

BEFORE THE NEUTRAL ARBITRATOR
SHERI E. ROSS

In the matter of:

INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS
LOCAL 1245,

GRIEVANCE NO. 25775

UNION,

AND

PACIFIC GAS & ELECTRIC
COMPANY

ARBITRATOR'S DECISION AND
AWARD

EMPLOYER

FOR THE UNION

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ARBITRATOR

Sheri E. Ross

INTRODUCTION

On August 24, 2021 the Union filed a grievance on behalf of J ■■■ K ■■■, (K ■■■), Troublemaker in the Restoration Department of the Vacaville Service Center alleging that on or about August 24, 2021 K ■■■ was improperly terminated without just or sufficient cause. The parties did not settle the grievance and the Union requested arbitration thereon. An arbitration hearing was conducted in this matter on July 25, 27, and 28, 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 October 4, 2023.

ISSUES

1. Was the Grievant, K ■■■, terminated on August 24, 2021, for just cause?
2. If not, what should the remedy be?

JOINT EXHIBITS

1. January 1, 2016 IBEW Physical Agreement
3. Local Investigating Committee Report Grievance 25775, dated May 2022
4. April 22, 2003 Letter Agreement, 03-16-PGE regarding Vehicle Take Home
5. June 30, 1999 Letter Agreement, R1-98-50-OGE attaching revised Meals Clarification
6. September 21, 1987 Positive Discipline Agreement

EMPLOYER EXHIBITS

1. February 2021 Employee Code of Conduct
2. July 21, 2021 Summary of Investigative Findings
3. Spreadsheet showing K's Start and End Times with Truck Start and End Times and Meal Entitlement information
4. K's Trip Detail report for January 19, 2021 through March 22, 2021
5. Spreadsheet showing Auditor's Summary of K's time and meal information
6. January receipts for K
7. Excerpted Text Messages January 26 – 27, 2021
8. Email from B dated 4/8/21 to M and B regarding J K time
9. Email from B dated 4/12/21 to K regarding J K's timecards
10. Sample certification accompanying online timecard submission
11. Email from B to M and B dated 2/25/21 re: approval of timecards
12. Revised Exhibit 5 requested by Arbitrator to reflect mistakes Auditor discovered
13. July 15, 2021 Notice to K of Completion of Complaint Investigation
14. July 13, 2021 Summary Report of Investigation Findings on his complaint

UNION EXHIBITS

- A. Union Spreadsheet analysis of Employer's 6
- B. Screenshots of excerpted texts January 27, 2021 through April 9, 2021
- C. K in reveal complaint dated 2/4/21
- E. K in Time Card report 1/19/21 through 1/28/21

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.

Letter Agreement No. R1-98-50-PGE Meals Clarification

A. GENERAL STATEMENT...

In reading these guidelines and related charts the following notes must be kept in mind:

1. Unless otherwise stated or indicated, the regular work hours for an eight hour day schedule are assumed to be 8 a.m. to 12 o'clock noon and from 12:30 p.m. to 4:30 p.m. The regular work hours for a nine hour day schedule are assumed to be 7:00 a.m. to 11:30 a.m. and from 12:00 p.m. to 4:30 p.m. The regular work hours for a ten hour day schedule are assumed to be 7:00 a.m. to 12:00 p.m. and from 12:30 p.m. to 5:30 p.m....

In lieu of Meal Allowances

1. The in lieu allowances of Sections 104.10 and 16.2 are not applicable to an employee's regular lunch period (Review Committee Case No. 1697). As such, if an employee is prevented from preparing his/her lunch (perhaps as a result of an emergency overtime callout prior to work), the employee does not have the option of opting for the missed meal allowance and half hour pay. Instead, the employee is entitled to a Company furnished lunch or reimbursement for the actual cost of a lunch purchased. This is consumed during the regular unpaid lunch period.
2. If an employee opts for an in lieu meal, the next meal is earned four hours from the point the first meal was earned. The four hour clock does not begin one half hour following the first meal entitlement. For example, an employee called out for emergency overtime at 8:00 p.m. earns a meal at 12:00 a.m. If the employee opts for the in lieu payment, the next meal is due at 4:00 a.m. (4 hours from 12:00 a.m., not 4 hours from 12:30 a.m.). It would be possible for an employee to earn as many as 6 missed meals in a 24 hour period.
3. The only in lieu payments which are \$8 and not \$15 are those meals which are earned prior to reporting to work and are nearest regular starting time or midpoint of regular hours. The key is to look at the time the employee reported to work. If at the time the employee reported, he/she was entitled to a meal, then it is a meal earned prior to reporting to work. If the employee is not entitled to a meal at the time, they report to work then any meal entitlement would be earned during a work period, or following dismissal and would be \$15. For example:

An employee who regularly works 8:00 a.m. to 4:30 p.m. is called out and reports less than 2 hours before regular work hours and is not given an opportunity to eat. At the time the employee reports for work, s/he is entitled to a meal. As such, this is a meal missed prior to reporting to work

and is paid at \$8 since it is nearest regular starting time. If the same employee is called out and reports 2 hours or more before regular work hours, there would be no meal entitlement "prior to arrival" because the normal meal practice has not yet been disrupted. However, at approximately 7:00 a.m.(usual breakfast time) the employee is entitled to a meal. This is a meal missed "during a work period" and as such is paid at \$15...

B. PREARRANGED WORK... NINE HOUR DAY

1. When prearranged overtime starts 1/2 hour or less before the regularly scheduled start time, an employee Provides his/her own breakfast and lunch as usual and there is no need to advance the lunch period...
2. When prearranged overtime starts more than 1/2 hour but less 2 hours before the regularly scheduled start time, an employee his/her own breakfast and lunch as usual and lunch must be Advanced*. Since the lunch period is advanced more than a 1/2 hour, the lunch period is paid at the overtime rate. In this example, the employee will be given 30 minutes of overtime pay to eat the lunch meal but the employee will provide his/her own meal...
3. (a) When prearranged overtime starts between 2 hours and 6 hours before the regularly scheduled start time, a Company furnished meal should be provided at the usual breakfast time (approximately 1 hour to 1/2 hour before the regularly scheduled start time)...
4. When prearranged overtime starts more than 6 hours before the regularly scheduled start time, a Company furnished meal should be provided approximately 4 hours, but not more than 5 hours, prior to the usual breakfast time (approximately 1 hour to 1/2 hour before the regularly scheduled start time), when another meal shall be provided...
5. (a) When an employee works in excess of 30 minutes beyond the end of regular work hours, a meal is owed...

Letter Agreement No. 03-16-PGE Compliance Inspector Vehicle Take Home Agreement

Company proposes to modify Section 202.19 of the Physical Agreement to allow for Compliance Inspectors to take their company vehicles home at the end of the workday. In an effort to improve efficiencies in ways that produce more value than the costs associated with employees taking the company vehicle home, and to minimize cost and maximize site availability, this voluntary vehicle take home policy will commence upon the execution of this agreement.

Classifications eligible under this agreement are Compliance Inspector.

The local supervisor may allow employees to volunteer to take their Company vehicles home at the supervisor's discretion...

All eligible employees may participate on a voluntary basis. Voluntary agreement to this policy includes an acceptance of all guidelines. Employees who fail to meet their obligations in accordance with these guidelines may be ineligible to participate in the program and may be subject to disciplinary action.

Company may disqualify employees from this policy where efficiencies are not gained, guidelines are abused, security is violated, or other business reasons as deemed by the company.

Participating employees shall report to their work areas or route by the start time of their scheduled shift. On days employees are required to report to their regular headquarters (as defined in 202.19), they shall report at the beginning of their regularly scheduled shift.

Participating employees shall leave their work areas or route no earlier than the end of their scheduled shift, commuting home on their own time, not to exceed one hour

FACTS PRESENTED AT THE HEARING

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

- M [REDACTED] B [REDACTED] (B [REDACTED]), Compliance Inspector Supervisor at the time of the alleged misconduct
- B [REDACTED] K [REDACTED] n, (K [REDACTED] n), Corporate Security Investigator.
- J [REDACTED] T [REDACTED], (T [REDACTED]), Electric Crew Foreman at the time of the alleged misconduct
- L [REDACTED] [REDACTED], Internal Audit Manager
- H [REDACTED] D [REDACTED], (D [REDACTED]), Senior Director Distribution Inspector and System Inspection
- D [REDACTED] B [REDACTED], (B [REDACTED]), Maintenance and Construction Coordinator
- R [REDACTED] S [REDACTED], (S [REDACTED]), IBEW Business Representative
- J [REDACTED] K [REDACTED], (K [REDACTED]), Grievant and Troubleman
- D [REDACTED] S [REDACTED], (S [REDACTED]), IBEW Local 1245, Asst. Business Manager
- S [REDACTED] F [REDACTED] S [REDACTED], (S [REDACTED]), Compliance Inspector at the time of the alleged misconduct

