

A MATTER IN ARBITRATION

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 1245,

UNION

v.

PACIFIC GAS & ELECTRIC COMPANY,

EMPLOYER

Grievance: R [REDACTED] R [REDACTED]
(TERMINATION)

Hearing Dates: February 7, 2022, July 22 &
29, 2022, February 21 & 27, 2023.

Award: July 14, 2023

Hirsch Case #: H22-006C

**DECISION AND AWARD
ROBERT M. HIRSCH, ARBITRATOR**

Appearances By:

Union: ALEXANDER J. PACHECO
General Counsel
IBEW Local 1245
30 Orange Tree Circle
Vacaville, CA 95687
Ajp3@IBEW1245.com

Employer: ELENA R. BACA
MARISA M. SHERMAN
PAUL HASTINGS LLP
515 South Flower Street
Twenty-Fifth Floor
Los Angeles, CA 90071
Elenabaca@paulhastings.com
Marisasherman@paulhastings.com

STATEMENT OF PROCEDURE

This matter arises as the result of a dispute between the International Brotherhood of Electrical Workers, Local 1245 (IBEW or Union) and the Pacific Gas & Electric Company (PG&E or Employer). The dispute concerns the termination of Grievant R■■■■ R■■■■ (Grievant or R■■■■). The parties are bound to a collective bargaining agreement (CBA) which requires all disputes over the application or interpretation of CBA be submitted to binding arbitration.

This matter is properly before the Arbitration Board which consists of this neutral member, Robert Hirsch (Arbitrator), D■■■■ S■■■■ and R■■■■ B■■■■, appointed by the Union, and K■■■■ L■■■■ and M■■■■ H■■■■, appointed by the Employer. All procedural requirements have been met. A hearing was held in this matter on the five dates indicated above, via video conference, at which time the parties had the opportunity to present evidence and cross-examine witnesses. At the conclusion of the hearing, the parties agreed to file post-hearing briefs which they have done.

Having had the opportunity to review the record in its entirety, this Arbitrator and the Board are prepared to issue a decision.

ISSUE

The parties agreed upon the following issue statement:

Did PG&E issue a written reminder to R■■■■ R■■■■ on or about May 24, 2018 for just cause? If not, what is the appropriate remedy?

Was the Grievant, R■■■■ R■■■■ discharged for just cause? If not, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE

- Title 102.4: Grievance Procedure – Finality.
- Title 104.1: Meals – Intent.
- Title 104.10: Meals – Reimbursement and Time Taken.
- Title 202.1: Hours – Workweek and Basic Workweek.
- Title 208.1: Overtime – Definition.
- Title 208.2: Overtime – Rate and Double Time Conditions.
- Title 208.6: Overtime – Travel Time – Emergency.
- Title 208.11: Overtime – Rest Periods.
- Title 208.12: Overtime – Prearranged Overtime.

TITLE 7 MANAGEMENT OF COMPANY (JUST CAUSE DISCHARGE OR DISCIPLINE)

LETTER AGREEMENT 15-16 (May 20, 2015)

12. Scope

.

The parties recognize the focus of this phase implementation is to improve safe behaviors as demonstrated by the pilot program noted above. As with the pilot program, the intent is not to utilize this information for disciplinary purposes...The Company would consider discipline only if an employee acts in a reckless manner, demonstrates a pattern of carelessness or non-compliance, or puts themselves or others at risk by intentionally violating PG&E's Keys to Life or Code of Conduct.

INTRODUCTORY STATEMENT

R█████ R█████ is one of five linemen or Electric Crew Foreman (ECF) terminated in 2019 after PG&E conducted two investigations into practices at the Employer's Napa yard. The parties have agreed that testimony and exhibits adduced at the prior hearings of linemen T█████ and H█████ will be deemed part of the record in this matter.

This Arbitrator has made several rulings in the prior matters which also apply to the R█████ arbitration. Notably, I have held that PG&E may not rely upon the Telogis tracking system or the swipe card access system to support any discipline. To the extent specific

behavior by the Grievant was revealed in whole or in part by either Telogis or swipe card data, it will not be considered as a basis for discipline. If however, it is clear from the Employer's investigations that alleged misconduct was revealed solely by other means, that conduct may form the basis for PG&E's disciplinary action.

