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In the Matter of an Arbitration

between

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

Complainant,

San Francisco, California

and

April 2, 1971

PACIFIC GAS AND ELECTRIC COMPANY,

Respondent,

Involving Arbitration Case No. 36.  
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OPINION AND DECISION OF BOARD OF ARBITRATION

SAM KAGEL, Chairman

LAWRENCE N. FOSS, Union Member

J. J. WILDER, Union Member

J. WAYLAND BONBRIGHT, Employer Member

ARTHUR M. KEZER, Employer Member

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Arbitration Case No. 36

ISSUE:

"Was the discharge of Robert J. Rowen, Jr. in violation of the Labor Agreement dated September 1, 1952, as last amended?"

Mr. Rowen was employed in April 1962 and discharged on June 5, 1970. He was a Control Technician.

LETTER OF DISCHARGE:

On June 8, 1970, the Company wrote to Rowen, in pertinent part, as follows:

"Specifically, your discharge was occasioned by your latest act of misconduct; namely, your threatening of a supervisor with bodily harm at approximately 1940 hours on May 29, 1970.

"Relative to the reasons for your discharge, weight was given to your past record of misconduct including amongst other things harassment of the Company and its supervisors, insubordination, failure to follow instructions, frequent instances of unsatisfactory job performance, and a poor record of attendance." (Co. Ex. 24.)

Specific Incident of May 29:

On May 29, E. D. Weeks, the Company's Power Plant Engineer, testified that at 7:39 or 7:40 his kitchen telephone rang; that his daughter picked up the phone and stated that it was for Weeks; that Weeks stated that he was on the phone:

"And Bob was on the other end of the line. He said: 'This is Rowen.' And then there was a pause. He said: 'What happened this morning will be handled by due process, but I have got something on my chest. I want to get it off. If you ever do to me this morning or if you ever do to me again what you did this morning, I will break your stupid arm. Do you hear me? I will break your stupid arm.

"And when I heard that I tried to find a piece of paper: I could write this down on my wife's desk. This is where the phone is in the kitchen. And the only thing I could come up with was a three-by-five card. And I was trying to hold that down with one hand and write with the other.

"And Bob said: 'What are you doing?'"

"And I said: 'I'm writing down what you are saying.'"

"And he said: 'I will deny this phone call. There are no witnesses. But if you ever do to me again what you did this morning, I will break your stupid arm.'"  
(Tr. p. 226.)

According to Weeks, he had received a call from Rowen in the past; he recognized Rowen's voice; that in the past telephone conversation Rowen identified himself similarly as he did on May 29.

Rowen categorically denied making any telephone call to Weeks whatsoever.

Other Incidents of May 29:

Early in the shift on May 29, Rowen placed a detergent box on the radiation protection board which had a label which read: "Let's all contribute to Forrest for the bold stand he made for us", referring to the Williams situation. The Company ordered that Rowen remove the box, so suggesting that if Rowen wanted to take up a collection for Williams he do so during his lunch hour and breaks. This was suggested by the Assistant Plant Superintendent, Warren Raymond. After Rowen started to question Raymond concerning this, Weeks interrupted and told Rowen that he had to take the box down and would he do so. Raymond and Weeks testified that Rowen did so saying, "yes sir"

in an insolent and derogatory manner. (Tr. pp.196,220.) Rowen states that at this time Weeks was mad. (Tr. p. 244.)

At that point, Weeks began confronting Rowen shaking his finger in Rowen's face. Weeks stated:

"The gist of my remarks to Bob was that I didn't like the way he had responded to my request to take the box down, that I thought he was being insolent and I didn't appreciate it. Especially in front of a lot of other people; that I had gotten several complaints from Supervisors in the past of this type of response from him to orders, and I didn't appreciate that either.

"And then he said: 'Please don't shake your finger in my face.'

"And I was shaking my finger at him. And I continued shaking it. And I told him that in my opinion in the past few days he had been going out of his way to make trouble and that he had better knock it off or else he was going to find trouble...." (Tr.p.221.)

Rowen stated that Weeks' finger shaking ".....

"upset me. I reacted to it. And I told him, I said: 'Mr. Weeks, I'd appreciate it if you would stop shaking your finger in my face.'

