

IN ARBITRATION PROCEEDINGS  
PURSUANT TO AGREEMENT BETWEEN THE PARTIES

IN THE MATTER OF ARBITRATION BETWEEN  
INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL 1245,

Union,

&

PACIFIC GAS & ELECTRIC,

Employer.

Re: Termination of H [REDACTED] V [REDACTED]

NEUTRAL ARBITRATOR'S  
OPINION AND BINDING  
AWARD:

ARBITRATION NO. 381;  
GRIEVANCE 25499

*APPEARANCES*

*For the Union:*

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*For the Employer:*

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*PROCEDURAL HISTORY*

This arbitration arises under the Collective Bargaining Agreement ("Agreement") between the International Brotherhood of Electrical Workers, Local 1245 ("IBEW Local 1245" or "Union") and Pacific Gas and Electric ("PG&E," "Employer," or "Company"). I was selected as the impartial Chair of the Arbitration Board. The Union's Board members were E [REDACTED] M [REDACTED], IBEW LOCAL 1245 & PG&E (V [REDACTED] TERMINATION)

IBEW Local 1245 Business Representative, and D ■■■ S ■■■, IBEW Local 1245 Assistant Business Manager; the Company's Board members were K ■■■ L ■■■, PG&E Labor Relations Manager, and Y ■■■ B ■■■, PG&E Labor Relations Specialist. At the outset of the hearing, the parties stipulated that the grievance was properly before the Arbitration Board. The evidentiary hearing in this matter was via Zoom on September 21 & 22, 2022. A Certified Shorthand Reporter attended the hearing to record the proceedings and testimony, and the reporter subsequently produced a verbatim transcript thereof. Each party had a full and adequate opportunity to call, examine, and cross-examine witnesses and to introduce relevant evidence. All witnesses testified under oath. The parties submitted post-hearing briefs, completing the record herein.

#### *ISSUES*

The parties stipulated to the following issues:

- 1) Was there just cause for the termination of Grievant H ■■■ V ■■■?
- 2) If not, what is the appropriate remedy?

#### *RELEVANT CONTRACTUAL PROVISIONS*

### **Title 7: Management of Company**

#### **Title 7.1 Management of Company**

The management of the Company and its business and the direction of its working forces are vested exclusively in Company, and this includes, but is not limited to, the following: to direct and supervise the work of its employees, to hire, promote, demote, transfer, suspend, and discipline or discharge employees for just cause; to plan, direct, and control operations; to lay off employees because of lack of work or for other legitimate reasons; to introduce new or improved methods or facilities, provided, however, that all of the foregoing shall be subject to

the provisions of this Agreement, arbitration or Review Committee decisions, or letters of agreement, or memorandums of understanding clarifying or interpreting this Agreement.

## **Title 102: Grievance Procedure**

### **102.2 GRIEVANCE SUBJECTS**

Disputes involving the following enumerated subjects shall be determined by the grievance procedures established herein:

- (a) Interpretation or application of any of the terms of this Agreement, including exhibits thereto, letters of agreement, and formal interpretations and clarifications executed by Company and Union.
- (b) Discharge, demotion, suspension or discipline of an individual employee.
- (c) Disputes as to whether a matter is proper subject for the grievance procedure.

### **102.4 FINALITY**

The resolution of a timely grievance at any of the steps provided herein shall be final and binding on the Company, Union and the grievant. A resolution at a step below Step Four, while final and binding, is without prejudice to the position of either party, unless mutually agreed to otherwise. (Amended 1-1-09)

- (a) If an employee has been demoted, disciplined or dismissed from Company's service for alleged violations of a Company rule, practice or policy and Company finds upon investigation that such employee did not violate a Company rule, practice or policy as alleged, Company shall reinstate the employee and pay the employee for all time and benefits lost thereby plus interest on such reinstated pay in the amount of 7 1/2% annum.
- (b) In the event of a "continuing grievance" as set forth in Section 102.9 and Attachment A, a retroactive wage adjustment shall be made as provided therein.
- (c) Provided further that nothing contained herein shall restrict or inhibit the parties or the Board of Arbitration from reducing the amount of a retroactive wage adjustment to an otherwise successful grievant where, in their absolute discretion, the equities of the situation do not call for the employee to receive a full retroactive wage adjustment.

## **102.6 STEPS**

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### **STEP FIVE (Title Amended 1-1-00)**

#### **ARBITRATION**

##### **A. TRIPARTITE BOARD**

Either Company or Union may request, within the time limits provided in the foregoing steps, that a grievance which is not settled at one of the steps provided above be submitted to arbitration.

