

**ARBITRATION
OPINION & AWARD**

**International Brotherhood
of Electrical Workers, Local 1245,**

Union,

and

Pacific Gas & Electric,

Employer

Re: Termination
Arbitration Case No. 211

BOARD OF ARBITRATION

Kenneth N. Silbert: Neutral Board Member

Margaret Short: Employer Board Member

Bill Pate: Employer Board Member

Roger Stalcup: Union Board Member

Ken Ball: Union Board Member

APPEARANCES

On Behalf of the Union:

Tom Dalzell, Esq.
Staff Attorney
IBEW, LOCAL 1245
P.O. Box 4790
Walnut Creek, CA 94596

On Behalf of the Employer:

Stacy Campos, Esq.
Legal Department
Pacific Gas & Electric
P.O. Box 7442
San Francisco, CA 94120

INTRODUCTION

This dispute arises under a collective bargaining agreement between the above-captioned Parties (JX 1). The prior steps of the grievance procedure were followed or waived and the matter is properly before the Board of Arbitration (JX 4)¹. An arbitration hearing was conducted on April 26, 1996, in San Francisco, California, at which the Parties had a full opportunity to present evidence and argument in support of their positions. The matter was submitted for decision upon the receipt of post-hearing briefs.

P , the Grievant, was hired by the Employer on June 2, 1988 and terminated on November 20, 1993 for allegedly "curbing" a gas meter on September 14, 1993.² Curbing refers to a situation in which a meter reader estimates the reading on a meter, rather than actually observing the meter and recording the indicated reading. The Union filed a timely grievance protesting the termination. The grievance was unresolved at the lower steps of the grievance procedure, leading to this arbitration.

ISSUE

Was the termination of the Grievant for just cause, if not, what remedy? (TR 2)

¹ The official transcript is cited as (TR __); Joint Exhibits are cited as (JX __); Employer Exhibits are cited as (EX __); and Union Exhibits are cited as (UX __).

² All dates hereafter refer to 1993, unless otherwise noted.

RELEVANT AGREEMENT PROVISIONS

OFFICE AND CLERICAL AGREEMENT

24.1 MANAGEMENT OF COMPANY

The management of the Company and its business and the direction of its working forces are vested in Company, and this includes, but is not limited to, the following: to direct and supervise the work of its employees; to hire, promote, demote, transfer, suspend, and discipline or discharge employees for just cause; . . . (JX 1)

WORK RULES

METER READER RESPONSIBILITY SUMMARY

B. PERFORMANCE-RELATED RESPONSIBILITIES

1. You are assigned to and responsible for reading specific routes each day. You are not to enter a read that you have not obtained from reading all the dials on the meter or plastic dial (curb or estimate a read).
2. You are expected to read every meter in the route and make every effort to pick up missed meters on the same day the route is read. . . .

The standard for missed meters in this headquarters is 4.5 per 1000 meters missed.

3. When a high or low reading is indicated by the hand-held device, the reading will be verified by checking the meter number and rereading the meter.
4. You are expected to meet the performance standard for meter reading resulting in rebates (over/underreads).

The standard for over/underreads in this headquarters is .60 per 1000 meters read. (JX 2 at page 18)

SUMMARY OF THE FACTS

Background:

The underlying facts are not in dispute, although the Parties disagree as to whether misconduct by the Grievant reasonably may be inferred from them.

Meter readers are responsible for reading gas and electric meters on a designated route. They can determine the sequence in which they visit accounts on the route, and the sequence in which they read the commodities at each account (TR 11-12). Gas meters display four circular dials, with black hands on a white surface. An experienced meter reader does not have to read each dial individually to obtain the full reading. Rather, they are able to see the reading as a whole, similar to the way one reads full words rather than the individual letters in a word (TR 17).

The Parties have negotiated performance standards for meter readers which set forth the acceptable level of missed meters and over/underreads (TR 22-26, 70; JX 2). The Grievant generally met those performance standards, and was considered to be a "very accurate" meter reader (TR 108).

