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130 Capricorn Avenue
Oakland, California 94611

IN ARBITRATION PROCEEDINGS PURSUANT TO
AGREEMENT BETWEEN THE PARTIES

In the Matter of a Controversy between:)	
)	
INTERNATIONAL BROTHERHOOD OF)	OPINION AND AWARD OF THE
ELECTRICAL WORKERS, LOCAL 1245,)	ARBITRATION BOARD
)	
Union,)	
)	
and)	
)	
PACIFIC GAS AND ELECTRIC COMPANY,)	
)	
Employer.)	
_____)	
Re: Dismissal)	Arbitration Case No. 304
_____)	

This arbitration arises pursuant to a Collective Bargaining Agreement between **INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1245**, referred to below as "Union"), and **PACIFIC GAS & ELECTRIC COMPANY**, (referred to below as "Employer" or "Company"). Under its terms, an Arbitration Board was selected to render a final and binding decision. **MATTHEW GOLDBERG** was selected to serve as neutral Chairperson; **LANDIS MARTILLA** and **KIT STICE** to serve as Union Board Members; and **DOUG VEDER** and **CHRIS DIAMOND** to serve as Company Board Members.

A hearing in this matter was conducted on June 9 and June 16, 2011 in San Francisco, California. All parties had full opportunity to examine and cross-examine

witnesses, and to submit evidence and argument. Posthearing briefs were received on or about September 3, 2011.

APPEARANCES:

On behalf of the Union:

JENNY MARSTON, Esq., INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1245, 30 Orange Tree Circle, Vacaville, California 95678

On behalf of the Employer:

VALERIE SHARPE, Esq. of PACIFIC, GAS & ELECTRIC COMPANY, 77 Beale Street, Suite 3112, San Francisco, California 94105

THE ISSUES

Was the grievant, P: discharged for just cause? If not, what should be the appropriate remedy?

RELEVANT CONTRACT SECTIONS

7.1 MANAGEMENT OF COMPANY

The management of the Company and its business and the direction of its working forces are vested exclusively in the 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 for just cause. . . .

FACTS

Grievant P: was employed as a "Troubleman" operating out of Willows, California. As the name implies, troublemen respond to the scene of various emergencies, including power outages, and take appropriate remedial measures. They work essentially on their own out in the field as they take care of customer issues in the distribution system. Originally hired by the Company on July 11, 1983, grievant was terminated December 8, 2010¹

¹All dates following refer to 2010 unless noted otherwise.

for failing to follow safety policies and procedures, dishonesty, and falsification of his time card. At the time of his termination, grievant had no active discipline on his record.

The discharge was the result of grievant's activities related to a power outage that occurred on September 4. At around 3:00 a.m. that morning, grievant was dispatched to respond to a downed wire in Hamilton City.² The wire was located on private agricultural property containing orchards as well as an undeveloped natural area. When grievant arrived at the scene, he found two blown cutouts on a tap line.

A tap line is a power line that diverges from a primary power line, its only source of energy. Cutouts are fused disconnects which are protection devices for the main line. When they are blown, typically by an energy surge, the line beyond the cutout is de-energized. A third cutout on the tap line had not blown. Grievant opened the fuse on that cutout to disconnect the downed line from the primary power line, and thus de-energized it. He then tagged the line with "man on line," a safety protocol which indicates that the line has been disconnected.

After opening the third cutout, grievant drove along the line to "patrol" it. He came to a locked gate roughly 0.6 miles from the point where he began. As the power line continued beyond the gate, grievant determined that he could not patrol it further by truck. While there was a path of crushed weeds that went around the gate, indicating that vehicles had taken that path, grievant believed that driving off road onto private property, particularly in the middle of the night, would not be consistent with Company policy.³

Upon his arrival at the gate, grievant called the Distribution Officer ("DO"), reported

²Grievant lives in Orland, about ten miles from the site of the outage.

³Restoration Supervisor Mike Lawson testified that Troublemens frequently have to drive off road, and that there is no Employer policy or procedure that prohibits Troublemens from driving off road onto private property at night.

what he had found, and asked for authorization to test the line. When he tested the line, two fuses blew, necessitating further investigation. Grievant returned to the locked gate, and followed the line on foot, with his flashlight. Four poles away, or about 1200' from the gate, he found a downed stretch of wire, which grievant had de-energized when he opened the third cutout, lying in an area of sixteen foot tall star thistle weeds. Grievant concluded that it would not be safe to attempt to cut down wire down: the thistle was thorny, and the area inaccessible by truck. He did not roll up and hang the wire⁴ because it was not his procedure to handle a wire that had not been tested and grounded. He was not permitted to ground a wire without assistance.

Grievant did not notice any signs of fire.

