

International Brotherhood of
Electrical Workers
Local 1245

and

Pacific Gas & Electric Company

Review Case #195

San Francisco Grievance #93

Arbitration Case #14

Issue: Under Factual Statements
1 and 2 stated below, is
Company required to fur-
nish meals?

Date of Award: January 23, 1961

FACTUAL STATEMENTS

The parties stipulated to the following factual statements:

1. Employees were required to report for prearranged work at 6:30 A.M. on a non-work day; they left their homes at 6:00 AM and traveled to headquarters where they reported for work at 6:30 AM and worked into regular work hours - 8:00 AM to 4:30 PM.

2. Employees were required to report for prearranged work at 6:30 AM on a non-work day; they left their homes at 6:00 AM and traveled to headquarters where they reported to work at 6:30 AM. They worked into regular work hours - 8:00 AM to 4:30 PM - and continued working beyond regular work hours until 5:45 PM, at which time they were released from work; the employees then traveled to their homes, arriving at 6:15 PM.

POSITION OF THE UNION

The Union contends that Section 104.8, which provides for a meal if the Company requires an employee to perform prearranged work two hours or more before regular work hours, applies to the breakfast situation in Factual Statements 1 and 2. Although employees in both cases actually worked only one hour and a half before regular working hours, their travel is stipulated at $\frac{1}{2}$ hour. Consequently, actual working time before regular working hours and compensated travel time before regular working hours totals 2 hours and employees are entitled to breakfast in Factual Statements 1 and 2.

In support of this contention, Union cites Section 104.1 which says that meal provisions will be applied in a practical manner so as to provide a comparable substitute when employees are prevented from observing their usual meal practices. Travel time, which is compensated as time worked, just as effectively prevented the employees from observing their usual meal practices.

In respect to the dinner situation in Factual Statement 2, the Union contends that Section 104.4, which provides for a meal if the Company requires an employee to perform work for $1\frac{1}{2}$ hours or more beyond regular quitting time, applies. Actual working time beyond regular work hours was one hour and fifteen minutes; travel time from headquarters

to home was stipulated at $\frac{1}{2}$ hour. On the same basis as the breakfast situation above, the Union alleges that actual working time of 1 hour and fifteen minutes plus $\frac{1}{2}$ hour compensated travel time entitled the employees to dinner under Factual Statement 2.

Title 104 clearly evidences the intent of the parties, the Union argues, to consider all compensated time as hours worked for the purpose of providing meals.

POSITION OF THE COMPANY

Company suggests that Section 104.1 is a general statement of intent designed only to permit flexibility where sections of Title 104 are otherwise difficult to apply.

The Company cites Section 104.11 which excludes travel from home in determining time intervals for the purpose of providing meals, and disagrees with the Union's contention that time intervals are restricted to four and five hour periods. It argues that two-hour and $1\frac{1}{2}$ -hour periods are also time intervals in the interpretation of Title 104 as a whole.

Finally, Company states that emergency work provisions do not call for breakfast furnished by the Company if the employee does not work two or more hours before regular working hours and unless opportunity to eat breakfast before reporting to work is not given.

The language of Section 104.4 provides that "if the Company requires an employee to perform work for $1\frac{1}{2}$ hours or more beyond regular work hours, it shall provide him with a meal approximately $1\frac{1}{2}$ hours after regular quitting time". It is obvious, according to the Company, that the meal is provided at the plant $1\frac{1}{2}$ hours after quitting time, not after the employee reaches his home.

Company pointed out that generally they provide employees with a meal at Company expense and the time to eat it upon completion of the qualifying time interval. The Union theory would require the employee to report back to the plant from his home to obtain a meal under the Company's practice. Section 104.11 was adopted for the express purpose of eliminating travel to work in view of consequences resulting in providing meals at various intervals depending upon the distance of the employee's home from the plant, and to avoid possible confusion resulting from the reference to Title 208 wherein compensation is paid for travel from home only. In general, the Company argued that providing meals based upon geographical distance from the plant would be confusing, inequitable and impractical.

