

BEFORE THE NEUTRAL ARBITRATOR  
SHERI E. ROSS

In the matter of:

INTERNATIONAL BROTHERHOOD  
OF ELECTRICAL WORKERS  
LOCAL 1245,

GRIEVANCE NO. 25060

UNION,

AND

PACIFIC GAS & ELECTRIC  
COMPANY

ARBITRATOR'S DECISION AND  
AWARD

EMPLOYER

---

FOR THE UNION

Eleanor Morton  
Leonard Carder, LLP  
1188 Franklin Street, Suite 201  
San Francisco, CA 94109  
[emorton@leonardcarder.com](mailto:emorton@leonardcarder.com)

FOR THE EMPLOYER

Maura A. Mastrony  
Littler Mendelson, P.C.  
One Century Tower  
Suite 300  
New Haven, CT 06510  
[mmastrony@littler.com](mailto:mmastrony@littler.com)

ARBITRATOR

Sheri E. Ross

## INTRODUCTION

On June 3, 2019 the Union filed a grievance on behalf of D ■■■ K ■■■, (K ■■■), Gas Compliance Representative in the Gas Compliance Department, Redding Service Center, alleging that on or about May 30, 2019 K ■■■ was improperly terminated without just and sufficient cause. The parties did not settle the grievance and the Union requested arbitration thereon. An arbitration hearing was conducted in this matter on August 15, 18 and 25, 2023. All parties were present and represented by counsel. All parties were given the opportunity to present witnesses and to make relevant arguments on behalf of their respective positions. The parties filed cogent and persuasive closing arguments. The record was closed by the Arbitrator after receipt of the written closing arguments on November 13, 2023.

## ISSUES

1. Did PG&E have just cause to discharge grievant, D ■■■ K ■■■, on May 30, 2019?
2. If not, what shall the remedy be?

## JOINT EXHIBITS

1. January 1, 2016 IBEW Physical Agreement
2. 2019 Code of Conduct
3. Local Investigating Committee Report Grievance 25060, dated April 2021
4. September 21, 1987 Positive Discipline Agreement

## EMPLOYER EXHIBITS

1. Interview notes dated 4/11/19
2. Interview notes dated 4/30/19

3. Withdrawn
4. Aerial and photo for Intersection of Landes Rd and Turnell Rd
5. Wave file of dispatch call
6. Wave file of dispatch call
7. Wave file of dispatch call
8. Email string re: DAKJ audit for 2/17
9. Email string re: DAKJ audit for 2/16
10. L & M Gap Training Power Point Day One
11. L & M Gap Training Power Point Day Two
12. Meeting Roster GAP Training Day 2 of 2
13. K █ GAP Training Feedback form dated 4/20/18
14. Note to file from S █ re: K █ dated 3/20/2018

#### UNION EXHIBITS

- A. KTLA Major Storm news coverage February 13, 2019
- B. Redding.com Storm coverage February 13, 2019
- C. Withdrawn
- D. Call log
- E. Callout detail report 167271
- F. Callout detail report 167314
- G. Callout detail report 167292
- H. Callout detail report 167331
- I. Callout detail report 167360
- J. Callout detail report 167378
- K. Tickets 1
- L. Tickets 2
- M. Tickets 3
- N. Tickets 4
- O. Email string DAKJ Call Logs
- P. Call Logs
- Q. through W DAKJ Wave files
- X. F █ D █ Grievance 25824
- Y. Photographs
- Z. Log Excepts
- AA. Letter of Agreement dated 1/28/13

## RELEVANT COLLECTIVE BARGAINING PROVISIONS

### 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.

### FACTS PRESENTED AT THE HEARING

During the three days of hearing, the following individuals testified:

- E. W. [REDACTED], (W. [REDACTED]), Locate and Mark Supervisor, North Valley and Humboldt
- Z. [REDACTED] L. [REDACTED] S. [REDACTED], (S. [REDACTED]), Gas Methods and Procedures Specialist
- J. [REDACTED] K. [REDACTED], (K. [REDACTED]), Gas VP of Transmission and Distribution
- R. [REDACTED] C. [REDACTED], (C. [REDACTED]), Supervisor Construction
- T. [REDACTED] W. [REDACTED], (W. [REDACTED]), IBEW Local 1245, Business Representative
- D. [REDACTED] S. [REDACTED], (S. [REDACTED]), IBEW Local 1245, Asst. Business Manager
- D. [REDACTED] K. [REDACTED], (K. [REDACTED]), Grievant
- J. [REDACTED] S. [REDACTED], (S. [REDACTED]), Senior Ops Specialist

Locate and Mark, (L & M), is a damage prevention process governed by California Government Code Section 4216, Federal Codes. 49 CFR 192.605 and 49 CFR 192.614, and PG&E Guidance Documents, Standards and Procedures (TD -58 11 P – 1100, 1200 and 1300).

The PG&E process is as follows:

1. An excavator contacts 811 and receives a USA, Underground Service Alert, ticket number
2. The ticket is received into a database with a compliance completion date

3. The ticket is assigned by the Irth UtiliSphere system<sup>1</sup> to a Locator for completion
4. The ticket is located and marked per PG&E procedure and law
5. The ticker is documented and closed

When performing L & M work, the locator is looking for any underground gas, electric, or fiber, generically referred to as facilities, that PG&E operates.

W█████ was sitting in as K█████'s supervisor in 2019 and presented his prepared minutes for Tailboard meetings attended by K█████ conducted on March 4 and 14, 2019 in the Chico yard, at which he discussed clearing no conflict cleared form office tickets. K█████ approached W█████ after the second meeting and advised him that he, K█████, had worked a lot of double-time over the previous week-end. W█████ felt he had no choice other than to approve the double-time, but the comment from K█████ caused W█████ to look at hours worked versus hours submitted by K█████. W█████ reviewed the tickets, after-hours call outs, when the tickets were opened and closed and K█████'s timecards. W█████ found multiple tickets opened at the same time with one ticket closed every two hours from home or another town, not the site of the ticket. W█████ explained that all tickets should be worked in a 2 – 4 hour timeframe and by simultaneously opening multiple tickets, K█████ was keeping other Gas Compliance Representatives, (GCR)<sup>2</sup>, from responding to those open emergency tickets. Since W█████ was not a member of management, he turned the matter over to his leadership team, C█████, S█████, T█████ H█████, (H█████), Manager Locate & Mark North, and D█████ H█████, (H█████), Labor Relations Specialist. He was not involved in the investigation.

---

<sup>1</sup> UtiliSphere was used between 2013 and 2019. Thereafter PG&E created its own system to manage USA tickets

<sup>2</sup> GCRs respond to USA tickets to locate and mark underground gas and electrical facilities where excavation is planned to take place and may also be called Locators.

S [REDACTED] is PG&E subject matter expert on L & M. He looks for trends, legal and procedural changes and potential efficiencies in the L & M process and creates training around them. Excavators are legally required to call in an 811 ticket within 2 – 14 days of intending to perform an excavation. A ticket at the time in question was created by Irth UtiliSphere. C [REDACTED] was on the investigation team as he was experienced with investigating inconsistencies in tickets and the process once the investigation was completed for referral to HR.

When a Locator is assigned a ticket, he/she is to look at the work description and the maps/schematics provided by the system in the folder. If no PG&E facilities are located nearby, the Locator can code the ticket off as “no conflict cleared from office”. This code does not necessarily mean the Locator is in the office, just that the Locator is not on the site of the ticket when closing it.

If there are facilities on the map/schematic, a site visit is required. The Locator is to go to the site, review delineations<sup>3</sup>, photograph the site, locate facilities and take photos of what was marked. The photos are proof of proper marking in the event of subsequent damage caused by the excavator. Locator may use permanent water based paint, spray chalk, flags or whiskers to mark facilities.

