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Arbitrator and Mediator
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IN ARBITRATION PROCEEDINGS PURSUANT TO

AGREEMENT BETWEEN THE PARTIES

In the Matter of a Controversy Between:	
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1245	Arbitrator's File No. 99-243-LA
and,	
PACIFIC GAS AND ELECTRIC COMPANY	ARBITRATION OPINION AND AWARD (July 28, 2000)
[Re: Dismissal Grievance, No. 240]	

Arbitration Board: Dorothy Fortier and Eric Wolfe, Board Members for the International Brotherhood of Electrical Workers, Local 1245; Margaret Short and Carol Pound, Board Members for the Pacific Gas and Electric Company

Appearances: Tom Dalzell, attorney for the International Brotherhood of Electrical Workers, Local 1245; Stacy A. Campos, attorney for the Pacific Gas and Electric Company.

INTRODUCTION

This dispute arises pursuant to a collective bargaining agreement between the International Brotherhood of Electrical

Workers, Local 1245, and the Pacific Gas and Electric Company. The Union contends that customer service representative L was dismissed without just cause. The Company maintains that Ms. L 's dismissal was justified after she intentionally failed to respond to incoming calls by repeatedly disconnecting customers.

The undersigned was selected by the parties to conduct a hearing and render a binding arbitration award. The hearing was conducted on May 16, 2000 in San Francisco, California. At the hearing, the parties were afforded the opportunity for examination and cross-examination of witnesses and for introduction of relevant exhibits. The dispute was deemed submitted for decision on July 11, 2000, the date the posthearing briefs were received.

ISSUES

The parties agreed upon the following issues for resolution: Was the grievant L terminated for just cause; if not, what shall be the remedy? (Tr. 4; Jt. Exh. 1, att.)

FACTUAL ANALYSIS AND DISCUSSION

1. Facts Giving Rise to the Dispute

This case concerns the dismissal in July 1999 of L , a customer service representative for the Company. Ms. L was employed by the Company for nearly 20 years. (Jt. Exh. 3, p. 8.) No discipline was active at the time of her dismissal. In evidence are documents reflecting Ms. L 's satisfactory performance of her duties, including a number of commendations. (Jt. Exh. 3, pp. 16-42.) During the relevant period, Ms. L was handling calls on a special Chinese-language line, in addition to working with English speaking customers.

Ms. L was dismissed in July 1999. According to the Company,

> Our investigation revealed you intentionally manipulated the phone console to avoid and reduce your availability to receive incoming calls. Your action of releasing calls directly impacted our customers. Additionally, during a Call Quality Monitoring session, you avoided calls by remaining on line after completing a call. These activities are a direct violation of PG&E's established employee conduct guidelines and work practices. (Jt. Exh. 3, p. 14.)

Initial concern about Ms. L 's performance arose on June 22, 1999 in the course of a departmental efficiency review. (Tr. 18-19, 86-91.) An examination of the service records for customer inquiries showed that Ms. L had an above average number of calls, but that the calls were below average in

duration. Typically, customer service representatives handle 80 to 100 calls per day in the San Francisco call center, with the calls averaging over three minutes each. (Tr. 13-14.)

Evidence gathered by the Company and offered in evidence at the hearing demonstrated that over a three day period of June 25, 28, and 30, 1999, Ms. L intentionally disconnected approximately 120 calls. (Tr. 41-49, 66-67.) The assembled evidence was drawn primarily from trace reports prepared by the Company's computerized tracking system. These internal records show, inter alia, the origin of the call, its duration, and whether the call was ended (that is, released) by a customer or by a customer service representative.

In the incidents cited by the Company, the call time duration was no higher than 17 seconds, and was much less in many instances, with calls often as brief as two to three seconds. (Jt. Exh. 3, pp. 43-65.) In certain instances, many incoming calls were dropped in successive order. (See, e.g., Jt. Exh. 3, p. 60.) In contrast, for lengthy periods covering most of the days in question, Ms. L apparently handled her other calls in the normal fashion.

After the initial efficiency concern was raised, but without direct contact with the grievant, the Company undertook an investigation by initiating and analyzing the trace records

described above, and by taking steps to see if an alternative technical explanation applied, or whether such an explanation could be discounted. On June 28, the Company also conducted a remote, surreptitious surveillance by a quality inspector. (Tr. 103-112; Jt. Exh. 3, pp. 72-75.) Ten calls were monitored. Of these, three were dropped without appropriate call handling, consistent with what the records otherwise showed about calls being released by Ms. L . On June 29, when Ms. L was off work, another employee was assigned to use her console, but no difficulties were experienced. (Tr. 51-54; Jt. Exh. 3, pp. 153-155.)