FACTUAL BACKGROUND

The Grievant

R■■■■ R■■■■ began working for PG&E in 1990. For most of his work life at PG&E, he served as an electrical lineman and eventually as an EFC, until his termination in 2019. EFC's are typically responsible for overseeing the crew in the field – directing work, completing work records regarding the jobs, completing timecards for lineman to sign – and are generally the point of contact for the supervisors. According to the Employer, they are held to a “higher standard” of conduct and performance than subordinate employees. During the relevant time period here, R■■■■ worked out of the Napa yard.

The Napa Service Center¹

In 2016, the new Director of Field Operations (DFO), T■■■■ M■■■■-W■■■■, became concerned about the relatively high overtime charged by Napa yard linemen and the disproportionately high backlog of work there. From late 2016 until early 2018, M■■■■-W■■■■ began working with a series of supervisors and superintendents to address what she considered unacceptable conduct and practices in Napa.² The DFO testified at the hearing in this matter

¹ Much of this section and the following section is based upon testimony or documentary evidence elicited in the T■■■■ arbitration.

² T■■■■ B■■■■ had served as a first line Supervisor at the Napa yard from 2006 until 2016. Thereafter a series of individuals struggled to manage the electrical crew there.

that she worked with a string of several supervisors and superintendents – at least 6 in all – to address timekeeping issues, meal concerns, and work performance. PG&E called three supervisory personnel – R■■ S■■■, L■■ P■■■, and D■■■ D■■ – as witnesses to address issues at the Napa yard. They recounted some of the difficulties they faced with the Linemen – sick-outs on Fridays and Mondays, poorly documented timecards (meals often not accurately noted), crews watching T.V. in the Bull Room (the gathering room at Napa) rather than heading out to work, a crew going out on an emergency when there was none, magnets used to prop open doors to the Bull Room when the crews were instructed not to do this. The men testified that the linemen were trained about timecards, meal policy, and rest periods while they served as Napa supervision. P■■■ and S■■■ recounted the “P-Card rebellion,”³ at the Napa yard – where procurement cards were confiscated by management in April 2018 because of high meal costs and that prompted many linemen and foremen to turn in their PG&E cell phones and iPads. The Employer demanded that the employees take their mobile devices back, and they ultimately did.

T■■ B■■ testified on behalf of PG&E. As mentioned above, he was a supervisor in Napa for 10 years – 2006 to 2016 – and seemed to enjoy the support of both management and the working linemen. B■■ ran through a list of practices he followed or permitted when he oversaw the Napa linemen; including his attempt to avoid charging non-productive time to the PCC account if possible, allowing foremen to fill out workers’ timecards as long as the employees then reviewed and signed them, allowing foremen to authorize workers to leave for

³ A term coined by the Union in its Revised T■■■ Closing Brief, p.10.

personal reasons if their overtime work was completed, participating in timecard training over the years, reviewing timecards occasionally so they were synced fairly closely to EC tags (job cards), allowing crews to take an extra meal after a long, tough outing, allowing a lineman to do a “job-walk” (pre-work inspection) to check a job and determine what materials are needed, possibly allowing a Lineman to “bridge his time” at home if he finished a long shift, lived near the yard, and had another shift starting shortly. B■■ confirmed that he never would authorize foremen to allow linemen to leave the service area while on duty. Nor would he permit 3-hour meals or workers to travel far out of their way for a meal.

R■■ S■■, a supervisor at the Napa yard from late 2016 to mid 2018, testified at the arbitration hearing as well. He acknowledged that he would permit night crew members who were between jobs to rest in their vehicles before the next shift started. S■■ also stated that he allowed linemen to eat at nicer restaurants when they were reasonably close by, rather than insisting they patronize a fast-food establishment.

The Corporate Security Investigation

In March 2018, PG&E management became increasingly concerned about Napa Foreman S■■ F■■'s erratic time reporting. Management commenced an in-depth review of his timecards, matching them with other data from sources such as job tags and the Telogis GPS system,⁴ a GPS guidance system which allowed the Employer to track the location of many but not all company vehicles. PG&E management concluded that other linemen were

⁴ More about Telogis later.

involved in the falsification of timecards and therefore expanded the review to include other employees, including Mr. R[REDACTED].

