PACIFIC GAS AND ELECTRIC COMPANY

COPY

INDUSTRIAL RELATIONS

Discharge for Cause

July 3, 1964

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In our review of arbitration settlements throughout the country, we often-times run across a discussion by an arbitrator that we believe may be of special interest to you. We are excerpting part of the text of a recent arbitration case which we believe to be of unusual value in respect to the arbitrator's treatment of the question of a just cause discharge. Following the precepts set forth in the questions will assist you in determining the propriety of disciplinary actions. A "no" answer to any one or more of the following questions normally signifies that just and proper cause did not exist:

"1. Did the Company give to the employee forewarning or foreknowledge of the possible or probable disciplinary consequences of the employee's conduct?"

"Note 1: Said forewarning or foreknowledge may properly have been given orally by management or in writing through the medium typed or printed sheets or books of shop rules and of penalties for violation thereof.

"Note 2: There must have been actual oral or written communication of the rules and penalties to the employee.

"Note 3: A finding of lack of such communication does not in all cases require a 'no' answer to Question No. 1. This is because certain offenses such as insubordination, coming to work intoxicated, drinking intoxicating beverages on the job, or theft of the property of the company or of fellow employees are so serious that any employee in the industrial society may properly be expected to know already that such conduct is offensive and heavily punishable.

"Note 4: Absent any contractual prohibition or restriction, the company has the right unilaterally to promulgate reasonable rules and given reasonable orders; and same need not have been negotiated with the union.

"2. Was the company's rule or managerial order reasonably related to the orderly, efficient, and safe operation of the Company's business?

"Note: If an employee believes that said rule or order is unreasonable, he must nevertheless obey same (in which case he may file a grievance thereover) unless he sincerely feels that to obey the rule or order would seriously and immediately jeopardize his personal safety and/or integrity. Given a firm finding to the latter effect, the employee may properly be said to have had justification for his disobedience.

"3. Did the company, before administering discipline to an employee, make an effort to discover whether the employee did in fact violate or disobey a rule or order of management?"

"Note 1: This is the employee's 'day in court' principle. An employee has the right to know with reasonable precision the offenses with which he is being charged and to defend his behavior.

"Note 2: The company's investigation must normally be made before its disciplinary decision is made. If the company fails to do so, its failure may not normally be excused on the ground that the employee will get his day in court through the grievance procedure after the exaction of discipline. By that time there has usually been too much hardening of positions.

"Note 3: There may of course be circumstances under which management must react immediately to the employee's behavior. In such cases the normally proper action is to suspend the employee pending investigation, which the understanding that (a) the final disciplinary decision will be made after the investigation and (b) if the employee is found innocent after the investigation, he will be restored to his job with full pay for time lost.

"4. Was the Company's investigation conducted fairly and objectively?"

"Note: At said investigation the management official may be both 'prosecutor' and 'judge,' but he may not also be a witness against the employee.

"5. At the investigation did the 'judge' obtain substantial evidence or proof that the employee was guilty as charge?"

"Note: It is not required that the evidence be preponderant, conclusive or 'beyond reasonable doubt.' But the evidence must be truly substantial and not flimsy.

"6. Has the company applied its rules, orders, and penalties even-handedly and without discrimination to all employees?"

"Note 1: A 'no' answer to this question requires a finding of discrimination and warrants negation or modification of the discipline imposed.

"Note 2: If the company has been lax in enforcing its rules and orders and decides henceforth to apply them rigorously, the company may avoid a finding of discrimination by telling all employees beforehand of its intent to enforce hereafter all rules as written.

"7. Was the degree of discipline administered by the company in a particular case reasonably related to (a) the seriousness of the employee's proven offense and (b) the record of the employee in his service with the company?"

"Note 1: A trivial proven offense does not merit harsh discipline unless the employee has properly been found guilty of the same or other offenses a number of times in the past. (There is no rule as to 'what number of previous offenses constitute a 'good,' a 'fair,' or a 'bad' record. Reasonable judgment thereon must be used.)

"Note 2: An employee's record of previous offenses may not be used to discover whether he was guilty of the immediate or latest one. The only proper use of his record is to help determine the severity of discipline once he has properly been found guilty of the immediate offense.

"Note 3: Given the same proven offense for two or more employees, their respective records provide the only proper basis for 'discriminating' among them in the administration of discipline for said offense. Thus, if employee A's record is significantly better that those of employees B, C, and D, the company may properly give A a lighter punishment that it gives the others for the same offense; and this does not constitute true discrimination."

/s/ V.J. THOMPSON

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