Meter readers use a hand-held electronic device ("EMR") to record reads from meters. The EMR can be programmed with the route and commodity sequences desired by the meter reader. In 1993, when the events at issue occurred, the Grievant was using an EMR known as an Itron. That device contained information regarding each customer on the route, including the customer's name and address, and the previous month's read for both the gas and electric meters at that location. The previous month's read flashed automatically - as the Grievant explained, "It was always in your face." (TR 38, 123). The EMR is programmed to detect entries which, based on the prior month's

read and the customer's usage history, appear to be out of the normal expected range. If the entry is either too high or too low, the EMR beeps to warn the meter reader. The meter reader should then check to verify that he/she is at the right house, and that the reading is correct, then re-enter the read. Normally, the EMR will accept the second entry even if it is the same as the first one (TR 27-28).³

The Events Leading to the Termination:

The alleged curbing which resulted in the termination of the Grievant's employment occurred at a residence in El Cerrito. The Grievant serviced the route including that residence from June through September. On August 13, the Grievant entered a read of 3941 for the gas meter at that residence. On August 18, as a result of customer complaints regarding high bills, the Employer removed the gas meter at that residence and replaced it with a new or refurbished one. When the old meter was removed, it showed a reading of 3953 (TR 55). The new meter showed a reading of 0000, when it was installed (TR 55). The Grievant next worked that route on September 14. At the time, he did not know that the gas meter had been replaced, and the EMR still showed the August read of 3941 as the previous read.⁴ The Grievant entered a read of 3954 for the gas meter (TR 68). This reading was obviously erroneous, because it bears no rational relationship to the 0000 reading on the new meter which had been installed less than a month earlier.

The discrepancy led to an investigation by Terry Moore, a Business Analyst for the Employer's East Bay Division. In addition to reviewing the documentation showing the various meter readings, summarized above, Moore visited the site on November 4. He found that the electric

³ The meter reader can disable the "beep." Given the Union's theory in this case, which assumes that the EMR warned the Grievant of an out-of-range entry, that does not appear to be relevant.

⁴ The master computer had not yet updated the information on the EMR to show the installation of the new meter (TR 90).

meter for the residence was located on the side of the garage above a fence, and could be read from the neighboring residence, approximately 50 feet away. The gas meter was in a latched cabinet below the electric meter. In order to view the gas meter, the meter reader would have to open a gate, then open the cabinet enclosing the meter. According to Moore, the recently installed meter "had the immediate appearance of a brand new meter." The glass was not scratched or diffused in any way, the black dials stood out against the pure white background, and all four dials on the meter were easily seen. (TR 39-49, 62)

Moore concluded that the Grievant had curbed the gas meter. He met with the Grievant and a Union steward, showed them photographs he had taken at the scene, and solicited an explanation. The Grievant told Moore he did not specifically recall what occurred when he read the meter on September 14, and he denied either curbing or short-dialing the meter.⁵ (TR 51-54, 122). Moore then consulted with Human Resources Advisor Collins Arengo regarding the appropriate level of discipline. After reviewing Moore's investigatory notes and speaking with him several times, Arengo concurred with Moore's opinion that the Grievant should be terminated (TR 63-65, 111-116).

Other Evidence:

The Grievant testified that he has never curbed, estimated or intentionally short-dialed⁶ a meter. He visited the scene of the incident in preparation for the arbitration, and testified that he still has no recollection of reading the meters at that location, or of having any trouble reading the route. Based upon the documentation, he testified that, on the day in question, he was "tweaking" the route

⁵ "Short-dialing" refers to a situation in which a meter reader reads the values on some of the dials, and estimates the values on others because they are blocked from view.

⁶ Short-dialing refers to reading some of the dials on a meter and estimating the others because they are obscured from view.

by resequencing both accounts and commodities at accounts (TR 124-125). According to the Grievant, it would not have made any sense for him to have curbed the gas meter if he read the gas and electric meters at the house next door. (TR 123-124)

As a possible explanation for the error, he testified that, at the time of the incident, he was depressed because he had recently broken up with his fiancée of five years, and his ability to concentrate was affected (TR 122). He also testified that he might not have noticed the new meter if he was concentrating on the dials as opposed to the meter in general (TR 131).