K[REDACTED] C[REDACTED] of Corporate Security and L[REDACTED] I[REDACTED] of Internal Auditing assumed responsibility for completing the review. I[REDACTED] analyzed a series of Employer records including the Telogis data for F[REDACTED] and R[REDACTED]y vehicles, timecards, access swipe records, meal receipts, fuel records EC notifications (job-calls), and ARCOS (emergency call-out) data.

In September 2018, after completing the review, I[REDACTED] assembled several of the data points and met with the Grievant, who was now on paid leave pending the investigation. I[REDACTED] went over each of the occurrences which management had determined were, or appeared to be, policy or CBA violations. R[REDACTED], when asked about his authority as foreman during his investigative interview, reportedly replied that “We are the authority.”⁵ He indicated during his interview, that he had never been “trained on how to complete timecards,”⁶ and always understood that overtime compensation began when he received an emergency call out.

In the final report, Corporate Security focused on thirteen dates when R[REDACTED] allegedly padded his hours of work, and two dates when PG&E claims he failed to report to work locations. The final report was issued on January 2, 2019. There, Corporate Security noted, under the heading of “Mitigating and Aggravating Factors,” the following:

While R[REDACTED] was responsible for knowing the applicable rules regarding overtime, CSD, concluded R[REDACTED] did not intend to misrepresent his travel time on those occasions as he was following what was apparently common practice at the Napa SC.”⁷

⁵ Joint Exhibit (JX) 10-06, p 2.

⁶ Id, p 3.

⁷ Id., p 5

The Employer does not rely specifically upon the findings of the CSD report in its Closing Briefs in this matter. Rather, it looks to the second investigatory report, created by retired PG&E veteran, A███████ M███████, to support its decision to terminate the Grievant's employment.

The M███████ Report

In October 2018, A███████ M███████, a retired 42-year PG&E veteran, was asked to conduct an independent review of the Napa yard. M███████ was tasked with reviewing relevant Employer records covering the first 5 months of 2018, and made many jobsite visits. He was not asked to interview anyone, and therefore did not.

On January 10, 2019, he issued his report.⁸ The M███████ Report identifies the following data reviewed: "Telogis GPS records, timecards, SAP EC Notifications, ILIS, Planned Outage information, Control Center records, along with other programs..."⁹ M███████ found at least 22 instances of "timecard falsification." In an attempt to avoid relying upon the Telogis system and/or swipe-card data as bases for discipline, PG&E has chosen to focus upon thirteen violations noted by M███████

The Charges Based Upon the M███████ Report

The Employer alleges that on three occasions – January 1, 14 and 28, 2018¹⁰ – R███████ worked prearranged overtime (POT) and took meals on company time when he knew he was

⁸ JX 3-52.

⁹ Id., p 1.

¹⁰ PG&E refers, in its Closing Brief (p.8), to a January 28th entry but actually cites details from the January 27th and 28th alleged violations from the M███████ report. I will focus on both entries.

not permitted to do so. According to the IBEW, R█████ was taking a “recognition” meal on January 1, 2018 – outside the CBA’s authorized meals, but within the accepted practice at PG&E when permitted by a supervisor. The Grievant could not specifically recall if this meal, on New Year’s Day, had been authorized, but surmised that he would not have taken it if it had not been approved in advance. R█████’s timecard for that date made no mention of the meal, as it should have. His restaurant expense receipt *did* show the meal and was approved about a month later when R█████ turned it in. Napa yard supervisors L█████ P█████ and R█████ Surges, who testified at this and prior hearings, denied *ever* giving the Grievant permission to take an unauthorized meal while on duty.¹¹

The Grievant testified that, on January 14th, he took another recognition meal. His timecard indicated that he had missed a meal that shift, entitling him to extra overtime pay. His approved expense form indicated R█████ had eaten a meal during the overtime shift. This alleged violation, noted by M█████, was coupled with a reference to R█████’s arrival time and duration at the jobsite – meaning Telogis data was implicated.