An Arbitration Board shall be appointed on each occasion that a grievance is timely submitted to arbitration pursuant to the foregoing provisions of this Title. The board shall be composed of two members appointed by Company, two members appointed by Union, and a fifth member appointed pursuant to the procedure set forth in the following Subsection B. Such fifth member shall act as Chairman of the Arbitration Board and conduct hearings and render a decision in accordance with the appropriate Submission Agreement.

##### **B. SELECTION PROCEDURE**

The parties to an arbitration proceeding will make a good faith effort to mutually agree to the selection of the Chairman. If they cannot, each party shall nominate two candidates from the panel established by Company and Union, Subsection C. If the parties are still unable to agree upon the selection of a Chairman, then the Chairman shall be chosen by lot from the panel names submitted.

#### *LETTER OF AGREEMENT: POSITIVE DISCIPLINE GUIDELINES*

##### **Introduction**

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In order to ensure that customers are served effectively and Company business is conducted properly and efficiently, employees must meet certain standards of performance and perform their jobs in a safe and effective manner. Supervision is responsible for establishing employee awareness of their job requirements, and employees, in turn, are responsible for meeting these standards and expectations. Positive Discipline is a system that emphasizes an individual's responsibility for managing their performance and behavior. It focuses on communicating an expectation of change and improvement in a personal, adult, non-threatening way; while at the same time, maintaining concern for the seriousness of the situation. Key aspects of this system include recognizing and encouraging good performance, correcting performance problems

through coaching and counseling, and building commitment to effective -work standards and safe work practices.

If an employee has a conduct, attendance or work performance problem, disciplinary action may be necessary to correct the situation. Positive Discipline is designed to provide the opportunity to correct deficient performance and build commitment (not merely compliance) to expected performance in a manner that, is fair and equitable to all employees. Each step is a reminder of expected performance, stressing decision making and individual responsibility, not punishment.

### THE POSITIVE DISCIPLINE SYSTEM

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#### 3. Step Three – Decision Making Leave (DML)

It is an extremely serious step since, in all probability, the employee will be discharged if the employee does not live up to the commitment to meet all Company work rules and standards during the next twelve months (12) the active period of the DML; except as provided in Section III.B.

Because the DML is a total performance decision by the employee, there is only one active DML allowed.

...

### III. TERMINATION -

- A. Termination occurs when Positive Discipline has failed to bring about a positive change in an employee's behavior, such as another disciplinary problem occurring within the twelve (12) month active duration of a DML. Termination may also occur in those few instances when a single offense of such major consequence is committed that the employee forfeits his/her right to the Positive Discipline process, such as:

Theft (See Review Committee Decisions 1451 and 1452)  
Striking a member of the public  
Energy Diversion  
Curb reading of meters

- B. Notwithstanding the foregoing, if a performance problem which normally would result in formal discipline occurs during an active DML, the Company shall consider mitigating factors (such as Company service, employment record, nature and seriousness of violation, etc.) before making a decision to discharge, all of which is subject to the provisions of the appropriate grievance procedure for bargaining unit employees.

IV. Administrative Guidelines

- A. Rule infractions are generally divided into three categories. These are (1) work performance, (2) conduct, and (3) attendance. . . .

Placement of a bargaining unit employee at a Positive Discipline step or termination of a bargaining unit employee may be grieved by that employee's Union because such action was without "just cause." The degree of discipline was too severe, or there was disparity of treatment, pursuant to the provisions of the appropriate grievance procedure.

. . .

*RELEVANT FACTS*

Grievant H [REDACTED] V [REDACTED] is a lineman and former foreman for PG&E. PG&E terminated Grievant for allegedly submitting inaccurate timecards which failed to disclose unauthorized work and which, per the Company, resulted in additional pay for extended double time. Grievant was on an emergency assignment with a crew on May 31, 2020. The crew performed two authorized jobs and then, without a work order, changed streetlights near the crew foreman's house. For the first job of the day, the crew consisted of four employees; however, one crew member left after the first job. The streetlight work was not reported on any of the remaining three crew members' timesheets. At the time of the incident, Grievant was on a Decision Making Leave (DML). PG&E determined that the foreman had misappropriated LED lights and found that Grievant and the other crewmember who changed the streetlights had inaccurately completed their timecards by failing to include the streetlight work on them. The foreman was discharged and the other crew member, who was an apprentice and not on a DML, received an oral reminder.

