

A MATTER IN ARBITRATION

In a Matter Between:

Pacific Gas and Electric Company

(Employer)

And

IBEW Local 1245

(Union)

Grievance: Termination

Hearing: October 8, 1999 and
March 6, 2000

Award: June 29, 2000

McKay Case No. 99-110(B)

ARBITRATION CASE NO. 235

DECISION AND AWARD

GERALD R. MCKAY, NEUTRAL ARBITRATOR
CAROL L. POWELL, EMPLOYER ARBITRATOR
MARGARET SHORT, EMPLOYER ARBITRATOR
ROGER STALCUP, UNION ARBITRATOR
HUNTER STERN, UNION ARBITRATOR

Appearances By:

Employer: Stacy A. Campos, Esq.
Pacific Gas and Electric Company
Law Department
P.O. Box 7442
77 Beale Street
San Francisco, California 94120-7442

Union: Tom Dalzell, Esq.
Staff Attorney
International Brotherhood of Electrical
Workers, Local 1245
P.O. Box 4790
3063 Citrus Circle
Walnut Creek, California 94596

A MATTER IN ARBITRATION

In a Matter Between:	Grievance:	Termination
Pacific Gas and Electric Company		
(Employer)	Hearing:	October 8, 1999 and March 6, 2000
And	Award:	June 29, 2000
IBEW Local 1245	McKay Case No.	99-110(B)
(Union)		

STATEMENT OF PROCEDURE

This matter arises out of the application and interpretation of a Collective Bargaining Agreement which exists between the above-identified Union and Employer.¹ Unable to resolve the dispute between themselves the parties selected this arbitrator in accordance with the terms of the Contract to hear and resolve the matter as the fifth member of a panel of arbitrators. Hearings were held in San Francisco, California on October 8, 1999 and March 6, 2000. During the course of the proceedings the parties had an opportunity to present evidence and to cross-examine the witnesses. At the conclusion of the hearings the parties agreed to file written briefs in argument of their respective positions. The arbitrator received those briefs on or before May 29, 2000. Having had an opportunity to review the record the arbitrator is prepared to issue his decision.

¹ Joint Exhibit #1.

ISSUE

Was the grievant, R , terminated for just cause? If not, what shall be the remedy?²

RELEVANT CONTRACT LANGUAGE

TITLE 7. MANAGEMENT OF COMPANY

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; . . .

BACKGROUND

At the time of the grievant's termination on June 21, 1997, he was classified as a journeyman distributor operator assigned to the San Francisco and Peninsula electric distribution power grid. The grievant had held the position of distribution operator for seven years prior to his termination. However, for most of the seven years he held the position, his job consisted of "[taking] care of the electrical responsibilities of San Francisco and Northern Peninsula, based on the DOs' office."³ According to the grievant, prior to the consolidation of positions, he had never worked in any of the substations. For the most part, his job consisted of what he described as a "desk job." It is the position of the Employer that in the course of performing his work, the

² Joint Exhibit #4 Attachment A.

³ Tr. Page 222.

grievant engaged in a performance error which the Employer believed could have caused serious injury to another PG & E employee. Because the error committed by the grievant was serious and because the grievant was on a decision making leave status at the time, the Employer terminated the grievant.

Mr. Greg Smethurst testified that at the time of the grievant's termination he was an operations supervisor who supervised the grievant along with 13 other employees. In approximately 1994, the Employer's operation had two classes of employees, one called system operators, and the other called distribution operators. One class of employees was stationed inside a main office, whereas the other class of employees worked in the field. A decision was made to combine these two classifications, and employees who were classified as system operators were sent back to the Employer's training program to learn the necessary skills to perform the combined job duties. After receiving the training, the grievant was placed on a rotating schedule, according to Mr. Smethurst, during which he worked one week on A desk, one week on B desk, one week as a mobile operator, and one week on the OK desk.⁴ The grievant worked this pattern from the 1994 until his termination in June 1997.