On January 27, 2018, the Grievant reported for prearranged overtime but then bumped his pay rate to double time after only five hours at work. The contract mandates that the first twelve hours of prearranged overtime should generally be charged at time and one-half. He also failed to report that he and his crew took a paid meal while receiving overtime. His expense form did show that a meal had been taken that morning. That report was approved by a

¹¹ Transcript (TR) 71 & 280

supervisor. On January 28th, R████ charged a meal while working overtime – a violation according to PG&E.

The Employer next charges R████ with extending an emergency double-time shift, to trigger an eight-hour rest period. Reviewing the timecard for February 8 and 9, 2018 – an overnight shift, PG&E says it is clear that the Grievant slow-walked the shift to earn a paid, eight-hour rest period. The Union disagrees, pointing to the testimony of D████ S████, who referenced an email of February 8, 2018, by night supervisor R████ S████ wherein S████ states that R████ and two others will have a “Rest period” relating to reconnecting a “10 meter service in a mobile park in Vallejo.”¹²

PG&E also charges R████ with taking another unauthorized meal this date. Here, the Union agrees. The timecard, completed by foreman J████ R████ and signed by the Grievant, does not mention the meal. His meal expense report does but references it as an authorized overtime meal.

PG&E relies upon M████’s findings to argue that the Grievant reported work hours for two jobs where he allegedly performed no work. On February 26, 2018, Rigley reported five hours of work on a job on Soda Canyon Road in Napa, yet another crew had to complete the work two days after. M████ clearly references Telogis data in this entry when he refers to R████’s vehicle location at a Winery at a specific time during the day.

¹² EX 182, p 23.

On April 3, 2018, the Employer charges that R■■■■ and his crew performed no work at two jobs in Vallejo, yet each person billed four hours of overtime work and claimed they missed a meal as well. M■■■■s report expressly relies upon Telogis to establish how much time the men spent at the jobsites.

The Employer adduced evidence that R■■■■, on January 27, 2018, and March 10, 2018, improperly reported his time as double-time on his timecard when it should have been merely overtime. IBEW, as in the prior Napa yard cases, claimed that the practice of rolling over from overtime to double-time was standard procedure and still goes on today with some supervisors, according to Union witness T■■■■ L■■■■.¹³

PG&E presented evidence by way of a timecard that the Grievant claimed he worked through lunch on May 1, 2018, yielding thirty minutes of additional overtime and a \$20 meal payment. R■■■■ testified that he didn't specifically recall the event although he surmised the job might have required a lane closure causing the need to work through the meal period. M■■■■ clearly relied upon Telogis data when writing up his review of May 1st – identifying how long R■■■■'s vehicle was at the jobsite and the precise time his vehicle returned to the Napa yard.

Next, the Employer focuses on three occasions where it alleges the Grievant failed to diligently perform work and charged excessive hours to complete fairly simple jobs. The M■■■■ Report cites February 25, 2018, as a date when M■■■■ believed R■■■■ took entirely too long to perform minor work at a few jobs. But M■■■■ clearly relied upon Telogis data to track the time and whereabouts of the Grievant's vehicle.

¹³ TR 482-484.

On April 23, 2018, R█████ is alleged to have spent too much time on a job, earning double time for almost five hours, yet he along with the other crew members needed to go back and complete the job three days later. The Grievant testified that he did not believe he was the foreman on this job, as another crew member, Mr. F█████, had more seniority than he did. M█████ believed that the crew recorded far too much time to complete this work, which involved a broken insulator and under arm bus.

On May 16, 2018, R█████ is again charged with spending far too much time to perform work at a jobsite. M█████ relied upon lane closure information in the PG&E job packet to conclude that permits and traffic control were all arranged prior to the start of the job. S█████ testified for the Union that he did additional research – accessing USAN data – showing that the crew had to wait until after 1:00 PM to begin work since utility markings were not yet complete. Further, Caltrans records indicate that work did not begin until 7:53 PM and ended at 11:10 PM that evening, according to the Union.¹⁴

The Written Reminder

On May 11, 2018, P█████ W█████, a PG&E on-call supervisor, attempted to contact R█████ in an attempt to get a crew out on an emergency call which involved more than two hundred customers without power. The Grievant was in Arizona for his son's graduation. W█████ testified that he contacted the Grievant two or three times, and eventually received a text

¹⁴ UX 106.