A [REDACTED] K [REDACTED] is currently a Superintendent for the Company in Kern County, but was a frontline supervisor at the time of the incident. He testified that he supervised Grievant for roughly a year and a half; that Grievant was a difficult employee in that Grievant made “things into bigger issues than they probably needed to be” (Tr. Vol I, Pg. 17, Ins. 15-18); that Grievant was very good at his craft and at paperwork; and that as a former foreman, Grievant was aware of the importance of documenting timesheets properly.

K [REDACTED] stated that employees must assigned their time to specific jobs which have job numbers; that they do so through a phone application called MyTime; that when employees submit their time on MyTime, the application reminds them that they are submitting a legally binding document and requires them to confirm the submission; and that while a foreman can (and often does) complete timesheets for crewmembers, every individual lineman is responsible for the accuracy of his/her time card.

K [REDACTED] further testified that on March 18, 2020, Grievant was placed on a DML and demoted from a foreman to a lineman for a verbal altercation with V [REDACTED] (“T [REDACTED]”) W [REDACTED] in which Grievant allegedly used a racial slur against W [REDACTED]. *See* Joint Ex 3, pgs. 27-28. K [REDACTED] noted that after being placed on the DML, Grievant failed on one occasion to place his keys on an assigned board and on another occasion wore a safety vest when it was not needed.

K [REDACTED] noted that the key and vest incidents played a role (although a non-decisive one) in the decision to terminate Grievant. K [REDACTED] further stated that PG&E has a speak up culture and he never directed Grievant to keep his head down while on the DML.

K█████ was the frontline supervisor on duty for May 31, 2020. On that day, there was an emergency assignment caused by a vehicle hitting a pole on Panama Lane in Bakersfield, CA. The incident disrupted service for some PG&E customers. K█████ spoke with Grievant that day and Grievant agreed to work an emergency call out, which is paid at double time, to restore service. K█████ also spoke with W█████, and W█████ agreed to work the same emergency callout as the foreman. Two other employees joined W█████ and Grievant on the initial May 31, 2020 job—Lineman K█████ C█████ and Apprentice A█████ K█████.

Later that day, K█████ spoke with Foreman W█████ about possibly adding a second car pole job in Wasco, CA; however, that job was never actually assigned to the crew. K█████ did later assign the crew to fix a “sweetheart” connection on Jumbuck Lane. K█████ anticipated this second job would not take more than thirty minutes to complete and would only need two people.

K█████ later learned that C█████ had left after the initial job and that the crew towards the end of the emergency shift had replaced some streetlights around the perimeter of Foreman W█████’s home. K█████ testified that a work order must accompany all work and that crews cannot do “filler” work to occupy deadtime without a work order.

After learning of the streetlight replacements, K█████ reviewed the time entries from May 31, 2020 and compared them to the times when the outages on Panama Lane and Jumbuck Lane were restored. From this review, K█████ concluded that the crew’s time was not accurately reported for both the Panama and Jumbuck Lane jobs and that there were unaccounted for hours. Specifically, the outage report showed that the Jumbuck Lane outage



was resolved at 17:00 hours but the timecards showed the work at Jumbuck Lane had begun at 17:00. See Joint Ex 3, pgs. 39 & 42-43. After K█████ made this initial determination, the PG&E Corporate Security Department (“CSD”) began an investigation into the crew’s May 31, 2020 actions.

K█████ testified that the decision was made to terminate Grievant after it was determined that his timesheet was inaccurate, as it did not include the streetlight replacement work, which was non-emergency work performed on emergency double-time and was performed without work orders.

K█████ acknowledged that Grievant corrected his May 31, 2020 timesheet by eliminating additional hours that W█████ had credited to the crew (while W█████ and Apprentice K█████ were paid additional hours that were not worked); that foremen can round job times on time cards (as time is reported in 15 minute increments); that additional work might occur at a site after power is restored; that while he believed it was best practice for lineman to review all job sheets, there was never a specific policy requiring linemen, as opposed to a foreman, to review such documentation; and that linemen must follow the direction of foremen in the field.

K█████ also testified that C█████ had at some unspecified point mentioned to K█████ that C█████ had left after the Panama Lane job because C█████ did not want to be a part of the unauthorized streetlight job. K█████ acknowledged that C█████ never formally reported the streetlight work to anyone at PG&E.