- G. B. (B.), Compliance Inspector
- K. H. (H.), IBEW Local 1245 Business Representative

From June 2020 to December 2022 B. supervised compliance inspectors and contractors for the distribution inspection program. K. was one of B.'s subordinates in the Yosemite division. K. was regularly scheduled on a 9-hour Monday through Friday shift. In January 2021 K. was assigned to 16 hour storm duty in the Coarsegold area within Yosemite. The shift is commonly referred to as 16-8s because workers are scheduled for prearranged overtime to work up to 16 hours per day with at least an 8 hour break before commencing work the next day.

During the January 2021 storm, B. was working at the Oakhurst Work Center along with two other employees, who lodged at a nearby hotel¹. When he came back to the yard on an unspecified date, he observed two compliance inspectors taking supplies off a vehicle, but noticed that K. was not with them. On that day K. listed his start time on his timecard as 4:30 AM along with one other employee, S., but K. did not show up at Coarsegold until 6 AM.²

B. rejected the timecards of K. and S. on an unknown date. B. states that he spoke to both employees and asked why they listed 4:30 AM as a start time when their commute time was only 45 minutes.

According to B., S. said he did so because K. listed his start time as 4:30 AM. B. testified that he told S. he was only allowed to document his actual start time and asked him to correct his timecard. S. said that he would do so, 'if that is what it takes'.

¹ One of the employees who worked with B. was G. B. B. stated that B. traveled with him and knew he was not actively working 16 hours; that he would start at 6 AM, be back at the hotel at 8 or 9 PM, have dinner with B., and start again at 6 AM the next day. B. recorded 16 hours of time which was approved. B.'s testimony was not controverted.

² K. and S. were traveling back and forth to Coarsegold from their respective homes because no hotel rooms were available.

S [REDACTED] has worked 3 to 4 storms per year always on a 16-8 schedule. He has always recorded 16 hours of work per day for a storm, regardless of the actual number of hours worked, using his start time in the morning. For the Oakhurst storm in January 2021, he had to start at 4:30 AM to get to Coarsegold by the scheduled start time. During the storm he worked 4 – 5 days in Coarsegold, several in Merced and others in Sonora. When he submitted his timecard for the pay period covering the storm, 11 – 12 days were denied and 2 others were sitting in pending. When he was calm, days later, he noticed B [REDACTED] in the Merced yard. S [REDACTED] asked B [REDACTED] if they had a personal problem and stated that he did not know why his timecard had been denied. He asked B [REDACTED] what he needed to do get it approved. B [REDACTED] told S [REDACTED] to change his start time to 5:15 AM for the days he went to Oakhurst. According to S [REDACTED], B [REDACTED] did not tell S [REDACTED] why he wanted to have him change the start time to 5:15 AM. B [REDACTED] asked him who told him to start at 5 AM in Sonora, because that was not how they were running things in Oakhurst. S [REDACTED] had taken a picture of the board in Sonora showing his shift time as 5:00 – 21:00 and told him to call T [REDACTED] C [REDACTED] or J [REDACTED] M [REDACTED] to verify. S [REDACTED] changed his start time to 5:15 AM so that he would get paid. He thought he could go back and fight for the rest, but decided against filing a grievance fearing retaliation from B [REDACTED] by retracting his approval to S [REDACTED] to take his truck home.

S [REDACTED] explained with regard to the practice of charging 16 hours of work, even if one works less, that the company owns your time for the 16 hours. When one works 16-8s the company can contact you anytime during the 16 hours and you do as they need. It is the employee's committed availability to the company. You have to be available to work during the entire 16 hours even if it means just picking up a phone call.