In assessing the evidence that was gathered, the Company's representatives rejected the possibility that Ms. L received a high number of so-called "ghost calls". In ghost calls, a customer service representative is unable to hear the incoming voice transmission. However, in such circumstances, and unlike Ms. L 's situation, a customer service representative is trained to utilize a standard dialogue of scripted comments to convey to the caller, assuming that the words can be heard, the future steps to be taken, including calling back to the Company. (Tr. 65-66, 91-92.) The ghost call explanation was rejected because the proper use of the scripted comments, which Ms. L knew, would require a much longer period of time on the phone line than was evident in the trace reports. (Also see Tr. 81.)

On June 30, 1999, the Company conducted an investigatory interview with Ms. L , with a Union representative present. (Tr. 55-59; Jt. Exh. 3, pp. 66-69.) In the course of the interview, Ms. L suggested that possible mechanical problems affected her work, but provided little or no accounting for specific calls that were mentioned. In one instance heard during the remote monitoring, when Ms. L apparently stayed on an open line for over 20 minutes, she claimed that she was waiting for the caller to retrieve information. (Tr. 108-110, 115, 122-123.) Ms. L eventually released this call when a supervisor, alerted by the monitor, inquired about the situation. (Also see Jt. Exh. 3, pp. 70-71; Co. Exhs. 3,4.) Immediately after the June 30 interview, and for several days following until the termination notice was issued, the problem of disconnected calls ceased. (Jt. Exh. 3, p. 71; Tr. 69-70.)

The termination notice was dated July 9, 1999. (Jt. Exh. 3, p. 14.) To support discipline in this matter, the Company has cited its rules of conduct, including guidelines expressly applicable to customer service representatives that prohibit the intentional and inappropriate disconnection of calls. (Jt. Exh. 3, p. 158.) According to the rules, violations are subject to discipline, up to and including dismissal. Following the termination, a grievance was filed, and an internal Company and Union review was undertaken as part of the grievance procedure. (Jt. Exh. 3, pp. 1-13.) The parties were deadlocked as to the

appropriate disposition of the dispute, and this arbitration followed.

At the arbitration, the Union offered evidence of countervailing or mitigating circumstances. For example, testimony showed that there were no customer complaints. (Tr. 67, 80.) Customer investigation inquiries were made by Company representatives, but it appears that customers were unaware of any intentional disconnection, and simply called back in the few instances that were recalled at all. Regardless of the absence of specific complaints, the Company notes that all response delays expose the Company to potential regulatory fines if the overall average for telephone response time exceeds the utility's permissible range of 20 seconds. (Tr. 92-93.)

The Union also offered evidence that, following this case, the Company adopted a new rule clearly specifying that intentional disconnection of customers would result in immediate dismissal. (Un. Exh. 1.) In contrast, as shown by the Union, in previous instances of call manipulation, including situations of repeated disconnections, muted calls, or lengthy holds, employees were given decision-making leaves and were not dismissed. (Un. Exh. 2; Tr. 96-97.) In one case, arising in Sacramento in 1996, an employee avoided 122 calls in six-plus hours, but was suspended, not fired. The Union urges that a parity of reasoning applies to this case.

In the Company's view, the examples cited by the Union are inappropriate because of the nature and extent of the disconnects by Ms. L . For example, one previous manipulation cited by the Union was carried out through a technique known as "aux toggling." Using that technique, a customer is switched to the end of the call queue, but is not forced to call in again. (Tr. 98-99.) From the Company's standpoint, disconnection requiring a separate, second call aggravates Ms. L 's wrongdoing, and has potential adverse safety implications for customers faced with possible emergencies. (Tr. 93-94.)

2. Discussion

A review of discipline for alleged employee misconduct requires an analysis of several factors. First, has the employer relied on a reasonable rule or policy as the basis for the disciplinary action? Second, was there prior notice to the employee - express or implied - of the relevant rule or policy, and a warning about potential discipline? A third analytical factor is whether a disciplinary investigation was thoroughly conducted, with statements and facts fully and fairly gathered. Fourth, did the employee engage in the actual misconduct charged by the employer? Last, are there any countervailing or mitigating circumstances requiring modification in not complete reversal of the discipline imposed. For the reasons that follow,

it is concluded that serious discipline of Ms. L was justified, but that the penalty of dismissal was excessive.