DISCUSSION

In Factual Statement 1, the employees reported for prearranged work at 6:30 AM on a non-work day and left their homes at 6:00 AM. Under the Contract, the employees are compensated for actual work time and for travel time in connection therewith.

Section 104.8 provides for a meal if an employee is required to perform prearranged work starting two hours or more before regular work hours on non-work days and such an employee continues to work into regular hours. Traveling time is described separately and it is not contended that reporting to work means the time an individual employee leaves his home.

The Chairman concludes that there are four hour, five hour, two hour, and one and one-half hour time intervals in the construction of Title 104. In the instant case, the two-hour period referred to in Section 104.8 is a time interval and as such is subject to the application of Section 104.11.

Aside from the literal construction of Title 104, the testimony of the Company is entitled to substantial weight:

"The purpose of that adopting Section 104.11 was in order to eliminate the travel time from the application of the meal time and was due to the fact that we felt that it would be unworkable, that the Contract provides that employees shall be paid full-time for travel time, and that if we were to include travel time we would have the situation where each employee would be due for a meal at various intervals during the day.

"That kind of a situation would be entirely unworkable.... So the parties agreed...that travel time would not be considered in determining the period of the two-hour provision as well as the four and the five hours."

On the basis of the foregoing, the chairman concludes that the parties did not intend to include travel time from an employee's home to headquarters for the purpose of determining the obligation to furnish meals. Breakfast need not be furnished under either factual situation.

In cases where prearranged work occurs on non-work days and such work continues after regular work hours, Section 104.4 states that if the Company requires the employee to perform work for $1\frac{1}{2}$ hours or more beyond regular work hours, it shall provide him with a meal approximately $1\frac{1}{2}$ hours after regular quitting time.

The chairman takes note of Section 104.10 which states 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 provision of this Title does not accept such meal, he shall nevertheless be entitled to such time allowance of one-half hour." In Factual Statement 2, the employees were "released from work at 5:45 PM". Release or dismissal from work as described in Section 104.10 infers dismissal from actual work at headquarters. It cannot be contended that release or dismissal from work occurs when an individual employee reaches his home.

Literally, the Contract requires the Company to provide the employee with a meal $1\frac{1}{2}$ hours after quitting time and then with meals at

intervals of approximately 4 to 5 hours thereafter. If the employee is on the job an hour and a half after quitting time, Section 104.10 applies.

It is the conclusion of the Chairman that the time interval of one hour and a half under Section 104.4 does not include travel time. If an employee actually works 1½ hours beyond regular quitting time, the parties agree this interferes with his usual meal practices, for he is leaving headquarters after 6:00 PM. However, in the instant case, the employees were dismissed at 5:45 PM. They were not inconvenienced for the full 1½ hours. Since there is no evidence in the record that travel time is a uniform allowance of 30 minutes, the chairman cannot agree that the circumstances of how far an employee lives from headquarters should govern the application of Title 104.

AWARD

1. The Company is not required to furnish breakfast under Factual Statement 1 or Factual Statement 2.
2. The Company is not required to furnish dinner under Factual Statement 2.

/s/ Laurence P. Corbett, Chairman

/s/ V. J. Thompson, Company Member

/s/ R. B. Hinman, Company Member

/s/ L. L. Mitchell, Union Member
(dissent)

/s/ Kenneth E. Stevenson, Union
Member (dissent)

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In the Matter of a Controversy

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS AFL-CIO
LOCAL 1245

and Complainant

PACIFIC GAS & ELECTRIC COMPANY

Respondent

OPINION AND DECISION

CASE NO. 14

This arbitration arises under a collective bargaining agreement dated August 2, 1960, between the PACIFIC GAS & ELECTRIC COMPANY and LOCAL UNION NO. 1245 of the INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS AFL-CIO. Pursuant to the provisions of Title 102 of said Agreement captioned "Grievance Procedure", the parties have designated an Arbitration Board composed of the following members: L. L. Mitchell and K. E. Stevenson appointed by the Union; V. J. Thompson and R. B. Hinman appointed by the Company; and Laurence P. Corbett, impartial chairman selected by both parties. The parties have also agreed to a joint Submission Agreement dated November 18, 1960, which sets forth the procedure to be followed in this case and poses the question to be arbitrated.

