

IN ARBITRATION PROCEEDINGS PURSUANT TO THE
COLLECTIVE BARGAINING AGREEMENT BETWEEN THE PARTIES

INTERNATIONAL BROTHERHOOD OF]
ELECTRICAL WORKERS, LOCAL 1245,]
]
Union,]
]
and]
]
PACIFIC GAS & ELECTRIC COMPANY,]
]
]
Employer.]
]
Re: Arbitration No. 322, meal time payments]

OPINION AND DECISION
OF
BOARD OF ARBITRATION

- Doug Veader, Company Member
- Claire Iandoll, Company Member
- Ed Dwyer, Union Member
- Hunter Stern, Union Member
- John Kagel, Neutral Chair

APPEARANCES:

- For the Union: Alexander Pacheco, Esq., General Counsel, Vacaville,
- For the Employer: Stacy Campos, Esq., Counsel, San Francisco

ISSUE:

What is the rate of pay for missed meals, specifically whether it is the rate of pay at which the missed meals are earned or at the rate of pay of the dismissal at the end of the day when there are multiple missed meals? (Tr. 6)

AGREEMENT PROVISION:

“104.10 MEALS — REIMBURSEMENT AND TIME TAKEN

(a) Company shall pay the cost of any meal which it is required to provide under this Title, and shall consider as hours worked the time necessarily taken to consume such meal, except, however, that when a meal is taken at Company expense following dismissal from work the time allowance therefor shall be one-half hour. If an employee who is entitled to a meal under the provisions of this Title prior to work, during or upon dismissal from work does not accept such meal the employee shall nevertheless be entitled to such time allowance of one-half hour for each meal missed and meal reimbursement as provided in (b) below. (Amended 1-1-88)

(b) At the employee's option, Company shall pay an allowance for any meal which it is required to provide in accordance with the following schedule: ...

BACKGROUND:

Review Committee report:

“Facts of the Case

During the 1984 General Negotiations, the parties agreed to compensate employees who opted to miss a meal earned during an overtime assignment. Sub-Section 104.10 (a) provides, in part, ‘If an employee who is entitled to a meal under the provisions of this Title...does not accept such meal the employee shall nevertheless be entitled to such time allowance of one-half hour for each meal missed and meal reimbursement as provided in (b) below.’

Prior to the 1984 negotiated changes, employees had the option to take a meal at the appropriate times which were normally 4 but no

more than 5 hours when starting or during an overtime assignment. If the employee chose not to take a meal that they were entitled to, they had the option to take the meal upon dismissal and half hour at the overtime rate. If an employee opted to forego this dismissal meal, they were entitled to a half hour at the rate of pay at the time of dismissal but not in lieu of payment for the missed meal. There was no provision to accrue meals during the overtime period.

On September 8, 1988, the Company sent a letter to the Union to clarify the understanding reached at the bargaining table regarding payments of missed meals and the half-hour time allowance. [Bradford letter below] In that letter, the Company clarified that ‘A distinction must be drawn between the meal time allowance an employee is entitled to upon dismissal and the other meal and time allowance entitlements accrued during overtime work. The meal upon dismissal shall be recorded as the first half-hour after release and is paid at the overtime rate in effect upon dismissal. Because of accounting difficulties, the other meals may have to be recorded at the conclusion and are also paid at the overtime rate in effect upon dismissal.’

On November 9, 2010, the Company sent a letter to the Union [Rayburn letter below] indicating that it had become aware of an inconsistent practice in the payment of the half-hour missed mealtime allowance. Based on the 1988 letter, some meals were being paid at the rate upon dismissal, while others were being paid at the rate in effect when earned. The Company notified the Union that it would correct the inconsistency by paying all missed meals accrued during an overtime assignment at the rate in effect at the time the meal was earned.

The dispute is limited to situations where, in addition to a dismissal meal, the employee earned and elected to forego an additional meal earned while at the 1.5X rate. The issue is whether this meal is paid at the rate of pay earned (1.5X) or the rate the employee is paid upon dismissal.

