

DECISION AND AWARD

PACIFIC GAS AND ELECTRIC
COMPANY,

And

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 1245

Re: T G
TERMINATION

ARB. CASE NO. 300

APPEARANCES

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BOARD OF ARBITRATION

Fred D'Orazio, Neutral Arbitrator
Bill Brill, Union Representative
Ed Dwyer, Union Representative
John Moffat, Company Representative
Kathleen Ledbetter, Company Representative

INTRODUCTION

This arbitration arises from a Memorandum of Understanding (“MOU”) between the Pacific Gas and Electric Company (“PG&E” or “Company”) and the International Brotherhood of Electrical Workers, Local 1245 (“IBEW” or “Union”), and involves the termination of an electric crew foreman for violating various operational and safety policies that led to the injury of a fellow employee. The undersigned arbitrator was selected as the Chairperson of a Board of Arbitration (“Board”) to conduct a hearing and render a decision. IBEW Business Representative Bill Brill and IBEW Assistant Business Manager Ed Dwyer served as Union representatives on the Board. PG&E Labor Relations Representatives John Moffat and Kathleen Ledbetter served as Company representatives on the Board.

A hearing was conducted in San Francisco, California, on February 14, March 29-30, April 29 and May 4, 2011. At the hearing, the parties stipulated that the matter was properly before the Board and that it has jurisdiction to hear the case and render a decision. The parties were afforded the opportunity to examine and cross-examine witnesses, and to introduce relevant exhibits. With the receipt of the final post-hearing brief on August 24, 2011, the matter was deemed submitted.

ISSUE

Was the Grievant terminated for just cause? If not, what shall be the remedy?

STATEMENT OF FACTS

The following is a summary of the basic facts that gave rise to this arbitration. Other facts are included in the Discussion section of this decision, as necessary.

The Grievant in this matter is T G who had worked for PG&E for approximately 37 years before he was terminated for his conduct during an incident on July 1, 2009.¹ At the time of the incident which led to his termination, G was an electric crew foreman out of the Company's Cinnabar Yard. He had received only minor discipline during his career, and had no outstanding discipline at the time of the incident in question.

On July 1, a transformer ("T20816") that supplies power to a commercial shopping center had blown and was leaking oil. PG&E troublemen M G and G Es were the first to respond to the scene, and they apparently restored power to the majority of customers before departing for another assignment.

At the end of his shift at 2:30 p.m. on July 1, G was informed by telephone that the transformer had failed and customers had lost power. Because G's regular crew for that day was not available, lineman Sa and journeyman cable splicer

Sm were recruited to complete the assignment with G, which essentially involved replacing the transformer. Sa came from his home and Sm was already at the yard, having worked the prior shift. Like G, Sm had worked at PG&E for some 37 years.

Before Sa arrived at the yard, G and Sm discussed the job in preliminary terms based on early information G had received from his supervisor, Dave Schnitter. G gave Sm permission to go to the job site to meet Schnitter, saying he would join him when Sa arrived. When Sa arrived at the yard, he and G had a similar discussion about the job. Soon thereafter, G and Sa drove their trucks from the yard to the job site to replace the failed transformer and restore power to the remainder of the customers. In general, the crew was to isolate T20816, clean up the oil, and replace the transformer.

Before the faulted transformer could be replaced, the crew had to complete a “switching” operation. The switching was to be conducted according to a “switching log” prepared by Distribution Operator (“DO”) Tho based on the early information radioed to him from the troublemen. DO Tho had faxed the switching log to G from the control center at the Edenvale yard while G was still at the Cinnabar yard.

To isolate T20816, the crew would need to de-energize two adjacent transformers, T20817 and T20818. As part of the switching log instructions, the fuses at a pad-mounted PMH-43 switch (which was about 400-500 yards from the faulted transformer) needed to be opened while the cables at T20815 were placed on standoff. After the cables were placed on standoff, the fuses at PMH-43 were to be closed. To accomplish this, G and Sa would be at transformer T20815 (which is adjacent to the failed

¹ Unless otherwise noted, all dates referred to hereafter are in 2009.

transformer T20816) to “standoff cables,” generally a two-man job. Sm would be at the PMH-43 switch, generally a one man job. The crew would then replace T20816.

As more fully discussed below, PG&E contends that G was required to conduct a full tailboard before any work began. According to the Company, this means he was required to conduct a meeting with the crew to discuss the job activities, procedures, potential hazards, and related subjects before starting any work, and to record the meeting on a tailboard Job Site Safety Analysis (“JSSA”) form to be signed by participants in the tailboard. The general purpose of a tailboard is to inform employees of the scope of the work and the policies that are to be followed. In response to the Company’s contention, the Union argues that G was not required by policy or practice to conduct a full tailboard before the switching operation began, and that it was permissible to do it after the switching but before the actual work of replacing the transformer. These contentions are more fully addressed below.

At the job site, G, Sa, Sm, and environmental specialist Lin Leung had a discussion with Schnitter about cleaning up the oil and changing out the faulted transformer. G told Schnitter that he would proceed in accord with the switching log, and Schnitter approved of going forward with the switching before he departed.² Sm went to his van to retrieve some dry set to soak up the oil. Sa went to move his truck because customers were complaining about being blocked in.

At about the same time, G and Sm discussed the steps for the switching

process and the other work as Sa [redacted] moved his truck.

Q. [by Union counsel] Okay. What were you and Mr. Sm [redacted] doing while Mr. Sa [redacted] was moving his truck?

A. I gave Mr. Sm [redacted] some instructions, wrote them down for him, that he had to go to the other PMH, check the bypass switch open, and then open the fuses.

Q. And did you go over all the steps of the switching with him at that point?

A. The steps he had to do, yes. And the steps that [Sa [redacted]] and I were going to do. I also gave [Sm [redacted]] the option as to whether he wanted to stay and standoff the cables with [Sa [redacted]] or go to the switch.

Q. So you gave him the option of either staying with [Sa [redacted]] at 20815 to put the cables on insulated standoff, in which case you yourself would go to the PMH switch?

A. That is correct.

Q. Or the other option was for him to go to the PMH switch?

A. That is correct.

Q. And when given this option, what did Mr. Sm [redacted] say?

A. He said that he'd go do the PMH switch.

Q. So at that point, your crew split up?

A. We split up to do the switching, yes.

Q. Did Mr. Sm [redacted] in fact leave to go to the PMH 43 site?

A. Yes, he did.

(RT 424-425)

² Schnitter, Sa [redacted], Sm [redacted] and Leung did not testify at hearing.

It was a common practice for a crew to split up in such circumstances.

Meanwhile, Sm had started the shift wearing protective clothing, as per Company policy that requires such clothing to be worn at all times. When Sm went to his van to retrieve the dry set to soak up the oil at T20816, he changed out of his protective shirt, retained his protective pants, and put on blue non-protective (polyester/cotton) coveralls under a protective vest. When Sm returned to the crew with the dry set after changing his clothes, he remained for only two to four minutes before he left for the PMH-43 switch. During this brief period, G was busy talking to Schnitter and customers, and did not notice that Sm had changed his clothing. It was unusual for a crew member to change clothes mid-shift, according to G and he had never encountered it before.

When he arrived at the PMH-43 switch, Sm found vegetation, described at hearing as a bush, in front of the switch door. He reported by telephone to G that he had to cut back a bush before opening the door to the switch. G (who was by then at T20815) responded that he and Sa had also found a bush in front of transformer T20815. G told Sm “that once he had the bush cut out of the way, he had permission to open the fuses. . . [and] . . . I told him if he didn’t have the right tool, which he carries pruning shears, I told him I had a chain saw if it was necessary for – and I asked him if I needed – if it was necessary for me to go over there and give him a hand.” (RT 450) Sm declined the offer, saying “he could take care of it, remove the bush

without it.” (RT 450-451) Sm called G back and told him he had “cleared the bush” and G gave him permission to proceed. (RT 518) At no time did Sm indicate that he was having a problem clearing the vegetation. He called G back and told him he had opened the fuses; Sa and G placed the cables on standoff; and G gave Sm permission by phone to close the fuses.

