Arb. #40

IN ARBITRATION PROCEEDINGS PURSUANT TO TITLE 9 OF THE CURRENT COLLECTIVE BARGAINING AGREEMENT BETWEEN THE PARTIES APPLYING TO OFFICE AND CLERICAL EMPLOYEES

In the Matter of a Controversy between LOCAL UNION NO. 1245 of the INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, Complainant, -and- PACIFIC GAS AND ELECTRIC COMPANY, Respondent. Involving discharge of [redacted] Mc[redacted], [redacted]	OPINION of the CHAIRMAN and DECISION of the ARBITRATION BOARD WILLIAM EATON Chairman LAWRENCE N. FOSS Member, Union KENNETH O. LOHRE Member, Union I. WAYLAND BONBRIGHT Member, Employer ELMO A. PETTERLE Member, Employer

APPEARANCES:

ON BEHALF OF THE UNION

Messrs. BRUNDAGE, NEYHART, GRODIN & BEESON by JOHN L. ANDERSON, Esq., 100 Bush Street, San Francisco, California 94104.

ON BEHALF OF THE EMPLOYER

HENRY J. LaPLANTE, Esq., Senior Counsel, and L. V. BROWN, Esq., Counsel, Law Department, Pacific Gas and Electric Company, 77 Beale Street, San Francisco, California 94106.

I. STATEMENT OF THE CASE

This is an arbitration to determine whether the Grievant, [redacted] Mc[redacted], was discharged for just cause (JX 2). The Grievant was hired by the Company on March 4, 1969, as a part-time meter reader (TR 17). It was arranged so that the Grievant, who was attending college, could work those hours which did not conflict with his class schedule (TR 18, 177). Approximately a year before his termination, the Grievant went on full-time status as a meter reader (TR 19).

On October 18, 1971, the Grievant was assigned to read the meters on Scenic Road in Fairfax (TR 139). Around noontime that day the Grievant finished reading 154 Scenic and bounded up a steep embankment to read 156 Scenic, the residence of James Pearson (TR 142, 145, 146).

Pearson testified that he had recently cut a driveway to facilitate parking, and was greatly concerned with the stability of the soil of the embankment (TR 78, 87). According to Pearson, he instructed the Grievant that there was an easier way to get to the meter, without coming up the embankment. Pearson testified that the Grievant replied, "Well, I'm going to do it my way" (TR 82). When the reading was finished the Grievant turned and, against the objections of Pearson, descended the same embankment (TR 83, 148).

Mrs. Pearson, standing on the porch facing Scenic, had heard the entire altercation between her husband and the Grievant. She stated that, in clear view of the Grievant,

she phoned the Company at the request of her husband (TR 114). Later, while driving to the grocery market, Mrs. Pearson stated that she encountered the Grievant crossing the street directly in front of her. According to Mrs. Pearson, the Grievant gave her the "finger," and obscene gesture made with the middle finger extended (TR 116). Mrs. Pearson testified that she was only two or three blocks from her house when this incident occurred (TR 115).

Pearson and his wife both testified that, after Mrs. Pearson had returned from the store and they were unloading the groceries, the Grievant drove by in a P.G.&E. truck, made a "gutteral noise," and spit in the direction of their mailbox while looking directly at them (TR 85, 105, 124). The Pearsons were so aggravated by this final gesture that they wrote a letter to P.G.&E. describing the events of the day (UX 1).

While it was the Pearson incident which precipitated the Grievant's discharge, his prior work record is also cited by the Company. On several occasions he had been discovered away from his assigned route on personal business (TR 19, 31, 33). The Company also introduced evidence which indicated that the Grievant was responsible for damaging the garage door of a customer on August 10, 1971, which he did not report (TR 61, EX 3).

The Company argues that the Pearson incident alone is sufficient grounds for discharge, and that the Grievant's past work history should preclude any consideration of his

discharge being mitigated (CB 4). The Company emphasizes that a meter reader is in "the forefront of Company's relations with its customers," and must therefore display great responsibility and exemplary conduct when dealing with customers (CB 2).

The Union argues that the incidents where the Grievant was away from his assigned route are the result of the Company's failure to provide written rules or other notification of the Company prohibition against leaving an assigned area (UB 9). Nor should the alleged damage to the garage door be accorded any weight, according to the Union, since in that incident the Company rescinded its proposed suspension of the Grievant and reinstated him with full back pay (UB 9).

