In the Matter of a Controversy	)	
	)	
between	)	
	)	
LOCAL 1245 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS AFL-CIO	)	
	)	
and	)	ARBITRATOR'S OPINION
	)	AND AWARD
PACIFIC GAS & ELECTRIC COMPANY	)	
	)	
Discharge	)	CASE NO. 132
	)	

BOARD MEMBERS:

THE CHAIRMAN: Donald H. Wollett, Impartial Arbitrator

FOR THE UNION:
Roger Stalcup and Corbett L. Wheeler
International Brotherhood of Electrical Workers, Local Union 1245
P.O. Box 4790
Walnut Creek, CA 94596

FOR THE EMPLOYER:
I. Wayland Bonbright and Chris Kobach
Pacific Gas & Electric Company
245 Market Street
San Francisco, CA 94106

APPEARANCES FOR THE RECORD:

For the Union:
Tom Dalzell, Esq.
P.O. Box 4790
Walnut Creek, CA 94596

For the Employer:
Lawrence V. Brown, Esq.
Pacific Gas and Electric
245 Market Street
San Francisco, CA 94106

BACKGROUND

This arbitration proceeding was held pursuant to a Submission Agreement whereby the parties, in accordance with Title 9, Step Six of the Collective bargaining agreement agreed to submit to arbitration the grievance of G . The parties selected Donald H. Wollett to serve as Chairperson for the arbitration proceedings. (Jt. Ex. 2)

The parties stipulated that the issue is as follows: "Did the discharge of G violate the Agreement? If so, what is the remedy?" (Jt. Ex. 2, Tr. 3)

The facts are essentially not in dispute.

The grievant, G , was hired as a Groundman by the Employer, the Pacific Gas and Electric Company, in November of 1977. (Tr. 27) He was laid off from his job in February of 1982, and by this time had completed an apprenticeship program and was a journeyman Lineman. (Tr. 28) The grievant was laid off due to a lack of work. (Tr. 28, Em. Ex. 1)

G reapplied for a position with the Employer in October of 1982. During the course of filling out an employment application, G answered "no" to a question on the application pertaining to whether or not he had "ever been convicted for violation of law, other than a traffic violation involving a fine of less than $50."[1/] (Em. Ex. 8a)

1/ At the time the grievant reapplied for employment, judicial records for the County of Placer introduced by the Employer showed that the grievant had been charged in 1982 with two counts of felony assault. G subsequently pleaded guilty to lesser offenses involving violations of Section 23103 of the Vehicle

Code and Section 415 of the Penal Code. See Em. Ex. 8b. Mike Edwards, the Employer's Personnel Manager for the Stockton Division, testified that he had discovered the grievant's 1982 criminal conviction for the first time in the course of the company's investigation that preceded G 's discharge. (Tr. 17-18) Edwards further testified that while the convictions would have influenced his decision to rehire the grievant, G 's falsification of the employment application did not enter into the Company's decision to terminate him. (Tr. 19, 26)

The grievant was rehired in November of 1982 as a meter reader in Modesto. In May of 1984, G was awarded a meter reading job in Oakdale. (Tr. 29) At the time of his termination in August of 1984, the grievant had been the successful bidder for a job involving the dual classification of "credit representative/meter reader." (Tr. 51)

Approximately one month after the grievant began to work as a meter reader, PG&E received a complaint from a customer that her 14 year old daughter had been frightened by the grievant's asking her if he could use the residence's bathroom. (Em. Ex. 1, Tr. 32-34) The record is not clear on the issue of whether or not the grievant was disciplined for this conduct. The grievant's termination notice indicates that he had received counseling regarding such conduct; however, the grievant testified that he was not disciplined or even apprised of Company policy with respect to using customers' bathrooms. (Tr. 34)

In January of 1983, the grievant was again charged with criminal offenses in the County of Placer, this time for felony burglary and grand theft. G pleaded guilty to one count and was placed on three years probation.

Beginning in 1984, the grievant was disciplined on numerous occasions for tardiness. Specifically, he received a letter of reprimand in March of 1984 for five separate incidents of tardiness, a reprimand which was not grieved. (Em. Ex. 2)

He later received another letter of reprimand, plus a one day disciplinary layoff, as a consequence of a subsequent incident involving tardiness. This time the Employer's action was grieved and sustained by the fact finding committee. (Em. Ex. 2, 4) This was followed by two more incidents in May involving tardiness, to which the Employer responded by ordering a two day disciplinary layoff. (Em. Ex. 2) This action was likewise grieved and upheld.

