive Discipline Policy as allowing for that requirement.

AWARD

Having carefully considered the evidence presented and the arguments made, it is the Award of the Arbitrator that:

1. The Company did not have just cause to discharge Grievant.
2. The Company is ordered to withdraw the discharge and impose a DML.
3. I will retain jurisdiction in this matter solely to resolve any disputes that may arise regarding the remedy ordered. Either party can request that I exercise this retained jurisdiction by giving written notice to the other party and to me (email is fine).

DATED: November 28, 2018

Respectfully submitted,

A handwritten signature in cursive script, reading "Sara Adler". The ink is dark and the signature is fluid.

Sara Adler, Arbitrator