message at 6:48 PM from R [REDACTED] which stated, “I’m on vacation. Don’t fucking call me again.”¹⁵

The Union presented evidence that other employees regularly use profane language at the workplace. Specifically, R [REDACTED] R [REDACTED] and R [REDACTED] T [REDACTED] were cited as two linemen who used profanity at supervisors. Apparently, neither was disciplined for behavior. Linemen T [REDACTED] L [REDACTED] testified that he also told W [REDACTED] to “stop fucking calling me,” on the May 11th as well, but was never reprimanded or disciplined for the behavior. W [REDACTED] denied that anyone else besides the Grievant had ever said anything like that to him, although he acknowledged using the “F word” and hearing it used at PG&E over the years. W [REDACTED] denied that he had ever heard the word used to a supervisor by a subordinate. W [REDACTED] reported the incident to R [REDACTED]’s supervisor, P [REDACTED] who then contacted PG&E’s Labor Relations group. Ultimately, on May 24, 2018, a written reminder – a form a discipline – was issued and is now grieved by the Union.

DISCUSSION

This is the third of five cases arising from events attributed to PG&E employees assigned to the Napa Yard, before this Arbitrator.¹⁶ The allegations are consistent with the prior grievance arbitrations and invite a similar analysis. We can start with a reminder to the parties that allegations of wrongful conduct, based in any way upon Telogis data, will not be sustained. This is because Arbitrator Goldberg’s Opinion and Award, dated June 9, 2020, was unequivocal

¹⁵ JX 12-4.

¹⁶ At times the five employees have been referred to as the “Napa Five.”

in its holding – PG&E violated Letter Agreement 15-16 when it relied upon any information obtained from the Telogis system to discipline employees. I have followed that Award and applied it to the Napa Five.

So that the parties clearly understand the import of this conclusion, any write-up in the M Report which explicitly or implicitly relies upon Telogis data – meaning GPS based evidence of an employee’s whereabouts – may not be used to support employee discipline. Further, this Arbitrator will not attempt to divine how the Telogis data may have figured in the allegations or conclusions. PG&E may not strip the Telogis data from the summary for a particular date and then try to fashion an argument why termination is still justified by the remaining summary. The Report speaks for itself, and my conclusions are based in part upon what was written at the time of the investigation.¹⁷

Sustained Charges

With this in mind, we turn to the charges levelled against R R . Of thirteen examples of wrongdoing relied upon PG&E to support its decision to terminate R’s employment, only three survive scrutiny. We start with a brief review of those three.

January 1, 2018: worked a prearranged overtime shift and was not entitled to a meal on company time. He reported no paid meal on his timecard for that day,¹⁸ but did submit an expense form and restaurant receipt, one month later, indicating that he and his crew (R

¹⁷ I wish to note that I do not fault A M for his obvious reliance upon Telogis data. That was a calculated risk which the Employer took at the time, given the fact that it had entered into Letter Agreement 15-16, in which the Employer stated that the Telogis system would not be used as the basis for discipline.

¹⁸ There is no supervisor sign off on this particular timecard.

was foreman on the job) had taken a meal that was a contractually due overtime meal. He charged the meal to his procurement card (P-Card, a company card). Although R█████ claimed that a recognition meal was often permitted by supervisors, and that must have been the case on January 1st, supervisors P█████ and S█████ testified that they had had *never authorized* overtime meals which were not otherwise permitted by the CBA. They were credible witnesses. In fact, no contractually permitted meal was due the Grievant.

January 28, 2018: R█████ again reported on his timecard that he took no paid meal during his shift. At least one lineman working with R█████, who served as the foreman again on the job, also submitted a timecard apparently completed by the Grievant, which showed no meal taken. This was false – the crew, under R█████’s leadership, did take an unauthorized meal which was improperly charged to PG&E via the P-Card.

The Union notes that these timecards were all approved by supervisors who could have and should have cross checked the cards with the expense forms and receipts. This Arbitrator has previously noted in the prior Napa Five cases that supervisors did approve the submissions. However, after three cases with testimony spanning several weeks, it is clear that the timecards were often not submitted with or at the same time as the expense documents. Supervisors cannot be reasonably expected to “tic and tie” each employee submission.¹⁹ Employees, particularly foremen, are bound to honestly report their time and expenses to the Employer without requiring daily audits by management to confirm the accuracy of the submissions.