The event immediately precipitating the grievant's termination involved an incident occurring at the Sheer Elegance Clothing Store in Oakdale on July 25, 1984. At the time of the incident, the grievant was in uniform, and properly on the premises of Sheer Elegance, a woman's beauty shop and clothing store, for the purpose of reading its meters. G approached a customer of the store whom he found attractive, and asked her for a dinner date, which she declined. The grievant had previously left a card in her dressing room with the preprinted message,: "Here I am, madly in love with you, on the verge of killing myself for your love, and I don't even know your name, address, and phone." The grievant had signed the card with his name, address and phone number, and a message for her to call him. He also identified himself as a meter reader. (Em. Ex. 3b)

The grievant's conduct upset the young woman, who reported the incident to G 's supervisor. G was suspended while the Employer investigated this customer complaint, and reviewed the grievant's employment record. Based upon his disciplinary record, as well as the incident at Sheer Elegance, the Employer made its decision to discharge G . The grievant was notified of his termination by letter dated August 7, 1984.

The ground for the grievant's discharge was his repeated disregard of his "fundamental responsibilities as an employee to conduct [himself] in a manner consistent with the public trust placed in our Company as a public utility and to abide by work rules pertaining to availability during scheduled work hours." (Em. Ex. 1)

POSITION OF THE PARTIES

The Employer

The grievant, argues the Employer, would not have been rehired by PG&E had he not misrepresented on his employment application that he had "never been convicted for a violation of law other than a traffic violation involving a fine of less than $50." In actuality, shortly before his rehire, G was arraigned on felony counts of assault to which he pleaded guilty to lesser offenses. While G 's falsification of his employment application is not alone a sufficient ground to support his discharge, the Board must view his employment record in light of this serious misrepresentation. (Em. Br. 9)

During the short time that the grievant was employed as a meter reader, he was disciplined on numerous occasions for his failure to report to work on time. Furthermore, on at least two separate occasions, G revealed his personal shortcomings with respect to his ability to conduct himself in a proper manner before the public. Specifically, the Employer had received a customer complaint that the grievant had attempted to gain access into her residence for the purpose of using the bathroom. The grievant failed to exercise good judgment by persisting in his demands despite the fact that the individual who answered the door was only 14 years old, and was alone. (Em. Br. 9-10)

The event precipitating the grievant's termination was simply a more flagrant example of G 's inability to conform to standards of conduct reasonably expected of an employee whose job requires frequent interaction with the public, and in whom the public has traditionally placed trust.

The Union

The Employer erred by viewing the grievant as a 20-month employee as opposed to a seven-year employee. Since the parties do not recognize "classification seniority," the grievant's previous six years of employment prior to his layoff must be tacked onto the comparatively short period of time he worked as a meter reader for the purpose of assessing his record of service with PG&E. (Un. Br. 13-14)

Also, some of the allegations made by the Employer in its termination letter to the grievant were not based on techni-

cally correct information. For example, the Employer's third ground for terminating G. -- the latter's "conviction" of a crime -- was technically incorrect and cannot be used as a factor to sustain his discharge. (Un. Br. 16, referring to Em. Ex. 1)

Further, some of the reasons relied upon by the Employer in its termination notice for the grievant's discharge pointed to conduct which was not punished at the time of its occurrence. (Un. Br. 16) For example, the Employer failed to substantiate at the arbitration hearing its naked allegation in the notice that the grievant received discipline for the incident involving his request to use a customer's bathroom, or that the grievant even behaved improperly by making such a request. (Un. Br. 14)

While the grievant's past incidents involving tardiness constituted legitimate grounds in support of the Employer decision to terminate him, G: clearly responded to the Employer's discipline, and these incidents alone are not sufficient to support his discharge.

Finally, while the Union admits that the grievant's conduct toward the customer at Sheer Elegance demonstrated a definite lack of judgment on his part, it was an isolated event that does not constitute a dischargeable offense according to arbitral precedent. (Un. Br. 22)

DISCUSSION

Sexual harassment is a highly subjective thing. Conduct which is offensive to one hearer or observer may be

titillating and acceptable to another. However, in this day and age -- when sexual harassment in the workplace is impermissible under federal law -- the sexual aggressor acts at his/her peril.