A hearing was held in accordance with said Submission Agreement in the Conference Room, General Offices of the Pacific Gas and Electric Company, 245 Market Street, San Francisco, California, on December 1, 1960. Appearances were made on behalf of the Union by Joseph R. Grodin, Esq., of the law firm of Neyhart and Grodin and on behalf of the Company by Henry J. La Plante Esq., of the Pacific Gas & Electric Co., Law Department.

THE QUESTION

By mutual agreement the parties have phrased the question to be determined as follows:

" Under the following statement of facts, is the Company required to furnish meals? (breakfast in factual statement 1 and/or dinner in factual statement 2).

FACTUAL STATEMENTS

By stipulation, the parties have stipulated to the following factual statements:

" 1. Employees were required to report for prearranged work at 6:30 A.M. on a non work day; they left their homes at 6:00 A.M. and traveled to headquarters where they reported for work at 6:30A.M. and worked into regular work hours - 8:00A.M. to 4:30 P.M. "

The question in this case is whether or not the Company is required to furnish breakfast?

" 2. Employees were required to report for prearranged work at 6:30A.M. on a non work day; they left their homes at 6:00 A.M. and traveled to headquarters where they reported to work at 6:30 A.M. They worked into regular work hours - 8:00A.M. to 4:30 P.M. - and continued working beyond regular work hours until 5:45 P.M., at which time they were released from work; the employees then traveled to their homes, arriving at 6:15 P.M. "

The question in this case is whether or not the Company is required to furnish breakfast and/or dinner.

POSITION OF THE UNION

The Union contends that Section 104.8 which provides for a meal if the Company requires an employee to perform prearranged work two hours or more before regular work hours, applies to the breakfast situation in Factual Statements 1 and 2. Although employees in both cases actually worked only one hour and a half before regular working hours, their travel time is stipulated at one half an hour. The Union alleges that if employees had

actually worked two hours before regular working hours, there would be no question concerning the obligation of the Company to furnish breakfast. Consequently, since travel time is stipulated at one half an hour and is under the circumstances compensated, actual working time before regular working hours and compensated travel time before regular working hours together equals two hours. Therefore the employees are entitled to breakfast provided by the Company in Factual Statements 1 and 2.

In support of this contention, the Union cites Section 104.1 which says in effect that meal provisions will be applied in a practical manner so as to provide a comparable substitute when employees are prevented from observing their usual meal practices. According to the Union, travel time which is compensated as time worked, just as effectively prevented the employees from observing their usual meal practices as the actual hours worked before regular working hours.

In respect to the dinner situation in Factual Statement 2, the Union contends that Section 104.4 which provides for a meal if the Company requires an employee to perform work for $1\frac{1}{2}$ hours or more beyond regular quitting time applies. Actual working time beyond regular work hours was one hour and fifteen minutes; travel time from headquarters to home was stipulated at one half hour. On the same reasoning applicable to the breakfast situation above, the Union alleges that actual working time of one hour and fifteen minutes, plus thirty minutes of compensated travel time, entitles the employees to dinner under Factual Statement 2.

According to the Union, Section 104.11 which states that in determining time intervals for the purpose of providing meals, "there shall not be included any travel time from an employee's home" does not apply to either factual statement. This section has no application to the dinner situation because the language is limited to travel time from and not to an employee's home.

It does not apply to the breakfast situation in both factual statements because the section is concerned with time intervals of four and five hours such as are found in Sections 104.2 and 104.6.

Furthermore, the Union argues that sections under Title 208 consistently separate actual work from travel time whereas references in Title 104 are to work generally without such separation. Absence of the qualifying adjective "actual" in Title 104 clearly evidences the intent of the parties to consider all compensated time as hours worked for the purpose of providing meals. For this reason, travel time is counted along with actual hours worked and breakfast must be provided in both factual statements and dinner in Factual Statement 2.

