

IN ARBITRATION PROCEEDINGS
PURSUANT TO AGREEMENT BETWEEN THE PARTIES

In the Matter of a Controversy

between

PACIFIC GAS & ELECTRIC COMPANY,

Employer,

and

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 1245,

Union.

RE: Discharge

ARBITRATION CASE NO. 173

OPINION AND AWARD

FRANKLIN SILVER,
Chairperson of Board
of Arbitration

DOROTHY FORTIER
GARY HUGHES
Union Members

MARGARET A. SHORT
MARTIN RATEAU
Company Members

This dispute arises under the Collective Bargaining Agreement between the parties, pursuant to which this Arbitrator was selected as neutral Chairperson of the Board of Arbitration. A hearing was conducted on February 7, 1990, in San Francisco, California, at which time the parties had the opportunity to examine and cross-examine witnesses and to present relevant evidence. Both parties submitted closing briefs which were received on April 26, 1990.

APPEARANCES:

On behalf of the Union:

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On behalf of the Company:

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ISSUE

Was the termination of the Grievant, P , for just cause; and, if not, what is the appropriate remedy?

PERTINENT PROVISIONS OF THE CONTRACT AND OF COMPANY RULES

EXHIBIT C, METER READER AGREEMENT:

Section B(1). Job Definition - A Meter Reader is an employee assigned a route of meter locations. Each meter location is visited, the meter number checked and meter dials read and recorded. Any unusual or abnormal conditions observed are reported. . . .

Section M(3)(c). The Company shall not discipline a Meter Reader solely on the basis of a route time analysis report or any other time summary report.

COMPANY STANDARD PRACTICE 850-11:

Section C(3). READER INSTRUCTIONS - Always read all meter dials. Not reading all the dials (2 or 3 dialing) is prohibited. Guessing or estimating any reading or entering a reading on the meter book page without actually reading the meter or plastic card (curbed reading) is grounds for immediate dismissal.

FACTS

A. Background and Basis of Discharge.

The Grievant was hired by the Company in May, 1986, and after the first six months she worked continuously as a meter reader until the date of her discharge, March 17, 1989. The

discharge letter from customer services supervisor Robert R. Freeman stated as follows:

"As you confirmed, you did not physically read the meters at 2360 McLaughlin Avenue, San Jose on March 15, 1989. This constitutes curbing.

"In addition, you improperly allowed a non Company person to assist you by reading part of your assigned route. This is in direct violation of Employee Conduct, Standard Practice 735.6-1. Therefore, we have no alternative but to terminate your employment with Pacific Gas and Electric Company effective today, March 17, 1989."

The non-Company person referred to in the discharge letter was G , the Grievant's house mate and best friend. G had been a meter reader with the Company for ten years until she was fired in February, 1989 for curbing. The specific incident leading to her discharge was that she used the reading from the previous month for a vacant house, rather than reading the meter directly. This led to an erroneous entry for that house, and she admitted that she had not read the meter.

For several years, the Company has provided meter readers with electronic meter reading devices ("EMRs") to enter the readings on their routes. Each individual route has a programmed sequence of accounts, developed by the senior meter readers with input from supervisors and meter readers, and designed to provide the most efficient sequence for reading the meters on the route. The accounts are called up automatically on the EMR in their programmed order, and the readings for each account are entered directly into the EMR, eliminating any need for writing down the readings. If a reader wants to deviate from the programmed sequence, the EMR provides a search

function which makes it possible to call up a non-sequential account and to continue in sequence from that account for as long as desired. The meter reader can return to the original sequence by entering another command. In addition, a separate function allows a meter reader at the end of the route to call up any addresses which were missed during the route, and if there are a number of misses they will appear in their programmed sequence. If a reading is entered which is out of the normal range based on the previous month's reading, the EMR will reject the reading and will beep. If the meter reader is sure the reading is correct, it can be entered again and if the reading is not too far out of the normal range it will be accepted.

After a route is completed, the entries from the EMR are sent to the Company's main frame computer which prints out a form known as an R15 route time analysis, showing readings from each of the accounts in the order entered into the EMR along with the time of each reading and the elapsed time since the beginning of the route.