Donna Dell'era testified that in 1995 she was program manager of the power system operations school in San Ramon Learning Center. In February, she directed a course intended to train individuals such as the grievant to operate safely under the direction of the system operator.⁵ The course was a four-day long training program which the grievant attended. She described the content and approach taken in the course in the following manner,

⁴ Tr. Page 14.

⁵ Tr. Page 106.

That's the - - a poster we usually have up, and we distilled down to five concepts, each operation of the switch log, how you perform it safely.

And the five steps are, first, to understand what it is they're asking you to do. Anticipate what the electrical results will be of that operation that you can see happening.

Operate that step.

"Do it" is the third one.

The fourth one is to verify that what you expected to have happened happened.

And the fifth step is to document that you did it.⁶

One of the points emphasized in the course, according to Ms. Dell'era, was the importance of a semaphore. She stated,

We have just very basic - - we have always just very basic - - you teach the semaphore is your visual for the condition of the contacts inside the breaker. You can't see inside the breaker. This is what's telling you is happening inside the breaker.

Each breaker is a little different, so it's located in different places basically, in each style of breaker.

However, the majority of them are in the back, very close to the mechanics of the breaker itself. It's important, because it is the one step that will enable you actually understand whether or not the contacts are open or closed.⁷

⁶ Tr. Page 109.

⁷ Tr. Page 110.

In addition to covering semaphores, Ms. Dell'era testified, the course covered the importance of the lights in the circuit breaking operation. Specifically, she talked about the red light. She stated, "The reason the red light is important is that the continuity of the trip circuit is monitored from that red light."⁸ If the red light is not functioning, she stated, it means one of several things. She stated, "If it burns out, . . . it means a couple of things. Either the breaker is not closed, the trip circuit is no longer made up, and the breaker will not open, or the light is burned out."⁹ It is important, Ms. Dell'era stated, for the light to be replaced in order to test the status of the breaker. The students in the class the grievant took were taught how to change the light bulb. Even if the light bulb is malfunctioning, Ms. Dell'era stated, the definitive way to determine the state of the circuit breaker is from the semaphore which is usually located in the back.

Another way to determine the status of a breaker, Ms. Dell'era stated, is with a meter. But a meter can be misleading. She indicated that a breaker can be closed with no load which is why it is always important to check the semaphore in the back.¹⁰ There was hands-on training with respect switching, according to Ms. Dell'era, in a program which she described as "treasure hunts."¹¹ These were intended to give students practical hands on experience with the equipment. Ms. Dell'era testified that if the worker could not find the semaphore located with the breaker, they were instructed in her class to stop any further action and to contact the DO to determine where the semaphore was located. According to Ms. Dell'era, there was only one breaker in San Francisco which did not have a semaphore. This breaker was not located at the Yosemite substation.¹² In

⁸ Tr. Page 111.

⁹ Tr. Page 112.

¹⁰ Tr. Page 114.

¹¹ Tr. Page 115.

¹² Tr. Page 116.

order to qualify as a journeyman, the distribution operator has to be able to verify whether a breaker is closed or not, Ms. Dell'era stated. Ms. Dell'era emphasized that students were told that if there were problems with the breakers, they were to stop immediately until it can be determined what is causing the problem. She stated,

To go no further in the log, and investigate, to the best of their ability - - or the troubleman or switchman, whoever was out in the field, to their ability - - and not do anything until you can find out what the problem is, and proceed with whatever you find.

But you don't - - you just stop the log until you find out what's going on.¹³

Ms. Dell'era was asked what an operator should do if the operator took a meter reading on a circuit breaker and received a reading of 20-20-20. She stated the operator should look at the semaphore. If the load had changed so that the meter read 80 or 90, Ms. Dell'era testified, "That is conclusive the breaker was closed." With a reading of that nature it probably would not be necessary to check the semaphore. With a reading of 20, she stated, "It just seems too low." According to Ms. Dell'era, the students in her class, including the grievant, were informed about meter readings and how to address them appropriately. Ms. Dell'era stated that the course she offered was a refresher course. The attendees, including the grievant, would have had other basic training in which the same topics would have all been covered in order for those individuals to qualify as journeymen.