Training for Locators consisted in 2013 of a 2-week ride-along, one week in the Academy, and both written and physical tests to secure a DOT required Operator Qualification, (OQ). As a result of a settlement agreement with the CPUC concerning the L & M program, PG&E revamped its Locator training. As of 2018 11 weeks of training at the Academy and OJT was created for new Locators. A two-day GAP Training Program was developed by S [REDACTED] and others for existing Locators. The GAP Training was delivered in March to August 2018. S [REDACTED] was the primary author for Day 2 of the training which covered “No

---

<sup>3</sup> California Government Code Section 4216 requires every excavator to place delineations, white markings, in accordance with Common Ground Alliance (CGA), practices, to delineate the area in which excavations are intended.

Conflict". The No Conflict topic specifically states that No Conflict is used after ensuring no PG&E facilities are in conflict due to vicinity of excavation area and require these actions:

1. If you are at excavation site, THEN do the following:
  - A. Paint "NO PGE" in delineations using appropriate color code for the facility identified as 'no conflict'. Do NOT paint "NO PGE" when other PGE facilities of the same commodity have not yet been cleared as "no conflict"
  - B. Take pictures of markings
2. Contact excavator to inform of no conflict when **closing ticket WITHOUT a site visit.**

Examples are given in the training materials for improper use of 'No Conflict'.

K■■■■ signed the attendance sheets for GAP training on April 19 and 20, 2018. He also completed a feedback form on the training program.

Updates to L & M training are handled through tailboards. Every three years Locators have to test to requalify.

S■■■■ was requested by C■■■■ to join the team investigating K■■■■'s records as a SME. S■■■■ reviewed K■■■■'s USA tickets, timecards, GPS locations, personnel file, maps in the USA folders and dispatch documents to assist the team. When an excavator calls 811 the ticket comes into the system and automatically dispatches with a folder to someone in that area. When the Locator sees the ticket, hitting the arrival button documents the start time for that ticket and locks the ticket out from any other Locator looking at it. S■■■■ concluded that on week-ends, K■■■■ was hitting the arrival button on multiple tickets at the same time so no one else could do so. He did not engage in this same process during the week.

A heavy snow and high wind storm hit Redding around February 13, 2019. As a result, PG&E had Locators available to take care of L&M work, so that power could be turned back on the week-end of February 16 – 17, 2019. Locators were requested to be on standby to manage the 811 tickets as they came in on the week-end. The Locators who agreed to be on standby were paid POT, pre-arranged overtime. K did not agree to work the storm as POT, but did work the storm on EOT – emergency overtime. The significance of working EOT as opposed to POT, is when an employee can file a grievance if that employee is number one on the list, but dispatch calls someone else to perform the work. If an employee is on POT, he/she needs to wait until the end of the calendar year to file a grievance alleging that dispatch called the wrong person to work. If an employee is on EOT, he/she can grieve a wrongful assignment on one's timecard.

S concluded that K locked up multiple tickets, the first for over 11 hours to maximize his pay. In this regard as an emergency call-out, K would have gotten paid door-to-door if he needed to respond. If the ticket could be completed in less than two hours, K would receive a minimum two hours pay. If he received another ticket within those hours, he would not be entitled to another 2-hour minimum. After locking up multiple tickets, instead of taking a minute to process each as no conflict, K extended the duration of his EOT pay. He closed the tickets out slowly throughout the day in a way to charge time throughout the day. By analyzing the GPS data, S determined that K was actually performing personal business and closing tickets out while driving his personal vehicle. K did not deny driving hands-free.

Below is a table created by the undersigned of all the tickets discussed by the LIC and/or during the hearing. They are organized by ticket number and then date.