B. March 15 - Observations by Supervisors.

On March 15, as the meter readers were leaving the San Jose yard at approximately 7:00 a.m., Freeman thought he saw some one riding with Grievant in her car. Meter readers are paid a fee to use their own personal cars, rather than to share rides. Therefore, Freeman's suspicions were aroused, and he asked two other management employees, field evaluator Richard Eleman and meter reading supervisor Judy Moring to go

with him to observe the Grievant on her route. Prior to leaving they obtained a copy of the Grievant's R15 for this route from the previous month, and they arrived at the route between 9:00 and 9:15.

Freeman, Eleman and Moring found the Grievant's car parked on Midpine Avenue near McLaughlin Avenue. They searched for the Grievant, and they first observed her at approximately 9:30 on Sunnycrest Circle at Bikini Avenue. They returned to a parking lot which they used as a headquarters, and they determined that the Grievant was one and one half hours ahead of where she had been the previous month according to the R15. Shortly after 10:00, they drove back onto the route, and they observed the Grievant and G together in G ' car driving south on Bikini. They returned to the parking lot, and Freeman called revenue protection representative Howard Dean to assist with the observation.

Dean arrived on the route at approximately 11:00. He knew both the Grievant and G by sight. He drove onto the route and observed G at 1286 Letitia, near Bikini. She was in the driveway, and appeared to be leaving the meter location at the corner of the house. She had a clipboard, and Dean observed that she was wearing a dark jacket, dark trousers, and a light shirt. He could not tell if this was a PG&E uniform. He was driving a PG&E car, and he estimated that he was 30 or 40 feet away from G. Because he was concerned that she had observed him, he drove down the street, parked at another house, and attempted to give the appearance

that he was checking the meters at that address. Dean then returned to the parking lot where Freeman and the others were waiting. After reporting what he had seen, he again drove onto the route and he observed G at another house on Bikini near the meter location. He then returned to his office.

After Dean reported his initial observation, Freeman and the others drove onto the route, and at approximately 11:15 they observed G at 2286 Bikini. She was leaving the side of the garage, near the meter location, coming down the driveway. According to both Freeman and Eleman, she was carrying a clipboard and wearing a PG&E uniform, consisting of dark gray jacket and pants, a light gray shirt. They both observed PG&E logos on the uniform. They were driving very slowly, and according to Freeman they observed G at a distance of five to eight feet. Because they were riding in a private van with dark tinted windows, they could not be easily identified by G.

Later, Freeman and the others were parked in their van at a different location on Bikini, near Letitia, where G car was parked. G returned to her car at approximately 12:00 or 12:15, and drove away. This time, according to Freeman and Eleman, she was wearing a light colored jacket. Approximately 30 minutes later, they observed the Grievant and G on Spokane Drive. The Grievant was at a meter location and G was on the sidewalk. This time G was wearing a light blue T-shirt with no jacket, and she was not carrying a clipboard.

Freeman and the others then located G [redacted]' car at 12:55 parked on Bayard Drive. They stopped and looked in the car. They saw a clipboard on the front seat, with a paper containing the word "church" and what appeared to be meter readings.¹ Eleman hurriedly copied "church", and numbers which matched the meter number the gas and electric reads for the Chinese Alliance Church at 2360 McLaughlin Avenue according to the R15. The church has a demand meter, which must be reset and sealed after reading, and Eleman copied the demand reading of .23 from the paper in G [redacted]' car.² In addition, Eleman copied the number 26E741, along with gas and meter reads, which were later matched with the reads for 1251 Letitia on the day's R15.³

Freeman and the others next observed the Grievant and G [redacted] sitting together from approximately 1:15 to 1:35 in G [redacted]' car, which was parked behind the Grievant's car on Midpine. The Grievant then got out of the car without her EMR and went to a house on Midpine. She returned to the car five minutes later. The day's R15 shows 54 entries between 1:15 and

¹ G [redacted] testified that the paper on her clipboard was a list of readings from when she had been a meter reader and which she had simply left in her car. She testified that she did, in fact, take a reading from the church and had written the word "church" with those readings on the same piece of paper. That piece of paper was entered as an exhibit with the Local Investigating Committee. It shows no reference to account number 26E741, and Freeman testified that this paper was not the one he had observed in G [redacted]' car on March 15.

² They later went to the church, and the demand meter had been re-set and showed a reading of .03.

³ According to the R15, the readings for the church were entered on the EMR at 1:17, and the readings for 1251 Letitia were entered at 1:18.

1:31, with a final entry for 1159 Midpine at 1:43.