¹³ Tr. Page 119.

Mr. L testified that on May 27, 1997 he was working as the DO and the grievant was working as his mobile operator.¹⁴ During the course of the shift, the grievant was directed to close breaker 401/2 located at the Yosemite substation. At 11:48, the grievant informed Mr. L that the breaker was closed. The load reading received by Mr. L indicated a problem. Mr. L asked the grievant to check the breaker again to make sure it was closed and to take an additional meter reading. In response to this direction, the grievant told Mr. L that he had checked the circuit and it was closed. The grievant took an additional reading and it was still reading 20-20-20 amps. Mr. L asked the grievant if when he closed the circuit breaker did the meter show a 3-phase meter deflection?¹⁵ The grievant responded to him that, yes, there had been a meter deflection. The grievant did not tell Mr. L that he could not determine if the breaker was closed because the red light burnt out. The grievant did not tell Mr. L that he had opened and closed the breaker more than one time which is something the grievant should have mentioned to Mr. L. One of the things the grievant reported to Mr. L was "that he checked 401/2, open and racked into operating position."¹⁶ According to Mr. L, that means that the grievant would have had to open the back door of the housing in order to determine that response. He stated,

It would indicate to the Court the back door, which would be on of these doors; to look at the position of the breaker to have give me a time that the breaker was in fact open, that the breaker was in fact racked in.

Now, the indication the breaker is open would show that semaphore is green. So he would have to be able to located the semaphore to be able to tell me this operation, which is in 1B on page 50.

The next operation is 1D, "Check 402/2, open and rack into operating position."

14 Tr. Page 137-138.

15 Tr. Page 141.

16 Tr. Page 144.

He had to have that door open on 402 to indicate to himself that the flag or the semaphore - - or some people use that interchangeably - - had to be green and had to be racked in.¹⁷

Mr. L testified that if the grievant had told him that he was not sure whether the breaker was open or closed he would have had the grievant stop and get some help. He stated,

I would ask him to stop and get some help, or I might choose to have him open the cabinet to 403/2 and compare the condition of 403/2, which was closed, to the condition of 401/2.

And once you show a comparison between circuit breakers, you can usually identify the problem.¹⁸

There was no time pressure, according to Mr. L. On numerous occasions, he stated, he has stopped switching operations to make sure everything is done properly.¹⁹ Mr. L stated that he normally does not tell operators to double check to see whether breakers are closed because "these are very rudimentary tasks. . . ."²⁰ When the grievant told him that the breaker was closed he had no reason to doubt the grievant's statement. Mr. L explained that he anticipated the meter reading to be about 50 rather than 20, which is what prompted him to ask the grievant to re-check the breaker to make sure it was closed. He explained that at the low end of the meter, the deflection sometimes needs extrapolation, which an electrician is trained to do. That is one of the reasons, Mr. L stated, that he asked the grievant if he had seen "3-phase meter deflection."²¹

17 Tr. Page 145.

18 Tr. Page 152-153.

19 Tr. Page 154.

20 Tr. Page 155.

21 Tr. Page 159.

In response to that question, Mr. L stated, the grievant answered, "Yes."²² The grievant did not mention to Mr. L that the lights which are intended to indicate whether the breaker is open or closed were not working. Mr. L stated that if he had known that, he would have asked the grievant to change the bulb by taking the one that was working and putting it in the socket for the one that was not working to see the result. When Mr. L was told by the grievant the second time that the breaker was closed, he stated,

... I took it at its face value. This is from a fellow Golden Gate division operator. I don't question this kind of thing. When a request is issued, I expect it to be done.²³

Mr. L stated he had no reason to believe that the grievant did not know how to verify whether a breaker was closed or open. The grievant, he stated, had performed operation 1B and operation 1P, both which require that he check the semaphore.