"And he stuck his finger right up in front of my nose. And by this time I would say he had lost his control. And he said: 'This is my finger, and I will do with it what I want.' And he shook his finger I'd say six or eight times more and finished what he was saying..." (Tr. p. 245.)

Thereafter, Rowen stated he wanted to see a Shop Steward and a meeting was held between the Steward, Rowen, Weeks and Raymond as an "observer." According to Weeks:



"I indicated that time he was acting very childish...." Rowen stated "He [Weeks] said I was acting like a spoiled little brat, five-year-old, and that if I was going to act that way, then he had every right to treat me that way and that that's the way he treats 'five-year-old brats' are the words he used.

"And I told him I didn't think that was proper.

"You see, since the finger shaking incident now this has been about a half an hour and he still hadn't really calmed down. We weren't really getting any place...." (Tr. p. 247.)

Rowen and Raymond left the meeting and thereafter Rowen, who stated that he was upset; asked his first-line Supervisor if he could be spared:

"I'd appreciate the time off in the afternoon from my work to go down and see a Labor Commissioner or an attorney or something to find out just what I could do in a case like this...." (Tr. p. 248.)

The first-line Supervisor talked to Weeks. Weeks stated that Rowen could not be spared after checking with the first-line Supervisor. (Tr.p.223.) Rowen then requested to see Weeks concerning the refusal. Weeks stated he explained to Rowen that there were manning problems and tried to find out what exactly Rowen's dissatisfaction with the Company was. (Tr. p. 224.) Rowen stated that Weeks

"....admitted to me that he was as mad as he had ever been as any employee as long as he could remember, but he still had the right and he was maintaining that he had the right to do that [shake his finger] and that was his prerogative." (Tr.p. 248.)

Finally, Weeks stated that concerning the finger shaking incident "Let's kind of forget about it" (Tr.p. 249); that Rowen said that he was not willing to do so.

Thereafter, before lunch, according to Rowen, his stomach began to bother him"...and this thing was kind of getting to me." At 12:15 or so he informed the Supervisor that he would not be in because he was going to go home sick. That afternoon he took his temperature and found it to be over a hundred and one degrees and he explained to a doctor by telephone that he felt nauseated, had an upset stomach and had a splitting headach. The doctor's advice was that he go to bed, take aspirin, and drink lots of water and to come in the following Monday if he was still sick. (Tr.p.251.) Rowen stated that he then stayed on a couch until he received a call from Williams at about 5 o'clock. His wife came home at 5:30 and he explained the situation to her until 6:45. Since she had not started to make dinner, she suggested to Rowen that they go to the Fresh Freeze to get some hamburgers and milk shakes, to bring them home and eat them. They did so, arriving home about 7:20 P.M. and ate dinner. Rowen continued eating and conversing with his family until about five minutes to eight. On cross-examination Company counsel asked Rowen that

whether by around 5 o'clock his flu symptoms had apparently cleared themselves. Rowen answered "I was felling bad and all weekend."

"Q. . . You were feeling so bad that you could go out and get hamburgers and consume that type of a meal?

"A. My wife wanted me to take her up there. I didn't even get out of the pickup. She went in and got the order...." (Tr.p. 304.)

Mrs. Rowen testified that she was with her husband between 5:30 and 8:00 and he did not make any phone calls.

"So Bob and I took the two boys, got in the pickup, went to the Fresh Freeze. As I recall, they were busy as they usually are on a Friday evening. We ordered hamburgers, milkshakes, french fries. And he paid for the order, came back, got in the pickup and we went home...." (Tr. p. 318.)

On being questioned by Company counsel she stated:

"We drove up there. He got out of the pickup and went up to the window and ordered it. And he had to stand in line before he could even place his order.

"Q. About how long did he stand in line?

"A. Oh, he was in line (I'd say) a good five or ten minutes before he placed the order, and maybe a few minutes before they called his name to pick up the order and before he paid for it and brought it out to the pickup..." (Tr.p. 320.)