In the alternative, the Union contends that even if Section 104.11 excludes travel time from an employee's home for prearranged work before regular working hours, no such exclusion is found for travel time to an employee's home following regular working hours. The Union points out that the parties have carefully distinguished between travel from home and travel to home under Title 208, especially in sections 208.7, 208.8, 208.10 and 208.12. In the case of prearranged work before regular working hours, it is possible to make arrangements for breakfast at home in contrast to inability to plan for dinner in cases of work after regular working hours for indefinite periods without prearrangement. According to the Union, the parties could have excluded travel time to the employees home just as specifically as they excluded travel time from an employee's home if they had so desired and so agreed.

POSITION OF THE COMPANY

The Company agrees that the issues in both Factual Statements involve whether or not compensated travel time to an employee's home and compensated travel time from an employee's home should be counted as work in applying the provisions of Title 104.

In respect to Section 104.1 referred to above by the Union, the Company suggests that this provision is a general statement of intent designed only to permit flexibility where sections of Title 104 are otherwise difficult to apply. The Company stated that Sections 104.8 and 104.4 represent the implementation of Section 104.1. To illustrate its use, the Company introduced testimony by R. J. Tilson, Industrial Relations Manager for the Company. He submitted a decision of the Review Committee received into evidence as Company Exhibit 2. In that case an employee was called out for emergency work at 3 o'clock in the afternoon and worked until 6:15 P.M. one hour and a half after normal quitting time. On the basis of Section 104.1, and in the absence of any other applicable provision, the Company approved a half hour meal period upon the employee's dismissal.

Referring to Section 104.8 and the provision for furnishing a meal if the employee performs prearranged work for 2 hours before regular work time, the Company contended that work means just what it says. Travel time, the Company points out, is clearly referred to as such in Title 208 and if the parties had intended to include travel time in the two hour qualification, they would have expressly referred to it. If this is not enough, the Company cites the clear language of Section 104.11 which excludes travel from home in determining time intervals for the purpose of providing meals.

The Company disagrees with the Union's contention that time intervals are restricted to four and five hour periods. It argues that two hour and hour and a half periods are also time intervals in the interpretation of Title 104 as a whole.

Finally, in concluding its analysis of the breakfast situation in both factual situations, the Company compares Section 104.8 with 104.3. In the latter section, emergency work provisions do not call for breakfast furnished by the Company if the employee does not work two or more hours before regular

working hours and unless opportunity to eat breakfast before reporting to work is not given . It would be completely illogical, according to the Company, if it furnished a meal in connection with prearranged work where at least 19 hours advance notice is required and denied a meal in instances of emergency work. On the basis of the foregoing, the Company contends that breakfast need not be furnished under either of the Factual Statements.

Section 104.4 is clear on its face in respect to dinner under Factual Statement 2. Here again, as discussed above, reference to work does not include travel time which is separately designated where it is involved. The language of the section provides that "if the Company requires an employee to perform work for $1\frac{1}{2}$ hours or more beyond regular work hours, it shall provide him with a meal approximately $1\frac{1}{2}$ hours after regular quitting time." It is obvious, according to the Company, that the meal is provided at the plant $1\frac{1}{2}$ hours after quitting time not after the employee reaches his home.

Mr. Tilson testified that he had participated in 1943 and 1944 negotiations. According to the witness travel time was not involved in 1943 in the case of an employee who worked 2 hours beyond quitting time. When the two hour work interval in Section 104.4 was reduced to an hour and one half in 1944, there was no change in the Company's position relating to travel time. He pointed out that generally the Company provides employees with a meal at Company expense and the time to eat it upon completion of the qualifying time interval. The Union theory, he said would require the employee to report back to the plant from his home to obtain a meal under the Company's practice. The witness further testified that 104.11 was adopted for the express purpose of eliminating travel to work in view of consequences resulting in providing meals at various intervals depending upon the distance of the employee's home from the plant.