However, unbeknownst to G, Sm was in the process of making several unfortunate errors. Rather than properly remove the vegetation from in front of the switch door, he had merely trimmed it. But he did not trim it enough to permit him to open the door to the PMH-43 switch to the 90 degree angle required to achieve the eight-foot clearance necessary to complete his task safely. This requirement is posted by a sticker on the door to the switch. The result was that Sm had insufficient clearance to create the necessary space or angle required to close the fuses. Sm also used the wrong tool; he used what was described at hearing as a small fuse head attachment on the end of a telescoping stick, rather than a grappler tool attachment. The grappler was available at the switch or in Sm’s truck. Lastly, Sm had placed his hands incorrectly on his hotstick.

As a result of these errors, in closing the fuses, he created an electric arc that burned him severely. Sm reported to G that he had been injured. G and Sa then drove to the PMH 43-switch, found Sm in his van severely burned, and called 911. Sm’s protective coveralls and shirt were found after the accident in his

vehicle. It is not disputed that Sm violated several procedures.

Immediately after Sm's accident but before any investigation began, G began to fill out the JSSA form, but stopped before completing it. He testified that he began to fill out the form because he was worried the Company would look for something that went wrong, and admitted he was simply "afraid." (RT 552) He admitted that he did not complete or sign the form because all subject matter areas on the form had not been covered in a tailboard, although he considered the discussions earlier in the day as per the directions in the switching log as "a form of documentation of what I had tailboarded on [and] just to leave it alone and just tell the truth, which I felt that switching log was my tailboard."³ (RT 437-438, 550; see also RT 55-56, 91-93; Joint Ex. 2, para. 74) G did not ask Sa to sign the form, but Sa signed it anyway.

There were two viable alternatives to the directions set out in the switching log. The first was to use load-break elbows instead of operating the PMH-43 switch. This option was discovered by Sa after he and G removed the vegetation and opened T20815. The load break elbow option would have resulted in fewer customers being put out of service during the operation. The second was to use a 600 amp switch. It was nearby, but G didn't notice it at the time. Thus, there were three viable alternatives. G opted to stick with the switching log. The alternative methods and G's rationale for this decision are more fully discussed below.

³ G testified that when he told the Local Investigating Committee ("LIC") "he did not want to lie" he meant that he did not want to give the impression that he had filled out the JSSA form before the switching began. (RT 550; Joint Ex. 2, para. 74)

Patrick Alameda, then a restoration supervisor of troublemen, arrived at the job site on the evening of July 1 as a factfinder. He observed the vegetation in front of the PMH-43 switch and saw that the door to the switch was about a third of the way open with the hotstick used by Sm still there. Alameda confirmed that Sm made the errors described earlier and caused the electric arc flash that burned him.

Alameda interviewed G, Sa and Schnitter at about 6:30 p.m. on July 1. G gave Alameda his form book, which included the partially completed JSSA form signed by Sa. During the interview with Alameda, G admitted that he had conducted a tailboard on the switching aspect of the work without using the JSSA form; that Sm had gone to PMH-43 to do the switching alone; and that he intended to conduct a full tailboard about the remaining work after the switching was complete and Sm returned.⁴ Alameda asked G if Sm was wearing protective clothing and G responded "how do I know if he was wearing it?" (RT 56-57) G had checked the box on the partially filled out JSSA form indicating Sm was wearing protective clothing.

In addition, Alameda found that G had no placard. The placard is a magnetic device to be placed on a truck at the job site. Described as an action plan, it essentially outlines in erasable ink the work to be performed and is used during the

⁴ Alameda testified he was told by Sa that immediately after the accident G made a statement to the effect that "I'm fucked now. I didn't have a proper tailboard." (RT 74; Joint Ex. 2, sub-exhibit I6) Because Sa did not testify, the alleged statement is hearsay and was not admitted for the truth of the matter stated. (RT 71, 73, 307) Also, while the alleged statement may be construed as an admission by G and an exception to the hearsay rule, the statement attributed to G is double hearsay. To fall within the exception, the admission must be

tailboard process in conjunction with the JSSA form.

An investigative report (referred to in the record as a “Serious Incident Communication”) found that Sm [redacted]’s actions violated several policies and were the root causes of the incident. The same investigative report found that several of G [redacted]’s actions constituted contributing causes to the accident. According to the Serious Incident Communication, G [redacted] conducted a deficient tailboard, failed to do a job site walk-down to identify and control hazards (the vegetation) associated with the job, failed to identify Sm [redacted] was not wearing protective clothing, and rejected an alternative approach to the switching.

On September 1, the Company terminated G [redacted]. The grounds for termination were stated as follows.

The termination of your employment is based on your lack of responsibility and accountability as a crew lead. Specifically, you were the lead of a crew that was involved in a serious incident resulting in significant injuries to a fellow employee. An investigation determined that as a crew lead, you did not act accordingly to known issues such [as] ensuring your crew members were wearing [protective clothing] and engaging in safe work procedures. Based on the severity of your behavior, your employment is being terminated.

(Joint Ex. 2, sub-part 4) Dennis Oliver, then Superintendent in San Jose, made the decision to terminate G [redacted], along with other upper management officials.

The Union filed a grievance contesting the termination on September 9, 2009. The Company denied the grievance, reiterating as reasons for termination those set forth in the

present at each level of hearsay, which is not the case here. Accordingly, no weight may be given to the testimony of

letter of termination.

DISCUSSION

As a general framework for deciding this case, the Company argues that in situations where, as here, the collective bargaining agreement does not define just cause, arbitrators typically consider the following factors to determine whether it exists: (1) whether the grievant engaged in the misconduct of which he is accused; (2) whether the penalty imposed is proportionate to the seriousness of the offense; and (3) whether the penalty is otherwise fair, reasonable and non-discriminatory. The Company contends it has met these elements and the termination should be upheld.

The Union argues that G has violated no Company policy, and his conduct was at all times consistent with established practices. In addition, the Union contends, even if G acted contrary to Company policy, the penalty is excessive and, at most, he should receive minor discipline under the parties' Positive Discipline Agreement. Therefore, his termination was not for just cause and should not be sustained.

Because this is a termination case, PG&E has the burden of proving that G was terminated for just cause. It must establish that he committed the allegedly wrongful acts, and that termination is the "just" discipline. (*How Arbitration Works*, Elkouri and Elkouri, 6th ed., 2003, pp. 958-959) Although arbitrators differ with respect to the quantum of proof required in a discharge case, in my view it is appropriate to apply the "clear and convincing" standard where, as here, the Company's allegations of misconduct

involve stigmatizing behavior such as negligent conduct that is a contributing cause of a fellow employee's severe injury. (*Id.*, pp. 949-950)

In addition, this matter in large part involves conduct that is alleged to have violated several Company policies and procedures. To satisfy a key component of just cause, the Company must establish that such policies and procedures exist, and that it has provided G with fair notice of them so that there is a clear standard under which the alleged wrongful conduct may be judged. (*Discipline and Discharge in Arbitration*, Brand et al., 2nd ed., 2008, p. 94)

The Tailboard Requirement

PG&E argues that G failed to conduct a full tailboard as required by its Code of Safety Procedures General Rule 1 ("CSP 1"). In relevant part, CSP 1 provides that a tailboard is a pre-work meeting intended, among other things to, provide crew members with knowledge of work methods and procedures to be followed during a job, and to identify potential or known hazards and the appropriate controls to mitigate the hazards. PG&E contends that G did not conduct a full tailboard using a JSSA form prior to switching, as required by policy, nor was he going to conduct a post-accident tailboard until prompted by Alameda. Also, the Company argues that G's post-accident conduct displayed a callous lack of responsibility and accountability.