C. The investigatory interview.

The following day, Freeman interviewed the Grievant. According to Freeman, he asked the Grievant if she had had any help on her route, and she said she had not. He asked her if she had read all of the meters, and she said she had. He indicated he had observed G on the route, and the Grievant stated that G had brought her lunch and her pain pills and had been there only 15 or 20 minutes. When Freeman said he knew G had been there longer, the Grievant said she might have been there an hour. According to Freeman, the Grievant said that G had read some of the meters on the route, but that she (the Grievant) had gone back and read the ones on Bikini. The Grievant admitted, according to Freeman, that G had read the church for her.

The Grievant testified that she did say that G had read the church, but denied telling Freeman she had used G's reading for the EMR. She testified that she had misunderstood Freeman's questions when she said G was on the route for 15 minutes, and that when she first saw G they were together for 15 minutes. Although she saw G off and on for a period of several hours, they were actually together for only a little over one hour.

C. March 15 - Grievant's account.

Because G had been recently fired from her job as meter reader, she was depressed and had occasionally visited the Grievant on her route for companionship. G asked if

she could come to the route on March 15, and although it was unnecessary, the Grievant suggested that G bring her lunch and pain medication to the area around Bikini and Sunnycrest at 9:30 or 10:00.

The Grievant had read the route she was assigned on March 15 many times before, and she usually did not read it in the programmed sequence.⁴ She found it boring to do the route in sequence, and there were practical reasons as well for not following the sequence. The Chinese Alliance Church is the first account on the EMR, and it is normally closed early in the morning. Also, the meters on Midpine, and at some other locations, require access to back yards, and she found it easier to get access early before people left for work.

The Grievant also followed a practice of "paper reading" some accounts out of the programmed sequence. The Grievant had started working as a meter reader before EMRs were introduced and she was comfortable with recording reads on paper. She also found the search function on the EMR to be somewhat unreliable when she attempted to bring up an account out of sequence using the meter number, although it was easier when she was able to use the account number. On the other hand, she found it easy to record some out-of-sequence portions of her route in a small tablet she customarily carried with her for that purpose, and at the end of the day to bring up the misses on the EMR, entering the reads from the paper.

⁴ Both the March 15 and the February R15s are out of sequence.

The Grievant testified that on March 15 she left the PG&E yard shortly after 7:00 a.m. by herself, and she parked at Midpine near McLaughlin. She began by reading accounts on McLaughlin, working her way back to Midpine. She then paper-read some of the backyard meters on the north side of Midpine, which were out of the EMR sequence, and then went back into the EMR sequence, reading Hopeton Court. She then paper-read the remaining backyard meters on the north side of Midpine, before returning to the EMR sequence to read the south side of Midpine.⁵

She continued in the EMR sequence until 9:10 a.m. when she left the sequence at 2246 Bikini, jumping across the street to read Sunnycrest Circle. The sequence at this point would have taken her south on the west side of Bikini, up and down Letitia Court, up and down Bagely Way, and back up the east side of Bikini to Sunnycrest. She skipped that portion of the sequence in order to be in the area of Sunnycrest and Bikini when G was due to arrive between 9:30 and 10:00 o'clock. When she crossed over to Sunnycrest, she searched up that portion of the sequence on the EMR, reading Sunnycrest, north on Bikini, and finishing Shoreview Court, at which point the R15 shows 27 minute lapse between 10:12 a.m. and 10:39 a.m.

G had arrived by the time the Grievant finished reading Shoreview Court at 10:12. G testified that on

⁵ This testimony is consistent with the R15, which shows a 5 1/2 minute gap between 2304 McLaughlin and 2301 Hopeton, and an eleven minute gap at 8:09 a.m. between 2302 Hopeton and 1214 Midpine.

her way she noticed the Chinese Alliance Church, and, because the location of the church made a "deadwalk" necessary, she stopped on the spur of the moment and went into the church to read the meters and save the Grievant the deadwalk. The church, however, has a demand meter, and G was unable to re-set and seal the demand because she did not have any seals with her. When she met the Grievant at Bikini and Shoreview, she said she had read the church but had been unable to reseal the demand. The Grievant then asked G to drive her back to the church so that she could re-set and seal the demand. The Grievant testified that she left the regular sequence at that point, rather than reading the church later in the day, because it was convenient since G was there in her car and could drive her.