At 4:45 a.m., grievant called "Jose," the customer associated with the property on which the downed line was located, and asked if he had a key to the locked gate. The customer said he did not have the key, but that workers with a key usually arrived in the area around 6:00 a.m. Grievant asked the customer to call him back if he was able to get access to the key to the gate. Grievant placed another call to the D.O., notified him what he found and that a crew was needed. He also told the DO that he was having electrical problems with his vehicle, and could not enter the information in the FAS, or mobile computer system. Grievant further advised the D.O. that the person with the key would be out there "after six, I ain't hanging around fro him, they can call me back out when they get it open, I guess."

Grievant testified that shortly thereafter, he experienced a sudden bout of diarrhea, and soiled himself. He was taking medication at the time which had one such side effect.

⁴The Company asserted that this would have been the appropriate safety measure.

This had happened on one or two previous occasions while on duty. Grievant decided to return home to clean up. On the way, he stopped at a restroom in Hamilton City on 1st Street. He drove by a farmhouse, where he thought the occupants might have a key to the gate, but did not see any lights on.⁵ Grievant continued back to his home. He parked his truck and changed his clothes with assistance from his wife. He logged off the FAS, citing the electrical problems electrical problems.

Grievant's wife, S _____; testified that grievant arrived back at the house that morning, asked for her help dealing with his soiled clothes, and then took a shower. She stated that her husband was in a hurry because he had to get back to work. After taking a shower, grievant cleaned up the interior of his truck. Grievant's wife testified that he was home for about an hour. Grievant got a call from the customer, at 6:58 a.m., letting him know that the gate was unlocked. He returned to the scene of the downed line, and called the crew that was reporting to advise them of the status of the job.

Daniel Baker⁶ was acting as grievant's supervisor on September 4, 2010. Baker was responsible for dispatching crews to the scene of power outages. The D.O. contacted him between 5:00 to 5:30 that morning and informed him of the wire down, which would require a three-man crew to repair. Baker assembled a crew, directed them to report to the site, and then proceeded to the site himself.⁷

Baker arrived at about 6:50 and met with a county employee responsible for canals. Baker noted that while road access to the area where the downed wired was located was

⁵Grievant stated that he did not intend to stop, but merely see if anyone was there.

⁶Baker is a Distribution Supervisor working out of Chico. He did not attend the Local Investigating Committee meeting regarding grievant's termination.

⁷Baker is required to report to the site of a "primary level" outage that involves more than 4,000 volts.

restricted by the locked gate across the road, there was an unpaved path immediately to the left of the gate that ran parallel to the power lines and led there. In Baker's opinion, grievant could have accessed the downed line by using that path.

The county employee advised Baker of a vegetation fire four or five electrical poles past the area where the wire was down. He opened the gate, and Baker drove in to investigate. Baker saw that, as stated, the fuse associated with the downed line was open, and tagged with the note "man on line." The downed portion of the line was laying in the surrounding weeds. Baker became concerned that it had not been properly isolated to prevent back feed.⁸ There was a sewer farm and three "ag pumps" in the vicinity, any of which may have had backup generators. The line, if energized by back feed, would have posed a serious danger of electrocution to anyone who made contact with the line.

Baker testified that grievant should either have cut the line off high enough so that it could not be contacted by anyone on the ground or remained on the scene to address this potential danger. Section 22(a) of the Employer's Code of Safe Practices provides that "Electrical apparatus and lines shall be considered energized until they have been tested, de-energized, grounded, or cleared as required by a Qualified Electrical Worker (QEW)." Baker testified that because the fuses had been opened, there was no jeopardy to the Employer's electrical system.

In contrast, grievant testified that there was no danger of back feed energizing the downed line because there were no generators in the area. By law, the Employer is notified whenever generators are installed. Grievant had not been so notified. He

⁸Back feed is power from a non-Employer source, such as a generator, that may energize a power line even when it has been cut off from its primary source.

acknowledged, however, that a generator could have been installed recently without his knowledge. He also stated that the wire was not in a location that was accessible to the public, as it was on private property surrounded by thistle, and therefore did not present any danger even if it had been possible for it to become energized with back feed.

After viewing the scene of the downed wire, Baker proceeded to the vegetation fire several poles down from the downed line. He called the DO back, and returned to the entrance gate to mark the way for the crew that was to arrive to repair the line. At the gate, he met a fire department crew, and cautioned them not to enter due to the danger from the downed line. Baker then called Restoration Supervisor Joe Little to the scene. Baker regarded the possibility that a downed wire had been improperly isolated as a potential work procedure error that would need to be investigated, and had a duty to report such errors.