Ticket	Start	Code.	End and Perceived problem
<i>X901402426<sup>4</sup></i>	<i>1/15/19 2:47 PM.</i>	<i>NCCFO<sup>5</sup></i>	<i>Facilities were present, Drove To Site, Located Gas line, NO PICS</i>
<i>X902501647.</i>	<i>1/25/19 2:17 PM</i>	<i>NCCFO.</i>	<i>Facilities were present</i>
<i>X903601836.</i>	<i>2/7/19 9:54 AM.</i>	<i>NCCFO.</i>	<i>Facilities were present, But drove to site, fences noted as a minimum of 3 feet behind meter, NO PICS<sup>6</sup></i>
<i>W904200313</i>	<i>2/11/19 11:57 AM</i>	<i>NCCFO.</i>	<i>Facilities were present</i>
<i>X904500283.</i>	<i>2/14/19 9:57 AM</i>	<i>NCCFO.</i>	<i>Facilities were present</i>
<i>X905100193.</i>	<i>2/22/19 11:52 AM.</i>	<i>NCCFO.</i>	<i>Facilities were present</i>
X904700108.	2/16/19 10:14 AM.	NCCFO.	Ended 2/16/19 10:20 AM
X904700139.	2/16/19 12:24 AM.	NCCFO.	Ended 2/16/19 12:46 PM
X904700148.	2/16/19 11:26 AM.	NCCFO.	Ended 2/16/19 11:27 AM
X904700149.	2/16/19 11:21 AM.	Marked.	Ended 2/16/19 12:13 PM
X904700212.	2/16/19. 1:56 PM.	NCCFO.	Ended 2/16/19 2:18 PM
X904700216	2/16/19 1:57 PM.	NCCFO.	Ended 2/16/19 2:25 PM
X904700223.	2/16/19 1:57 PM.	NCCFO.	Ended 2/16/19 2:25 PM
X904700239.	2/16/19 2:43 PM.	NCCFO.	Ended 2/16/19 3:51 PM
X904700245.	2/16/19 2:58 PM.	NCCFO.	Ended 2/16/19 3:51 PM
X904700256.	2/16/19 3:14 PM.	Marked.	Ended 2/16/19 4:30 PM
X904700259.	2/16/19 3:18 PM	NCCFO.	Ended 2/16/19 3:19 PM
X904700264.	2/16/19 3:21 PM	NCCFO.	Ended 2/16/19 3:51 PM
X904700269.	2/16/19 3:43 PM	NCCFO.	Ended 2/16/19 4:35 PM But drove to Site, saw broken pole, no riser NO PICS
X904700291	2/16/19 4:54 PM.	NCCFO	Ended 2/16/19 5:35 PM
X904700295	2/16/19 5:08 PM	NC <sup>7</sup>	Ended 2/16/19 6:07 PM Went to site Painted NO PGE, NO PICS
X094700297.	2/16/19 5:20 PM.	NCCFO.	Ended 2/16/19 5:35 PM
<b>X904700305<sup>8</sup></b>	<b>2/16/19 6:36 PM</b>	<b>NCCFO</b>	<b>Ended 2/16/19 6:14 AM</b>
X904700308.	2/16/19 6:52 PM.	NCCFO.	Ended 2/16/19 8:01 PM
X904700312.	2/16/19.7:00 PM.	NC.	Ended 2/16/19 8:34 PM Painted NO PGE, NO PICS
<b>X904700314</b>	<b>2/16/19 11:53 AM.</b>	<b>NCCFO.</b>	<b>Ended 2/17/19 11:54 AM DUP</b>

<sup>4</sup> Tickets italicized, bolded and in purple font are those from an LIC Exhibit of tickets that K [REDACTED] cleared No Conflict Cleared from Office, but where facilities were present

<sup>5</sup> NCCFO No Conflict Cleared from Office

<sup>6</sup> Any notes about driving to the site are created from the undersigned based upon her review of the ticket

<sup>7</sup> NC- No Conflict

<sup>8</sup> Tickets that are bolded and in red font are those noted by the investigators as locked by K [REDACTED].