On the way to the church, the Grievant asked G, to stop at Letitia, at which point the Grievant testified that she paper-read Letitia Court, four houses on Denair near Letitia, and a portion of Bikini near Letitia.⁶ The Grievant and G then drove to the church, where the Grievant read and sealed the meter.⁷ According to the Grievant, she left the EMR in the car and paper-read the church.

⁶ After this cluster of houses had been read, only Bagely Way and the portion of Bikini between Bagely and Sunnycrest remained from the portion of the sequence which the Grievant had skipped in order to meet G at 10:00 o'clock.

⁷ Company and Union representatives from the Local Investigating Committee interviewed a church employee who had seen a PG&E meter reader that morning reading the meters. The church employee was shown photographs of the Grievant and G, and she identified the Grievant as the meter reader she had seen on March 15.

G then drove the Grievant back to Bikini and Shoreview, at which point the Grievant continued to read in sequence between 10:39 and 11:24. G testified that after dropping the Grievant off, she went to a market at a gas station to buy the Grievant a Coke and that she had an ice cream herself. She then drove around for a while, did not find the Grievant, and parked in the area of Bikini and Bagely. She got out and stretched, and she saw a kitten by some bushes at 2286 Bikini. She called to the kitten and took some steps onto the property before the kitten ran away. She testified that she was not wearing a PG&E uniform at the time, or at any time that day; nor did she read that meter or any other meter except for the church. She testified that she then spotted the Grievant crossing the street on Bikini near Bayard, and she drove to that location and parked.

The R15 shows that just before 11:24, the Grievant read Shoreland Drive, and then read two houses on Bayard, at which point there is a ten minute break. The Grievant testified that when she got to Bayard, she waved to G, and when G got there, she asked her to drive to Bikini and Bagely so that she (the Grievant) could finish up the portion of the sequence that she had missed earlier. The Grievant testified that she decided to leave where she was at Bayard and to finish up this sequence because G was there and could drive her. The R15 shows that between 11:34 and 11:56, a number of accounts on Bikini, including 2286 Bikini, and on Bagely were entered on the EMR. The Grievant testified that after she

finished reading on Bagely, G drove her back to Bayard where she (the Grievant) resumed reading. The R15 shows that at 11:56 there was an eight minute break, and the accounts on Bayard were then resumed in sequence.

The Grievant continued reading in sequence until 1:07 when she finished up on Denair. G testified that during that time she slept for a while and walked around, until she again saw the Grievant who asked her to drive her to some houses she had missed earlier. After this G drove the Grievant back to her car on Midpine, where for twenty minutes or so the Grievant entered her paper reads from the church, the Letitia-Bikini group, and from Midpine on the EMR. The R15 shows that these reads were entered between 1:17 and 1:31. The Grievant had earlier had difficulty reading one of the addresses on Midpine, and the EMR rejected this read when she attempted to enter it. She therefore got out of the car and spoke with the occupant of that house before returning to enter that read. This testimony is consistent with the EMR which shows a twelve minute gap before the entry (on the third try) of the final read on Midpine.

According to the R15s for February and March, the total elapsed time for the Grievant to read this route in February was six hours and six minutes, while the elapsed time for March was six hours and thirteen minutes.

D. Timing of six addresses including 2286 Bikini.

On a portion of Bikini which includes 2286 Bikini, the houses are arranged so that there is a common driveway between

two houses with the meters being placed opposite each other across the driveway. The meter reader is therefore able to read the gas and electric meters on two houses quickly before walking the width of two houses to the next driveway. During the hearing, the Grievant's attention was directed to the portion of the R15 showing six houses on Bikini beginning at 10:39 a.m. This testimony followed:

"Q. To read the next six addresses took you about two and a half minutes. Would that be accurate?⁸

"A. Yes.

"Q. That's about normal for that kind of situation, in your opinion?

"A. Yeah, unless you're running it. I didn't run those.

"Q. Did you run any of those that day?

"A. Some of them I did.

"Q. Which ones did you run that day?

"A. I think I was running some in Sunnycrest Circle.

"Q. Where else?