The Union argues that G should not be disciplined for his decision to complete the switching before conducting a full tailboard with a JSSA form or magnetic

placard. According to the Union, the standard practice was to conduct switching before the full tailboard, and the evidence shows that the tailboarding method used by G on July 1 was consistent with that practice. The Union contends that the Company's claim that a different protocol had been implemented is not supported by the record. Further, the Union contends that G did not refuse to conduct a proper tailboard after Sm was injured, nor did he display a lack of responsibility and accountability in the aftermath of the accident. Therefore, there is no basis under just cause principles to discipline G for not conducting a full tailboard before the switching operation or for his conduct after the accident.

According to the Company, prior to a March 27, 2009 meeting regarding effective tailboards, it was an acceptable practice to conduct switching operations before conducting a full tailboard, but with the announcement of the new JSSA form at that meeting the practice was changed. The March 27 meeting was conducted by supervisors Schnitter, Forest Freitas and Thomas Santoro.⁵ The Company argues the new protocol, which it claims had been implemented by July 1, required foremen to conduct a full tailboard using the JSSA form before the switching began. The Union contends the Company had provided no such notice as of July 1.

That the change was expressly communicated to employees at the March 27 meeting or at any other time prior to July 1 is not established in this record. Alameda,

⁵ Prior to the change, the tailboard process did not involve the JSSA form, but rather involved the placard. When the Company introduced the JSSA form, the placard requirement was retained as part of a full tailboard.

who did not attend the March 27 meeting, testified as follows.

Q. [Union Counsel] . . . You mentioned a rule change. Let me just make sure we all understand what that is. What rule change are you referring to?

A. [Alameda] Before we instituted the JSSA, because – because in years past, there probably was the opportunity to go out and perform some of that switching prior to commencing the work.

And then we put the job site safety analysis in play. And from that day forward, that was the proper protocol.

Q. Okay. I think I understand now. So, beginning with the implementation of the JSSA form –

A. Uh-huh.

Q. – the Company, in your understanding attempted to draw a clean line and no longer permit that practice of delaying the full tailboard until after switching?

A. From the best of my recollection, yeah; yeah.

When you – when you go to a job site, you have a complete and full tailboard. That's what CSP 1 is all about.

Q. Do you know, since the JSSA was implemented, whether any foremen, other than Mr. G have delayed the full tailboard until after switching?

A. I don't know.

Q. Do you know when the JSSA was implemented?

A. No, couldn't give you a date. I'd have to speculate.

(RT 166-168)

G who did attend the March 27 meeting, testified that no Company

representative at that meeting ever expressly announced any change concerning the timing of full tailboards. In fact, G said at no time prior to July 1 was he told that the JSSA form and placard had to be filled out as part of a full tailboard before switching in circumstances such as those presented here. G testified further that it was his “impression at that time that it’s common practice with . . . myself and other foremen to go out and do switching before you conduct a full on-site job tailboard,” and that a full tailboard would be conducted later with the JSSA form. (RT 428-429) G did not think the full tailboard using the JSSA was not required or unnecessary. Nor did he think the switching log was a complete substitute for the JSSA form.⁶

I credit G’s testimony to the effect that no change in policy regarding the timing of tailboards was expressly announced at the March 27 meeting. He was a credible witness, and his testimony to the extent that the timing of the tailboard was not discussed on March 27 is unrebutted. While he testified from first-hand knowledge, none of the Company witnesses attended the meeting, and Schnitter, Freitas and Santoro (who conducted the meeting) did not testify. In addition, G’s testimony about the practice that existed as of July 1 was corroborated by other witnesses, all of whom worked as crew foremen at some point in their careers and who are familiar with the situation G faced on July 1.

⁶ During his 37 years with PG&E, G testified, he has never heard of a foreman placing a placard on a truck before switching, and he named several foremen who he personally saw place the placard on a truck after switching during his stint as a temporary supervisor from about November 2008 to late June 2009. One of these, Ed Fleige, was disciplined at an unknown time. The precise reason he was disciplined is not clear in the record. Nor is it clear that G was fully aware of the specifics of Fleige’s discipline. Given the lack of clarity regarding Fleige’s

Es , who was one of the first responders on July 1, has worked for PG&E for 27 years in a wide variety of positions, including as a lineman, crew foreman, electric crew supervisor and now a troubleman.⁷ Es testified that the common practice as of July 1 was to begin with switching and delay the full tailboard until after switching when performing a job where switching is followed by changing out a transformer: “that’s a way a lot of the jobs are done, yes.” (RT 631-632)

Car worked for PG&E for some 43 years as a crew foreman, lineman and supervisor before he retired as an electric distribution supervisor on December 1, 2010. He testified that G did nothing out of the ordinary on July 1 in deciding to delay the full tailboard until after the switching, and he would have done it no differently if he had been foreman. He said “common sense tells you when you are going to do it,” and “if you have switching to do, you do the switching first, and when we all gather around to do the actual job, you have the full tailboard. Every situation is different.” (RT 689-690, 700) Car testified further that the practice started to change after July 1 because “there were a lot of questions, of course, around the tailboard because nobody knew how to fill it out or when to fill it out. There was a lot of confusion because, of course, we didn’t want to get into the same situation T was in.” (RT 688)

Bal has worked for PG&E for some 20 years as a troubleman, lineman and now crew foreman at the Edenvale yard. He testified that delaying a full

situation, it is afforded little weight.

⁷ Among other things, Es co-authored the May 2008 update of Work Procedure 2904 (discussed below) and Crew Leader, Troubleman and Supervisor Training Module (discussed below), and conducted some of the training.

tailboard until after switching was a common practice as of July 1, and he followed it himself. He said he was never told prior to July 1 that delaying a full tailboard until after switching was not permitted, but he and “everybody else” changed their practice after July 1. (RT 712) According to Bal there’s been a lot of confusion even among supervisors about whether the JSSA form must be filled out before switching, but there is no confusion that the form must be filled out before the actual work starts.

It is noteworthy that the written PowerPoint presentation used at the March 27 meeting does not clearly indicate that a new requirement about the timing of tailboards was clearly communicated to those in attendance. The PowerPoint presentation is replete with references to the substance and purpose of a full tailboard, but it does not expressly address the issue presented here regarding the timing of a full tailboard. For example, the PowerPoint describes tailboards as “playbooks” that “provide the crew a list of the plays to be run that day . . . Details what plays each player will be involved in and their assignment . . . Allows players to ask questions to be sure everyone runs the same play and understands their assignments.” It similarly provides “No Tailboard, No Work! Know Tailboard Know Work.” The PowerPoint states that holding a quality tailboard requires a foreman to “review [the] job and be sure everyone understands the objectives, procedures, assignments and hazards applicable to the job tasks and the job site.” (Employer Ex. 5) The change in tailboard policy claimed by the Company here would have been a fairly significant event. If it was announced at the March 27 meeting, it

seems that subject would have been featured in the PowerPoint.

In connection with the March 27 presentation, the Company also introduced the new JSSA form with a checklist for foreman. The list includes a number of items that must be checked off as part of a full tailboard: these include, for example, “confirm safety equipment requirements,” “identify hazards pertinent to this particular job,” “outline the work planned for the day,” “identify materials required for the work to be done,” “discuss the sequence of tasks to be done,” and ensure “each person understands their role.”