Y [REDACTED] B [REDACTED] is a PG&E Labor Relations Specialist. She testified that the Company utilizes progressive discipline and a code of conduct; that employees are annually trained on the code of conduct; that Grievant had received such training; that the code of conduct requires accurate recordkeeping; that after she received CSD's Investigation Report about the May 31, 2020 incident, she spoke with Grievant's supervisor and a determination was made to terminate Grievant due to the incident occurring while Grievant was on a DML. She further testified that Grievant was terminated for inaccurately completing his timecard, which constituted unsatisfactory work performance, and that the discharge was not based on falsification of the timecard (which would have been a conduct issue):

Q: Are you telling me that he was not in fact terminated for falsification is what I want to know.

A: That wasn't the terminology that we used.

Q: I'm not asking for terminology. The thing I've highlighted right here, falsification, was Mr. V [REDACTED] terminated for that?

A: I don't know how else to explain it. In our determination, based on the investigation and our review of records, we determined that the grievant had inaccurately completed his timecard.

Tr. Vol I, Pg. 177, Ins. 2-11.

B [REDACTED] also testified that Apprentice K [REDACTED] only received an oral reminder for the May 31, 2020 incident, and that K [REDACTED] and Grievant were discipline for the same reason.

Q: Do you recall what level of discipline he received?

A: I seem to recall he received an oral reminder.

...

ARBITRATOR KHOURY: Was there any difference in the conduct -- sorry, the performance issues that the --that K [REDACTED] was found to have committed and the performance issue the grievant here was found to have committed? In other words, was it the same reason that they were disciplined or are you saying it was different discipline that was applied?

THE WITNESS: It was for the same reason, for the inaccurate submission of timecards.

Tr. Vol I, Pg. 183, Ins. 2-4 & Ins. 9-17.

B [REDACTED] could not identify another scenario where an employee was disciplined for not listing all work jobs on a timesheet.

ARBITRATOR KHOURY: So time away, I understand, I think is a different issue. I'm asking is there a situation where there would have been a third job, like we have here, that wasn't recorded and somebody was disciplined for that, that you're aware of?

THE WITNESS: We disciplined the apprentice.

ARBITRATOR KHOURY: I'm talking about outside of the incidents giving rise to this case here.

THE WITNESS: Not that I can think of.

Tr. Vol I, Pg. 189, Ins. 1-10.

K [REDACTED] L [REDACTED] is a Labor Relations Manager at the Company. She testified that in 2016, the Company provided timecard training during a five-minute tailboard meeting; that the training consisted of supervisors using an FAQ document that was not handed out to employees but that employees could request copies of the document; and that she was not aware of any other trainings provided on the issue.

K█████ C█████ is a lineman in Bakersfield who was part of the May 31, 2020 Panama Lane job crew. He testified that the crew consisted of Foreman W█████, Grievant, Apprentice K█████ and himself, and that the Panama Lane job took about seven to eight hours to complete. He stated that he went home after the Panama Lane job, that the "sweetheart" job on Jumbuck Lane came in towards the end of the Panama Lane job, and that he was not needed for that job. He further testified that he overheard Grievant and Foreman W█████ talking about changing streetlights by their respective houses; that C█████ told Apprentice K█████ that it was a bad idea and that he should leave as someone could get fired over replacing streetlights without authorization; that he was about ten to twelve feet from the conversation, which occurred at about 4:30 pm on May 31, 2020; and that he did not speak to anyone from management about the incident until being contacted shortly before the arbitration hearing.

Grievant has twenty-four years of experience with the Company. He testified that he wanted to leave after the Panama Lane job on May 31, 2020, as he had plans to see a movie with his daughter, but that C█████ had to leave for a family emergency, which is why he stayed for the Jumbuck Lane job. Grievant stated that the secondary box at Jumbuck Lane was filled with water, that it took about twenty to thirty minutes to drain the water, and that the Jumbuck Lane job took about an hour to an hour and a half to complete, which included cleaning up the site after power was restored.

Grievant further testified that, while he was at the Jumbuck Lane job, he believed the crew might still do the second car pole job in Wasco; that Foreman W█████ was the only one who spoke directly with K█████ about the possibility of going to Wasco; that Foreman W█████

told Grievant and Apprentice K [REDACTED] they were going to replace some streetlights while they waited on the Wasco job; that Foreman W [REDACTED] gave them the address for the streetlights; that Foreman W [REDACTED] went to pickup the materials on his own; and that due to the COVID-19 pandemic, only the Foreman was allowed into the office to retrieve paperwork.