"A. Probably Bikini. Part of Bikini." (Tr. 242)

The R15 shows that the readings for the six addresses ending with 2286 Bikini were entered within a total elapsed time of 51 seconds. In comparison, the R15 for February shows that the same six addresses were entered with an elapsed time of 2 minutes, 34 seconds. When asked to explain this discrepancy between the two months, the Grievant answered:

"A. I don't know. I can't explain why some meters get read faster than others. All I know is sometimes you walk faster. Sometimes you don't. Sometimes you're very tired. Sometimes you're not." (Tr. 246)

Eleman, whose job duties include training meter readers, read the same six addresses to determine the time necessary to do so. It took him two minutes and 18 seconds to read the 12

⁸ The elapsed time for those six addresses was actually three minutes and five seconds.

meters at those addresses, and he expressed the opinion that it was not physically possible to read them in 51 seconds.

POSITIONS OF THE PARTIES

The Company.

The Company argues that management has the fundamental right to establish reasonable work rules which are consistent with law and the collective bargaining agreement, and that it has done so in establishing the rule against curbing contained in Standard Practice 850-11. Violation of this rule goes to the heart of the service provided by the Company, and immediate discharge comports with the seriousness of the offense. The Grievant received the rule, and she knew that G had been fired for curbing.

The testimony of the Grievant and G, that G only read the meter at the church and that the Grievant re-read this meter and read all other meters on the route, is riddled with contradictions and conflicts with direct and circumstantial evidence. The Grievant testified that she read the six addresses which include 2286 Bikini with her EMR in 51 seconds, as compared with two minutes and 39 seconds the previous month. This is implausible, and since G was seen at these addresses with her clipboard before the readings were entered on the EMR, logic dictates that these reads were taken by G. Further, the Grievant's testimony that she paper-reads meters because it is easier and faster, and that she zig-zagged through her route that day, is inconsistent with the clearly more efficient EMR search procedures and programmed

sequence. G's testimony that she read the church to save the Grievant time, even though G knew she was unable to seal the meter, defies common sense. The Grievant had no logical explanation for leaving the normal sequence of her route to re-read the church as soon as G said that she had read it. The illogic of her explanations, and her misrepresentations when she was initially interviewed, demonstrate that the Grievant is attempting to conceal her misconduct.

Three Company supervisors observed G in a Company uniform, with a clipboard, walking from meter areas on the route. Relying on reads by a third person, especially one who has recently been discharged for falsifying reads, constitutes dischargeable conduct. The Grievant's testimony that she paper-read meters does not make sense in light of the simpler and more efficient EMR procedure. In light of all of the evidence, the Company argues that the Grievant sought and received assistance in reading the meters on her route from G and this conduct merits discharge.

The Union.

While recognizing that curbing has been treated as a dischargeable offense under this collective bargaining agreement, the Union notes that previous cases have involved incorrect meter reads. Since there is no evidence of incorrect reads in this case, the Union argues that the misconduct must be proven by clear and convincing evidence, and that such evidence is lacking.

The only instance of curbing alleged as a basis for termination in the March 17 letter involved the Chinese Alliance Church. While both the Grievant and G candidly admitted that G had read the church meters, the evidence establishes that the Grievant did not enter those reads into her EMR. Freeman's testimony that the Grievant admitted using G ' reads is incomplete and diluted, and the church administrator unequivocally identified the Grievant as having read the meters. In addition, the Grievant's description of her paper reads is corroborated by her tablet and the 26-minute lapse in the R15 report.

In addition, the discharge letter alleges improper assistance on the route. Although there was innocuous assistance by G , the disputed evidence of improper assistance falls short of establishing curbing. The claim that G wore a PG&E uniform, as one of her four sets of clothing, and carried a clipboard does not establish curbing. The Grievant's explanation of paper-reading obviates any inference of wrong-doing, and the total elapsed time in March was greater than in February. The only allegation of curbing relates to the church, and the left-over evidence of assistance on other parts of the route is insufficient to establish misconduct warranting discipline or discharge.

The Union asserts that the Company has added several additional allegations of curbing which were not raised in the disciplinary interview, in the termination letter, or at lower stages of the grievance procedure. Therefore, the Union argues

that under broad arbitral authority, these new allegations should not be considered by the Board of Arbitration. If the Board determines that these allegations may be considered, the Union contends that as a matter of proof none of them merit discipline. Although there is disputed evidence that Gonzales read 1251 Letitia, 2286 Bikini, and 1286 Letitia, it was not established that the Grievant did not also read these accounts or that she relied on G. ' readings. With respect to the R15 report showing that 12 meters between 2316 Bikini and 2286 Bikini were read in 51 seconds, the Meter Reader Agreement provides that the Company may not discipline a meter reader solely on the basis of a route time analysis report, which it purports to do now. As a matter of due process and factual analysis, these new allegations do not warrant discipline.