(Employer Ex. 5)

Admittedly, the PowerPoint presentation and the JSSA form contain many general and specific aspects of a full tailboard. However, a close reading of these documents simply does not reveal that either one announces with any degree of specificity the new requirement about the timing of a full tailboard. The PowerPoint and the JSSA form, standing alone, may arguably be construed as implicitly requiring a full tailboard prior to all work. This interpretation would have more appeal if it were not for G's un rebutted testimony about the March 27 meeting and the testimony of three long time, experienced witnesses who said his conduct was not out of step with a longstanding practice that was still followed as of July 1. And it cannot be overlooked that none of the Company representatives - Schnitter, Freitas and Santoro - who presumably conducted the PowerPoint presentation and discussed the JSSA form at the March 27 meeting were called to testify about what they said at the meeting.

For these reasons, it cannot be concluded that the March 27 meeting, the PowerPoint or the JSSA form constituted a clear announcement of any departure from the timing aspect of the practice described by G , Es , Car and Bal . As noted above, the Company has the burden to show by clear and convincing evidence that it clearly communicated a change in the policy or procedure which G is alleged to have violated. G may be found to have violated a policy or procedure only if he was aware of it.

Nor does CSP 1 compel a different conclusion. That policy provides in its entirety:

1. Tailboard Briefings

(a) Employees shall participate in tailboard briefings given by the employee-in-charge of the job. After the briefing, each crew member should be able to demonstrate knowledge of:

- (1) The work methods, procedures, and proper sequences for the job
- (2) What s/he and other members of the crew are to do
- (3) The responsibilities and appropriate actions in emergency situations
- (4) The potential or known hazards or trouble spots involved and the controls to mitigate the hazards
- (5) What other work is going on in the area (e.g., PG&E, contractor, County, etc.).

(b) If the job tasks or conditions change such that employees become aware of a hazard about which they have not received a tailboard briefing, they shall stop work and notify their supervisor or the employee-in-charge.

(c) A tailboard briefing is a pre-work meeting or discussion held in a safe

location, usually at the job site, to discuss job activities before starting the work and again at any time conditions the job site change (i.e., work scope or activities change, crew members change, new equipment introduced, contractor activities change, etc.). Tailboard briefings encourage employee involvement and participation. (Employer Ex. 6, p. 2)

Like the PowerPoint and JSSA form, CSP 1 does not expressly address the timing of a full tailboard in switching situations such as that presented here. The closest it comes to stating when a full tailboard must be conducted is the reference to “pre-work” in CSP 1(c), but that term is by no means unequivocal given the state of this record. Does it mean “pre-switching?” Or does “pre-work” mean before the main work begins? Based on how that term has been interpreted in the past -- pre-work has not been uniformly interpreted as requiring a full tailboard before switching -- the logical conclusion is that the same interpretation should apply here.

CSP 1 existed prior to March 27, 2009, and there has been no change in its wording since. As the Union points out, if the Company intended to change its practice regarding the timing of full tailboards in relation to a switching operation, it seems it would have changed CSP 1 as well, or in some manner made it clear that the full tailboard must be done before any work, including switching, in order to comply with that provision. The failure to modify CSP 1 or explain that it would be interpreted contrary to the practice which it spawned in the past provided no clear direction to G or other employees that the policy would no longer be interpreted consistent with the practice.⁸

⁸ Further corroboration of this conclusion is in post-July 1 events. After July 1, PG&E formed a grass roots safety team that has conducted numerous meetings and conference calls with electric crew personnel about effective tailboards and related subjects. that there was confusion displayed by employees at these meetings

This brings us to the events of July 1, 2009. G did not conduct a full tailboard before the switching on July 1, but it is notable that he did not fail to communicate with his crew about precisely what was to be done before the switching. He conducted initial discussions with the crew on preliminary issues regarding switching; he went over the switching steps with Sm and he was with Sa at T20815. As G testified, “any time you have discussions about work that’s going to be performed, it is a form of a tailboard.” (RT 516) These pre-switching discussions on July 1 occurred at the Cinnabar yard and later at the job site, and they were based on the written instructions in the switching log. Supervisor Schnitter, who took part in some of the discussions, did not object to the crew splitting up to start the switching after the discussions took place and before a full tailboard. If the purpose of a tailboard is to inform employees of the work to be done and to chart a road map about how the work will be accomplished, G substantially satisfied that purpose at least as far as the switching was concerned. And he did not consider any of the preliminary discussions as satisfying his obligation to perform a full tailboard later using the proper form.⁹ That the full tailboard never occurred was not due to any shortcoming on G’s part, but rather to the injury to Sm, which is discussed below.

G’s post-accident conduct on July 1 does not in my view suggest he was

about when a full tailboard is required. During a meeting at the Edenvale yard in February 2011, Bal asked the team whether the tailboard form needed to be filled out prior to switching, after switching or a combination of both? He said no one provided an answer. At a May 3, 2011 conference call conducted by the team, an employee asked the same question, and the team responded “the form does not need to be filled out until after the switching has been completed, because prior to that you’re under the direct supervision of the dispatcher.” (RT 717-720)

irresponsible, callous, or lacked accountability. G did begin to fill out a JSSA form, but stopped before completion. The Company contends that this is evidence that G knew he should have conducted a full tailboard and filled out the JSSA before the switching work. This is certainly a plausible interpretation of his conduct. However, I credit G's testimony that he did not begin to fill out the JSSA form because he thought he had acted contrary to policy or procedure. Rather, in the emotional aftermath of Sm's injury, he was worried the Company would look for something that went wrong, and admitted he was simply afraid. G did not ask Sa to sign the form, but he (Sa signed it anyway presumably for the same concerns expressed by G

I similarly find that G was not dishonest about the reason he began to fill out the JSSA form. He gave the form to Alameda when he arrived and admitted that he did not begin to fill it out until after the accident. He correctly believed that he had acted consistent with an accepted practice before switching, and that the switching log (along with the pre-switching discussions referred to above) was a form of documentation akin to a full tailboard on the switching part of the job. G convincingly testified that when he told the LIC that "he did not want to lie," he simply meant that he did not want to leave the impression that he had filled out the JSSA before the switching began. (RT 550; Joint Ex. 2, para. 74) Given that G was accustomed to the practice described above, the totality of this evidence does not indicate to me that he was dishonest, nor can

⁹ G referred to these discussions at the LIC as "tailboards" on the "switching part of the job." (Joint Ex. 2, Joint Statement of Facts, para. 55-56)

it be construed as an admission that he began to fill out the JSSA form because he believed he had violated any policy.¹⁰

Nor did G resist conducting a full tailboard on the evening of July 1. After Sm was injured, another crew was called out with G as foreman. Alameda was by that time on the scene as a factfinder. The switching had been completed (using the 600 amp, as discussed below) and a question arose about whether there would be a full tailboard for the main work.

Alameda testified that he was upset with G because he felt the crew was beginning to change out the transformer and perform other related work without a full tailboard having occurred, although there is no indication that Alameda objected to the switching having already occurred before a full tailboard. In any event, Alameda asked G if he planned to conduct a full tailboard as the work got underway (cleaning up the oil, laying out tools, setting up lights, etc.). In essence, Alameda wanted G to conduct a full tailboard before actual work commenced and it did not appear to him that G was going to do so.

Alameda testified that G responded that he was waiting for everyone to return “rather than give 15 Tailboards.” (RT 69, 466) According to Alameda, G asked him “where Chris Sa was, and I says, ‘he’s standing by out front.’ We’re going to give a tailboard.’ And he told me that he wasn’t giving 15 tailboards.” (RT 289, 290-

¹⁰ G had little experience with the JSSA form as a foreman. He had returned from serving as a supervisor only about ten days before July 1, and had been in that capacity since November 2008. Although he had instructed others to use the form, he had not had occasion to use the form personally.

291) Alameda felt G displayed a callous lack of responsibility and accountability by his response, given the circumstances. He directed G to conduct a tailboard, even if it took 15 tailboards to get the job done. At that point, Alameda called Sa back and G conducted a full tailboard using a JSSA form.