POSITIONS OF THE PARTIES

The Employer:

- » Moore reasonably concluded that the evidence pointed directly and absolutely to the conclusion that the Grievant had curbed the meter. He could find no other reasonable explanation for the read in question.
- » Before deciding to terminate the Grievant, Moore consulted with Human Resources advisor Collins Arengo, and provided her with his written summary of the investigation. Arengo confirmed that termination was the appropriate level of discipline.
- » The Union does not dispute that the rule prohibiting curbing is reasonable, that other meter readers have been terminated for that offense, or that termination is the appropriate remedy for proven curbing.
- » Overwhelming evidence supports the conclusion that the Grievant curbed the meter. Had the meter at the residence not been changed, the Employer probably would not have discovered his misconduct. The read entered by the Grievant is consistent with curbing

because, as Moore explained, a meter reader who decides to estimate rather than read a meter would enter a low read as close as possible to the prior month's read. This would tend to avoid detection by the customer and the Employer.

- » Although the Employer does not have to prove the Grievant's motive, Moore gave a plausible explanation as to why the Grievant would have curbed the meter. The electric meter at the residence could be read from the neighboring house, while the gas meter was in a cabinet inside the fence. The Grievant may have simply decided not to bother taking the few extra steps and extra time required to read the meter accurately.
- » The Union has not presented any credible evidence to rebut the conclusion that the Grievant curbed the meter.
- » The Union's speculative theory, based on an assumption of an average use of 2 cubic feet a day, is not supported by the evidence.
- » Other arbitrators have upheld terminations for curbing (Chvany, Arbitration Number 144; Concepcion, Arbitration Number 129).
- » The Arbitration Board should conclude that there was just cause for the termination of the Grievant's employment. The grievance should be denied.

The Union:

- » Company rules prohibit employees from curbing or estimating meter reads. For purposes of this Arbitration case only, the Union stipulates that curbing established by clear and convincing evidence is just cause for termination.
- » Certain types of unintentional errors occur in meter reading, and the Parties have negotiated performance standards applicable to those errors. Given the Grievant's workload of

approximately 15,000 meters a month, he could have made 9 reading errors and still have met those negotiated standards.

- » The Grievant described himself as a diligent employee who would rather miss reading a meter and suffer the possible consequences than enter an estimated read. Moore described the Grievant as "very accurate" reader with good performance standards.
- » The Grievant's entry of 3954 for the gas meter was clearly erroneous, because a new meter with a read of 0000 had been installed several weeks earlier.
- » The Employer has no direct evidence that the Grievant curbed the meter; it relies on inferences drawn from circumstantial evidence. The Grievant denies curbing or short-dialing the meter. It is not surprising that he could not recall the specific incident when questioned by Moore, given the number of meters he had read in the interim.
- » The route in question is in a good neighborhood, and the gas meter was easily accessible, even though it was inside the gate.
- » The records show that, within ten minutes of the alleged curbing, the Grievant had resequenced three accounts, moving several to a completely different sequence on the route, and resequencing the commodities at one account.
- » The alleged curbing was one of five reads that the Grievant entered at 8:39 a.m. The following month, another meter reader entered a read for the same gas meter as one of five reads in a one-minute period. Moore testified that the pattern of entries by the Grievant appeared to be a true pattern of reading, one which would not suggest curbing. (TR 79-80)
- » There is an alternative explanation for the erroneous read. Because of delays in updating the EMR data base, as the Grievant approached the residence on September 14, the Itron would

have shown the prior read from the old meter - 3941. Between the installation of the new meter on August 18, and the known correct read on October 14, the customer used an average of 2 cubic feet of gas a day. When the Grievant read the meter on September 14, it had been installed for 27 days. If the customer used the average two cubic feet a day during that period, the meter would have read 0054 when the Grievant observed it. If he entered 0054, the Itron would have alerted him that the read was unacceptable, as compared to 3941. It is possible that the Grievant glanced at the prior month's read, assumed he had misread the 1000's and 100's dials, and used the "39" from the prior month and combined it with the "54" he had entered, for an entry of "3954."