After receiving verification from the grievant that the circuit was closed, Mr. L informed the troubleman that he could close the circuit. When troubleman did this, it caused a "dropped load."²⁴ Because the circuit was not closed as the grievant had reported it, when the troubleman performed his end of the operation, it caused the production of a "ball of fire." When the troubleman contacted Mr. L, "he was rather upset, and I had to calm him down."²⁵ In the process of attempting to deal with the crisis, Mr. L contacted the grievant, and ultimately directed him to close circuit 401 and 402. The grievant informed Mr. L that he could not do

22 Tr. Page 159.

23 Tr. Page 159.

24 Tr. Page 163.

25 Tr. Page 164.

that. Mr. L then told him to close breaker 403. In the course of this, the grievant raised the possibility with Mr. L that he had not closed circuit breaker 401. Mr. L, at this point, stated that, "I was furious." The grievant's actions in failing to close that circuit "caused me a lot of problems . . ."26 Mr. L stated that faced with this situation, he was taught to dispatch someone else to check the situation. He contacted Mr. O to get the status of the Yosemite substation. When Mr. O checked the two circuit breakers, he reported back to Mr. L that they were both engaged. Mr. L then directed him to disengage the two breakers.²⁷ This was the first time, Mr. L testified, that he was informed that the breaker had not been closed as the grievant had reported it. If there had been any doubt that breaker 401 and 402 were not closed, he would not have ordered the troubleman to proceed. Mr. L stated, "I am not a firework technician. I don't do fireworks."²⁸

Mr. Smethurst described the physical problems which could be created when the grievant failed to close the circuit and the troubleman went ahead with his operation. He stated,

In this case, the switch is not designed for a load breaker; therefore, you are going to burn the blades on the switch up. It's all going to come piling down on top of him, you know.²⁹

26 Tr. Page 167.

27 Tr. Page 169.

28 Tr. Page 170.

29 Tr. Page 38.

He continued,

. . . . The switch could come apart, the wires could fall down off the overhead. Any number of things could occur when that happens.

But your most common thing to happen would be the switch to either blow up or burn up.³⁰

When asked whether anyone could be injured as a result of these consequences, Mr. Smethurst stated, "If that switch comes flying down, or the wires come flying down. Anything could cause injury when things come apart."³¹ Mr. Smethurst noted that as a result of the failure to close the circuit properly and the consequent actions when the troubleman continued in the process, approximately 2200 customers lost their power. When Mr. Smethurst investigated the load drop to determine what caused it, he concluded that the grievant's failure to close the circuit was the ultimate cause of the problem. In the course of his investigation, he asked the grievant if he had checked the semaphore to make sure that the circuit was closed, and the grievant told him that he had not.³²

The grievant testified that he had little or no experience working at the substations in San Francisco and the Peninsula until job consolidation. The grievant testified that he had never been to the Yosemite substation prior to the incident which led to his termination. The grievant asserted that prior to May 27th, he had never received any training on the operation of an interlock.³³ When he performed his job at the Yosemite substation in closing the breaker, he noticed an operation change and gave the load reading as 20-20-20. According to the grievant, there was no

30 Tr. Page 38.

31 Tr. Page 39.

32 Tr. Page 46.

33 Tr. Page 224.

reading on the meter of 20, so he estimated. He asserted that he saw "some deflection." When the grievant was asked to verify that the circuit was closed, he said, based on his limited experience, he believed he should open it and close it again. He said, "I heard it open, closed it back, heard it bang, saw the same deflection, reported the same back to him."³⁴ The grievant asserted that in attempting to perform step 1H, he reported to Mr. L that he could not find "the station service to verify off of bank 1 if its in this position or not."³⁵ Mr. L continued the process, according to the grievant.