The exchange between Alameda and G appears to have been a misunderstanding during an understandably tense period following Sm's injury. It is understandable that Alameda wanted a full tailboard at that point in the day. However, as G explained, the switching had already occurred, Alameda had taken his booklet containing the JSSA forms as part of the early investigation, and he was waiting for Sa to return so the entire group could be present for a tailboard. Moreover, G testified that it was not unusual to start the preliminary work, such as laying out tools and setting up lights, before the full tailboard. He said it was getting dark, the lights were needed to conduct a full tailboard, and the tools were needed for the work. In fact, G was planning to conduct a full tailboard using the JSSA form when Alameda intervened. He asked Alameda for his JSSA book, but Alameda told him to get a form from another foreman (Cam), which he did.

G admitted that he made a statement to Alameda to the effect that he did not want to conduct 15 tailboards. But the statement had nothing to do with any resistance to conducting the tailboard; rather, he said it because Sa was not yet present and "I wanted everybody present, you know, so there wouldn't be any misunderstanding

as to what was needed to be done.” (RT 464, 466) Indeed, despite Alameda’s initial testimony to the effect that he felt G was not going to conduct a tailboard and showed a lack of responsibility, he (Alameda) conceded at hearing that was important to have everyone present for the full tailboard.

In sum, the Company has not shown by clear and convincing evidence that G violated a policy or practice that required a full tailboard be conducted prior to switching. In fact, G’s intention to conduct a full tailboard after switching was in line with a common practice which the Company may have intended to change but did not clearly do so at the March 27 meeting or any other time prior to July 1. As it turned out, Sm was injured and the full tailboard never occurred because of the injury, not because G violated any policy. And the post-accident exchange between G and Alameda was nothing more than a lack of communication during an understandably tense situation.

The Switching Area Hazard and the Grappler

In connection with its argument that G failed to conduct a proper tailboard, PG&E argues that G failed to mitigate an identified hazard as required by USP 22. The Company contends that this policy, among other things, requires a job site walk-down to view the hazard at the outset and control it, but G admits that he never walked over to the PMH-43 switch, even after Sm reported the hazard to him.

In addition, the Company contends, G failed to ensure that Sm complied

with WP 2904, which specifies the type of tool that should be used to open and close the fuses on the PMH-43 switch. If G had conducted a proper tailboard using the JSSA form, this subject would have been addressed directly with Sm . According to the Company, G 's assumption that Sm would successfully mitigate the vegetation hazard and use the proper tool simply because of his 37 years of experience is no substitute for compliance with USP 22 and WP 2904.

The Union argues that just cause does not exist to discipline G for his decision not to conduct a walk-down and personally review the switching location where Sm was injured or ensure that Sm used the proper tool. The Union contends there was no policy or rule preventing a foreman from relying on crew member reports, and G 's conduct was well within the reasonable range of conduct that one would expect from a similarly situated foreman.

Several Company policies are relevant here. First, USP 22 provides in relevant part that the following steps must be taken in dealing with hazards: a foreman must (A) "identify" the hazard, (B) "evaluate" the hazard, (C) "control" the hazard, and (D) "evaluate" the controls. (Joint Ex. 2, sub-exhibit 7)

Second, CSP 1 provides that "if the job task or conditions change such that employees become aware of a hazard about which they have not received a tailboard briefing, they shall stop work and notify their supervisor or the employ-in-charge." (Joint Ex. 2, sub-exhibit 8; Union Ex. 16)

Third, WP 2904 contains the rules and procedures for operating switching devices. In relevant part, it provides that “by design, the PMH switches covered in this WP may be operated safely by one person; however, some field conditions may dictate the need for additional assistance.” (Union Ex. 12, WP 2094, section B) WP 2094 goes on to provide that only tools applicable to a specific switch should be used, and “each PMH switch is supplied with a grappler tool designed by the manufacturer.” (Union Ex. 12, WP 2094, section B.4) It also provides that “a clear, level operating space extending at least 8 feet from the cabinet door(s) and the width of the equipment pad must be maintained for safe operation. . . . If this area is obstructed by vegetation or obstacles that, in the opinion of the person performing the switching, prevent the safe operation of the switch, report the problem and tag the equipment ‘inoperable while energized.’ Schedule corrective measures.” (Union Ex. 12, WP 2094, section B.5)

Based on these written policies, Alameda and Oliver testified that G was required to personally view the PMH-43 switch in a complete job site walk-down before starting any work, rather than rely on Sm’s reports. They also said G should have also inspected the site after Sm identified the bush as a hazard, but he did not do so. Thus, G did not properly identify or evaluate the hazard, and he improperly relied on Sm’s report that he had sufficiently trimmed the bush to achieve the proper clearance.

I have carefully read the relevant provisions of these policies and, while they

admittedly contain numerous safety and procedural requirements relating to hazards, they do not in my view clearly constitute policies that required G to personally go to the site to assess the nature of the hazard presented by the vegetation, evaluate the controls implemented by Sm or make sure Sm achieved the eight foot clearance and used the proper tool.

It is not necessary to go through each step in the USP 22 process. Suffice it to say that the policy does require that “work areas” be “regularly inspect[ed],” hazards that have the potential to cause injury must be inspected and monitored, and that controls must be implemented. But the policy simply does not say how this is to be accomplished or who must do it; it places no clear duty on a foreman in all instances to personally accomplish these tasks, and it does not preclude a foreman from relying on a crew member in carrying out these goals.

CSP 1 provides that if conditions reveal a hazard about which an employee has not received a tailboard briefing, he shall stop work and notify his supervisor or the employee in charge. In relevant part, CSP 1(b) contains mainly a requirement to notify a supervisor if conditions reveal a hazard that has not been the subject of a tailboard, but it says nothing about what is to be done next or how the hazard is to be addressed. In fact, asked if CSP 1 requires a foreman to personally visit each switching site, Alameda said only that the requirement is “implicit” in the policy. (RT 181) CSP 1(b) simply does not explicitly communicate a policy that requires foremen to walk-down every job site.

WP 2904 similarly sets forth a number of broadly worded procedures to be followed in switching, but it does not impose any clear directive that foremen monitor first-hand every step of the procedure. In fact, it indicates that PMH switches may be opened by one person absent field conditions that require additional assistance. Such conditions did not exist on July 1, and, in any event, G offered assistance and it was rejected by Sm .

Nor do the records of the pre-July 1, 2009 weekly tailboard meetings introduced into evidence support the Company's argument. (See e.g., Employer Exs. 5-10) I have reviewed all of the documentation related to these tailboards, and it is unnecessary to reiterate their content here. Suffice it to say that these tailboards address many aspects of tailboarding, but they do not expressly address the issue here; that is, must a foreman personally walk-down every job site to identify and control hazards before proceeding with a switching operation instead of relying on information from a crew member.

In fact, a tailboard meeting on July 11, 2008 (attended by G and Alameda) suggests G had no duty to walk-down the job site in lieu of relying on Sm because much of the responsibility in this regard is placed on the individual employee as opposed to the foreman. Of the four points of "Personnel Responsibility" discussed at the July 11, 2008 tailboard, three safety rules are of particular significance here: "(a) Employees who do not understand or have questions about the rules shall contact their supervisor; (b) Each employee shall be thoroughly familiar with the equipment they have

been assigned to operate and with applicable approved operating procedures and practices, which shall be strictly followed; and (c) Where employees have identified unsafe operations, the employee shall report the hazards to their supervisor. In situations where they have been trained to do so, they shall control the hazard.” (Employer Ex. 3)

There is no specific requirement in the evidence of pre-July 1 tailboards about how employees are to satisfy these requirements or that a foreman must personally review the site before or after the hazard is controlled to make sure the employee has effectively done so. And it cannot be overlooked that Sm was certainly an experienced employee who was trained to control the hazard he faced on July 1. It is a stretch to read the general language in the policy discussed during the July 11, 2008 meeting as requiring a hands-on review policy for foreman.