X904800003 <sup>9</sup>	2/17/19 6:07 AM	NCCFO	Ended 2/17/19 6:35 AM
X904800004.	2/17/19 6:07 AM.	NCCFO.	Ended 2/17/19 7:29 AM But drove to Site, confirmed pole, trees, NO PICS
X904800006.	2/17/19 6:07 AM.	NCCFO.	Ended 2/17/19 6:37 AM
X904800007.	2/17/19 6:07 AM	NCCFO	Ended 2/17/19 6:38 AM
X904800008.	2/17/19 6:07 AM.	NCCFO.	Ended 2/17/19 6:39 AM
X904800009.	2/17/19 6:07 AM.	NCCFO.	Ended 2/17/19 6:35 AM
X904800010	2/17/19 6:07 AM.	NCCFO.	Ended 2/17/19 8:14 AM
X904800011.	2/17/19 6:07 AM.	NCCFO.	Ended 2/17/19 8:15 AM
X904800012.	2/17/19 6:07 AM.	NCCFO.	Ended 2/17/19 9:42 AM But drove to Site to confirm which pole, NO PICS
X904800013.	2/17/19 6:08 AM.	NCCFO.	Ended 2/17/19 6:42 AM
X904800032	2/17/19 9:57 PM.	EBM <sup>10</sup>	Ended 2/17/19 10:01 PM
<b>X904800057</b>	<b>2/17/19 12:06 PM.</b>	<b>MARKED</b>	<b>Ended 2/17/19 1:26 PM</b>
X904800031.	2/17/19 9:57 AM	MARKED	Ended 2/17/19 10:37 AM
<b>X904800106</b>	<b>2/17/19 12:06 PM.</b>	<b>MARKED</b>	<b>Ended 2/17/19 12:52 PM</b>
X904800274.	2/17/19 3:43 PM	NCCFO	Ended 2/17/19 9:59 PM
X904800299	2/17/19 9:34 PM.	NCCFO.	Ended 2/17/19 9:36 PM
X904800304	2/17/19 5:19 PM	NCCFO.	Ended 2/17/19 5:42 PM
X904800306	2/17/19 5:17 PM	NCCFO.	Ended 2/17/19 9:36 PM
X904800309	2/17/19 5:19 PM	NCCFO	Ended 2/17/19 10:06 PM
X904800311.	2/17/19 10:08 PM.	NCCFO.	Ended 2/17/19 10:09 PM
X904800313	2/17/19 7:12 PM.	NCCFO.	Ended 2/17/19 7:40 PM But drove to Site, Broken Pole, NO PICS
X904800318	2/17/19 5:59 PM	NCCFO	Ended 2/17/19 10:19 PM
X904800321	2/17/19 6:13 PM.	NCCFO.	Ended 2/17/19 10:25 PM
X904800325	2/17/19 6:31 PM.	NCCFO.	Ended 2/17/19 10:25 PM
X904800329.	2/17/19 7:46 PM	NCCFO.	Ended 2/17/19. 7:58 PM
X904800331.	2/17/19. 8:12 PM	NCCFO.	Ended 2/17/19 8:13 PM
W904800025	2/17/19 5:42 PM	NCCFO.	Ended 2/17/19 5:42 PM
X904800330.	2/17/19 10:22 PM.	NCCFO.	Ended 2/17/19 10:23 PM
<b>W908000603</b>	<b>3/27/19. 9:53 AM.</b>	<b>NCCFO.</b>	<b>Facilities Present, drove to Site NO PICS</b>
<b>W909100403</b>	<b>4/4/19. 7:56 AM.</b>	<b>Not Req.</b>	<b>Facilities Present</b>

The testimony presented with respect to eleven of these tickets is set forth below:

With respect to ticket X904500283, the investigation disclosed that the pole to be replaced was not clearly identified, there were two poles on site and the schematics are not exact, so a site visit was required. K [REDACTED] confirmed that he

<sup>9</sup> Tickets in boxes are noted by investigators as locked by K [REDACTED].