On cross-examination, the grievant acknowledged that he had received training on the semaphore and he understood its purpose.³⁶ He described the purpose of the semaphore in the following manner, "To give an indication, open or closed, of a CB."³⁷ When asked whether he knew it would conclusively tell him whether the breaker was open or closed, he answered, yes, that it was one method to determine that. He acknowledged that it was a "sure fire method." The grievant acknowledged that he did not go to the back of the transformer box to check the semaphore to determine whether the circuit on 401 and 402 was closed. The grievant acknowledged that operation 1-B required him to walk around to the back of the cabinet where the semaphore was located.³⁸ The grievant acknowledged that at no point while he was at the Yosemite station did he ever ask for assistance because he did not understand the operation of the equipment at that location.³⁹ The grievant asserted, however, that "I had questions from the start, a few things I couldn't find."⁴⁰ The grievant stated when asked what things he could not find at

³⁴ Tr. Page 227.

³⁵ Tr. Page 228.

³⁶ Tr. Page 237.

³⁷ Tr. Page 237-238.

³⁸ Tr. Page 232.

³⁹ Tr. Page 240.

⁴⁰ Tr. Page 241.

the substation the following, "The potentials, they were there. That had to be found by C , and then once he found it and I found it, that was complete."⁴¹ There was nothing else that he could not find. The grievant also acknowledged that there were no time limits on his functions and no one was telling him to hurry up. The grievant acknowledged that he did not ask Mr. L or anyone else where the semaphore was located on the breaker 401. The grievant acknowledged that he was asked to double check to make sure the breaker was closed because of the meter reading he gave. Without being directed to do so, and without reporting his actions to Mr. L , he opened and closed the breaker again. When asked why he did not go to the back of the cabinet to see whether the semaphore showed the breaker was closed, the grievant stated,

That wasn't a second-nature operation for me. This was the first time I had a chance to operate the interdrive sub.

Opening and closing it, hearing the bang, and seeing the deflection was enough for me to realize that something did occur, and the operation was satisfied when I saw the deflection . . .⁴²

The grievant acknowledged that he was aware of the potential deadly consequences of telling Mr. L the breaker was closed when in fact it was open.⁴³

The Union called a number of employees who testified about the various problems that had occurred over the years at the Yosemite station. The problems described had nothing to do with the difficulties the grievant had closing the breaker. However, each of the employees called testified that to determine whether a breaker was open or closed, a clear way of doing so was to check the semaphore in the back of the cabinet. Mr. F , for example, when asked

41 Tr. Page 241.

42 Tr. Page 246.

43 Tr. Page 247.

about a low reading on the meter of 20 was asked for a conclusive way of determining whether the breaker position was closed, he responded, "He would go to the semaphore and probably see if the breaker was open or closed, yes."⁴⁴

Prior to his termination, the grievant had received a number of items of positive discipline, including a decision making leave for attendance on May 24, 1997. In its letter of termination, the Employer asserted that the grievant engaged in a number of violations on May 27th, which included,

Operating the breaker more than one time without notifying the division operator. Once breaker was operated, no red light indicated breaker status was unknown. Not checking semaphore at back of breaker and breaker physically closed. Indicating 3-phase load that did not exist.

POSITION OF THE PARTIES

EMPLOYER

The Employer argued that it had just cause to terminate the grievant. The grievant made a serious performance error warranting discipline while at the last step of the parties' negotiated positive discipline policy. The Employer pointed out that the grievant acknowledged that he did not check the semaphore to determine whether the breaker he was supposed to close was in fact closed. The grievant's failure to take the one minute to walk to the back of the breaker cabinet and

⁴⁴ Tr. Page 215.

check the semaphore is inexcusable. The grievant knew about the importance of checking the semaphore and he was aware that the load readings were so low, the desk operator asked him to double check to make sure the breaker was closed. Even if the grievant failed to check the semaphore the first time he confirmed the breaker was closed, it is shocking that he didn't walk to the back of the breaker when asked a second time to confirm whether the breaker was closed.