» Curbing cases are, by definition, fact intensive. Points made by other arbitrators in such cases include the following:

1. The timing of entries into the EMR device may provide persuasive evidence of curbing.
2. Deviation from the programmed sequence of reads may tend to prove curbing.
3. Physical observations of supervisors may tend to prove curbing, as where a supervisor observed another person apparently reading meters for the terminated employee.
4. The absence of a plausible explanation by the employee may tend to prove curbing.
5. The fact that an employee had experienced problems meeting the standards may tend to prove curbing.
6. The fact that a meter or meters might be avoided because of unpleasant conditions might tend to prove curbing.
7. The fact that a reading could not be made from the location described by the employee may tend to prove curbing.

8. The fact that a correct reading was recorded on one meter at the same location where employee allegedly curbed another meter tends to support the contention that the employee simply made a reading error.

- » Application of the above factors leads inescapably to the conclusion that the Grievant made an inadvertent error.
- » The timing of the entries was indicative of a normal reading pattern, and the sequence of the reads was natural and in order of the neighborhood.
- » The fact that the Grievant was resequencing his route is inconsistent with a theory that he curbed the meter to save a few seconds.
- » None of Moore's observations support a finding of curbing.
- » The alternative explanation offered by the Union is plausible.
- » The Grievant had no problem meeting standards, and would not have feared reporting a missed meter.
- » Neither the neighborhood nor the location of the meter presented any difficulties for the Grievant. Having read the electrical meter, it is unlikely he would have curbed the gas meter. Similarly, it would make no sense for him to have read 760 meters that day, and to curb a single meter located only a few feet from a meter he read.
- » A reading error in and of itself does not subject an employee to discipline, unless the employee's errors are above the negotiated level of acceptable errors.
- » There was not just cause for the termination of the Grievant's employment. He should be reinstated with full seniority and made whole for all lost wages and benefits.

OPINION

As in any discipline case, the Employer bears the burden of proving that the Grievant engaged in the alleged misconduct and that the level of discipline was appropriate. The Employer has met that burden.

The 3954 reading entered by the Grievant on September 14 was clearly erroneous because it bears no rational relationship to the actual meter reading, which would have been between 0000 and 0127, the reading on October 14 (TR 86-87). Thus, on September 14, the first two dials on the meter would have read "00" or "01." Had the Grievant actually read the meter, all four dials would have been in clear view after he opened the cabinet. It is virtually inconceivable that an experienced meter reader such as the Grievant could have misread "00" or "01" as "39," which he entered as the first two digits of the read. On the other hand, his entry of 3954 bears an obvious relationship to the August reading of 3941, which would have appeared on the EMR. According to Moore, an estimate of 3954 (suggesting a usage of 13 cubic feet of gas for the prior month), would have been an excellent estimate by someone curbing a meter. A meter reader curbing a meter would normally estimate a low as possible, to avoid suspicion from the customer. A higher estimate might arouse suspicion, particularly if the customer had been on vacation or had an unusually low usage that month for any other reason. (TR 84-86)

The facts and this analysis are sufficient to establish a *prima facie* case that the Grievant curbed the meter, as alleged by the Employer. The burden shifts to the Grievant to establish a reasonable alternative consistent with the evidence.

The Union argues that the Grievant had no reason to curb the meter. He was an experienced employee who consistently met the negotiated performance standards; on September 14 he was tweaking the route by spending the additional time necessary to resequence accounts and/or commodities at accounts; and he would have gained little time by curbing one of the 760 meters he read that day (TR 79-81). However, as the Employer argues, it is not necessary for an Employer to establish an employee's motive for engaging in misconduct to sustain a discharge. Frequently, it is difficult to discern an employee's motive for engaging in intentional misconduct, particularly when viewed the harsh light of a subsequent termination. Contrary to the Union's argument, the evidence suggests a possible motive. If the Grievant was spending additional time tweaking the route, curbing one or more meters would gain back some time. The relative locations of the electric and gas meters at the residence create an obvious temptation to curb the gas meter. The electric meter could be read from the adjoining residence, 50 feet away. To read the gas meter, the reader had to spend the additional time necessary to walk to the fence, open the gate, and open the cabinet containing the gas meter.