Grievant further testified the crew replaced four streetlights on May 31, 2020, which took about an hour (fifteen minutes per streetlight); that after the streetlight replacement was completed, Grievant still did not know whether they were going to work on the Wasco job; that Foreman W [REDACTED] told them to head back to the yard; that he arrived at the yard at around 6:30 pm and then went home, arriving to his house at around 7:00 pm at which point he received a call from Foreman W [REDACTED] telling him that the Wasco job was not going to materialize.

Grievant also testified that when he saw his timecard, it said that he finished work at 21:30 but he actually finished work at 19:00 and he corrected his timecard accordingly; that, as a lineman, he was only concerned with the beginning and ending time on his timecard and that he did not focus on the time allocated to specific jobs; that he and Foreman W [REDACTED] were barely on speaking terms due to their earlier altercation; that Grievant was simply trying to keep his “head down” while on the DML; that he thought the streetlight job was filler work while the crew waited to hear whether they would be assigned the Wasco job; and that Foreman W [REDACTED] called the streetlight job “filler” work.

Grievant also testified that his superintendent and immediate supervisor told him to keep his head down and not question orders while he was on the DML; that he did not find it suspicious to have a foreman tell him to change streetlights while they waited for a potential

additional job; that supervisors only communicate jobs directly with foremen; and that he did not know the streetlights were near Foreman W■■■■'s house.

Grievant testified that he never spoke about streetlights in front of C■■■■ and he only found out about the streetlight job at the Jumbuck Lane job, which was after C■■■■ had left for the day; that it is ridiculous to think he would conspire with Walker after he was put on a DML for an altercation with W■■■■; and that W■■■■ asked Grievant to lie to CSD about changing the streetlights, but Grievant refused.

Grievant acknowledged that it was a mistake to only focus on the start and end time of his timecard:

Q: As you sit here today, do you understand that in submitting this timecard to the company without verifying that it was accurate, that you violated their policy?

A: Looking at that now, probably, yes. It was a mistake on my part that I didn't go through it in more detail than just the beginning and end time, yes.

Tr. Vol II, Pg. 305, Ins. 12-18.

Grievant, however, asserted that he received no formal training regarding documenting each job on his time sheet and that the focus was always on making sure the right beginning and end times were inputted. Grievant acknowledged that work orders should accompany jobs and should be included on timesheets, but it was not typical for a lineman to verify work orders; moreover, he stated that foremen often pushout time sheets to linemen and linemen rarely if ever correct those timesheets other than verifying the start and end times of their shifts.

CSD provided a report of its findings regarding the unauthorized changing of the streetlights on May 31, 2020. In part, the report made the following conclusions:

The facts of this investigation demonstrated that PG&E assets (streetlight parts, vehicles, crew time) were improperly used on May 31st, 2020, to unofficially install improved streetlights in the immediate neighborhood of an electric crew foreman. The foreman obtained the parts, directed the activity of two crew members, participated directly in the work himself, and then created the timecards for himself and the crew members who were compensated by PG&E for their work time. What the investigation could not demonstrate conclusively was that the crew members were aware at the time that they were performing an unofficial task, using misappropriated supplies, for the benefit of the foreman. An argument can be made that from the circumstances a very experienced lineman, like B [REDACTED] V [REDACTED], must have known or should have known, that the job was improper, but the evidence obtained was insufficient to prove that. V [REDACTED] denied it, the other crewmen had apparently no awareness of it, and the foreman took all the event's responsibility onto himself. V [REDACTED] also voluntarily removed from his May 31st timecard, prior to the initiation of this investigation, 2.5 hours of overtime pay which the foreman had attempted to award him for the work. Accordingly, CSD did not substantiate a PG&E code of conduct violation in this matter by lineman H [REDACTED] (B [REDACTED]) V [REDACTED].

Joint Ex. 3, pg. 34.