S [REDACTED] further explained that he lives one hour 2 minutes from Oakhurst under clear conditions, but before turning on the key one has to spend 3 – 5 minutes completing a COVID Safe application and 10 – 15 minutes completing a required

truck inspection. B■■■■ sent S■■■■ an email acknowledging receipt of the COVID Safe application, so he knew what time he started. Further on the dates in question the conditions were rainy and there was quite a bit of snow on the ground. He needed to install chains. Then one arrives in a line of vehicles to funnel into the single entrance, park and get to the rendezvous point. He did actually start at 4:30 AM to arrive at 6 AM.

By changing his timecard to 5:15 AM start time, S■■■■ was no longer entitled to a Supplemental Meal, so he removed it from his timecard. Per S■■■■ Supplemental Meals occur when one is entitled to a meal break during overtime, but are not able to go, sit down and eat within the bounds of the CBA. A supplemental meal allows an employee to eat and keep going, but maintain the contractual entitlement to a meal. It means grabbing a Red Bull, Beef Jerky and gas station food. One does not need permission for a Supplemental Meal.

B■■■■k states that in late January, either Monday or Tuesday, he asked K■■■■ why he was starting at 4:30 AM to get to Coarsegold and told him he had to use actual times. K■■■■ told him that traffic was preventing him from getting in in 45 minutes, but never mentioned the 16-8s schedule. B■■■■ told K■■■■ to correct his time card. K■■■■'s timecard was declined and sent back to him to correct. K■■■■, unlike S■■■■, did not correct the timecard. K■■■■ denies that B■■■■ ever spoke to him about changing his timecard.

On January 27, 2021 B■■■■ sent a text email to the work group stating:

A reminder on time cards. You can only turn in for the hrs you work. Storm schedule of 16/8 does not automatically pay you for 16 hours each day. You may want to revisit your vehicle take home policy if you think your entitled for door to door pay.

No evidence was provided to support the contention that K■■■■ was on the distribution list. Further, K■■■■ states that his work mobile phone was not receiving texts and, at some point, supervision changed the destination they were texting him to his personal cell phone.

B [REDACTED] also states that he reviewed his policy on 16-8s, to reflect that only actual time worked was to be recorded on timecards, in tailboard meetings, but no evidence of agendas or meeting attendance records was presented.

When subsequently investigated by Corporate Security, the timecards in question show:

Date	Timecard Start	Vehicle Start Time	Delta	Pay Rate	Timecard End	Vehicle Stop Time	Delta	Pay Rate
1/19/21	0700	0735	.58	ST	2030	1906	1.40	DT
1/20/21	0430	0519	.82	DT	2030	1911	1.32	DT
1/21/21	0430	0513	.72	DT	2030	1945	0.75	DT
1/22/21	0430	0510	.67	DT	2030	1855	1.58	DT
1/23/21	0430	0512	.70	DT	2030	1936	0.90	DT
1/24/21	0430	0517	.78	DT	2030	1920	1.17	DT
1/25/21	0430	0513	.72	DT	2030	1708	3.37	DT
1/26/21	0430	0525	.92	DT	2030	1802	2.47	DT
1/27/21	0430	0509	.65	DT	2100	2129	-0.48	DT
1/28/21	0515	0503	-.20	DT	2100	2032	0.47	DT

On an unknown date, B [REDACTED] contacted T [REDACTED] M [REDACTED], (M [REDACTED]), Systems Inspection Manager and B [REDACTED]'s supervisor, advising him that he had declined the timecards. M [REDACTED] told B [REDACTED] to follow-up with Labor Relations Specialist Y [REDACTED] B [REDACTED], (B [REDACTED]). He did so.

B [REDACTED] told B [REDACTED] to create a ticket so that she could open a case and advised that she would contact R [REDACTED] S [REDACTED], (S [REDACTED]), IBEW Business Rep. A few days later B [REDACTED] advised B [REDACTED] that the Union would file a grievance. B [REDACTED] states he followed up again with K [REDACTED], who did not agree to change his timecard. K [REDACTED] denies ever speaking to B [REDACTED] about the timecard.