The Union argues that the appearance of impropriety will not support discipline, and such appearance is the most that has been proven. Therefore, the Grievant should be reinstated with full backpay, seniority and benefits.

DISCUSSION

A. The discharge letter.

The discharge letter alleged that the Grievant did not physically read the meter at 2360 McLaughlin Avenue (the Chinese Alliance Church), and that this constituted curbing. It alleged further that "you improperly allowed a non Company person to assist you by reading part of your assigned route." The Union argues that because the letter alleged curbing at only one specific address, relying on a more generalized

allegation of improper assistance with respect to other portions of the Grievant's route, principles of due process dictate that newly articulated allegations of curbing at other addresses, including 2286 Bikini, 1251 and 1286 Letitia, and "the Bikini cluster" (2316 through 2286 Bikini) should not be considered.

Due process certainly requires that an employee must be informed of the grounds for termination, and that in general an employer may not later add new grounds beyond the scope of the original charges. The primary reason for this principle is that the employee must know what he or she is expected to defend against, and cannot be held responsible for producing evidence to rebut previously unknown allegations. In addition, an employer is responsible for fully investigating the employee's conduct before making the decision to terminate, and it cannot add new charges which were not considered at the time it made that decision.

In this case, Freeman felt that the Grievant had admitted relying on G ' reading of the church's meters, and apparently for this reason he specified that address in the discharge letter (Tr. 45). He and other supervisors had observed G at other locations on the route, and he stated in the discharge letter that G had assisted "by reading part of your assigned route." Although this allegation did not use the word "curbing", and it cited a different Standard Practice, the substance of the allegation is that the Grievant had entered readings at other locations on her route

without having actually read the meters herself, i.e. that she had engaged in curbing.

A discharge letter should not be read in an overly technical manner, and if it is sufficient to place a grievant on notice of what he or she is required to defend against, it satisfies due process requirements. Here, the Grievant was placed on notice by the discharge letter that she was accused of relying on readings by G. at locations other than the church. In addition, the Local Investigating Committee report states that G. was observed leaving a meter location at 2286 Bikini with a clipboard and wearing a PG&E uniform (p. 3), that Dean had observed her with a clipboard and dark clothing leaving a meter location on Letitia (p. 2), and that Eleman had copied the meter number for 1251 Letitia Court from the clipboard in Gonzales' car (p. 4). Therefore, the Grievant and the Union were on notice that the Company claimed that G. rather than the Grievant had read the meters at these specific locations. The allegation of curbing is therefore not limited to the Chinese Alliance Church.

B. The substance of the charges.

Much of the evidence in this case focuses on the Grievant's methodology in reading her route. The EMRs provided by the Company incorporate modern computer technology designed to increase the efficiency with which meter readers do their jobs. The Grievant, however, was not totally enamored of the EMR procedures, and chose to deviate from the programmed sequences and to engage in what the Company considers the inefficient

practice of paper-reading portions of her route. Whatever the relative merits of the different approaches to meter-reading, this aspect of the Grievant's conduct did not violate any Company policy nor was it so inherently illogical as to suggest that it was done to cover up improper conduct.

Much of the Grievant's explanation for her actions on March 15 appears credible on its face. It does not seem unlikely that she arranged to have G bring her pain pills and her lunch to the route due to G ' need for companionship, that she paper-read the backyards on Midpine, nor that she deviated from the programmed route at Bikini and Sunnycrest in order to be in that area to meet G at 10:00 o'clock. Although there are some problems with G ' explanation that she stopped to read the church purely on impulse,⁹ it may be accepted that she did this and that the Grievant impulsively decided to leave the normal route at 10:12 a.m. in order to have G drive her to read the church meters and re-set and seal the demand.¹⁰ The church administrator's identification of the Grievant supports this account of events.

After this point, however, the explanations by the

⁹ G did not convincingly explain how she knew when she stopped that she would be saving the Grievant a deadwalk (Tr. 138-9) or why she thought she would be saving the Grievant time by reading the meter in spite of the fact that she could not re-seal it (Tr. 127).