Therefore, I find that there was no written policy in effect as of July 1 that explicitly required G to perform a walk-down of the job site and personally identify and control any hazard in every situation.¹¹ Given this finding, the question is whether G acted reasonably as a foreman in responding to Sm’s report of a bush in front of the PMH-43 switch.

¹¹ It is noteworthy that the Company’s training module (“Crew Leader, Troublemaker and Supervisor Training Module”) does not expressly call for a foreman to walk-down every job site. According to the module, responsibilities of a “supervisor” (Schnitter in this case) include at least verification of the site and that it can be located to complete the work with proper materials and crew size. (Union Ex. 17, p. 19) The module requires a “foreman” to prepare certain forms, including a form designed to address vegetation (Union Ex. 17, p. 7), but the requirements stop there. The module does not go on to state when the form must be prepared or if a walk-down is required. The module states in this regard that “the use and completion of these forms will be discussed later in the training,” but the module does not reflect such a discussion. Asked if the module imposes the responsibility on a foreman “to look at all job locations himself,” Alameda said the requirement exists, but “it’s just not listed here.” (RT 199-200; Union Ex. 17, p. 21)

To resolve this question, it is worth repeating the exchange between Sm and G. When Sm arrived at the PMH-43 switch he reported to G (who by then was at T20815) that there was vegetation in front of the switch and it needed to be removed. G did not take the situation lightly. He reported it to the DO. Only after Sm told G that he could take care of it, G authorized Sm to remove the bush. In doing so, G offered Sm a chain saw and offered to go to the location to assist. Sm rejected any assistance, stating that he could take care of it himself. G advised Sm that once he cut the bush out of the way, he had permission to open the fuses.¹² At no time did Sm report to G that he had difficulty removing the vegetation to achieve the appropriate clearance or with opening the door. To the contrary, Sm called G and falsely told him he had properly cleared the bush. There was no reason to question Sm's report that he had cleared the bush. Indeed, even Alameda testified that he would not have expected a 37-year splicer like Sm to have committed these violations.

There may be a factual context in which a foreman in the exercise of good judgment should walk-down a job site in the face of a reported hazard, but this was not one of them. Removing the bush was a routine assignment, and Sm was a 37-year cable splicer who reasonably could be relied upon to carry out such an assignment in the

¹² Coincidentally, there was also a bush in front of T20815, which G and Sa cut down at the same time without difficulty. This is a common task for electric crew employees because people frequently plant a landscaping screen in front of equipment and employees remove it when necessary.

proper manner.¹³ The exhibits show that the bush in this case was not very large, and there is no evidence that it presented a unique problem. It bears repeating that G did not take the situation lightly. He offered Sm assistance in the form of help and a chain saw, but Sm declined. If Sm had indicated he was having a problem, we arguably would be a different case. But that's not what happened. Sm called to tell G that he was proceeding to remove the bush; at no time did Sm indicate that he was having a problem removing the bush and in fact said he had cleared it.¹⁴

The same rationale applies to G's conduct as it relates to Sm's failure to use the grappler tool. Sm was an experienced employee and the grappler was readily available in his truck or at the switch. In fact, WP 2094 states that each PMH switch is supplied with a grappler tool designed by the manufacturer. For reasons unknown, Sm did not communicate any difficulty whatsoever to G and he did not use the proper tool.

In evaluating G's conduct, it is useful to consider the acceptable practice as understood by him and other employees who are familiar with this work. If G's conduct was contrary to the norm, some form of corrective action may be appropriate.

¹³ The Company suggests that Sm was not an employee upon whom G should have relied because of his work history. However, the fact that G had "heard" Sm "had gotten in trouble" or that "people were concerned" about his "work habits" does not detract from the conclusion reached above. (RT 529-532) There is no competent evidence in the record that Sm had in fact been disciplined or counseled, G testified that he had had no problems working with Sm in the past, and, in any event, if Sm had been disciplined or counseled, G did not know about it.

¹⁴ The Company issued Work Procedure Safety Alert Bulletins to clarify its procedures in the aftermath of the July 1 injury to Sm and Alameda testified at length about them at hearing. (See e.g., Union Exs. 7, pp. 3-5; Union Ex. 21; RT 260-273) Suffice it to say that this evidence does clarify and reaffirm numerous policies and procedures, but it does not establish a requirement that a foreman personally identify, evaluate or control every hazard, nor does it preclude a foreman from relying on reports from crew members.

However, the testimony is that there has been no requirement that a foreman conduct a job site walk-down in every situation, and G 's conduct was consistent with how other experienced employees would have handled the same situation.

G testified that prior to July 1 he did not review job sites during emergency projects, and he was never told that he had to personally view a job site and evaluate a hazard rather than rely on an experienced crew member. Also, G has witnessed other foremen and crew members rely on each other for this purpose. His testimony was corroborated by other witnesses.

Es 's testimony is illustrative of the testimony given by other Union witnesses. He testified that the situation faced by G is not unusual, it is common for a foreman to react consistent with G 's conduct in this situation, and he would "probably have done it the same way." (RT 636) According to Es a foreman may offer assistance, but he "pretty much" relies on the information and assurances given by the crew member facing the vegetation. (RT 642, 669-670) Es put it this way: "[I]f you tell me that you have eliminated the hazard . . . I'm just relying on the fact that you told me there was a hazard, you told me you were going to take care of it, and you told me you did it. I'm going to assume that you know what you're talking about, you did what you needed to do, and it's done." (RT 669-670) "We're all capable of cutting down a bush," Es testified. (RT 637) In addition, given the extensive training employees had in using the grappler, Es said, "I doubt very seriously that any foreman would

say, hey, make sure when you get there you open that with a grappler tool.” (RT 632-635)

The testimony given by Car and Bal is consistent with G's and Es's testimony in all material respects. In brief, Car said it is common for a foreman to rely on a report from a crew member that vegetation has been removed, and he has done so himself. “I would not go to check if the bush is out of the way,” Car said. (RT 690, 693-694, 696-699) And Bal testified along the same line, saying that it's “very common” for a crew member to encounter vegetation at a site, and he would rely on an employee with Sm's experience to let him know if his presence was needed. (RT 723-724)

If Sm was a novice employee or there was any competent evidence that would reasonably have caused G to question Sm's ability to accurately report the hazard, remove it, report back, and use the proper grappler tool, G's conduct might be viewed in a different light. However, that is not the situation here for the reasons stated above.

In sum, G was not required under Company policy or practice to personally walk-down the job-site, nor was he prohibited by policy or practice from relying on Sm. G acted reasonably in relying on an experienced 37-year splicer to accomplish the relatively routine tasks at the PMH-43 switch by identifying the hazard, removing the bush, evaluating whether he had created proper clearance and using the

proper tool. The fact that Sm did not do so is the reason for the unfortunate accident. G's conduct, simply put, was reasonable under the circumstances, and creates no valid basis for termination under a just cause standard.

Alternative Switching Method

PG&E argues that G violated Company policy USP 22, which provides that alternative switching methods may be used in the face of a hazard, when he decided to follow the switching log rather than use the load break elbows or the 600 amp switch. The Company argues that both alternative methods were available and could have accomplished the same result while impacting fewer customers and avoiding the hazard at the PMH-43 switch, yet G improperly decided to stick with the method set out in the switching log with the result that Sm was injured.

The Union argues that G should not be disciplined for failing to use either alternative method under the circumstances presented here, because there was no rule that required him to do so and his conduct was well within the range of conduct that one would expect from a similarly situated foreman. In fact, the Union contends, there is still no rule that defines the circumstances in which a foreman is required to adopt an alternative switching method.

