

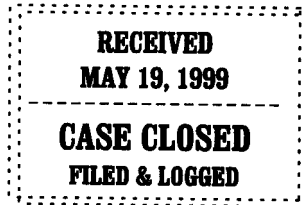


# REVIEW COMMITTEE



**IBEW**

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INTERNATIONAL BROTHERHOOD OF  
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R.W. STALCUP, SECRETARY

MARGARET A. SHORT, CHAIRMAN

- DECISION
- LETTER DECISION
- PRE-REVIEW REFERRAL

**Fresno Division Grievance No. FRO-95-90  
Fact Finding Committee No. 6330-96-041  
Pre-Review Committee No. 2071**

**NORA WOODS**  
Company Member  
Local Investigating Committee

**JIM LYNN**  
Union Member  
Local Investigating Committee

### Subject of the Grievance

This case concerns whether employees at the Fresno Call Center were inappropriately sent home during an extension of a work day assignment.

### Facts of the Case

On December 11, 1995, the Fresno Call Center was asked by the Sacramento Call Center to extend their regular closing time of 7:30 p.m. to 10:00 p.m. to assist with customer outages due to storm conditions. As a result, employees at the Fresno Call Center who completed their regular shift were extended to continue working until 10:00 p.m. At approximately 9:00 p.m., the Call Center was asked to continue operations past 10:00 p.m. due to continuing storm conditions. As a result of this request, the Supervisor asked that employees who were currently working and were scheduled to report for pre-arranged work at 6:00 a.m. the following morning, December 12<sup>th</sup>, go home at 10:00 p.m. In the Local Investigation Committee (LIC) Report, the Supervisor testified that he sent these employees home because the Company wanted these employees to be rested and ready to work a full day on December 12<sup>th</sup>. At approximately 10:30 p.m., the Sacramento Call Center asked the Fresno Call Center to continue operating throughout the night. As a result, the Supervisor called out 10 to 15 employees from the EOT list who were on their non-workday and asked these employees to report to work.

On December 12, 1995, customer outages continued and those employees reporting for pre-arranged work at 6:00 a.m. were asked to continue working until 10:00 p.m. In addition, employees could volunteer to work sixteen (16) hours of overtime. The Fresno Call Center closed operations at 10:00 p.m. on this date.

On December 13, 1995, all employees were scheduled for mandatory twelve (12) hour shifts in addition to being offered to voluntarily work sixteen (16) hour shifts. Again, the Call Center closed operations at 10:00 p.m.

On December 14 & 15, 1995, the storm and outages continued and as a result employees were again scheduled for mandatory twelve (12) hour shifts as well as being offered the option to work sixteen (16) hour shifts. The Fresno Call Center continued operating throughout the night on both of these days.

In the LIC Report, the Supervisor testified that there were approximately 45 to 60 hours of available overtime for each employee during the week December 11 - 17, 1995. The Shop Steward further testified in the LIC Report that everybody got plenty of overtime.

#### Discussion

The Pre-Review Committee agreed that the only day in dispute in this case is that of December 11, 1995 and the issue of whether or not employees were inappropriately sent home at 10:00 p.m. on December 11, 1995, in order that they report for pre-arranged work at 6:00 a.m. December 12, 1995.

The Union argued that the Company violated the terms of Arbitration Case No. 120 which is reflected in Letter Agreement 85-61, by sending these employees home at 10:00 p.m. and replacing them by calling out other employees. Letter Agreement 85-61 states in part:

“If Company determines, based on observing objective behavior by an individual employee performing overtime work, that the employee can no longer continue to work safely, the Company will send the employee home. The Company will not send an employee home for the purpose of circumventing a rest period or increased overtime penalties.”

The Union argued that the Company made no attempt to determine if the Call Center employees could continue to work safely based on observing objective behavior but rather sent these employees home for the purpose of circumventing a rest period these employees would had been entitled to if they would have continued working beyond 10:00 p.m. The Union further points to P-RC 1176 which states that the interpretive language of Letter Agreement 85-61 must be applied to the Clerical Agreement.

The Company argued that while the parties did agree in P-RC 1176 that the interpretive language of Letter Agreement 85-61 must be applied to the Clerical Agreement, there was confusion around how long the Fresno Call Center would be open the night of December 11, 1995, due to the changing storm conditions. The Supervisor did testify that he was sending employees home in order that they be rested to return to work the next day, however, he may not have known at the time he released the employees that he was going to need to call other employees into work.

In any case, Company has the right to require employees to report for work during their regular work hours even if a rest period has been earned. In an operation like the call centers, Company has little control over the volume of work, i.e., customer calls, and must therefore staff according to expected volumes during regular work hours.

**Decision**

After considerable research and debate concerning the facts in the case and recognizing the age of this grievance, the Pre-Review Committee agreed that an equity settlement is in order. If assuming employees who were sent home at 10 p.m. or later had been allowed to work two more hours on December 11, 1995 they would have qualified for a rest period, in accordance with Subsection 12.10 of the Clerical Agreement these employees would have been entitled to be paid at two times the straight rate of pay for all work performed until the employees had been relieved from duty for at least eight consecutive hours. With this in mind, the P-RC agrees that employees who would have qualified for a rest period but were released at 10:00 p.m. or later on December 11, 1995 and who returned to work on December 12, 1995 without having had eight hours off, will be compensated the difference between what they have already been paid and the 1995 double time rate for all hours worked on December 12, 1995. A list of those employees will be sent to Payroll to make the adjustment.

In addition, employees who were sent home at 10 p.m. or later who would not have qualified for a rest period will be paid for two additional hours at the appropriate 1995 rate (ST, 1 ½ or 2X)

A list of employees to be paid and the amounts to be paid will be sent to Payroll to make the adjustment.

On the basis of the foregoing, this case is considered closed without prejudice to either party.

*Margaret A. Short*

Margaret A. Short, Chairman  
Review Committee

*5/18/99*

Date

*Roger W. Stalcup*

Roger W. Stalcup, Secretary  
Review Committee

*5/18/99*

Date