The Union attempted to place the blame on Mr. Leung for failing to ask the grievant if he had performed each of the steps he was supposed to follow. The grievant was a fellow journeyman and a peer of Mr. L . As a journeyman, it was the grievant's responsibility and not Mr. L 's to use his training and experience to take the necessary steps to perform each operation. The Union's claim that the Yosemite station itself is to blame for the grievant's errors is also ridiculous. The grievant's failure to close the breaker had nothing to do with any of the problems at the Yosemite station. The Union's attempt to blame the grievant's error on the switching log is similarly flawed. Mr. L testified that he had no difficulty whatsoever in guiding the grievant through the operations contained on the two logs. The Union's attempt to blame another employee in another classification for the grievant's failure to check the semaphore is also absurd. It is true that a substation worker left the interlock engaged on the breaker, thereby precluding it from closing. The Union fails to take into account that the Company has a check and balance system to insure that the mobile distribution operator properly and conclusively verifies whether a breaker is open or shut prior to opening or closing a breaker. In this case, the grievant claimed the breaker was engaged and open in operation 1B, yet he failed to walk around the cabinet to ensure the breaker was closed after he manipulated the breaker operation handle on the front of the breaker. The Employer asserted that the grievant had proper training to perform the job that he was requested to perform on May 1997.

The grievant's termination is in accordance with other post-DML employees with more years of service. Employees who receive a DML's are given a day off with pay to decide whether they wished to continue their employment with PG & E and perform at a fully satisfactory manner. The grievant received a DML on May 23rd and was off on May 24, 1997. Despite the Company's warning to the grievant that he needed to perform at a fully satisfactory level or face termination, the grievant failed to do so. Had the grievant had a clean disciplinary record, he still would have been disciplined for his negligence. However, he would not have been terminated. The Union's contention that termination is too severe a penalty for the grievant's performance error ignores the fact that the grievant was specifically warned after being placed on the decision making leave that it was critically important that he maintain his job performance at a fully satisfactory level. Since his failure to do so would result in the termination of his employment. The Employer cited another of arbitration decisions where employees with more years of service than the grievant were terminated after having received a DML. The Employer asked that the grievance be denied.

UNION

The Union directed the Board of Arbitrations attention to a number of facts which it believes are beyond dispute. First, while the grievant had worked for the Employer for 14 years, he had virtually no experience as a mobile division operator. He had only been assigned to work in the field at substations for several weeks and he had never been trained or assigned to work at the Yosemite substation. Second, the grievant's supervisor had little experience or expertise, and his judgment of the grievant's actions was undoubtedly colored by his own lack of technical competency. Third, the grievant did not commit a switching error, the offense charged by the Company at the time of termination. Fourth, the outage on May 27th was directly attributable to a

switching error committed by substation foreman O' who left the interlock device engaged and did not leave any warning that he had done so. With this undisputed background, the Union then moved to 4 areas which the Employer alleges the grievant was at fault.

The Employer alleges that the grievant should not have opened and closed the breaker a second time without notifying L. The Union noted that the grievant believed by opening and closing the breaker handle, he was doing exactly what Mr. L told him. The Company next alleges the grievant should have stopped the operation completely because the red light and green light bulbs were not working. In the real world, virtually all the light bulbs on breakers are burnt out. There are no spares to be found anywhere. The grievant was without fault in proceeding without a green or red light. The third allegation is the grievant could not have read 20 amps on the meter. On this point, he was corroborated fully by system operator F who testified that he had been trained to report a slight deflection as 20-20-20. Finally, the Employer points to the fact that the grievant did not check the semaphore. The flag on the front of the breaker which the grievant checked, serves same function as the semaphore and operates the same mechanical principal. No written policy or guidelines require that the semaphore be checked. The switching log did not specify as one of its 406 steps that the semaphore be checked. Checking the semaphore is not always reliable according to Mr. L because it operates based only on one phase, and checking the semaphore is not necessary according to Ms. Dell'era if you have a good reading.