The CSD report also provided the following analysis regarding aggravating and mitigating factors:

**Mitigating:** Though employees are responsible for ensuring the accuracy of their own timecards, it is common PG&E practice for crew foremen to fill out timecards for their crew members. Foreman W [REDACTED] filled out the May 31, 2020 timecards for himself, K [REDACTED] and V [REDACTED]. Prior to being contacted by CSD, V [REDACTED] had corrected the hours worked portion of his May 31, 2020 timecard to reflect what he said was his actual end time of 7:00 PM, versus the 9:30 PM end time W [REDACTED] had originally recorded for him. Though the streetlight replacement activity which took place on May 31, 2020 occurred in the immediate vicinity of Foreman W [REDACTED]'s residence, none of the persons interviewed in this matter indicated crew members V [REDACTED] or K [REDACTED] were aware of that at the time. Crew members K [REDACTED] and V [REDACTED] indicated they had just been following work instructions of Foreman W [REDACTED] when he took them to change out streetlights in what turned out

to be W■■■■'s neighborhood. V■■■■ specifically stated that at the time he was not aware they were working in W■■■■'s neighborhood.

Foreman W■■■■ described to CSD that he, alone, was the one who had obtained the new LED streetlights from a PG&E warehouse, and he alone had disposed of (trashed) the replaced lights.

**Aggravating:** V■■■■ is an experienced PG&E employee with nearly 25 years of service. He told CSD his crew would "on occasion" change out streetlights, while Foreman W■■■■ acknowledged that this was a task usually done by contractors. V■■■■ confirmed that W■■■■ had filled out his May 31, 2020 timecard for him, and V■■■■ had reviewed it closely enough to change his end of work time from 9:30 to 7:00 PM, but he denied any awareness of what job(s) his May 31, 2020 time had been charged to.

Joint Ex. 3, pg. 33.

#### *EMPLOYER'S POSITION*

The Employer argues that the evidence clearly shows that Grievant engaged in poor performance by submitting an inaccurate timecard, as Grievant's May 21, 2020 timecard did not reflect the streetlight work. Grievant knew about the importance of submitting accurate timecards, and that, as an experienced lineman and former foreman, Grievant's testimony about mistakenly submitting an inaccurate timecard is not believable. Further, Employer argues that Grievant was on clear notice that an inaccurate submission of a timecard would be a violation of the Company's Code of Conduct. Grievant was on a DML, which, per the Employer, is akin to a last chance agreement, and the Apprentice Lineman was also disciplined for the same misconduct, although less severely since he was not on a DML. Grievant was further impeached by the testimony of C■■■■, who along with K■■■■, testified that changing streetlights is not "filler" work, and testified that Grievant and Foreman W■■■■ discussed the unauthorized change of streetlights before it occurred. Finally, the Employer argues that if



Grievant is reinstated, he should not be awarded backpay as Grievant acknowledged that he engaged in a policy violation while on a DML.

#### UNION'S POSITION

The Union points out that Grievant was terminated for the alleged performance issue of inaccurately submitting a timecard, not for falsification of a timecard or misappropriation of PG&E property. However, the Employer now inappropriately seeks to use C█████'s testimony to turn this into a misconduct case, but this after-acquired evidence should not be used to add a new theory for disciplining Grievant. Moreover, C█████'s testimony does not hold water for numerous reasons and should not be credited even if considered.

In terms of the alleged poor performance, the Employer's case falters. First, the Employer relied on the key and vest incident inappropriately. These were never documented and are not in Grievant's personnel file; therefore, they should not have been used. Most troubling, however, is that the Employer used the DML as a last chance agreement. A DML is not a last chance agreement, and the Company was required, under the DML, to consider mitigating circumstances, to which it only paid lip service in this case. The Employer, *inter alia*, ignored the fact that Grievant corrected his end time on May 31, 2020 so that he would not be paid for unworked time and that he was completely forthcoming with the CSD investigation.

For these reasons, the Union argues that Grievant's termination was without just cause and he should be made whole.

### OPINION

Having carefully reviewed and weighed all the testimony and evidence presented at the hearing, and having considered each argument raised in the parties' briefs, I find that the Grievance should be Granted and the Grievant should be made whole for the following reasons.

In any arbitration involving discipline or discharge of an employee under a collective bargaining agreement containing a just-cause standard, the employer necessarily bears the burden of proof. It must establish to the satisfaction of the arbitrator by at least a preponderance of the credible evidence that the employee engaged in the charged misconduct, and that such conduct was sufficiently egregious to warrant the level of discipline imposed in light of any mitigating or aggravating circumstances.

