International Brotherhood of Electrical Workers Local 1245

and

Pacific Gas & Electric Company

Review Case #173

San Jose Grievance #14

Arbitration Case #9

Issue: Whether the Company is obligated to pay the employees for working and travel time for the total time elapsed between the time they reported to their regular headquarters in Santa Cruz and the time they returned thereto.

Date of Opinion: May 5, 1960

Facts of the Case: On April 2, 1958, a crew of PG&E employees were dispatched from Santa Cruz headquarters to the Boulder Creek area to carry out some repair work. Due to emergency conditions, the employees worked until 2:00 AM, and at about that time, stopped work and went to the Boulder Creek fire station. The foreman of the crew telephoned Santa Cruz, and was told that the highway between Boulder Creek and Santa Cruz was blocked by a landslide. It was decided that the employees should remain overnight in Boulder Creek rather than attempt to return to Santa Cruz. Motel accomodations were secured, and the crew retired until about 7:30 the next morning, when they resumed work. At issue is whether they are entitled to be paid for the period roughly between 2:00 AM and 7:30 AM.

There was some dispute over the statements made when the men were told to put up at the motel as well as some question about the quality of accomodations. (The motel had been shut up for the winter and the cabins were damp and unheated.)

Union relied on Sections 202.19 and 212.1, arguing that due notice of being away from home had not been given and the men were in fact on call while in the motel.

The Company argued that Section 202.22 nullified 202.19 and allows the use of 201.1, which provides board and lodging in such instances. They further argued that it was impossible to return home and they had done the best possible under the circumstances.

Opinion

1. The first issue need not give us any great pause. The fact that the Union did not specifically cite Title 212 during the grievance negotiations (and even this is not entirely certain), does not seem to us to preclude its being cited at the arbitration stage. The Company could legitimately object if a new grievance were raised for the first time during arbitration, but this is not the case. Particularly in a situation like this, when the language of the contract is not clear, arbitrators must seek enlightenment regarding the intent of the parties not only from the contract as a whole, but from the surrounding circumstances as well. If Title 212, or any other section of the contract, throws light on the matter at issue, it may be taken into account, unless there is some specific prohibition either in the contract itself or in the submission agreement.

2. With respect to the second issue, the substantive part of the case, what seems to us to be involved is the application of a rule of reason rather than a delineation of absolute rights and wrongs. The Union relies heavily upon an incident that occurred in 1955, in which a PG&E repair crew was marooned for a night on Mt. Hamilton during a snowstorm, and received pay for the total time elapsing between departure from and return to permanent headquarters, although no actual work was performed during the night. On the other hand, one can visualize a situation in which a crew, prevented by weather or other circumstances beyond the control of the Company from returning to headquarters at night, is fed well and housed in luxurious quarters; it is not likely that a request for pay would be raised for the time thus spent in comfortable slumber.

The present case falls between these two extremes. The employees were not huddled in sleeping bags on an icy mountain, but their quarters were not particularly comfortable. They managed to get some rest, although not a full night's sleep.

Giving due weight to all the circumstances, we are led to the conclusion that the employees are not entitled to pay for the period during which they were not at work. The following arguments are persuasive:

a. There was obviously some misunderstanding about the nature of the period in dispute. It would appear to us, however, that the Company supervisor intended that the men should have a rest period before starting work the next morning. If it had been necessary to keep the crew alerted for an emergency during the night, a more logical procedure would have been to remain at the fire station, rather than to repair to a motel. The fact that work was begun before the conclusion of a six hour rest period does not vitiate the conclusion that the employees were on rest period, for it was clear that they were not called in the morning, but rather, rose by common consent. A rest period need not be a full six hours to be a rest period. We find, therefore, that the crew was not on call during the period at issue.

b. The portion of the contract which seems most applicable to the situation is Section 202.22. Once a temporary headquarters is established, employees are entitled only to an expense allowance for time not worked. The crucial words of this section are the following: "...when, in its opinion, it is impractical to return, Company shall give as much advance notice as possible to employees who are required to remain at temporary headquarters." We find that the Company, in good faith, decided that it was impractical to return the crew to Santa Cruz; that the evidence supports the reasonableness of this decision; and that as much advance notice as possible, which in this case was none, was given.