¹⁰ Although at the investigatory interview Freeman understood the Grievant to admit relying on G reading of the church meters, what was actually said by the Grievant is sufficiently vague so that it is possible Freeman misinterpreted the Grievant's statements as an admission.

Grievant and G fail to explain adequately the direct observations by Company supervisors and other circumstantial evidence concerning their actions. The problems with their explanations relate to the portion of the route which the Grievant skipped when she left the programmed sequence at Bikini and Sunnycrest in order to remain in that area to meet G at 10:00 o'clock. The portion that was skipped was south on Bikini to Letitia, all of Letitia (including four houses on Denair), north on Bikini to Bagely, all of Bagely, and then north on Bikini to Sunnycrest. This portion of the route was entered into the EMR in two segments: Bagely Court and north on Bikini ("the Bagely-Bikini cluster") was entered between 11:34 and 11:56 a.m.; and Letitia Court, the four houses on Denair, and part of Bikini ("the Letitia-Denair-Bikini cluster") was entered at the end of the day. The conflicts in the evidence regarding these two clusters is discussed below.

The Bagely-Bikini cluster. The most telling conflicts involve this cluster, for which the readings were entered in the EMR between 11:34 and 11:56 a.m. The Grievant testified that when she was at Bikini and Bayard, she saw G and waved to her, and that she then asked G to drive her to Bagely. Her testimony was that she had previously paper-read the Letitia-Denair-Bikini cluster on the way to the church, and she needed to finish by reading the Bagely-Bikini cluster. The R15 shows that after two addresses on Bayard were entered at 11:24, there was a ten minute gap before the Bagely-Bikini

cluster was entered, and that there was an eight minute gap afterwards, at which point the sequence on Bayard was resumed.

The Grievant's testimony is consistent with the R15, but the initial conflict arises from the testimony by Freeman and Eleman that they clearly observed G at approximately 11:15 carrying a clipboard and wearing a PG&E uniform, including a jacket with logos, leaving a meter location at 2286 Bikini, which is located within Bagely-Bikini cluster. Although the Union suggests that their testimony lacks credibility because they observed G later wearing a different jacket or no jacket, it is certainly possible that G could have put on a PG&E jacket for the sole purpose of reading these meters. The Grievant's jacket was available, since she testified that she had it with her that day but did not wear it (Tr. 167). G explanation, that she was calling to a kitten on the property, is an attempt to explain her presence on the property, but it does not explain why she was observed carrying a clipboard and wearing a PG&E uniform.

Therefore, no adequate basis for doubting the reliability of the supervisor's observations has been presented, and those observations are strong evidence that G was on the property at 2286 Bikini for the purpose of reading the meters. While this evidence does not directly establish that the Grievant entered G ' readings in the EMR, it contradicts the testimony of both the Grievant and G that G only read the church and it undermines the credibility of both of their testimony.

In addition, the timing of the entries for the six addresses between 2316 and 2286 Bikini provides persuasive evidence that the Grievant did in fact enter G readings in the EMR rather than reading the meters herself. The readings for those six houses were entered in 51 seconds, as compared with 2 minutes and 34 seconds the previous month. The meters for two houses in that area of Bikini are located directly opposite each other across a driveway so that those four meters (a gas and electric meter for each house) can be read in close succession before walking the width of two houses to read the next group of four meters. The following chart shows the intervals between readings of these meters in February and March. The intervals between reading the gas and electric meters at each address are shown on the same line with the address, and the intervals between different addresses are shown on the line in between each two addresses.

Address	February interval (in seconds)	March interval (in seconds)
2316 Bikini	6	3
2310 Bikini	29	7
2304 Bikini	6	3
2298 Bikini	4	7
2292 Bikini	7	3
2286 Bikini	39	6
	4	3
	4	7
	6	3
	35	7
	14	2
Total elapsed time	2:34	0:51

What is notable about the February intervals is that they were consistent with the physical location of the meters, in

that the intervals where the Grievant was required to walk the width of two houses to reach the next group of four meters were 29, 39, and 35 seconds, while the intervals between addresses having meters opposite each other were 4 seconds each. In March, however, there was no appreciable difference in the intervals between the meters separated by two houses and those in close proximity to each other, all of which showed 6 or 7 second intervals. This demonstrates that the March readings were not entered at the time they were physically read, as testified by the Grievant, and when considered with the previous conclusion that G actually read the meters, it establishes that the Grievant entered G ' readings for these houses in the EMR.¹¹