In conclusion, the Company contended that Section 104.11 was incorporated in the Agreement to avoid possible confusion resulting from the reference to Section 208.12 (1) and 208.7 where compensation is paid for travel from home only. In general the Company argued that providing meals based upon geographical distance from the plant would be confusing, inequitable and impractical.

DISCUSSION

By stipulation the regular work hours are 8:00 A.M. to 4:30 P.M. Section 202.4 of the Agreement provides that under these circumstances, the regular lunch period is 12 o'clock noon to 12:30 P.M.

In Factual Statement 1, the employees report for prearranged work at 6:30 A.M. on a non work day and they leave their homes at 6:00 o'clock. Under Section 208.12 (2), the employees are compensated for actual work time and for travel time in connection therewith. The stipulation that this is prearranged work contemplates that at least 19 hours advance notice has been given to the employees.

Section 104.8 provides for a meal if an employee is required to perform prearranged work starting two hours or more before regular work hours on non work days and such employees continue to work into regular hours. The stipulation agreed to by the parties refers to reporting "for prearranged work at 6:30 A.M." and working into regular work hours. Traveling time is described separately and it is not contended that reporting to work means the time an individual employee leaves his home. Rather the Union argument is that if travel time is compensated as hours worked such time should be counted as hours worked for the purpose of construing the meal provisions of the agreement.

Section 104.11 states clearly that "in determining time intervals for the purpose of providing meals, there shall not be included any travel time from an employee's home." The chairman sees no merit in the Union argument that

the two hour period in Section 104.8 or the one and one half hour period in Section 104.4 are not time intervals. If the phrase "time interval" was used consistently as the Union suggests, this argument could be considered. However, in Section 104.6 which the Union cites as an example, the word interval does not appear at all. The chairman concludes that there are four hour, five hour, two hour, and one and one half hour time intervals in the construction of Title 104. In actual practice, there are other time intervals because the language of the several sections refers to approximate times for the purpose of meeting operational variations. In the instant case, the 2 hour period referred to in Section 104.8 is a time interval and as such is subject to the application of Section 104.11.

Aside from the literal construction of Title 104, the uncontroverted testimony of the Industrial Relations Manager is entitled to substantial weight. On page 45 of the transcript lines 6 - 25 he testifies as follows:

" At the same time, in discussing the 104.3 Section, which provided for the two hours or more, as now appears in the Contract, we then became involved in travel time, as to how it may relate to the meal periods. And the parties agreed at the time, May 26th, '44, to inject the present 104.11.

The purpose of that was in order to eliminate the travel time from the application of the meal time and was due to the fact that we felt that it would be unworkable, that the Contract provides that employees shall be paid full-time for travel time, and the if we were to include travel time we would have the situation where each employee would be due for a meal at various intervals during the day.

That kind of a situation would be entirely unworkable, as it would apply to crews. So the parties agreed in the Contract of 1944, in May, that travel time would not be considered in determining the period of the two-hour provision as well as the four and the five hours.

Q. When did these same sections, 104.11 and 104.3, first come into the picture with respect to this Union?

A. May 26th, '44. "

On the basis of the foregoing, the chairman concludes that the parties did not intend to include travel time from an employee's home to headquarters for the purpose of determining the obligation to furnish meals. Breakfast need not be furnished under either factual situation.

By stipulation, Factual Statement 2 involves employees who continue to work an hour and fifteen minutes after regular quitting time which is 4:30 P.M. It is stipulated that the employees took thirty minutes to travel to their homes. Under these circumstances, Section 208.12 (2) provides that employees shall be compensated for actual work time and for travel time in connection therewith.

In cases where prearranged work occurs on non work days and such work continues after regular work hours, Section 104.5 refers back to Section 104.4. This provision states that if the Company requires the employee to perform work for $1\frac{1}{2}$ hours or more beyond regular work hours, it shall provide him with a meal approximately $1\frac{1}{2}$ hours after regular quitting time. This section contemplates an employee working on the job or being at headquarters for at least $1\frac{1}{2}$ hours. In applying Section 104.4 on a practical basis, the Industrial Relations Manager's uncontroverted testimony is helpful as it appears in the transcript on page 53 lines 14 to 26 and page 54 lines 1 to 10:

"Q. Well, I am still not sure I understand you. Wouldn't you say that it would be impractical for the Company to take into consideration the travel time because that would vary with the distance from which the employee lives and works, right?