It should first be noted that nothing in USP 22 required G to switch to an alternative method. As noted earlier, USP 22 states in broad terms that employees are to identify hazards, evaluate hazards, control hazards and evaluate the controls. Nothing in

this policy expressly spells out how this should be done. PG&E points out that USP 22 provides that one way to control a hazard is through “substitution, such as . . . changing the equipment.” However, while this provision recognizes that changing equipment is an option, it represents yet another Company policy that lacks clarity in that it stops short of defining when a foreman is required to change from an acceptable switching method to another method that may become available during the process of carrying out the DO’s instructions. This is especially true in light of the testimony that it is unusual for a foreman to deviate from a switching log.¹⁵ The question, therefore, is whether G acted reasonably in light of USP 22 and the existing circumstances.

There is considerable disagreement in the record about G’s decision to not pursue one of the two alternatives to the switching log. Alameda testified that G, upon learning of the vegetation at the PMH-43 switch, should not have given Sm the go-ahead but rather should have deviated from the switching log in favor of using load break elbows. This alternative would have affected no additional customers beyond those already affected as a result of the failed transformer, while de-energizing the PMH-43 switch affected three other pad mount transformers. In addition, Alameda testified that use of the load break elbows would have been safe and consistent with WP 2322, “Operating Procedures for Load-Break Separable Terminations.” Thus, according to

¹⁵ Alameda testified that Sa (who did not testify in this proceeding) thought it would have been safe to use the load break elbows. However, when G told Sa he had considered using load break elbows but ruled that option out for safety reasons, Sa did not object. Although any comments by Sa are hearsay and may not be given weight for the truth of the matter stated, they do underscore the difference of opinion among employees about the best way to accomplish a job in a given situation.

Alameda, using the load break elbows would have been the “preferred” method.

It was Alameda’s “impression” that G did not opt for the load break elbows alternative because it was easier for him to use the switching log. Adopting another method would have required that he get a different set of switching procedures and he preferred to “just stick with the original switching log.” (RT 66-67, 305) At some point during the conversation on July 1, Alameda asked G why he didn’t do so and G responded that “we can Monday morning quarterback this thing to death.” (RT 293)

The other viable alternative was to use a 600 amp switch in the area. This would have been a safe alternative. Alameda testified that USP 22 provides that when a hazard is identified, “we should stop our work and consider other work methods.” He said using the 600 amp switch would have been a desirable alternative and would have de-energized the same number of customers as opening up the fuses at the PMH 43-switch.

As G and Sa removed the vegetation from transformer T20815, G became aware of the load break elbows as an alternative method. When Sa pointed this out, G decided to proceed in accord with the switching log. He believed it was unsafe to use load break elbows next to a faulted transformer, and, accordingly, he told Sa he “didn’t like the idea of moving those into a faulted transformer; and, two, that the cardinal rules state that we are to follow the switching log.” (RT 445)

G admitted that he had a map which indicated the presence of the 600 amp

switch in the area, but he said “it did not cross my mind, no I did not see that switch” and “I did not look for alternatives at that time.” (RT 533-535) It is noteworthy that neither Sa , Schnitter, G , Es , nor the DO suggested using the 600 amp switch as an alternative method either. G held the view that the switching log created by the DO ordinarily should be followed unless there is a hazard. He said that if he had known the vegetation hazard at PMH-43 could not be removed he would have looked for another alternative switching method. However, “I felt that by us eliminating the bush in front of our piece of equipment and [Sm] doing the same at his, we’d be using the time efficiently and that there wouldn’t be any hazard in operating those fuses.” (RT 534)

That G ’s decision was a reasonable one is corroborated by Es and Car . Es had a conversation with Schnitter and Gaz at the job site about whether it would be safe to use the load break elbows, and he expressed his concern to them about doing so. Specifically, Es told them that he had doubts about using load-break elbows to energize and de-energize good equipment in contrast to a bad piece of equipment from which the oil has leaked. In layman’s terms, Es said, his concern was that “it could blow up.” (RT 619-620) Es , Schnitter and Gaz discussed the alternate plan, and apparently no one insisted that it be adopted, even though it was presumably known that using load-break elbows would not have affected more customers. Es testified: “so it was our physical observation in the field, it was the conditions in the field, and it was reality. I mean, that’s the way the log was written was

to dump the circuit and then stand off cables. . . If we'd have used the load-break elbows, we would not have had to affect the customers; but that's not what we were going to do and that's not what ultimately was done." (RT 621)

Asked if Work Procedure 2322 answers the question one way or the other of what would happen if you use load break elbows next to a faulted transformer, Est answered "definitively, no." (RT 621-623; Employer Ex. 1, p. 2, para. B) Asked if he would expect a crew foreman to contact the DO to suggest a different approach in the circumstances presented here, Es testified "I doubt it." (RT 627) This is true, he said, even given the presence of the vegetation because a sticker on the PMH-switch alerts an employee to maintain an eight foot clearance and the reality is that vegetation is frequently found in front of equipment and easily cut it down by employees.

Car testified along the same line. He said he would not have used the load break elbows because the transformer was faulted. Asked why this is so, Car testified "well, you don't know what caused it to go bad, for one thing. And the switching log was written different. So I would have gone with the switching log instead of explaining to the DO . . . that I was going to change the switching log," even after hearing that vegetation existed in front of the PMH 43-switch because "you could just cut the bush out of the way." (RT 691-692) Car similarly considered both the switching log and the 600 amp switch as viable alternatives, but he would have stayed with the switching log because it would have been quicker than changing to an alternate

procedure. Although he said using the 600 amp would have been safer in hindsight, he would not have changed the method at that time.

As the above testimony indicates, there is considerable disagreement about whether one of the alternative switching methods should have been adopted on July 1. However, I find it unnecessary to address the various positions on this point in order to determine if G was terminated for just cause. Even Alameda conceded that there were three switching methods available, and all were acceptable if done safely. He admitted that trimming the bush could have been done to facilitate the work, and “*if they are not going to do that and they can’t get the door completely open, then they should have used an alternative work method.*” (RT 62-63; italics added) Thus, assuming the load break elbows and the 600 amp switch were viable or even preferred alternatives, G’s decision to not adopt either approach and elect instead to follow the instructions in the switching log may fairly be criticized only in hindsight with the knowledge of Sm’s injury. The fact that Sm eventually injured himself through his own mistakes does not transform G’s otherwise reasonable decision into a dischargeable event. At most, it may raise a question of performance, but it is hardly just cause for termination.

The Protective Clothing

PG&E argues that G was responsible for making sure his crew complied with all Company work procedures and policies, yet he failed to ensure compliance with

the policies that required employees wear protective clothing. G failed to conduct a proper tailboard during which he should have noticed Sm was not wearing protective clothing when he departed for the PMH-43 switch. As it turned out, the Company argues, the absence of protective clothing resulted in Sm 's injuries being more severe.

The Union argues that G violated no policy or practice in not conducting a full tailboard before the switching, and he had no responsibility under any policy or practice to make sure Sm did not change out of protective clothing before leaving for the PMH-43 switch. Even if there had been a policy placing such responsibility on G , his conduct in the circumstances presented here was well within the reasonable range of conduct that one would expect from a similarly situated foreman.

There are two main policies that cover protective clothing. First, CSP section 1, subsections 2 and 11, states in relevant part.

2. Personal Protective Equipment

(a) Employees shall be provided with personal protective equipment (PPE) suitable for the hazard (such as . . . electrical or impact hazards . . .) and, prior to use of the PPE, shall receive training on:

- (1) The need and limitations of personal protective equipment
- (2) Selection, use, care and maintenance, and storage of equipment
- (3) How to inspect for damage, deterioration and defects.