The Union alleges that black meter readers are harassed by police and property owners as a daily part of their job in white residential areas. It is contended, therefore, that the Grievant, who is black, would hardly have reacted so violently as alleged to a mere request to use an alternate route when reading the Pearson's meter. The Union points out that the Pearsons had an admitted history of "altercations" and "confrontations" with those who came upon their property (UB 10, 11).

Such a history, the Union contends, lends credibility to the Grievant's story that the Pearsons verbally accosted him, twice referring to him as a "stupid nigger" (UB 11). The Union concludes that any reaction on the part of the Grievant was only natural when confronted with "unreasoned verbal attack and racial slurs" (UB 11).

II. DISCUSSION

Work History

Donald Johnson, Marin district manager for the Company, testified that in July 1970 the Company received a phone call from an anonymous caller, informing them of a P.G.&E. pickup truck parked in front of a certain apartment building (TR 19). Johnson indicated that when Lee Wise, Novato manager for the Company, and a troubleman naned F[redacted] investigated they discovered that the truck was parked in front of the Grievant's apartment (TR 21, EX 1). Further investigation revealed that the truck was assigned to the Grievant on that day (EX 1).

The Grievant did not deny thus leaving his route, but testified that the rule against leaving an assigned route had never been communicated to him (TR 136). Johnson admitted that he had never told the Grievant about the rule, and that the rule is not written down, but is verbally communicated to all new employees (TR 24, 27). The Grievant testified that he had gone to his apartment that day to see if his acceptance to San Jose State College had arrived in the mail (TR 173).

According to the Grievant he was only at his apartment for 45 minutes (TR 173). Johnson indicated, however, that the anonymous caller had advised the Company that the truck had been there for two hours on the day in question, and that it had been similarly parked in front of the apartment building on numerous other days (TR 19).

As a result of this incident an "Employee Warning Record" was issued to the Grievant by Bud Alwes, district customer services supervisor, headquartered in San Rafael (EX 1). The warning indicated that, "a repeat of this violation could result in disciplinary action up to and including dismissal" (EX 1).

[redacted] M[redacted], head meter reader in the San Rafael area, testified that he is responsible for assigning routes to meter readers which ordinarily take approximately six hours to complete. Often it is necessary, according to M[redacted], to assign two route books to a single reader in order to total six hours of work (TR 31, 41). M[redacted] testified that on one day in the fall of 1971 he assigned two books to the Grievant--one two hour book and one four hour book (TR 32). At the end of the day it was discovered that the Grievant had only taken the shorter book (TR 32).

According to M[redacted], when the Grievant was asked about the longer route book the next morning, he replied that he did not know that it was assigned to him (TR 33). The Grievant testified that it took him three hours and 45 minutes to read the route and that when he finished he drove around looking at automobiles (TR 167), presumably in the Company vehicle assigned to him.

Johnson testified that it is a company rule that when a meter reader finishes a route he is "expected to return directly from [his] route to the office upon completion" (TR 24). The Grievant testified that he believed that he had

put in a full day, and that some routes "are just quickies" (TR 168). Apparently he felt that driving around the rest of the day looking at automobiles was not a repeat violation of the rule against leaving his route, which he had previously been warned about (EX 1).

On August 17 1971 Donald Johnson received a letter from a subscriber indicating that a P.G.&E. truck had backed into his garage door on August 10 1971, causing damage to the door (EX 2). Johnson ascertained that the Grievant had been assigned to read the meter at the residence where the damage occurred on the day in question (TR 71), and that no other Company vehicle was in the area on that day (TR 72).

Robert Canziani, who was customer services supervisor in the San Rafael office at the time, drove the truck assigned to the Grievant on Aguust 10 to the scene of the accident. Photographs taken comparing the bumper of the truck with the damaged areas of the garage door show that the bumper and the damage marks align perfectly, indicating that in all probability it was the Grievant's truck which caused the damage (EX 3a through 3e). The impact of the truck had been such that it cracked a "two by eight" wood member of the door and attracted the attention of the next door neighbor (TR 63, 67, EX 3a).

The Union argues that evidence of this incident is inadmissible because of an agreement between the Union and the Company, whereby the Company agreed to remove any record of the incident from the Grievant's personal file in return for the

Union's agreement not to file a grievance (TR 127). The Grievant, who had been suspended for a day or so, was reinstated with full back pay (TR 128).

It is the Company's position that it "ill-advisedly dropped the matter on the mistaken belief that it needed the customer's testimony," and that the customer was reluctant to testify (CB 7). But the Company contends that it did not agree to disregard the incident for future reference. Corbett Wheeler, Union business representative, conceded that he was never told that the incident would not be looked upon or considered as part of the Grievant's work history (TR 128-129).