The Meter Reader Agreement provides in section M(3)(c) that the Company may not discipline a meter reader "solely on the basis of a route time analysis report." Although a comparison of the two R15s furnishes strong support of the charge of curbing, the discipline was imposed at the time based upon the supervisors' direct observations and what Freeman considered to be an admission by the Grievant. The R15s furnish corroborative evidence of the supervisors' observations, and were not the sole basis of the discipline. For that reason, the Meter Reader Agreement does not preclude considera-

¹¹ Prior to being confronted with the timing of these particular readings, the Grievant testified that she had run part of her route. While this tends to lend support to an assertion that she read these six addresses, she may have anticipated the questions about these addresses. At any rate, running these six addresses is an inadequate explanation of the uniformity in the intervals between the various houses.

tion of the R15s as support for the disciplinary action.

The Letitia-Denair-Bikini cluster. The Grievant testified that she asked Gonzales to stop while they were driving to the church at approximately 10:15 a.m. and that she paper-read this cluster of houses at that time, entering the reads in the EMR at the end of the day while sitting in G. . . ' car. This testimony is consistent with the R15 and with her note pad. It is inconsistent, however, with two other pieces of evidence.

First, Dean testified he observed G. . . in dark clothing leaving a meter location with a clipboard at 1286 Letitia at approximately 11:00 o'clock. Dean was driving a PG&E car and did not want to be seen by G. . . , and so he saw her quickly from a distance as he drove past. He was unable to say whether the dark clothing worn by G. . . was a PG&E uniform. He later saw her leaving a meter location on Bikini.

Second, Freeman and Eleman saw a clipboard in G. . . ' car at 12:55, and Eleman copied some readings which included the readings for account number 26E741 from the clipboard. The readings corresponded with those in the R15 for that account, located at 1251 Letitia. G. . . ' testimony that the paper on the clipboard contained leftover readings from when she was a meter reader is unlikely in itself. More importantly, since the paper she provided does not contain a reference to account number 26E741, there is no explanation for how Eleman was able to copy that number and the correct readings. There is no reason to believe that he would have manufactured this evidence, and it demonstrates that G. . . in fact read 1251

Letitia. It also undermines her credibility and that of the Grievant.

In view of Dean's observations and Eleman's notes taken from the clipboard, it is likely that the Grievant used G ' readings for at least part of the Letitia-Denair-Bikini cluster and at some point copied those readings into her own notebook.

C. Conclusion.

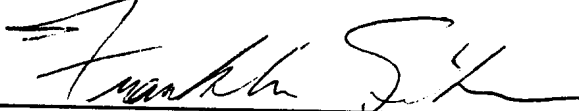
The evidence is conclusive that G read at least a portion of the Bagely-Bikini cluster, and that the Grievant entered those readings in the EMR rather than reading the meters herself. Although the evidence is less strong with respect to the Letitia-Denair-Bikini cluster, it appears that the Grievant used G ' readings for at least some of those houses as well.

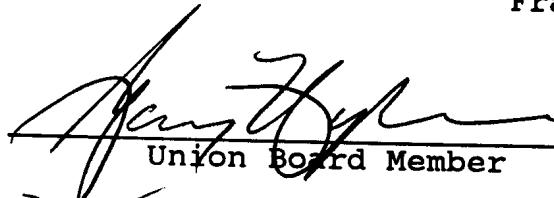
As the Union notes, this is not the usual type of curbing, which involves guessing or estimating reads, but it nevertheless fits under the definition in the Standard Practice, which includes ". . . entering a reading on the meter book page without actually reading the meter. . ." The Standard Practice specifies immediate dismissal as the penalty for curbing. Immediate dismissal for this offense has been upheld in prior arbitration cases, and, as the Grievant knew, G had been discharged for curbing one month earlier. Under these circumstances, it is concluded that the Grievant knowingly engaged in curbing and the Company was justified in its action of discharging the Grievant.


AWARD


The termination of the Grievant, P: was for
just cause. The grievance is denied.


Dated: June 1, 1990


Franklin Silver, Chairperson


Union Board Member (Concur/Dissent)


Union Board Member (Concur/Dissent)

 6/14/90
Company Board Member (Concur/Dissent)

 6/19/90
Company Board Member (Concur/Dissent)