There is nothing to suggest that Weeks did not receive the phone call for he immediately wrote down what he said and

immediately recounted it to his family. In addition, to the context of the phone call, here the caller identified himself as Rowen. Weeks' testimony was that he had received calls from Rowen in the past, that he recognized Rowen's voice, and that the caller used phrases that Rowen had used in the past.

Insofar as Rowen's specific denial is concerned, serious questions were raised concerning his credibility. This is specifically true concerning his testimony as to his illness, and as to his recovery from his symptoms. He volunteered that he did not get out of the car, for example, to purchase the family dinner at the Fresh Freeze while his wife testified that he spent a substantial period of time standing in line to purchase it. The direct facts of the call and the evidence of Rowen's lack of candor leads to the conclusion that Rowen did in fact make the telephone call to Weeks.

Telephone Call as Basis for Discharge:

The Union contends that if Rowen was found to have made the call, that the call was justified because of the finger shaking incident and Weeks' statement that Rowen was acting like a five-year-old; that the call did not carry a threat of present physical harm being contingent only on future conduct by Weeks which Weeks, with prudence, could avoid and was not job-related, being in the form of a strictly personal dispute.



The telephone call was a call from an employee to his Supervisor in which the employee threatened him with physical harm because of what may occur on the job. That the Company is entitled to discipline employees for proven conduct of this kind is clear.

"Real" Reason for Discharge:

As in the Williams case, the Union raises questions concerning the specific basis for Rowen's discharge as being his safety consciousness rather than his actions concerning Weeks on May 29. Specifically, the Union refers to the facts that Rowen brought up matters concerning radiation safety at a meeting on December 12, 1967; that in August 1969 an incident occurred during which Rowen objected that a shipping cask was not within proper radiation tolerances; that in February 1970, Rowen discovered a piece of pipe, the bulk of which had been sold to a scrap company, was radioactively contaminated and Rowen wanted to notify the scrap company; that Rowen raised questions concerning safety harnesses during outages; that Rowen wanted to speak <sup>an</sup> to/AEC Inspector because certain measures concerning safety were not followed during outages; that Rowen raised questions at the May 20 safety meeting concerning the fact that ionizing radiation is "the most general carcinogen present today...." that the settings on the hand and foot counter had been deliberately set

too high that employees have brought back contamination into the plant from their homes; that these situations have been discussed over and over again but nothing was ever done concerning them. (Co. Ex.1,2.) Additionally, the Company had been keeping a daily log concerning Rowen's activities for a long period of time.

The above incidents raised by Rowen do not provide a defense to his discharge. The record shows that anyone can make a report to AEC and if Rowen had decided to do so, he would have done so; that the Company had adopted some of Rowen's safety suggestions; that Rowen could have filed a grievance or grievances concerning the subject of safety but apparently did not do so.

The main point is that despite all of his past conscientiousness, as described by the Union, Rowen on May 29 in fact threatened Supervisor Weeks as alleged. The Company did show that Rowen had had a work record and attendance record as alleged in its letter of discharge. Consequently, the record does not support the Union's contention that legitimate concerns for safety voiced by Rowen was the basis for his discharge. Rather, the record does show that Rowen, for whatever reasons, chose to employ threats of violence in terms of his dealings with the Company and his Supervisor rather than use authorized governmental

or grievance procedure means to voice his complaints. In doing so, he threatened the physical safety of his Supervisor. And, for such conduct, discharge was proper.

DECISION IN ARBITRATION CASE NO. 36:

The discharge is sustained. The grievance is denied.

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BOARD OF ARBITRATION:

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| <u>Sam Kagel</u><br>Chairman           |                                  |                        |
| <u>John Wilder</u><br>Union Member     | <u>Dissent</u><br>Concur/Dissent | <u>3-30-71</u><br>Date |
| <u>Lawrence N. Lee</u><br>Union Member | <u>Dissent</u><br>Concur/Dissent | <u>3-30-71</u><br>Date |
| <u>W. B. Bright</u><br>Employer Member | <u>Concur</u><br>Concur/Dissent  | <u>3/30/71</u><br>Date |
| <u>G. M. Keene</u><br>Employer Member  | <u>Concur</u><br>Concur/Dissent  | <u>3/30/71</u><br>Date |