

In the Matter of an Arbitration

between

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL UNION
NO. 1245,

Complainant,

and

PACIFIC GAS AND ELECTRIC COMPANY,

Respondent,

involving suspension of Henry D.
Seavers.

Review Committee No. 1033

Arbitration Case No. 38

OPINION AND DECISION OF BOARD OF ARBITRATION

SAM KAGEL - Chairman
JOHN J. WILDER - Union Representative
JOHN K. McNALLY - Union Representative
I. WAYLAND BONBRIGHT - Company Representative
KENNETH H. ANDERSON - Company Representative

San Francisco, California
June 11, 1971

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ISSUE:

Is the Grievant entitled under the provisions of the applicable Labor Agreement to be paid for the period he was suspended from work pending disposition of felony charges for which he had been held to answer in a Superior Court of the County of Alameda?

FACTUAL SITUATION:

The Grievant was suspended on May 15, 1970, following his arrest on May 13, 1970, for alleged violations of the California Penal Code. After a jury trial began, the charges were dropped and a recommendation that they be dismissed made by the Alameda County District Attorney on July 24, 1970. The Grievant was reinstated to his former classification on July 29, 1970. The claim in this case is for pay during the period of his suspension.

POSITION OF THE PARTIES:

Position of the Union: That the parties have agreed that the Company bears economic risk of the kind of suspension involved in this case; that this is the result of the Creed case whereby an employee who is suspended because criminal charges are pending against him, and those charges are subsequently dropped, the Company would make the Employee whole; that this has been the case subsequent to the Creed case; that Company evidence to the contrary is insubstantial; that even if the Creed case had not settled the question, back pay should be paid; that the Company if it desires to suspend an Employee solely because the Employee has been charged with criminal misconduct entirely unrelated to his work prior even to any investigation of the charges involved, the Company should bear the economic risk if the charge of misconduct is not upheld; that a contrary result would be unfair and irreconcilable with the principles of just cause; that the Company has not shown that any legitimate interest it might have had was threatened in any way by Grievant's arrest and charge.

Position of the Company: That a Company is not required by the terms of the Agreement, arbitration decisions, Review Committee decisions or the Letter of Agreement with the Union to reinstate with pay for the period of suspension for misconduct occurring off the job; that in 1962, the Review Committee did not provide pay to an employee who had been so suspended; that Section 102.13 is the only Agreement Section by which the Company is contractually bound to reinstate the wages lost and no mention is made of the term "suspension"; that the Creed case did not overrule the prior Review Committee decisions; that the decision in the Creed case was a letter of understanding restricted to the San Jose Division rather than a formal jointly-signed decision of the Review Committee; that there was no meeting of the minds with regards to setting a universal rule of retroactivity following a suspension in the Creed case; that a suspension of final judgment as to whether employees should be summarily discharged on the basis of the facts, most of which were in the possession of the police and not available to the Company without interference with the proceedings in Court is neither unfair or unreasonable.

DISCUSSION:

Analysis of the Issue: The issue in this case is not whether the suspension of the Grievant was proper for that is not contested. The issue is whether the Company, once the criminal charges were dropped and it made the decision to restore the Grievant to service, must pay him for the period for which he was suspended.

Past Practice: In 1962, in an apparently similar case, the Review Committee did not award back pay. In the Creed matter, by letter dated January 13, 1969, the Review Committee found that a certain amount of back pay should be awarded to an employee suspended because of his arrest "without prejudice to the position of either Union or Company, this grievance will be settled on the basis of a retroactive wage adjustment of

30 work days, commencing April 10, 1968."

According to the Union, the Creed matter establishes that the Company is required to pay back pay in a case such as the present one; the above quoted Section referring to a dispute as to the amount of work days involved because of delays caused by the Grievant and his counsel in the Court process. The Company disagrees contending that the Creed matter was not an official Review Committee decision nor that it in fact made the concession that the Union claims.

The Union cites further a case where an employee who was suspended on a marijuana offense, when the charges against him were dismissed, was made whole for the time he was on suspension.

SUMMARY:

The record established that the Parties have seemingly concurred that the Company can suspend employees when certain charges of criminal conduct are lodged against him pending the outcome of their criminal cases. Such suspensions apparently are not challenged at the time that they are made, but are left in effect until Court disposition has taken place.

The record shows that the problem of whether or not the Creed case and similar cases modifies the 1962 Review Decision does not have to be answered.

Section 102.13 of the Agreement reads: "If an employee has been demoted, disciplined or dismissed from Company's service for alleged violation of a Company rule, practice, or policy and Company finds upon investigation that such employee did not violate a Company rule, practice, or policy as alleged, it shall reinstate him and pay him for all time lost thereby".

The Company maintains that since that provision does not include the word "suspension" it is inapplicable to the case at hand. (Co.Br.p.4) However, it is quite clear in this case that the Company would investigate the Grievant's case because he was arrested for alleged felony violations, and was suspended pending further investigation. (Standard Practice No. 75.6-1, Co.Ex.2).

It is fair to state that suspension without pay can be viewed as discipline and, therefore, under Section 102.13 that disciplinary action was found to be without merit when he was restored to service and therefore, the Company is required to reinstate and pay the Grievant for all time lost.

However, if not so viewed, then the suspension became a form of disciplinary action when the Grievant was restored to duty without pay on July 29, 1970. Under such circumstances, the Company converted its "investigatory suspension" to a "disciplinary suspension". Yet it established no reasons why it was even entitled to take such disciplinary action against the Grievant where the Court charges were dismissed

and no other facts were shown to justify, in this particular case, discipline at the time of dismissal. Accordingly, under such circumstances, the disciplinary suspension would have to be viewed as discipline without just cause in which case the Grievant would be entitled to payment for all time lost.

Therefore, if the suspension is viewed as an act of discipline at the time that it took place, or as discipline at the time that the Company refused to pay back pay, the Agreement and the evidence do not sustain the Company's position in this case.

DECISION:

The Grievant is entitled to be paid for the period he was suspended from work pending disposition of the felony charges against him and he shall forthwith be granted such pay.

<u>/s/ Sam Kagel</u> Chairman		
<u>/s/ J. K. McNally</u> Union Member	<u>Concur</u> <u>Concur/Dissent</u>	<u>6-11-71</u> Date
<u>/s/ J. J. Wilder</u> Union Member	<u>Concur</u> <u>Concur/Dissent</u>	<u>6-11-71</u> Date
<u>/s/ I. W. Bonbright</u> Company Member	<u>Dissent</u> <u>Concur/Dissent</u>	<u>6-11-71</u> Date
<u>/s/ Kent H. Anderson</u> Company Member	<u>Dissent</u> <u>Concur/Dissent</u>	<u>6-11-71</u> Date