On February 4, 2021 K [REDACTED] filed an internal complaint with PG&E's Compliance and Ethics Department against B [REDACTED] alleging that B [REDACTED] inappropriately disclosed information about his FMLA status. An investigation was begun on the

complaint, however, on February 9, 2021 K [REDACTED] was advised that insufficient information was provided and a request for a list of data was given a due date of February 17, 2021. On some unknown date, K [REDACTED] changed allowed his identity to be disclosed. The investigation proceeded. On April 16, 2021 B [REDACTED] was interviewed regarding this complaint. During the investigation B [REDACTED] admitted that a publicly available calendar in his office contained information that included when an employee was out on FMLA leave. This was the only portion of the complaint that was substantiated. During the hearing B [REDACTED] stated that the complaint was over his use of "FMLA" on a calendar and he did not know who filed the complaint until the July 25, 2023, the first date of the hearing in this matter.

On February 25, 2021 M [REDACTED] sent B [REDACTED] a request to assist B [REDACTED] with travel time and timecards. B [REDACTED] responded that same day that no grievance had been filed and B [REDACTED] should approve timecards as he had in the past and inform employees on how to correct time recorded. B [REDACTED] stated that there was no way he could modify the timecard or just approve 40 hours, so he approved the timecard as submitted. B [REDACTED] also approved K [REDACTED]'s PCard invoices for supplemental meals. According to S [REDACTED] and corroborated by D [REDACTED], if B [REDACTED] had neither approved nor denied K [REDACTED]'s timecard, he would have been paid 40 hours straight time per week and would have had to grieve the difference if he wished to be paid for it.

Per B [REDACTED] and M [REDACTED]'s instructions, B [REDACTED] followed up with timecards and GPS information to show the start and end times as recorded on the timecards as well as truck start and stop times provided by fleet. He also sent K [REDACTED] a spreadsheet with the same information on April 12, 2021.

On April 21, 2021 B [REDACTED] communicated to K [REDACTED] that he suspected an employee submitted inaccurate timecards. K [REDACTED] performed an investigation which included reviewing the data provided in the table above and interviewing

personnel. He also turned over data pertaining the meal reimbursement to [REDACTED], whom he considered a subject matter expert thereon.

K[REDACTED] utilized Fresno Restoration Supervisor, T[REDACTED] R[REDACTED], (R[REDACTED]), and Merced Temporary Supervisor, J[REDACTED] T[REDACTED], (T[REDACTED]), as subject matter experts on the topic of 16-8s. T[REDACTED] testified that employees work 16 hours with 8 hours off, (16-8s) usually to repair storm damage or other emergencies. Under the 16-8 schedule one is to record only time worked, according to T[REDACTED].

T[REDACTED] worked with K[REDACTED] on January 21, 2021 as crew foreperson. He told his crew that they were working 16-8s until further notice. T[REDACTED] did not elaborate on what working 16 hours meant. He did not tell the crew either that they can record 16 hours regardless of hours worked or to record only actual hours worked. T[REDACTED] was lodged at a motel himself and did not record his start time until arrival at the work site as the motel was only 2 – 3 minutes away. He recorded his stop time when he returned to the motel. T[REDACTED] further explained that supplemental meals are secured on the go and one keeps working, expenses the meal and still puts in for a missed meal.

K[REDACTED] also looped L[REDACTED] [REDACTED], (L[REDACTED]), Internal Audit Manager, into his investigation as a subject matter expert on time and expense audits. L[REDACTED] reconstructed K[REDACTED]'s time records based upon actual hours worked for K[REDACTED] and also concluded that he claimed various meal entitlements to which he was not entitled. At the hearing she concluded that she had made errors in her conclusion and at the request of the Arbitrator reformulated her findings with regard to meal entitlements. The reformulated findings resulted in a lesser total than Ionin concluded K[REDACTED] had been overpaid for meals during the investigation. With regard to the 16-8s, L[REDACTED] looked at S[REDACTED]'s timecards too and found that he had not recorded 16 hours or made any changes in his timecard.

D ■■■ S ■■■, (S ■■■), IBEW Local 1245 Assistant Business Manager, testified as a subject matter expert on supplemental meals after participating in negotiations, as a shop steward, business, representative, fact finder and union member of the pre-review committee. He stated that a supplemental meal is a meal taken on the go while working overtime that is not considered a comparable substitute for a normal meal and enables employees to eat while avoiding shutting down a job. S ■■■ created a spreadsheet with a side by side analysis PG&E/Union analysis of K ■■■ meals. He concluded that K ■■■ was entitled to the meals under any circumstance in some instances and in others based upon the past practice understanding of 16-8s.