¹⁹ Accountants “tic and tie” financial reports to one another, tying figures to one another.

April 23, 2018: ██████ reported that he worked 4.75 hours of double-time work on a job in Vallejo, without any meal. No work apparently was performed that day. Three days later, R█████ and his crew returned to the job to perform the work – fixing a broken insulator and under arm bus – rather simple work for these experienced linemen. PG&E had estimated that the work would take six hours to perform. A total of forty hours of work was reported on this job. M█████ was unable to understand how the crew took forty hours to perform the work.²⁰ The Union contends that F█████ was the foreman on the job so R█████ can't be held responsible. But the exhibit cited by the Union, UX 98, p1, Row 3, indicates that F█████ was the foreman on a job at 716 Ligarita Ave, A█████, and R█████ was foreman on a job at 444 Tennessee St, Vallejo. This exhibit does not help the Grievant, as the job in question was located at on Fernwood Street, in Vallejo.

The union also notes that other linemen on the job were not disciplined therefore, it is inappropriate for the Employer to discipline R█████. The fact is, both men designated as foremen on jobs that day, R█████ and F█████, were disciplined for their actions. It is not disparate treatment when an employer chooses to discipline only the lead workers who direct a crew and complete the time records for performed work.

Unsustain Charges

These three examples cited above are sustainable charges of wrongdoing by the Grievant. Below, we review briefly the remaining charges relied upon by PG&E which do not survive.

²⁰ EX 145, pp 2-3.

January 14, 2018: M ■ notes in his report what time R ■ arrived at the job and how long his vehicle was on site. This information is based upon the Telogis system. The reference to an inappropriate meal will not be considered because the Employer relied upon Telogis data for some of the entry. We cannot tell, for example, whether the day's activities first came to the attention of the investigators because of their improper reliance upon the Telogis data. I draw a negative inference, against PG&E in that regard since it violated LA 15-16 by considering GPS data at all.

January 27, 2018: The Grievant is charged with improperly charging his time as double time even though PG&E has consistently maintained that this work, on prearranged overtime should be charged at time and one-half. As noted in the T ■ case however, several examples exist where employees roll over to double time even where the contract calls for a lesser rate of pay. The rule and certainly its enforcement has been ambiguous and cannot serve as a basis for discipline during the time frame at issue here. In fact, Union witness L ■ confirmed that some supervisors still permit the premature roll-over to double time.

February 8 & 9, 2018: M ■ clearly relied upon Telogis, noting arrival and departure times. Accordingly, charges about extending a double time shift and failure to report meals properly will not be considered.

February 25, 2018: M ■ relies upon Telogis data to identify R ■'s location and travel time. Thus, the charges will not be countenanced.

February 26, 2018: Telogis data was clearly relied upon by M ■ as he notes vehicle location and time markers for R ■. Charges about uncompleted work will not be considered.

March 10, 2018: R■■■■ was assigned to work pre-arranged overtime but rolled over to double time prematurely, according to PG&E. As with the January 27th entry, this practice cannot form the basis of discipline for actions occurring in 2018, given the inconsistent application of the rule.

April 3, 2018: Telogis is expressly referenced here by M■■, as it was in the Corporate Security Report upon which he relied, and thus the charges of wrongdoing will not be considered.

May 1, 2018: Again, Telogis data was used to track R■■■■'s movements and therefore the allegations will not be considered.

May 16, 2018: M■■ expressly references Telogis in his summary and therefore, the charges will be ignored.

For the reasons stated, the ten charges noted above cannot form the basis for the Grievant's discipline.

The Written Reminder

The Union grieves the Written Reminder issued to R■■■■ R■■■■ by PG&E. That warning was issued after the Grievant, who was on vacation in Arizona, sent a text message to his supervisor, on May 11, 2018, stating, "Don't fucking call me again."