<sup>10</sup> EBM= Excavated Before Marked

made a mistake by not proceeding to the site and clearing this ticket from the office as no conflict.

With respect to ticket X903601836, the investigators concluded that K█ should have observed delineations at the site, marked the area with paint, taken pictures and closed the ticket as no conflict. K█ states that he mis-cleared the ticket as No Conflict Cleared from Office; there were no delineations at the site due to standing water; he did not take pictures or put paint down because of the muddy water; and he could have used flags for marking the area. K█ trusted the contractor instead of following procedure.

With respect to ticket W908000603, the investigators concluded that the ticket was miscoded as K█ drove to the site. Additionally, most pools require gas and electric for pool heaters and even if the excavator says they will not be digging near facilities, most require a trench to the meter and that meter needs to be marked and photographed. Had K█ properly coded the ticket, a supervisor would have reviewed it and caught the absent photos. K█ states that he spoke to the homeowner, not the excavator, and found the digging would not be near facilities, so did not take photos, but should have taken pictures.

With respect to ticket W904200313, the ticket states work on back and right side of property and facilities are noted on the maps and schematics on the right side and facing the property. K█ did not testify about this ticket.

With respect to ticket X905100193, the investigators concluded that with 15 boring holes on the site and maps showing facilities present on the site, a site visit was required as there was no way of knowing where the boring holes were vis a vis the facilities. K█ says that this site is about 1.5 miles from his home, he had previously visited the site for other contractors, he drives by multiple times per day to get to and from his home to the freeway and he knew for a fact that no utilities were on the property.

With respect to ticket X901402426, the investigators noted that K■ miscoded the ticket as he went to the site and met with the homeowner, and he should have put paint on the ground and taken pictures. K■ states that there were gas lines located under the driveway, but the homeowner told him he was trenching for sprinklers and he, K■, knew that no one puts sprinklers under a driveway. K■ admitted that he should have put paint on the ground and taken pictures.

With respect to ticket X902501647, the investigators concluded that a PG&E pole was to be replaced and the ticket itself noted a request for a 20 foot radius around the pole. K■ admitted that he should have driven to the site and made a mistake in not seeing the riser.

With respect to ticket W909100403, the investigators concluded it was a new ticket and required a response other than PG&E response not required; and since it was a school, facilities were present. K■ states that he had been to the site previously and talk to 'F■' on the phone, who told him that a PG&E response was not needed. K■ admitted that he should not have taken F■'s word that the delineations had not changed since his last visit and should have gone to the site and taken pictures.

With respect to ticket X904800004, the investigators concluded there was a house pole with a secondary drop; and there was no way to tell where the facilities were or where the work was being done, without going to the site. K■ did go to the site, miscoded the ticket, saw that the pole could not be replaced without clearing the trees, found that the schematic was wrong as there were no underground facilities and no one was going to dig where the drop was visible off the pole. He did not note the absence of underground electric in the notes because he confirmed the pole locations.

With respect to ticket X904700314, the investigators concluded the one could not determine if the electric facilities were overhead or underground without going to the site which also had gas facilities. K■■■■ believed it was a duplicate ticket of one called in by Outback, the construction company to a subcontractor. The pole was well outside the scope of the work according to K■■■■.

With respect to ticket X904800057, per the ticket the sewer main was being replaced. K■■■■ admitted that he should have gone to the site and located the sewer, but never did. He marked it as no conflict because in a phone conversation with the foreman, he was told that they would not be working in anyone's yard, just in their easement. According to K■■■■ it was a mistake not to go to the site.

Additional tickets coded off as No Conflict or No Conflict Cleared from Office, which K■■■■ drove to, observed, but took no pictures and may or may not have placed markings are: X904700269, X904700295, X904700312, and X904800012.

K■■■■ states that he did make mistakes in clearing tickets from the office without going to the sites; the mistakes were not intentional; K■■■■ received no benefit from making the errors; he never refused training; he was never offered retraining; and he had never been coached or counseled regarding these clearing tickets from the office.