B ■■■, S ■■■, S ■■■, B ■■■, and S ■■■ all testified that the past practice for 16-8s was to record 16 hours regardless of the time worked, unless specifically instructed to the contrary by a supervisor. The reason for claiming 16 hours regardless of time actually worked is that the employee is holding him/herself available to work during that entire 16 hour period. Further, according to these witnesses, PG&E wants the employee to be available when needed and by paying for 16 hours PG&E incents the employee to come back the next day instead of staying home.

On May 26, 2021 K ■■■ filed another internal complaint against B ■■■ alleging that B ■■■ reported him for falsification of timecards in retaliation for the February 4, 2021 complaint. After an investigation, the retaliation complaint was found to be unsubstantiated.

In his July 20, 2021 Summary of Investigative Findings K ■■■ recommended:

“a possible need for further training of hourly employees and their supervisors to eliminate any confusion on how the term (16-8) is defined and implemented at PG&E.”

It also noted that:

“ Even if based on a genuine belief in the justification of his actions, K█'n's practices produced inaccurate timekeeping records and receipt of pay and meal allowances to which he was not entitled.”

K█ does not recommend termination in the Summary of Investigative Findings.

D█, the decision-maker, stated that she decided to terminate K█ for falsification of timecards based upon the recommendation from Security and HR. She also stated that falsification of timecards violates the Code of Conduct and termination is consistent with the way PG&E has handled record falsification in the past.

K█ stated that he has worked 1 – 2 storms per year since hired in 2013. Examples include Chester, Bakersfield, Santa Cruz, Napa, Bay Area and Cupertino. In each of the storms worked prior the January 2021 storm, he was scheduled 16-8s and recorded 16 hours per day regardless of actual time worked. No evidence to contradict K█'s assertions was presented.

In January 2021 K█ was assigned to work Oakhurst on T█'s crew as a patrol switching man on line tags. T█ told him it was a 16-8 shift for the five days K█ worked on his crew. T█ would send him to work on a task, he would come back to the meet area, and once it was dark, work would be wrapped up so that no one was working in the dark. T█ would tell them to wrap up and go, that they were done. K█ was not provided with lodging at Coarsegold and had to drive back and forth daily from his home in Clovis.

After five days K█ was reassigned to Madera with S█. He ended up working in Merced for V█ W█. Mid-way through the second day he went to Sonora. He came home that night, packed his bags and returned to Sonora the next day to stay there working for V█ M█. Both W█ and M█ told him his shift was 16-8.

K■■ entered his time on the MyTime App on his phone. The time was color coded: yellow for entering time, green for approved and red for denied. His time on the Oakhurst storm was denied with a code showing “apprentice OT”. This was not the code for K■■’s position, so he fixed it, and resubmitted to reflect the correct code for his position. The same denial for the “apprentice OT” code had occurred once or twice in the past. He had corrected the code on those occasions, resubmitted and was then approved and paid timely. When his time was approved after changing the position code for the Oakhurst storm, he thought he had corrected all issues arising out of his time submittal, as B■■ never contacted him and explained why the time submission was denied. According to K■■, B■■ never told him to correct his time because he worked less than 16 hours. K■■ specifically denied that B■■ told him twice to change his time card, but he refused.

K■■ attended the LIC in its entirety and heard B■■ tell the attendees that he had a meeting with K■■ and S■■ at the Madera yard to correct their timecards, but that never happened. At his Unemployment Insurance hearing, ■■■J■■ testified for PG&E. He did not claim that K■■ was told to change his time card and refused, per K■■. K■■ stated that he would have changed his timecard if B■■ had told him to do so as it would have been a direct order from a supervisor and he would have been insubordinate to refuse. If K■■ felt that B■■’s order to change his timecard was incorrect, he would have taken it up with his Union rep. Several times prior to January 2021, B■■ had not handled K■■’s timecard in a timely fashion. He would receive an off cycle check for any overtime worked a week after his regular check in those cases.