Because there was no switching error and no other error warranting discipline, termination was not appropriate. This is all the more clear when one considers that Mr. O' 's, whose failure to disengage the interlock, was the root cause of the problem and constituted the true switching error was not disciplined at all, nor was Mr. L . Because the Employer chose not to discipline these men with greater responsibility than grievant, its decision to discipline the grievant cannot pass muster and was not for just cause. The Union asked that the grievant be reinstated with full back pay and benefits.

DISCUSSION

It is true that the grievant's conduct for which he was disciplined involves some rather technical determinations. However, when all of the smoke and mirrors of technical jargon are cleared from the panel of arbitrators field of vision, the reason the grievant was disciplined relates to the fact that he was requested to perform a function in the process of switching, requiring him to close a breaker. The grievant failed to perform this function which resulted in the loss of power to customers and the potential injury to the troubleman when he drew an arc. The Union has attempted to excuse the grievant's action on the basis that other people were at fault, particularly Mr. O' who failed to disengage the interlock. The Union also attempted to excuse the grievant on the basis of his inexperience and lack of training. The panel rejects the Union's arguments and excuses for the grievant in their entirety.

The record clearly establishes that the grievant received ample training to perform the job that he was requested to perform on May 27, 1997. The grievant knew what a semaphore was and knew why one would check a semaphore with respect to a circuit breaker. The grievant believed he closed the circuit, but received a reading on the meters which created doubt both in his mind and in the mind of Mr. L . To correct this doubt, the grievant opened the breaker and re-closed it, which the Employer contends is an inappropriate response. Aside from the issue of whether it was the appropriate thing to do, it establishes clearly without any question that there was doubt in the mind of the grievant concerning whether or not the breaker was closed. The grievant testified that he knew the consequences for failing to close the breaker and knew that there was potential that someone could be injured if the process continued with the breaker still open. The grievant simply relied on clicks and noises to help him determine the status of the breaker.

The panel might overlook the failure of the grievant after his first attempt to close the breaker to check the semaphore on the back of the box. However, once doubt had risen in the mind of the grievant and Mr. L ; concerning the status of the breaker, there was no excuse for the grievant not checking the semaphore to determine whether in fact it was open or closed. The Union's own witness, Mr. F , testified that checking the semaphore was a conclusive way of determining whether the breaker was open or closed. The grievant also testified that this was a definitive way of determining whether the breaker was open or closed. Rather than do so, the grievant relied on the noises and clicks and told Mr. L that the breaker was closed. Mr. L had a right to rely on the fact that the grievant was journeyman, and in that capacity was telling him that the breaker was closed. Mr. L was not on-site and was not in a position to verify the accuracy of the grievant's statements. Since the grievant represented to Mr. L that the breaker was closed, the responsibility for failure is not with Mr. L as the Union attempted to assert, but is with the grievant.

The panel of arbitration is not as concerned about the red lights and green lights and whether bulbs are burnt out on a regular basis as much as it is concerned with the fact that the grievant's responsibility was to make sure that the breaker was closed. If the lights were not functioning and the grievant could not rely on them, then the grievant had to use other means to determine whether the breaker was open or closed. Since the reading the grievant got on the meter was marginal, the grievant could not effectively rely on that reading which prompted Mr. L's question to him to re-check the breaker. Faced with the situation where there were no lights and the reading on the meter was marginal, there was no excuse for the grievant not to check with a sure fire method of determining whether the breaker was open or closed. That sure fire method was to look at the semaphore in the back of the breaker box. The grievant's failure to do that caused 2200 customers to lose service and almost caused a troubleman to become injured. The grievant testified that he was aware of these consequences.