S■■■■, however, supervised K■■■■ for a short time in 2017 - 18 on temporary assignment. S■■■■ states that he had quite a few conversations with K■■■■ on closing tickets from the office as no conflict when there in fact was a conflict. The issue came to a head in March 2018 when K■■■■ closed a ticket from the office as no conflict when there was equipment present. S■■■■ reported the situation to his director and then worked with the excavator to remark the site. Because of prior similar conduct (clearing from office when facilities were present), S■■■■

placed a work restriction on K█. In this regard K█ was prohibited from clearing tickets as no conflict from the office. K█ was required to visit every site and evaluate the situation for safety reasons. S█ made a note for K█ and for his files about the discussion but did not include it in K█'s Employee Performance Record form because he deemed it a safety, not disciplinary, note. K█ confirms that he did have a conversation with S█ and the director, M█ D█ about a 6 inch gas main he failed to locate and that they told him to stop clearing from the office. They did not review procedures with him and he did not recall multiple conversations about clearing tickets from the office. K█ states that a subsequent supervisor, B█, allowed him to resume clearing tickets from the office.

With regard to the alleged locking out of tickets, W█ presented WAVE files for 7 dispatch calls some of which are duplicates of PG&E exhibits. Four of these calls corroborate dispatch asking K█ if he can take 4, 3, 3 and 3 tickets, totaling the 10 tickets. K█ tells dispatch in a later call that he picked up earlier in the day. One of the dispatchers can be heard telling K█ on a recording that C█ F█ also took a whole bunch of L & M tickets that day. Dispatch did not inform him to open the tickets simultaneously.

The investigatory team concluded that K█ was opening multiple tickets at the same time to lock them so that he could time when he closed the tickets throughout the day. PG&E asserts that by starting all the tickets at the same time and closing them throughout the day, (1) K█ ensured that he would be paid in excess of the 2-hour minimum and/or (2) that he would prevent his supervisor L█ P█ from doing bargaining unit work<sup>11</sup>. The first assertion is contradicted by testimony that if K█ merely performed a site visit on each ticket,

---

<sup>11</sup> S█ stated that P█ was not scheduled as a supervisor the week-end of February 16 and was working as a member of the bargaining unit. No one contradicted this assertion, however, the call-out reports do not list P█ as available for work.

his day would certainly have exceeded the 2-hour minimum. The second assertion is contradicted by testimony that if P [REDACTED] was doing bargaining unit work, any member of the bargaining unit working that day including K [REDACTED] could have made a claim for bypass pay.

S [REDACTED] asked a union member of the ARCOS oversight committee to provide him with callout records for 2/17/19. In response to his request, S [REDACTED] received callout detail reports for six call outs that occurred that day for. The callout sheets show that K [REDACTED], C [REDACTED] F [REDACTED] and F [REDACTED] D [REDACTED] appeared to be available for L & M work the week-end of the 16<sup>th</sup>. S [REDACTED] also explained that when a member believes another employee took a call out of order or otherwise improperly, the member can claim bypass pay under the CBA for those calls without supervisor approval.

K [REDACTED] made the decision to discharge K [REDACTED] based upon his falsification of records and timecards, not following procedures and clearing tickets as no conflict when facilities were present.

## SUMMARY OF PARTIES POSITIONS

### Union's Position

- PG&E failed to establish just cause for termination because it failed to use progressive discipline
- PG&E failed to establish that K█'s mistakes constitute the sort of sever, willful misconduct that warrants termination in the first instance
  - K█'s ticker responses were based on a mistaken understanding of the confusing NCCFO label and do not warrant termination in the first instance without progressive discipline
  - K█'s decision to open multiple tickets at once several times on February 16 and 17 does not constitute "falsification" and does not establish just cause for termination
  - K█'s February 16 and 17 timecards making an obvious and good faith claim for bypass pas do not constitute "falsification" and do not establish just cause for termination.