It must be concluded that the Company did not agree to remove evidence of the incident from the Grievant's personnel file, and that such evidence is admissible as part of his work history. That evidence demonstrates that the Grievant was responsible for damage to the garage door, and that the Company paid over $100 for repairs (TR 65).

The Pearson Incident

Mrs. Pearson testified that there is a "No Trespassing" sign posted on her house (TR 119). She indicated that on numerous occasions she and her husband had had "altercations" with city employees who would, "at their leisure time take pictures, walk around the property and just take over" (TR 120, 121). According to Mrs. Pearson, she was standing on the porch of the house when the Grievant came to read the meter

and could hear the entire conversation between her husband and the Grievant (TR 112-113).

Pearson testified that his wife first called his attention to the Grievant as he was coming around the corner of their newly-established driveway (TR 79). When Mrs. Pearson inquired "[w]ho's that," Pearson testified he responded without concern, "Well, that looks a great deal like a P.G.&E. meter reader" (TR 79). Not until the Grievant came up the newly cut bank did Pearson pay any particular attention to him (TR 81, 82).

When Pearson realized that the earth on the bank might be broken loose, he instructed the Grievant, "Say, there's an easier way of getting to that meter" (TR 82). According to Pearson, the Grievant replied, "Well, I'm going to do it my way" (TR 82). Pearson testified that he "detected a certain hostility," but again instructed the Grievant of an easier way to reach the meter (TR 82). Again, according to Pearson, the Grievant responded, "Well, I'm going to do it any damn way I please" (TR 82). It was at this point, Mrs. Pearson testified, that she telephoned P.G.&.E. (TR 114).

When the Grievant turned from reading the meter, Pearson indicated that he told him, "Now don't come down that way" (TR 83). Mrs. Pearson testified that her husband then asked Mc[redacted], "Don't you have any regard for private property?" (TR 113). She stated that the Grievant replied, "No," and "took off" down the embankment (TR 113).

The Grievant testified that Pearson had asked him what he was doing there and that he had told Pearson that he was there to read the meter (TR 146-147). When Pearson told the Grievant not to go down the embankment, the Grievant testified that he thought Pearson was referring to the future (TR 147). The Grievant asserted that Pearson was advancing upon him, "hollering . . . racial type things" and that before he could read the meter and leave, Pearson shouted, "Why do you have to be such a stupid nigger" (TR 147).

Pearson testified that he did not advance upon the Grievant and that at no time did he get any closer than 25 feet (TR 92). Pearson also indicated that he recognized the Grievant as a meter reader because of his P.G.&E. uniform (TR 79). If we believe this, there would have been no reason for Pearson to ask Mc[redacted] what he was doing there. It does not appear that Pearson was at first alarmed either by the Grievant's presence or by his color (TR 97). The evidence is, in fact, that two black families live just a few houses away from the Pearsons (TR 91). It would appear that the Pearsons may be overly sensitive to trespassers--regardless of color or race.

If Pearson displayed irritation, the evidence indicates that his reaction was caused by his concern for possible damage to the embankment. Pearson testified that he had worked extensively on the new driveway, estimating that he had put in over a 100 hours of work on it (TR 78). The instability of the soil should have been visually apparent to the Grievant. In this situation when Pearson asked him to use an alternative

path when leaving, it is difficult to believe that the Grievant thought Pearson was referring to future use. The very admission that he felt Pearson was referring to future use of the bank, indicates that the Grievant understood what had aggravated Pearson and knew that he should have heeded his request not to go back down the bank.

The Grievant also stated that he went down the bank to get away from the racial invectives allegedly directed at him by Pearson (TR 149-150). This is inconsistent with his explanation that he thought Pearson simply meant not to use the bank in the future.

Both Pearson and his wife testified that Pearson did not call the Grievant a "stupid nigger" (TR 108, 124). Whether or not such an epithet was used in the heat of the argument, it seems evident that the entire incident could have been avoided, or greatly mitigated, by a show of reasonable consideration on the part of the Grievant for the concern of Pearson over the condition of the newly cut embankment.

It was following this incident that Mrs. Pearson testified the Grievant gave her "the finger" as she was going to the market (TR 115). According to Mrs. Pearson her attention was directed to the Grievant both by his uniform and by the gesture. She stated that the gesture so startled her that she stopped the car, and looking in the rear view mirror observed the Grievant repeating the same gesture (TR 117).