c. It would be manifestly inequitable, and clearly not the intent of the parties, if Section 202.22 were to be used as a subterfuge to deprive employees of compensation. Temporary headquarters

cannot be established arbitrarily and without reasonable cause. Nor would it be reasonable if men were put on rest period if there were no opportunity for rest, as in the Mt. Hamilton case, in order to economize on wages at their expense. But we find that in the present situation, Section 202.22 was used in a proper manner; that the Company made every effort to obtain suitable accomodations for the employees, and did in fact secure the best that were available; and that all things considered, the degree of hardship imposed upon the employees was not such as to rebut the conclusion that they were in fact at rest. As further evidence of the Company's good faith, we may cite the fact that there was no insistence upon a full six hour rest period in order to avoid the imposition of overtime pay the next day.

Award

As applied to the facts of this case, and within the meaning of Sections 201.1, 202.19, and 202.22 of the Agreement dated September 1, 1952, as amended, the employees named in the submission agreement were not entitled to overtime pay for the stipulated period.

/s/ Walter Galenson
Walter Galenson, Chairman

For the Company:

/s/ Vern Thompson

/s/ N. E. Rhodes

For the Union:

/s/ Mark Cook - Dissent

/s/ Jack E. Wilson - Dissent

In Re: Pacific Gas and Electric Company and Local No. 1245, International Brotherhood of Electrical Workers

Board of Arbitration: Walter Galenson, Chairman; Vern Thompson and N. E. Rhodes (company-appointed members); Mark Cook and Jack E. Wilson (union-appointed members)

Issues to be Arbitrated

1. Is reference to Title 212 of the Agreement dated September 1, 1952, as amended, a proper inclusion in the issue for arbitration (No. 2) under the facts of this case?

2. As applied to the facts of this case and within the meaning of Sections 201.1, 202.19 and 202.22 of the Agreement dated September 1, 1952, as amended, were the following named employees entitled to overtime pay for the number of hours herein indicated?

Employee	Hours
W. H. Sharfenstein	5 1/4
A. Barson	5 1/4
D. Canelis	5 1/4
O. L. Thomas	5 1/4
A. O'Connor	4 3/4
C. J. Harrel	4 3/4
W. H. Mc Gee	4 3/4
A. A. Campos	4 3/4
D. M. Wagner	4 3/4
L. Bechtold	5

If issue No. 1 is decided in the affirmative, then Issue No. 2 shall be revised to include reference to Title 212.

If issue No. 2 is determined in Union's favor, Company will pay each of the employees whose name is listed above at their respective overtime rate for the period of time involved.

Facts of the Case

On April 2, 1958, a crew of P G & E employees were dispatched from Santa Cruz headquarters to the Boulder Creek area to carry out some repair work. Due to emergency conditions, the employees worked until 2:00 am, and at about that time, stopped work and went to the Boulder Creek fire station. The foreman of the crew telephoned Santa Cruz, and was told that the highway between Boulder Creek and Santa Cruz was blocked by a landslide. It was decided that the employees should remain overnight in Boulder Creek rather than attempt to return

to Santa Cruz. Motel accomodations were secured, and the crew retired until about 7:30 the next morning, when they resumed work. At issue is whether they are entitled to be paid for the period roughly between 2:00 a.m. and 7:30 a.m.

There is some dispute as to what the employees were told when they retired for the night. The foreman, Ted E. Bailey, testified that he instructed them to take a rest period (Transcript, p. 72). One of the employees involved, Arthur Barson, stated that the crew was told to "arrange for a motel and stay there until the next morning when we go back to work unless we were called otherwise. If something came up during the night that couldn't wait until morning, presumably they would call us." (Transcript, p. 40).

There is also some question about the quality of the accomodations. The motel had been shut up for the winter, and the cabins were damp and inadequately heated. Mr. Barson testitifed that the employees were unable to get much sleep as a result. The foreman conceded that the rooms may not have been too comfortable, but asserted that they were the best available in Boulder Creek at that time of the night. The Union does not dispute this contention. At any rate, it is agreed that the men arose at about 7:00 a.m., ate breakfast, and resumed work.