The young female customer in the apparel shop was geniunely offended by the grievant's behavior and the rather crude invitation on his "calling card." Furthermore, one cannot say that her reaction was so bizarre that it can be dismissed as idiosyncratic and silly. It is not always true that "there is no harm in asking." The harm is that the respondent will be outraged and affronted, as the victim was here. The grievant assumed that risk when he chose to behave as he did.

The grievant's offense was compounded by the fact that he was on duty and in uniform. The existing system of measuring power usage by reading meters would quickly become unworkable if the public lost confidence in the wearers of the PG&E uniform and denied them access to their property. For this reason the employer has insisted that meter readers behave themselves with impeccable propriety.

The grievant, with seven years of seniority with PG&E, must be assumed to have understood these simple truths. He was not entitled, while on duty and in uniform, to engage in conduct which created the risk that a member of the public would be offended. The behavior which precipitated his termination was a serious offense which the employer quite properly regarded as unacceptable.

However, I am not persuaded that, standing alone, it

warranted termination. Viewed objectively, with as disinterested an eye as I can command, the grievant's behavior was not so palpably and grossly beyond the pale of decency that it was inherently revolting, disgusting, and abhorrent. There were no four letter words, no suggestion of aberrant sexual behavior, no call for erotic responses. Conduct of that sort, like theft, gross insubordination and drunkenness requires no prior warning. An employer may treat the first offense as the last offense.

But where, as here, the conduct is a function of poor judgment and is not inherently and grossly offensive, justice would call for the application of progressive discipline -- at least a warning -- prior to termination, <u>if this were the only offense in the grievant's record</u>.

Unfortunately from the grievant's point of view, it is not.

The Employer makes much of the incident involving the frightened 14 year old in the house to which the grievant sought entrance in order to use the bathroom. I disagree. The facts surrounding this incident are far too murky and unclear to have probative value. Indeed, the Employer itself apparently did not take the complaint very seriously. It issued no warning, no reprimand, or other discipline. I attached no significance to this evidence.

Perhaps the most serious offense in the grievant's record is his falsification of his employment application. However, it is clear that this fact played no part in the

Employer's decision to terminate G . Indeed, management did not even know of the falsification until after he was fired. (Tr. at 26) Hence the falsification is not something which I can properly take into consideration. The substantive question that I am to answer is whether management had just cause for the discharge of the grievant on the date of termination. Post-termination knowledge does not bear on that question.*

However, the grievant's criminal record as it developed in 1983 may be taken into account. The off-duty conduct involved, while not job-related in the conventional sense, manifested a proclivity toward violence and instability which, while it did not produce any disciplinary action by management, could properly be taken into account in evaluating the suitability of the grievant's placement in a job such as meter reader, the performance of which is largely unsupervised and involves sensitive relationships with the public. There is, in the arbitrator's judgment, a nexus between the grievant's behavior in 1983 which caused him finally to be placed on three year's formal probation under rather severe terms and conditions and his behavior on July 25, 1984.

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* Post-discharge facts may, however, bear on the question of remedy, e.g., the propriety of directing reinstatement.

Finally, the Employer is entitled to take into account, in weighing the answer to the question of whether the grievant's behavior on July 25th was the "last straw," his sorry tardiness record during a four-month period in the spring of 1984. From January 27 until May 15 of that year he was guilty of eight incidents of tardiness, and received three letters of reprimand and two suspensions of short duration. While it is true that tardiness and sexual harassment are not related, it is also true that there runs through both actions a common denominator of irresponsibility in carrying out his obligations to the Employer.

This is, on balance, an extremely close case. The question is: "Did the discharge of G violate the Agreement?" PG&E policy admonishes meter readers not to behave "in a manner which would reflect discredit on the Company." On the contrary, a meter reader is instructed to "represent PG&E in a manner which is a credit to both [the meter reader] and the Company." (Em. Ex. 5) The grievant's behavior on July 25, 1984 certainly did not reflect credit on him or the Employer. Under the circumstances of this case the discipline must be sustained.

AWARD

The Employer did not violate the agreement by discharging the grievant, G . Accordingly, the grievance is dismissed.

March 27, 1986
Sacramento, CA

Donald H. Wollett,
Impartial Arbitrator

I DISSENT:

Roger Stalcup

I CONCUR:

I. Wayland Bonbright

Corbett L. Wheeler

Chris Kovach