The only conversation K■■ had with B■■ in this timeframe was about the truck take home policy. When he first answered K■■’s questions about his start time, he thought K■■ was asking him about his dispute with B■■ over the truck take home policy. After his Union rep spoke to him privately, he understood the questions were about the 16-8s.

K■■■ explained that he did not believe he was disciplined for the meal issue. He explained that by the time he got to the meet point in the mornings, all the breakfast food provided by PG&E was gone, so he put in for food in lieu of breakfast. He noted that B■■■ approved all his meal expenditures and meal entitlements without objection.

Finally, S■■■ stated that B■■■ is dishonest. He based his assessment on representing B■■■ when he was a member of the bargaining unit in 2018. S■■■ related that he saw evidence of a black book that B■■■ maintained listing transformers. When B■■■ was called out on emergencies that only lasted a ½ day, he would pretend to be a customer and call in an idle transformer to get a full day of pay. He was given a Decision Making Leave – the last discipline step before termination for a year after agreeing to his misconduct. The DML sunset after a year.

SUMMARY OF PARTIES POSITIONS

PG & E's Position

- PG & E had just cause to terminate K■■■'s employment inasmuch as:
 - His falsification of company records is a terminable offense
 - His theft of time and monetary reimbursements is a terminable offense
 - K■■■'s fraud demonstrates that he cannot be trusted
 - K■■■ was well aware that his conduct in reporting false time and in-lieu meals on his timecard violated PG & E policies
 - K■■■ claim to justify his timecard falsification is not believable.
- K■■■'s claimed confusion over how to record his 16-8s is belied by the actions of his colleagues
- PG & E conducted a full and fair investigation
- K■■■ is not credible
 - K■■■'s testimony that B■■■ never spoke to him about the timecard issues in January 2021 is not credible and is inconsistent with other evidence in the record
 - K■■■'s testimony that he thought the reason for the denial of this timecard was the result of a coding issue and was resolved is not credible and inconsistent with other evidence in the record

- K█████ testimony about what he was told by supervisor J█████
 - T█████ is inconsistent
- The Union's arguments are without merit
 - B█████ did not discriminate against K█████
 - The meals K█████ was taking were not supplemental meals which are not permissible under the CBA at any rate

Union's Position

- PG & E did not establish that K█████ acted with knowledge and intent to defraud with regard to its allegation that he falsified company documents
- PG & E failed to establish that K█████ acted with knowledge and intent to defraud PG & E
- PG & E's failure to notify K█████ that his long-followed practices had become terminable offenses prevent PG & E from establishing just cause for termination
- B█████'s testimony that he instructed K█████ to change his timecard and K█████ refused, even if credited, would not establish that PG & E had just cause for termination
- PG & E cannot establish just because the evidence shows that B█████ initiated the investigation in retaliation for K█████ filing a complaint against him.

DISCUSSION

The traditional seven factors just cause analysis relies on the following factors:

1. The employee knew of the company's policy
2. The company's policy was reasonable
3. The company investigated to determine that the employee violated the policy
4. The investigation was fair and objective
5. Substantial evidence existed of the employee's violation of the policy
6. The company's policy was consistently applied
7. The discipline was reasonable and proportional (the punishment fit the crime)

In this case the 16-8 rule is not a company rule but a supervisor by supervisor rule. Uncontradicted testimony established that other supervisors approved of 16 hours pay, regardless of the actual number of hours worked, for those

assigned to a 16-8 shift. B■■■■'s own testimony demonstrates that his rule for 16-8s was not even applied consistently among his crew, as those who were housed at a motel/hotel near the site, claimed the 16 hours pay per B■■■■'s instructions, even when they did not work a full 16 hours each day. B■■■■'s denial of the 16 hours to employees, K■■■■ and S■■■■, who were not housed at a local hotel and had to commute from their homes, was at odds with his treatment of other crew members. Thus, B■■■■'s 16-8 rule was neither consistently applied throughout his crew, throughout PG&E nor known as a 'company' policy.

Is PG&E's policy of granting each supervisor discretion, as to whether or not to pay an employee called out for 16 hours with an eight hour required rest break before the next 16, **for the entire 16 hour period**, reasonable? Under California law, if employees are under an employer's control, it is likely that the employer will have to pay them even if they are just sitting around waiting for something to happen. This is generally referred to as "controlled standby." Based upon undisputed testimony, once scheduled for a 16-8 shift, those 16 hours were owned by PG&E. The 16-8 scheduled employees could be called to the field, even after going home, cleaning and restaging their vehicle, and changing out of their gear, as long as the 16 hour clock was still running. Leaving the decision as to when or when not to pay employees scheduled for 16 hours, where PG&E owns those employees' hours, if fewer hours are worked, to individual supervisors is not reasonable.