In this specific case, Grievant was on a DML for prior serious misconduct. Per the Letter of Agreement: Positive Discipline Guidelines, "in all probability, the employee will be discharged if the employee does not live up to the commitment to meet all Company work rules and standards during the next twelve months (12) the active period of the DML; except as provided in Section III.B." Section III.B states:

Notwithstanding the foregoing, if a performance problem which normally would result in formal discipline occurs during an active DML, the Company shall consider mitigating factors (such as Company service, employment record, nature and seriousness of violation, etc.) before making a decision to discharge, all of which is subject to the provisions of the appropriate grievance procedure for bargaining unit employees. (emphasis added)

**I. The Employer Did Not Prove That Grievant's Submission Of An Inaccurate Timecard, Which Only Listed Two Of Three Jobs Performed, Was A Performance Problem Which Normally Would Have Led To Discipline.**

The Employer, in this case, discharged Grievant for the performance issue of submitting an inaccurate timecard and argues that the discharge should be sustained because the "evidence establishes that V [REDACTED] knowingly submitted inaccurate time records claiming he worked only two jobs during the double-time shift when he actually worked three jobs but failed to include the third job on his timecards." PG&E Brief at pgs. 12-13.

Section III.B of the Letter Agreement refers to performance problems that would normally result in formal discipline, and I cannot ignore those words in the Letter Agreement: "all words used in an agreement should be given effect. The fact that a word is used indicates that the parties intended it to have some meaning." See Elkouri & Elkouri, *How Arbitration Works*, (Kenneth Mays, ed., BNA Books 8th Ed. 2016) at 9-36. The dispositive question, therefore, is whether Grievant's May 31, 2020 submission of an inaccurate timecard which omitted the streetlight job was the type of performance issue which "normally would result in formal discipline."

The Employer bears the burden of showing that this performance issue would normally result "in formal discipline occurring." However, PG&E Labor Relations Specialist B [REDACTED] could not identify another incident before May 31, 2020 when someone was disciplined for failing to list a job on a timecard:

ARBITRATOR KHOURY: So time away, I understand, I think is a different issue. I'm asking is there a situation where there would have been a third job, like we have here, that wasn't recorded and somebody was disciplined for that, that you're aware of?

THE WITNESS: We disciplined the apprentice.

ARBITRATOR KHOURY: I'm talking about outside of the incidents giving rise to this case here.

THE WITNESS: Not that I can think of.

Tr. Vol I, Pg. 189, Ins. 1-10.

Moreover, PG&E, through L [REDACTED]'s testimony, could only point to a five-minute oral training in 2016 as to when it provided timecard training.

The Employer argues that Grievant nevertheless clearly violated the Code of Conduct about recordkeeping while on a DML, and that the timekeeping program reminded Grievant that he was verifying the accuracy of his time. However, “[a]rbitrators have not hesitated to disturb penalties where the employer over a period of time has condoned the violation of the rule in the past. Lax enforcement of rules may lead employees reasonably to believe that the conduct in question is tolerated by management.” See Elkouri & Elkouri, *How Arbitration Works*, (Kenneth Mays, ed., BNA Books 8th Ed. 2016) at 15-81. It is without question that the Employer can adopt a stricter attitude moving forward; however, it must first give “clear notice of intent to do so.” *Id* at 15-82.

In its brief, the Employer points to arbitration and Pre-Review Committee decisions in which employees were disciplined for timecard issues, but all those cases involve employees misreporting their overall time spent working. Here, there is no allegation that Grievant misreported his overall work time; indeed, Grievant corrected his timesheet to ensure the amount of his overall recorded work time was accurate.

In its brief and at the hearing, the Employer spent much time on the question of whether Grievant verified that a work order existed for the streetlight job. However, the Employer did not discharge Grievant for working on the streetlight job without a job order; rather, the Employer discharged Grievant for inaccurately submitting a timecard.

For these reasons, I find that Grievant's failure to list the streetlight work on his May 31, 2020 timecard was not the type of policy violation that would have normally led to discipline in May 2020; therefore, under the terms of the Parties' Letter of Agreement: Positive Discipline Guidelines, the Employer did not have grounds to discharge Grievant despite Grievant being on a DML.