The Union contends that foul language is simply part of the work environment among the electrical line crews. It's used in the office, in the yard, out on the jobs. IBEW even makes

the case that employees curse at their supervisors. In fact, lineman L [REDACTED] testified that he said almost the identical words to supervisor W [REDACTED] that very day. What the Union fails to explain however is why W [REDACTED] reported only R [REDACTED] and not L [REDACTED]. W [REDACTED], who testified credibly, stated that no one else had ever spoken to him like that. Nor does the record suggest that he had any personal animus towards the Grievant. I simply reject, as unsubstantiated, the notion that linemen are allowed to curse directly at their supervisors while issuing a directive like, don't call me again. It is insubordinate and nothing suggests this is standard practice at PG&E even if employees swear regularly. The Written Reminder was justified.

CONCLUSION

Written Reminder

As noted immediately above, PG&E had just cause to issue a Written Reminder to Grievant, R [REDACTED] R [REDACTED]. He was insubordinate towards a supervisor who was merely trying to find workers to fill vacancies.

Discharge

The termination letter, dated February 8, 2019, issued to the Grievant states the following:

“Your termination of employment is based upon the totality of the findings of the Company Investigations into your conduct and that you are currently at a Written Reminder for Conduct. Specifically, it has been determined that you violated the Employee Code of Conduct by misusing company time, misstating work activities, and fraudulent submission of timecards

for overtime compensation resulting in all day rest periods, and delayed service time to customers in violation of the Labor Contract (Title 3.3).”

As PG&E noted in its Post-Hearing Brief, A███████ M███████'s investigative report “...identified 22 dates where R███████ misused Company time and Company vehicles, misstated his work activities and locations, by falsifying timecards, and charged meals not due.”²¹ The Employer chose to move forward with thirteen of those charges, given prior exclusionary rulings by this Arbitrator. They have succeeded in proving only three of those charges – three of the initial twenty-two grounds for termination which *in totality* formed the basis for termination.

Moreover, the sustained charges involved two examples of unreported, improper meals and one occasion where R███████ reported 4.75 double-time hours without being able to provide a concrete explanation why, or why the crew came back a few days later charging a total of 40 hours to the job. None of the other allegations made in the discharge letter were substantiated. Although R███████ generally served as a foreman and should therefore be held to a high standard of care, he was a twenty-nine year employee and served in a roguish environment where rules were not consistently enforced.²²

Under these circumstances, I find that termination is inappropriate. I recognize that had PG&E and IBEW not entered into LA 15-16 barring the use of Telogis data for disciplinary purposes, this Grievant and others, would be in a far more serious predicament. But that is not

²¹ Employer Post-Hearing Brief, p 7.

²² See the discussion above under Napa Service Center.

the case. Mr. R [REDACTED] could also be facing termination had he engaged in additional, pre or post termination notice behavior making his return to work untenable. That did not occur.²³

AWARD

Based upon the evidence presented and the arguments of the respective parties, I find that PG&E did not have just cause to discharge R [REDACTED] R [REDACTED]. The following is Ordered:

- 1) The grievance is granted in part. The discharged is overturned. All personal records shall be corrected to reflect this change.
- 2) The Grievant is to be reinstated to his former position without any back pay or benefits.
- 3) The Grievant is to be promptly retrained about rules and procedures, whether derived from the CBA or from the Employer's existing policies which do not contravene the CBA – addressing timecards, overtime, double-time, use of company vehicles, supervisor authority verses foreman authority, swiping in/accessing company yards, the proper use of Telogis data (now permitted for discipline) and any other rule implicated by this grievance/arbitration. The Employer shall document the date and scope of the training. The Grievant shall thereafter be on notice with regard to Employer expectations.

²³ I don't consider R [REDACTED]'s contribution to the text messages traded among the Napa Five to be grounds for discipline.

This Arbitrator retains jurisdiction over the remedy ordered in the event a dispute arises over its implementation.

IT IS SO ORDERED.

Date: July 14, 2023

A handwritten signature in black ink, appearing to read 'R. Hirsch', is positioned above a horizontal line.

Robert M. Hirsch, Arbitrator

Arbitration Board Signatures
Arbitration No. 375 / 390
Grievance No. 24918 / 24680



Company Board Members


K  L  Concur Dissent 07/18/2023
Date


M  H  Concur Dissent 7/18/2023
Date

Union Board Members


D  S  Concur Dissent 07/18/2023
Date


R  B  Concur Dissent 07/18/2023
Date