The Grievant denied that he made any obscene gesture at Mrs. Pearson, testifying that it not his nature to use such sign language (TR 150-151). The Grievant indicated that he had only glanced quickly at Mrs. Pearson at the house, and would not have been able to recognize her before she testified at the arbitration hearing (TR 152). Mrs. Pearson testified that she was wearing "a bright red blouse" on the day of the incident (TR 114). And though the Grievant said he would have not been able to recognize her, he was watching her closely enough at the house to observe that "she immediately after this left the area of the porch to pick up the phone" (TR 147-148).

Mc[redacted] also denies that he ever spit in the direction of the Pearsons (TR 153). Mrs. Pearson testified, however, that the Grievant slowed the truck down and, sticking his head out the window, looked directly at her and spit (TR 124). Pearson indicated that he was only 15 feet from the Grievant's truck, and that it was emphatically clear that the Grievant was spitting at him and his wife (TR 104-105).

III. CONCLUSIONS

Certain evidentiary material submitted by the Company with its posthearing brief must be disregarded since the Union has had no opportunity to comment upon or examine that material. Determination of the matter must be according to the evidence and testimony presented at the arbitration hearing.

Evaluation of the Pearson incident is largely a matter of credibility. The incident at the house undoubtedly became

heated, and it is possible, though by no means proven, that Pearson did use some racial invective towards the Grievant. Yet the Union has argued that black men, including the Grievant, are accustomed to such treatment in white neighborhoods, so that no wrongdoing on the part of the Grievant would have resulted from so ordinary an incident, however inexcusable such incidents may be (UB 10).

It would seem that the Union wants the argument both ways. It wants the Arbitrator to believe that the Grievant was relatively immune to such invective, and at the same time that he was "mightily provoked" by a remark which, in terms of the Union's argument, is all too common.

Even if we were to evaluate the incident at the Pearson's house as one in which both sides may have been somewhat at fault, there remain the spitting and the "finger" incidents. These occurred sometime after the incident at the house. The details of these incidents, and the directness and precision of the testimony offered by the Pearsons regarding the incidents, are too forceful to be ignored or discounted. Even if we were to grant that the Grievant lost his temper with more or less justification during the first incident, there can be no justification whatever for the two later incidents.

It is a common rule of industrial arbitration that a good employment record may mitigate the severity of discipline, and that a bad employment record may serve to preclude any consideration of mitigation. The record of this Grievant conclusively falls in the latter category.

The Grievant indicated that he saw nothing wrong with leaving his assigned route to take care of personal business. On the first occasion his excuse was that no one had told him that there was a rule against such behavior. Evidently the Grievant felt that, unless advised to the contrary, he was being paid by the Company to read his mail and perhaps to perform other household duties around his apartment.

The Company then warned him. On the next occasion he nevertheless concluded that some three or four hours was all that was required in a day, and that he was free to drive around looking at automobiles for the remainder of the work day.

The garage door incident indicates a similar lack of job responsibility and lack of concern for the reputation and public image of his employer. The Grievant damaged the door and did not feel it necessary to report the incident to the owner of the garage or to the Company.

The attitude of the Grievant towards his work was perhaps epitomized during his cross-examination at the hearing. The evidence is that the Grievant had been the first part time meter reader to be employed by the Company. Company counsel inquired whether, "your hours were varied to accommodate your school classes." The reply of the Grievant was, "No. I was hired as non-scheduled so that I would still be able to give them some work besides my going to school" (TR 158).

The Grievant worked as a uniformed employee of a public utility Company, whose job it was to go into the yards, and sometimes the homes, of subscribers to the Company's services.

Such employees are depended upon by the Company to render courteous and tactful service to its customers. They are depended upon to promote the best interests of the Company through their services, as well as to perform their assigned work in a reasonable manner.

A public utility has not only the right, but the duty, to exercise prudence and caution in sending employees onto the premises of its customers. The Grievant in this dispute had been guilty of unreported damage to a customer's property, and had been twice warned of dereliction of his job duties prior to the Pearson incident. Whether or not the Pearson incident would stand alone as ground for discharge, there is no doubt whatever but that the entire Pearson incident, taken together with the Grievant's record with the Company, constitute just cause for discharge.

DECISION

The discharge of [redacted] Mc[redacted], Meter Reader, was for just cause.

Respectfully submitted,

William Eaton, Chairman

Lawrence N. Foss, Member, Union

Kenneth O. Lohre, Member, Union

I. Wayland Bonbright, Member, Employer

Elmo A. Petterle, Member, Employer

May 10 1972