## **II. The Employer Failed To Account For Mitigating Circumstances**

Alternatively, even if Grievant had committed a policy violation for which discipline would normally issue, the Employer failed to account properly for mitigating circumstances. Section III.B. of the Letter Agreement states that for a performance issue the Company "shall consider mitigating factors (such as Company service, employment record, nature and seriousness of violation, etc.) before making a decision to discharge." (emphasis added)

There are multiple mitigating factors in this case. First, and as discussed above, the Employer had not previously treated the failure to list all jobs on a timesheet as a serious violation—this is shown by the fact that there had been no previous discipline for such infractions, that the only formal training that the Employer could identify on the issue was a five-minute tailboard in 2016, and that Apprentice K [REDACTED] only received an oral reminder for his infraction. As an aside, it must be noted that Apprentice K [REDACTED]'s misconduct was more  
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serious than Grievant's, as Apprentice K [REDACTED] did not remove the two and a half hours of unworked time from his timecard. Third, and as recognized by the CSD report, it was Foreman W [REDACTED] who inputted the time and pushed it out to Grievant, which was an acceptable and normal practice. Fourth, Grievant acted honestly by correcting the end time on his May 31, 2020 timecard and by fully cooperating with the CSD investigation. Finally, Grievant had twenty-four years of service with the Company. It appears that CSD saw his lengthy service as an aggravating factor, but it is clear from the Letter Agreement that lengthy service should count as a mitigating factor for disciplinary purposes.

I find that the abovementioned mitigating factors in this case point away from sustaining the discharge.

### **III. C [REDACTED]'S TESTIMONY IS PROBLEMATIC**

C [REDACTED] provided testimony that he overheard Grievant and Foreman W [REDACTED] talking about changing streetlights near both of their houses, and that C [REDACTED] warned Apprentice K [REDACTED] not to participate in the unauthorized work of changing the streetlights. Grievant denies that this conversation with W [REDACTED] happened. The Union vigorously argues that I should disregard this testimony as it goes to a misconduct/falsification charge, not a performance allegation. Nevertheless, I will address why I cannot credit C [REDACTED]'s testimony.

The Employer argues that I should credit C [REDACTED]'s testimony over Grievant's, as Grievant is an interested party in this matter and C [REDACTED] is not. There are, however, several reasons to question C [REDACTED]'s testimony. First, he did not share this information with PG&E management until shortly before the arbitration, which was over two years after the fact. Second,

Apprentice K [REDACTED] was not called to corroborate this testimony. Third, C [REDACTED]'s testimony asserted that there was a quid-pro-quo type agreement between W [REDACTED] and Grievant in that they would change streetlights near both of their houses. Yet, there was no evidence presented showing that any unauthorized streetlight work occurred near Grievant's house on May 31, 2020. Grievant was not normally part of W [REDACTED]'s team, and so it is unlikely that W [REDACTED] and Grievant would have had an opportunity to change streetlights near Grievant's house at a later date. Fourth, if Grievant were conspiring with W [REDACTED], it makes little sense for Grievant to have corrected the end time of his May 31, 2020 timecard and for him to have cooperated honestly with the CSD investigation. Finally, it is clear from the evidence that Grievant and W [REDACTED] did not like each other and that Grievant was on the DML due to an altercation with W [REDACTED]. It, therefore, strains credulity to think Grievant would enter a conspiracy with W [REDACTED]. For all these reasons, I do not credit C [REDACTED]'s testimony over Grievant's testimony.

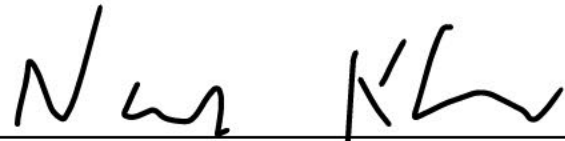
#### *AWARD*

For the reasons stated above, the Grievance is Granted and Grievant H [REDACTED] V [REDACTED] shall be reinstated to his former position of lineman and shall be made whole. This make-whole remedy includes the restoration of benefits and backpay for all wages that he would have earned but for the termination. The parties shall each bear their own costs. I shall retain

jurisdiction for ninety days for the sole and limited purpose of addressing any issues regarding implementation of this award.

IT IS SO ORDERED.

Dated: January 9, 2023  
La Crescenta, California

A handwritten signature in black ink, appearing to read 'Najeeb N. Khoury', written over a horizontal line.

Najeeb N. Khoury, Arbitrator



Arbitration Board Signatures  
Arbitration No. 381  
Grievance No. 25499

**Company Board Members**

 \_\_\_\_\_ Concur ☒ Dissent ☐ 01/10/2023  
Y  B  Date

 \_\_\_\_\_ Concur ☒ Dissent ☐ 01/09/2023  
K  L  Date

**Union Board Members**

 \_\_\_\_\_ ☒ Concur ☐ Dissent ☐ 01/13/2022  
E  M  Date

 \_\_\_\_\_ ☒ Concur ☐ Dissent ☐ 01/12/2023  
D  S  Date