### PG & E's Position

- PG&E had just cause to terminate K█'s employment based upon his egregious, knowing and repeated violations of critical locate and mark procedures
  - K█ was aware of the proper locate and mark procedures as evidenced by the ample training and coaching he received, as well as by his own admissions
  - K█ knowingly and recklessly engaged in numerous violations of PG&E's locate and mark procedures which justified terminating his employment
  - The Union's attempts to justify K█'s blatant policy violations by pointing to alleged comparators falls flat
- PG&E had just cause to terminate K█'s employment based on his falsification of Company records
- PG&E also had just cause to terminate K█'s employment based on his failure to adhere to supervisors' instructions, falsification of his timesheets, and failure to adhere to PG&E's hands-free driving policy
- K█ is not credible and his testimony should be disregarded.
  - K█'s shifting testimony as to why he was failing to adhere to the proper locate and mark procedures demonstrates his complete lack of credibility
  - K█'s testimony as to why he locked out multiple tickets during the week-end of the Arcos callout is not credible and is inconsistent with other evidence in the record



## DISCUSSION

The evidence and K■■■■'s admissions show a flagrant disregard for the Mark & Locate procedures on the week-end of February 16 and 17, 2019. K■■■■ asserts that the occasions listed above, with regard to X904500283, X903601836, W908000603, X905100193, X901402426, X902501647, W909100403, X904800004, X904700314, X904800057, X904700269, X904700295, X904700312, and X904800012, on which he failed to follow procedures to go to a site and mark facilities, were only mistakes. The type of mistakes made by K■■■■ in failing to go to sites and/or mark facilities is not something out of a cartoon where Yosemite Sam or Wiley Coyote is shocked and fried, but appears in pristine condition in the next frame. Failure to properly Locate and Mark can result in severe bodily injury and death.

K■■■■ does not deny knowing the proper procedure, on which he was both counseled 11 months earlier and trained 10 months earlier.

The coding of tickets as NCCFO, no conflict cleared from office, without checking records for a conflict, and when going to the site, but failing to code the ticket to reflect the visit, failure to mark facilities and/or note corrections to be made to company records, is a falsification of records in addition to violating locate and mark procedures.

The Union's assertion without proof that other employees engaged in the same conduct and were not discharged does not establish that company policy was inconsistently applied.

Even in the absence of the settlement agreement that PG&E entered into in 2016 regarding its Locate and Mark, the company's Locate and Mark procedures are reasonable. In view of the settlement and revamping of the training program in which K■■■■ took part in 2018, the minimization of K■■■■'s 'mistakes' is particularly unwarranted.

K■■■■'s substantial and egregious use of NCCFO, leaving dangerous conditions in the field for others to stumble across is so severe as to justify termination without prior discipline without consideration of the other allegations concerning hands-free driving and locking up tickets as a falsification of timecards.

#### AWARD

The grievance is denied inasmuch as PG&E met its burden of proof that K■■■■'s violations of the Locate and Mark policies were knowing, blatant and so severe in risking the safety of others to warrant termination without prior progressive discipline.


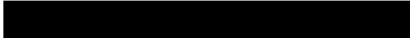

Respectfully submitted this 20th day of November, 2023,



A handwritten signature in black ink that reads "Sheri E. Ross". The signature is written in a cursive, flowing style.

Sheri E. Ross  
Arbitrator



Arbitration Board Signatures  
Arbitration No. 394  
Grievance No. 25060

**Company Board Members**

  
 \_\_\_\_\_ ☒ Concur ☐ Dissent 11/22/2023  
K L  Date

 \_\_\_\_\_ ☒ Concur ☐ Dissent 11/22/2023  
D H  Date

**Union Board Members**

  
 \_\_\_\_\_ ☐ Concur ☒ Dissent 11/25/2023  
D S  Date

  
 \_\_\_\_\_ ☐ Concur ☒ Dissent 11/25/23  
I W  Date