(b) Employees shall use only Company-approved personal protective equipment that meets regulatory standards and is properly fitted to ensure . . . adequate protection from the anticipated exposures.

(c) Employees shall inspect PPE before each use to assure proper fit and

that the item has no damage, deterioration or other condition that might impact its effectiveness and protective qualities. PPE that is found to be damaged, deteriorated or defective shall not be used but either tagged, removed from service and notice given to the supervisor of its condition, or destroyed, as authorized by the supervisor.

(d) If employees suspect that they may need PPE or are unsure if they need PPE, they shall notify their supervisor or contact their safety representative for guidance.

(e) When employees may be exposed to hazards such as . . . electricity . . . that make the workplace unsafe, feasible engineering and/or administrative controls shall be implemented to eliminate or minimize the hazard(s) or exposure by controlling it at its source. When hazards cannot be adequately controlled to a safe level through engineering controls (e.g., changing the process or equipment, . . . [or] . . . isolating the hazard . . .) or administrative controls . . . employees shall use appropriate personal protective equipment. See the Safety Equipment Guide for more information.

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11. Clothing and Jewelry

(a) Employees shall wear suitable clothing at all times to minimize danger when they are exposed to live electrical equipment or lines, . . .

(1) Clothing considered suitable to work in on or around . . . exposed electrical conductors, and/or equipment energized at 50 volts or greater which have the potential for an unexpected arc, is clothing made from flame resistant (FR) material. Workers exposed to hazards of open flames or electric arc should not wear clothing (outer garments or underwear) that is made of or contains the following fabrics: acetate, nylon, polyester, or rayon. If the worker's job classification requires FR clothing, all other outer garments . . . shall also be FR rated.

(Joint Ex. 2, sub-exhibit 8; Union Ex. 16)

Second, SH&C Procedure 237, the Arc-Flash Control Procedure, sets out

responsibilities for various supervisory levels. It provides that (1) “supervisors” are responsible for “ensur[ing] that arc-flash hazard controls are implemented, followed, and re-evaluated as necessary;” (2) the “Arc-flash Hazard Control Lead Person or Committee” has a variety of responsibilities, including “establish[ing] the categories of worker protection and the levels of PPE or (FR clothing) that will be required” and “develop[ing] a process for monitoring and evaluating the controls that are developed and implemented;” and (3) “employees” shall “wear the appropriate clothing and any other PPE while working on energized equipment.” (Employer Ex. 2, p. 4)

The plain wording of CSP 1 places no specific responsibility on a foreman to personally check or ensure individual employee compliance with the policy. Rather, the focus of this policy places various protective clothing responsibilities on individual employees, not on foremen in the first instance. The only responsibility on foremen expressed in this policy is to utilize protective clothing and equipment in the same manner as other employees. SH&C Procedure 237 places the responsibility for compliance on supervisors, the arc-flash committee, lead persons, and employees. Assuming for argument’s sake that a leadperson is synonymous with a foreman, these policies when read together arguably require that G had the responsibility to monitor implementation of employee requirements in CSP 1. He testified that he was aware of CSP 1, subsections 2 and 11; he knew that employees are required to wear protective clothing 100 percent of the time; and he would enforce protective clothing rules if he

noticed a crew member was not in compliance.

However, even assuming G had the responsibility as a foreman to ensure compliance with the protective clothing policies, that conclusion would not answer the more specific question here: did his failure to notice that Sm changed out of his protective clothes mid-shift constitute grounds to conclude that he failed to carry out his responsibility in a manner that warrants disciplinary action? Several mitigating factors argue against such a finding.

When Sm arrived at the work site on July 1 as part of G's crew, he was wearing a protective shirt and pants, so even a full tailboard at that time would have raised no concern about his clothing. G and Smi had a discussion in which Sm agreed to go to the PMH-43 switch as part of the switching process. Sm went to his van to get the dry set or possibly for some other reason, knowing that he would be going to the PMH-43 switch. While at his van, he inexplicably took off his protective shirt, retained his protective pants, and put on non-protective blue coveralls under a protective vest, which in all likelihood obscured any PG&E logos or the absence of logos on the coveralls. Within about two to four minutes after Sm returned, everyone went their separate ways to begin the switching, and Sm departed for the PMH-43 switch. This brief window of time was hectic. G was busy talking to customers and Schnitter, while at the same time dealing with other aspects of the job in the aftermath of the blown transformer. The mid-shift change in clothing was unusual under any

circumstance, and there was no reason for G to have anticipated that Sm would change into non-protective clothing.

In the midst of the activity, G did notice that Sm was wearing blue coveralls rather than the beige ordinarily worn by most employees. But even this would not necessarily have drawn his attention because the protective clothing requirement had been implemented as recently as January 2009, employees were wearing various colors provided by potential suppliers,¹⁶ and blue coveralls were offered in the new catalogue circulated to employees. The fact that the blue coveralls from the catalogue were on back order and did not become available until after July 1 was not announced. G testified that he knew that the Company had ordered new protective clothing, but it is not surprising that Sm's blue coveralls did not catch his attention as he dealt with the blown transformer and Sm departed for the PMH-43 switch.

Nor was G's conduct contrary to how other employees would have responded in a similar situation. Es testified that a crew member would get "razzed" if he showed up at a tailboard in non-protective clothing, because "you come to work ready to work." (RT 637-638) However, he said protective clothing is not on his check list when he's at a job site; like G, he said he would bring it up only if he noticed it. Asked if he would expect a foreman to always notice that an employee has changed

¹⁶ Es who was on the protective clothing committee, testified that coveralls were ordinarily available in brown, but different colors were in the system and being used by quite a few employees due to the fact that various companies had provided them during a trial period. As of July 1, according to Es, other colors were in use, but the only colors that employees could order were brown or tan. After the contract to supply protective clothing was issued to a company, some employees continued to wear other colors.

clothes mid-shift, Es said "I kind of doubt it." (RT 641)

Car similarly testified that it would not have been a standard practice for a foreman, even during a tailboard, to go through a check list with each crew member to determine if they were wearing protective clothing. And Bal testified that, as of July 1, if a crew member had changed into blue non-protective coveralls during a shift, he would not necessarily have noticed because the requirement to wear protective clothing was in a state of flux and employees were wearing various colors.

Given the totality of these circumstances, it could not reasonably be expected that G would immediately notice within a span of a hectic few minutes that Sm upon returning from his truck on July 1, had for some unknown reason changed clothes mid-shift from protective to non-protective. Mid-shift changes are uncommon, and the fact that Sm was about to depart for PMH-43 to perform a job where protective clothing would have been standard made his change all the more unlikely. Moreover, given that various colors were in use, it is not surprising that a mid-shift change into blue coveralls would have raised any red flags for G. Sm's clothing change was yet another act in an unfortunate confluence of events that resulted in his injury, but the factors surrounding his change militate against a finding G failed to exercise his responsibility as a foreman in a manner that supports the disciplinary action at issue here.

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AWARD

I have carefully considered the entire record herein, as well as the post-hearing briefs submitted by the parties. Based on the foregoing findings and conclusions, the grievance is sustained. PG&E has not shown by clear and convincing evidence that it had just cause to terminate G He shall be reinstated and made whole for his losses with appropriate offsets.

Fred D'Orazio

Fred D'Orazio, Neutral Chairperson

Date: 10-20-11

Bill Brill

Bill Brill, IBEW Local 1245 Representative (~~Concur/Dissent~~)

Date: 10/6/11

Ed Dwyer

Ed Dwyer, IBEW Local 1245 Representative (~~Concur/Dissent~~)

Date: 10/6/2011

John Moffat

John Moffat, PG&E Representative (~~Concur/Dissent~~)

Date: 10/12/11

Kathleen Ledbetter

Kathleen Ledbetter, PG&E Representative (~~Concur/Dissent~~)

Date: 10/18/11