On the threshold issues, there is no dispute that the Company has adopted a reasonable policy prohibiting intentional disconnection of customers by service representatives, and subjecting those who violate the rule to discipline. To its credit, the Union does not question that such a policy is appropriate, nor that Ms. L had notice of the Company's policies. The Union has noted that a new, clearer rule prescribing immediate termination was adopted following Ms. L 's dismissal. This change, however, raises issues of a mitigating nature, and does not undermine the reasonableness of the Company's rule in the first instance.

Regarding the Company's investigation, it was full and fair by any measure. Internal business records were carefully assembled and reviewed, independent remote surveillance was undertaken, alternative explanations were considered and rejected, and Ms. L had an ample opportunity to offer explanations about the events in question.

Turning to the central issue, there is convincing evidence of actual misconduct of a serious nature by Ms. L . Boiled down, there is ample evidence that Ms. L repeatedly

disconnected calls from customers seeking assistance from the Company. Since the Company is the major provider of essential utility services in Northern California, and beyond, the disconnections could have had serious and troubling implications for customers who were seeking emergency assistance during periods of high call volume and long phone delays. Fortunately, when viewed through such a lens, the adverse impact of Ms. L 's misconduct appears to have been minimal.

Although Ms. L 's misconduct has been convincingly shown, there are mitigating and countervailing circumstances that require modification of the discipline. Three key factors are relevant on this issue. First, Ms. L has had a long career with the Company, and performed her job generally in a better-than-satisfactory manner. This context does not excuse wrongdoing. However, given this history, and since the Company did not first directly advise Ms. L of its concern as its inquiry unfolded, the better reasoning is that progressive discipline should have been used absent a showing of egregious misconduct with substantial adverse effects.

Second, as a mitigating factor, the Company in past years has utilized decision-making leaves for the manipulation of customer calls, including situations of customer mistreatment by failing to respond to the appropriate order of incoming calls.

While the Company properly maintains that wrongdoing such as aux toggling is different than the present situation, with calls in the former situation being routed to the end of the line rather than being fully released, that distinction is not persuasive in terms of justifying a dismissal in this instance. In both situations, as in other past disciplinary cases involving muted calls and lengthy holds when a customer is left simply in a suspended status, the employee gains time for him or herself without engaging in normal business practice. If there are differences in the situations, they have not been shown to be significant standing alone for disciplinary purposes when determining that a dismissal is the appropriate proportionate penalty.

A third countervailing consideration is that, after the events in question involving Ms. L , the Company clarified that it intended to apply in a strict fashion a policy of immediate dismissal for instances of intentional and inappropriate disconnections. Since there was no evidence of any previous dismissal for intentional disconnection or comparable misconduct, it is fair to conclude that Mr. L was not provided sufficient advance notice that her actions would lead to immediate dismissal. However, with the new rule in place, in the future it is unlikely that employees will be able to rely on the type of distinction cited by the Union in urging that mitigation principles should be applied to Ms. L 's case.

Based on the above, the appropriate remedy in this situation is to convert the dismissal to a disciplinary suspension without pay, and to reinstate Ms. L to her position. In reaching this conclusion, and rejecting the Union's contention that make whole relief is justified, it is noted that Ms. L was not cooperative in the course of the investigation. Instead, she failed to acknowledge her wrongdoing, which was considerable, and was not forthcoming in explaining the events that took place. Her recalcitrance undoubtedly provided an additional basis for the Company's concern about the extent of her wrongdoing. Nevertheless, in light of Ms. L 's lengthy and dedicated service to the Company, and the other mitigating circumstances noted above, the penalty of dismissal was excessive.

AWARD

Based on the testimony and documentary evidence, and the findings and conclusions set forth above, the undersigned renders the following Award:

1. The grievance will be sustained in part and denied in part.

2. L shall be reinstated to employment as a customer service operator, without loss of seniority. Ms. L 's dismissal of July 19, 1999 shall be converted to a disciplinary suspension without pay.

5. Pursuant to the stipulation of the parties, the undersigned will retain jurisdiction for 90 days from the date of this Award to resolve any dispute over implementation of the remedy.

Dated: July 28, 2000

BARRY WINOGRAD
Arbitrator

DOROTHY FORTIER
Union Board Member
(concur) (dissent)

MARGARET SHORT
Company Board Member
(concur) (dissent)

ERIC WOLFE
Union Board Member
(concur) (dissent)

CAROL POUND
Company Board Member
(concur) (dissent)