The Union's alternate theory as to how the Grievant might have inadvertently entered the wrong reading is not accepted. The Union's theory first assumes that, on September 14, the gas meter actually read "0054." That is pure speculation which is not supported by the evidence.⁷ Even if the meter did read "0054," that does not explain the Grievant's entry of "3954." If the Grievant

⁷ The Union arrives at the figure by showing that between August 18 (when the new meter was installed) and October 14 the consumer used an average of 2 cubic feet of gas a day. The period of time from August 18 to September 14 was 27 days. If the consumer used the average of 2 cubic feet a day during that period, the meter would have read "0054." (TR 86) However, Moore points out that between August 13 (when the Grievant read the meter) and August 18, the average usage was 2.4 cubic feet a day. If that average usage is used to calculate the usage between August 18 and September 14 the reading on September 14 would have been "0064," not "0054." (TR 86-87, 98-102)

had entered "0054" as the reading, the EMR would have warned him of a low entry. In that event, his obligation was clear: "When a high or low reading is indicated by the hand-held device, the reading will be verified by **checking the meter number and rereading the meter.**" (Meter Reader Responsibility Summary, JX 2 at page 18). Even in the unlikely event that the Grievant did not notice the new meter when he first read it, he certainly would have noticed it if he both checked the meter number and reread it. Moreover, rereading the meter would have confirmed the Union's supposed initial read of "0054," which he could not have mistaken for "3954."

The Union's suggestion that the Grievant arrived at "3954" by using the first two digits of the prior read and the last two digits which he read from the meter bears the seeds of its own demise. If the Grievant did as the Union suggests, he intentionally violated his obligation to check the meter number and reread the meter after the EMR notified him of a low read. He also intentionally violated his obligation to refrain from entering a read "not obtained from reading all the dials on the meter . . ." (Meter Reader Responsibility Summary, *supra*)

The fact that the sequence and timing of the reads on the Grievant's route that day appears to be normal is not inconsistent with a finding that he curbed this particular meter. Instead, it reasonably may be inferred that he entered the curbed "reading" for the gas meter in the correct sequence, *i.e.* just after entering the read for the electric meter.

Finally, the Grievant's testimony does not support the Union's theory. He did not testify that the events occurred as the Union proposes. His testimony that he has no recollection of the specific events on September 14 (TR 123-124) is inconsistent with the Union's theory. Given the number of meters he read between September 14 and November 4, when he was confronted by Moore, it is not surprising that the Grievant would not specifically recall reading particular meters on September

14, in the absence of unusual occurrences. But, the theory suggested by the Union involves a sequence of unusual events of the type which would jog the memory. The gross discrepancy between an entry of 0054 and the prior reading of 3941, which "was always in [his] face" on the EMR, would have been unusual enough to recall. Similarly, estimating a read by adopting two digits from the prior read and two digits from the dials on the meter would have been memorable, particularly in view of the Grievant's testimony that he has never curbed, estimated or short-dialed a meter (TR 123).

For all of the above reasons, the record requires a finding that the Grievant curbed a gas meter as alleged by the Employer. This finding is consistent with prior arbitration awards cited by the Parties. As the Union acknowledges, curbing cases are fact intensive and each case must be decided on its own merits. Factors supporting a violation in one case may not be present in other cases. Factors tending to support a violation in this case include: (1) the physical observations by Moore, establishing that the new meter would have been obvious and easily readable if the Grievant had attempted to read it; (2) the absence of a plausible explanation by the Grievant; (3) The implausibility of the Union's explanation; (4) the location of the meter, which made it inconvenient to read as compared to the electric meter at the residence; (5) the vast discrepancy between the actual reading and the reading entered by the Grievant; and (6) the fact that the Grievant was unaware a new meter had been installed, leading him to believe that his curbing would not be detected.

The Parties agree, for purposes of this case, that proven curbing constitutes just cause for termination. Accordingly, the following award is rendered:

AWARD

The termination of P. was for just cause. The grievance is denied.

Kenneth N. Silbert
Kenneth N. Silbert, Neutral Member

10/21/96
Dated

Roger Stalcup
Roger Stalcup, Union Member

~~Concur~~ / Dissent

10/24/96
Dated

Ken Ball
Ken Ball, Union Member

~~Concur~~ / Dissent

10-24-96
Dated

Margaret Short
Margaret Short, Employer Member

Concur / ~~Dissent~~

10/24/96
Dated

William R. Pate
Bill Pate, Employer Member

Concur / ~~Dissent~~

10/25/96
Dated