In summary, the facts establish that the grievant was a well-trained, experienced journeyman who was directed to close the breaker. The grievant was fully aware of the consequences of his failure to carry out this responsibility. The grievant was aware of how to close a breaker and how to determine definitively whether the breaker was closed. The grievant could not determine that from the lights since apparently they were not working. The grievant could not determine it from the meter reading because that was questionable and caused Mr. Leung to ask the grievant to double check whether the breaker was open or closed. The grievant was left in a situation where he needed to do something else to assure that the breaker was closed so as to avoid injury to his fellow workers and the loss of service to customers. The grievant failed to do so. This is grounds for discipline.

Having determined that the Employer established that the grievant's behavior constituted grounds for discipline, the only real question before the panel is whether the Employer's decision to terminate the grievant was reasonable under the circumstances. The panel would agree with the Employer that if this was the grievant's first offense, termination for this conduct would be unduly harsh and inconsistent with the Employer's general plan of discipline. However, this was not the grievant's first disciplinary problem. In fact, the grievant received a decision making leave only 4 days earlier. By agreement, the parties have set the standards of discipline so that employees understand if they receive a decision making leave, the next step is termination. Employees who have an active disciplinary leave realize that they must maintain fully satisfactory records of performance, or their next step is out the door. The Union does not contest any of these facts. It is true that in one of the investigatory reports the Union questioned whether it was appropriate to terminate the grievant only 4 days after he completed serving his decision making leave. In that note, the Union suggested that more time needed to pass so an employee could be given an opportunity to improve his performance. That argument may have merit in some circumstances, but when an employee immediately engages in conduct which warrants discipline right after completing a decision making leave, the employee does so at the employee's jeopardy.

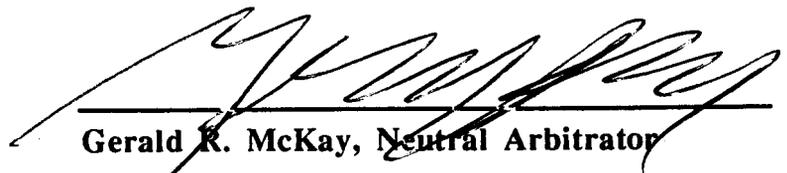
In summary, the Employer has established that there were grounds to discipline the grievant for negligence in performing his job at the Yosemite station on May 27, 1997. The Employer has established that the grievant was on an active decision making leave at the time he engaged in his negligent job performance. The Employer's decision under the circumstances to terminate the grievant was reasonable based on his misconduct and his disciplinary record. The grievance must therefore be denied.

AWARD

The Employer had just cause to terminate the grievant. The grievance is denied.

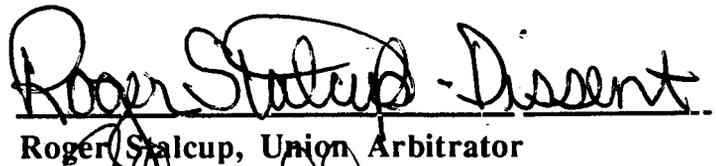
It is so ordered.

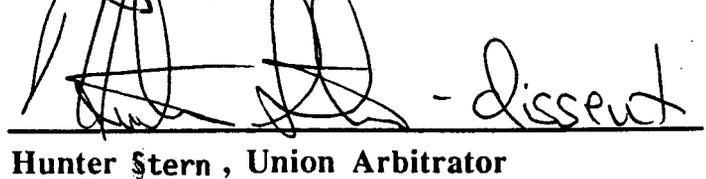
June 29, 2000


Gerald R. McKay, Neutral Arbitrator


Carol L. Pound, Employer Arbitrator


Margaret Short, Employer Arbitrator


Roger Stalcup, Union Arbitrator


Hunter Stern, Union Arbitrator