The Committee confirmed that the practice regarding the application has been inconsistent. In some areas, the missed meals are paid at the rate in effect at the time earned. In other areas, the missed meals are paid at the rate in effect upon dismissal. The Committee also learned that there are no accounting difficulties which would require the payment of all meals at the rate in effect upon dismissal. The Company's Payroll representative was not aware of there ever having been such accounting issues.” (Jt. Ex. 1)

Bradford letter (November 15, 1988):

“The amendment to Section 104.10 of the Physical Agreement allowing for the payment of missed meals and a half-hour time allowance for each meal has generated a number of questions recently. One question in particular has been asked by several Regions and this response from this Department has not reflected the understanding reached at the bargaining table.

The question is: If when released from work, an employee is entitled to more than one meal, the corresponding time allowances, and a rest period, how is the employee to be compensated?

A distinction must be drawn between the mealtime allowance an employee is entitled to upon dismissal and the other meal and time allowances entitlements accrued during overtime work. The meal upon dismissal shall be recorded as the first half-hour after release and is paid at the overtime rate in effect upon dismissal. Because of accounting difficulties, the other meals may have to be recorded at the conclusion of the regular hours of work or the work period and are also paid at the overtime rate in effect upon dismissal. Except for one meal entitlement, and travel time home, an employee shall be paid straight time for the rest period. The additional meal time allowances are additional pay. ...” (Jt. Ex. 1)

Guidelines For Use In The Administration of Title-104- Meals (June 1999):

These Guidelines were agreed to by the Parties. Paragraph 8 is relevant to this issue and reads:

“...8 Employees may choose to forego a meal earned during an overtime assignment that they are entitled to and take that meal as an allowance. Employees are allowed to accumulate meal allowances and the final hour of time normally provided to reach such meals and have such time tacked onto the end of their overtime work period. If employees elect to take a meal and half hour time allowance, they will qualify for their next meal after performing work for four more hours (Clarification letter dated November 15, 1988 [Bradford letter] and Pre-Review Committee 1283).” (Jt. Ex. 3)

Rayburn letter (November 9, 2010):

“The Company has recently become aware of an inconsistent practice for payment of missed meals pursuant to Section 104.10 of the Physical Agreement; Meals - Reimbursement and Time Taken. We believe the practice stems from a 1988 clarification letter on the subject from Rich Bradford, then Manager of Industrial Relations. In his letter, Mr. Bradford indicated that, because of accounting difficulties, meals may have to be recorded at the conclusion of the work period and paid at the overtime rate in effect upon dismissal. This is inconsistent with the Agreement in that the 30-minute missed meal allowance should be paid at the rate in effect at the time it was earned.

At some point subsequent to this letter, Company gained the ability to pay the missed meal allowance at the appropriate rate; however, this was not widely communicated and employees have been inconsistently paid since then. Further, there is no evidence that the parties discussed this issue during the implementation of the SAP payroll system in 2005 and 2008. The result of this practice is an overpayment to some employees of an additional 15 minutes’ pay each time a missed meal was paid at the double-time rate when in fact it was earned at the time and one-half rate. The Company has no intention of seeking reimbursement for the overpayments. However, the Company intends to correct this practice immediately and communicate the clarification system-wide to supervisors and timekeepers.” (Jt. Ex. 1)

POSITION OF THE PARTIES:

Position of the Union:

That there was a mutual, longstanding intent of the Parties, as evidenced by the clear language of the Bradford letter and the 1999 Guidelines; that non-dismissal meals would be paid at the rate of the dismissal meal; that the Bradford letter required the recording of missed meals at the end of the shift on a timecard as the accounting practice then in effect, with pay at the overtime rate in effect on dismissal, the Union choosing to abide by its terms; that the bargained paragraph 8 of the 1999 Guidelines is silent as to

the rate of pay for multiple missed meals, but it incorporated the Bradford letter by reference, even if the Guidelines used the term “tacked on”; that the Rayburn letter places undue emphasis on the Bradford reference that meals “may” have to be recorded as it states which does not qualify how missed meals are to be paid for; that the Employer presented no evidence to support its interpretation of the letters; that the conundrum of a higher rate for a missed meal from an emergency call-in would not be paid at a lower rate for a dismissal meal is resolved by the Arbitrator filling in the gap where the Parties did not cover that situation as otherwise shown by their mutual intent to benefit employees; that the Company’s interpretation is contrary to the longstanding, unequivocal practices of the Parties.

Position of the Employer:

That there is no contractual language supporting the Union’s position that all missed meals are to be paid for at the rate of pay in effect at dismissal; that the Bradford letter clarified the distinction between the dismissal meal rate and the rate of pay for other meals missed during the course of the shift; that the Union made no objection to the distinction set forth in the Bradford letter; that paragraph 8 of the 1999 Guidelines dealt with the administration of time recording, not the rate of pay involved; that the example of how emergency call-out missed meals supports the Employer’s position and exposes the inconsistency of the Union’s position.

DISCUSSION:

The Union in essence maintains that the Bradford letter, a unilateral statement of the Company, as codified by the Parties in 1999 in the Meals' Guidelines, requires the time allowance for all missed meals be paid for at the rate employees were receiving on dismissal from their shifts. Thus, according to the Union, if the employee was being paid double time at that point, all missed meal allowances were to be paid at double time even if they would have been paid at a lesser rate at the time the missed meal opportunity occurred during the shift. (Tr. 24)

The problem with that analysis, however, is that the Bradford letter did not unequivocally grant such payments. Rather, a fair reading of it shows that it was conditional, showing that the Employer's then accounting system granted such payment, not because the Employer agreed to pay that amount, but because it could not, under its then system, administer the payments in any other way. (Tr. 47, 78) While that maladministration of payments could mostly benefit employees, it also caused a loss of benefit to employees, as to which there had been no grievance filed, when the employee was entitled to a meal time allowance of double time on an emergency call-in but on shift dismissal the employee was being paid at the rate of time-and-one-half. (Tr. 38, 40)

The Rayburn letter marked an end to the conditional aspect of the Bradford letter, namely the Employer, apparently belatedly, concluded its newer accounting system could handle payments of missed meal allowances as they occurred at the rate then occurring, rather than the artificial use of the dismissal rate because now an alternative was seen by

the Employer to be available to it. (Tr. 58) Accordingly, the Employer moved to stop payments as having been paid under the Bradford letter's practice.

As the Employer points out, there is nothing in the Collective Bargaining Agreement, and the Union points to none, which requires payment as the Union seeks, and the 1999 Guidelines, referencing the Bradford letter in paragraph 8, showed how missed meals would be recorded on time records, not setting pay rates. (Tr. 49, 55, 58, 77,85)

Finally, according to the Grievance Committee's fact report, even after Bradford's letter, there had not been a consistent practice that embedded payment as the Union seeks into the Parties' contract as a non-expressed benefit for employees. (See also Tr. 27, 29, 31-32, 59, 88) Not only, as pointed out, it would not necessarily be a benefit depending on how the employee's shift unfolded, but such a finding, even if permissible under the Agreement, based on practice alone, would require a consistent, unvarying practice, and, according to that report, and the testimony, there wasn't one.

DECISION:

The rate of pay for missed meals is the rate of pay at which the missed meals are earned.



Chairman, Neutral Member

Concur 6/1/17
date



Union Member

~~Concur~~/Dissent 6-5-17
date



Union Member

~~Concur~~/Dissent 6-5-17
date

Matthew Long
Company Member

Clare Ick
Company Member

Concur/~~Dissent~~ 7/10/17
date

Concur/Dissent 7/10/17
date