Positions of the Parties

The Union relies primarily upon two sections of the agreement. One of these is Section 202.19, which reads:

> "Crews shall report for work at regularly established Company headquarters and shall return thereto at the conclusion of the day's work, and the time spent in travelling between such headquarters and the job site shall be considered as time worked."

It is contended that while this section does not expressly cover the situation, it creates a presumption that employees are to be paid for all time elapsed between departure from and return to their Santa Cruz headquarters.

The Company counters with Section 202.22, which provides that Section 202.19 is not applicable to crews working at temporary headquarters. This section, together with Section 201.1, stipulates that when crews are assigned to temporary work at such distance from their homes that they cannot be returned to their homes, they shall receive board and lodging, and be paid for travel time between the temporary headquarters and the job site. It is also provided: "Company shall return employees to their regular headquarters at the conclusion of each job but when, in its opinion, it is impractical to return, Company shall give as much notice as possible to employees who are required to remain at temporary headquarters."

The Union argues that Section 202.22 applies only to advance assignment to work at temporary headquarters, affording the employees an opportunity to make arrangements with their families and to take along such personal effects they need for assuring comfortable rest. It is the position of the Company, however, that this was a case of assignment to a temporary headquarters within the meaning of Section 202.22, and that the emergency conditions prevailing at the time made it impossible for the crew to be given advance notice of assignment.

The Union relies also on Title 212, which reads as follows:

> "Employees shall not be required to be on call. However, Company with Union's cooperation shall establish schedules for employees who volunteer to be readily available for duty in case of emergency. Assignments of emergency work shall be distributed and rotated as equitably as practicable among employees who have volunteered to be available. The time during which an employee is available for duty shall not be considered as hours worked."

The Union contends that by implication, employees who do not volunteer for standby duty are entitled to be paid for all time during which they are on call by direction of the Company. It is argued that in this case, the men were told to arrange for a motel and stay there unless called earlier, which was in effect a standby status.

The Company counters with the statement, first, that Title 212 was never raised by the Union at previous stages of the grievance procedure, and cannot be injected for the first time at the final stage of arbitration. Secondly, the Company feels that Title 212 has nothing to do with the present case, but applies only to the establishment of regular standby schedules. Finally, it is argued that the crew was clearly on rest period status, and not on call.

One further argument may be mentioned. The Union maintains that the Company did not make sufficiently strenuous efforts to return the employees to their homes on the night of April 2, that the decision to remain over night at Boulder Creek was for the convenience of the Company, and that the employees should not bear the financial burden of the Company's decision. The Company replies that first, it was impossible to return because of a landslide, and secondly, that if the Company had been motivated by the desire to economize on wage payments, the men would not have been permitted to return to work prior to the expiration of a six-hour rest period; by delaying the start of work for an hour or so in the morning, the Company could have avoided overtime pay for work performed on that day.

Opinion

1. The first issue need not give us any great pause. The fact that the Union did not specifically cite Title 212 during the grievance negotiations (and even this is not entirely certain, Transcript. p. 87) does not seem to us

to preclude its being cited at the arbitration stage. The Company could legitimately object if a new grievance were raised for the first time during arbitration, but this is not the case. Particularly in a situation like this, when the language of the contract is not clear, arbitrators must seek enlightenment regarding the intent of the parties not only from the contract as a whole, but from the surrounding circumstances as well. If Title 212, or any other section of the contract, throws light on the matter at issue, it may be taken into account, unless there is some specific prohibition either in the contract itself or in the submission agreement.

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Award

1. Reference to Title 212 of the Agreement dated September 1, 1952, as amended, was a proper inclusion in the issue for arbitration.

2. As applied to the facts of this case, and within the meaning of Sections 201.1, 202.19, and 202.22 of the Agreement dated September 1, 1952, as amended, the employees named in the submission agreement were not entitled to overtime pay for the stipulated period.

Walter Galenson

Walter Galenson, Chairman

For the Company:

Vern Thompson

N. E. Rhodes

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For the Union:

Mark Cook, Dissent

Mark Cook

Jack E. Wilson - Dissent

Jack E. Wilson

Dated: May 5th, 1960.