A. Right.

Q. Wouldn't that be equally applicable, or wouldn't that problem be present in both situations where the travel was to the work or the travel was from the work?

"A. I can't recognize it from the work, because, remember, these people don't go home to eat. We give them a meal at our expense and the time to eat it. They're a part of a crew generally and after they have worked the one and a half hours we generally take them to a restaurant and the whole crew eats, or else we dismiss them and they go to a restaurant and the whole crew eats.

We dismiss the whole crew at the time. It doesn't interfere with the operation of the crew, the hour and a half. It's assumed, after he works the hour and a half, his meal is no more at home.

On your theory, he has to travel home first in order to qualify for the meal, but his meal is already gone. So what is he going to eat when he gets there?

He has to come back downtown to eat.

Now, that was the discussion. If he could get home in time to eat his meal, then there would be no use for this provision. "

The chairman takes note of Section 104.10 which states 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 provision of this Title does not accept such meal, he shall nevertheless be entitled to such time allowance of one half hour." In Factual Statement 2, the parties stipulate that employees were "released from work at 5:45 P.M." Release from work or dismissal from work as described in Section 104.10 and the statement of facts infers dismissal from actual work at headquarters and the parties apparently saw no need to use a qualifying adjective. It cannot be contended that release from work or dismissal from work occurs when an individual employee reaches his home.

Applying Section 104.10 to a hypothetical situation demonstrates the inequity involved in pursuing the Union's theory to its logical extreme. Suppose an employee has an opportunity to work 15 minutes beyond regular work hours in a situation similar to Factual Statement 2. If this employee lives a distance of one hour and fifteen minutes from headquarters, does the Union contend he is

entitled to 1 hour and fifteen minutes travel time under Section 208.12 (2), dinner provided by the Company under Section 104.4, and in addition a half hour time allowance? If under these circumstances, the employee lived an hour and ten minutes from headquarters, clearly he would not be entitled to a meal. Such an application of Title 104 defies logic.

Literally Section 104.4 requires the Company to provide the employee with a meal $1\frac{1}{2}$ hours after quitting time and then with meals at intervals of approximately 4 to 5 hours thereafter. The language contemplates the presence of the employees at headquarters, or actually on the job, so that a meal can be provided. If the employee is on the job an hour and a half after quitting time, Section 104.10 applies. Reference in this section to dismissal time which again contemplates availability, at headquarters or on the job, to either accept or reject a meal, helps in the interpretation of Section 104.4. There is no need under the circumstances to treat the travel to home situation in Section 104.11.

It is the conclusion of the Chairman that the time interval of one hour and a half under Section 104.4 does not include travel time for the purpose of the section. The provision of Section 104.1 in which the parties agree to apply the provisions of Title 104 in a practical manner are in fact carried out by this interpretation. If an employee actually works $1\frac{1}{2}$ hours beyond regular quitting time, the parties agree this interferes with his usual meal practices, for he is leaving headquarters after 6 o'clock. However, in the instant case, the employees were dismissed at 5:45 P.M. They were not inconvenienced to the extent provided in Section 104.4. Since there is no evidence in the record that travel time is a uniform allowance of 30 minutes, the chairman has no alternative than to conclude that on the Union's theory the

fortuitous circumstance of how far an employee lives from headquarters would govern the application of the meal sections. In this interpretation, the chairman cannot agree. Dinner is not required to be provided under Factual Statement 2.

AWARD

1. The Company is not required to furnish breakfast under Factual Statement 1 or Factual Statement 2.
2. The Company is not required to furnish dinner under Factual Statement 2.

Respectfully submitted

Laurence P. Corbett

Laurence P. Corbett
Chairman of the Arbitration Board.

[Signature]

[Signature]

L. L. Mitchell Dissent

[Signature]