PG&E did conduct an investigation to determine if K■■■■ violated company policy, but it was not fair. In this regard all B■■■■ and/or HR needed to do, if there were questions about the validity of certain claims on K■■■■'s timecard was authorize payment for a standard 40 hours and put the burden on him to grieve for the balance. No evidence was presented to establish why PG & E chose to deviate from standard practice in disputing timecard entries was presented. ■■■■'s analysis of K■■■■'s meal claims contained errors and she even failed to uncover

S■■■■'s modification of his timecard. These facts lead me to believe that her attention to detail, understanding of the systems and accuracy are questionable. Further, although the investigative report specifically recommended additional training on 16-8 timecard coding and did not recommend termination of K■■■■ Security's recommendation was ignored. In these circumstances, the fairness of the investigation has not been proven.

Substantial evidence did not exist of K■■■■'s violation of policy. In this regard B■■■■'s testimony was incredible, unpersuasive and unconvincing. He was untruthful in stating that he did not know who had filed a complaint against him until the date of the hearing. K■■■■ granted permission to the investigator to reveal his identify. The investigation concluded in April that B■■■■ posted K■■■■'s name on a publicly displayed calendar as taking FMLA leave. B■■■■ knew at least in April 2021 that K■■■■ had submitted a complaint thereon.

B■■■■'s statement that he told both K■■■■ and S■■■■ that they could not charge for a full 16 hours if they worked fewer hours was also untruthful. He never spoke to them together according to both gentlemen. He never approached S■■■■ about the issue and in fact only told S■■■■ to change his start time without explanation. The evidence did not establish that the subsequent 'group' text message included and/or reached K■■■■. B■■■■ statement that there was no way he could just approve 40 hours is also untruthful, as it is clear that by B■■■■ doing nothing, K■■■■ would have been paid for the base 40 hours.

It is undisputed that K■■■■ worked prior storms as 16-8s, claimed the full 16 hours each time regardless of the number of hours actually worked, and was never disciplined, counseled or otherwise advised that his practice was in error. K■■■■'s claim that B■■■■ never spoke to him about the flat 16 hours he charged on his timecard is credible on its face and in light of both K■■■■'s previous experience with a coding error and B■■■■'s propensity for falsehoods, for which he was once disciplined. Even though B■■■■'s prior Decision Making Leave sunset had been

wiped off his record, the evidence in this hearing shows that he continued to shave the truth with regard to K[REDACTED].

PG&E's assertions that K[REDACTED] was not entitled to the supplemental or in-lieu payments rests upon an assumption that he was not entitled to a full sixteen hours pay. K[REDACTED] was entitled to the full sixteen hours pay and consequently, he was entitled to the supplemental or in-lieu meal payments too.

PG&E did not have just cause to terminate Klein.

AWARD

The grievance is sustained. K[REDACTED] shall be reinstated with backpay, (offset by interim earnings excluding funds gained from selling goats), and restoration of benefits to August 24, 2021, the date of his termination; reimbursement for health insurance premiums paid by K[REDACTED] to the extent such premiums would have been paid by PG&E; reimbursement for medical expenses to the extent they would have been covered by PG&E health insurance; restoration of seniority as if he had not been terminated; and removal of any and all documentation pertaining to the investigation and/or discipline for said termination from his personnel file


Respectfully submitted this 20th day of October, 2023,


A handwritten signature in cursive script that reads "Sheri E. Ross".

Sheri E. Ross
Arbitrator


Arbitration Board Signatures
Arbitration No. 395
Grievance No. 25775


Company Board Members

 _____ Concur ☒ Dissent ☐ October 23, 2023
Date

 _____ Concur ☒ Dissent ☐ October 23, 2023
Date

Union Board Members

 _____ Concur ☐ Dissent ☒ October 24, 2023
Date

 _____ Concur ☐ Dissent ☒ October 25, 2024
Date