Baker drove to a pullout on Highway 45 to await Little's return. He saw grievant coming off the highway from the northbound direction onto the street he was on between 7:30-8:00 a.m. Baker flagged grievant down and sent him to the scene of the downed wire, with instructions to make it safe by opening another set of cutouts, or to stand by at the scene. According to Baker, grievant was "argumentative," stating that it was unnecessary to open another set of cutouts, but ultimately complied. Shortly thereafter, Little and the repair crew arrived. Baker pointed out the site of the downed wire out to Little. They took pictures and gathered other information. Grievant was not at the site when they arrived. Baker ultimately filled out an online form initiating a work procedure error investigation. Union Steward M J testified that Little told him during the investigation that the downed wire was not a "big deal."

Lawson⁹ was grievant's direct supervisor on September 4. Several days later, Baker advised him that he had submitted the work procedure error report. Following referral to the appropriate division, an investigation, led by Jim Grabot,¹⁰ was begun. Grabot obtained records indicating that grievant placed a call to the DO at approximately 4:49 a.m., indicating that a downed wire needed to be repaired, that he could not access the wire due to a locked gate, and that he would be leaving the scene.

Grabot interviewed grievant by telephone as part of his investigation. Lawson was present during the interview, and listened in.¹¹ Grabot asked grievant why he was not at the scene of the downed line when Baker arrived. Grievant answered that he left to use the restroom, then had to go look for a key to the gate. He also maintained that he never left the Hamilton area.

This was not the first time that Lawson heard grievant's explanation. Prior to the interview, Lawson met with grievant on September 28 at the site. Grievant had told Lawson that he wanted to show him the site prior to being interviewed so that Lawson would understand what had taken place. He took Lawson to the location of the downed power line and the gate, showed him where the fuses were as well as a bathroom he claimed to have used, on 2nd Street in Hamilton City, and pointed out a house that he claimed to have visited in an attempt to find a key to the gate, which was south of Hamilton City on Highway 45. Grievant mentioned that after going to the house, he returned to the gate, noting that he encountered Baker on his way.

⁹Lawson is a Restoration Supervisor for the Employer, working out of Redding.

¹⁰Grabot did not testify at hearing.

¹¹Grievant was also offered the opportunity for a shop steward to be present, but declined.

The work procedure error team concluded that no such error occurred, labeling it a “human performance issue,” and referred the matter back to Lawson. Lawson conducted his own formal interview with grievant on October 13, pursuant to an investigation into how grievant handled the downed wire. Lawson wrote a report detailing the interview.

The report reflects the various measures grievant described to take care of the problem. He recounts his opening the fuses, the locked gate, his call to the customer on the line to learn that he did not have a key, and that the workers with the key generally arrived at 6:00. Grievant left his truck and walked down 4 spans where he found the wire down “in 16 foot thistle brush.” Returning to the truck, grievant reported the issue to the D.O. as well as letting him know that he “was not going to wait around at the location” because he had no access.

Grievant told Lawson, as noted, that his truck was experiencing electrical issues that morning. He called Fleet Supervisor Jim Griffis to coordinate getting a mechanic to look at the problem and set up an appointment so that it could be worked on. Lawson’s report reflects that grievant stated that he was not exactly sure when the phone calls to and from Griffis took place, but they were shortly after the last phone call to the D.O.¹²

At this point D: stated that it didn’t make sense to leave the locked gate location as it was close to the time that the customer said that the workers would be at the location. D: stated that he was still at the locked gate location and needed to use the restroom. . . .

Grievant then told Lawson that he drove .5 miles from the opened fuse to the park on 1st Street to use the restroom at that location. While there, he had an idea where the person with the key to the locked gate might live.

¹²Cell phone records indicate that this last call took place at 4.49 a.m

D: stated that he drove south on Hwy 45 to the location and did not see any lights on. . . . while leaving that location he received a call from the customer stating that the locked gate is now open. . . . while driving back to the locked gate location he meets up with Dan Baker. . . .

Lawson testified that, as shown above, grievant's account of his activities that morning paralleled his phone interview with Grabot. After the interview, Lawson spoke with Griffis, who told him that he spoke on the phone with grievant at approximately 8:00 a.m. that morning. Realizing there was a discrepancy with grievant's account as to when the call took place, Lawson obtained grievant's cell phone records and the GPS data from his truck. The phone records show that grievant called Griffis at 7:48 a.m. More importantly, the GPS data indicated that at 5:28 a.m., grievant was in the town of Orland, rather than near the location of the downed line in Hamilton City.

Lawson then conducted a second interview with grievant. Grievant's timecard for September 4 reflected that he worked continuously from 2:45 a.m. until 1:00 p.m. However, Lawson concluded from the GPS data that grievant had not been working while in Orland. Lawson also wanted to ask grievant about the discrepancy between the GPS data and the account of his whereabouts that morning.

Lawson's report of this second interview, which took place on October 22, recites that he was asked why he logged off at 0528 hours, as shown on the FAS Work Report, since he had previously stated that he changed his mind about leaving after he spoke to the D.O. and decided to stay at the site without notifying the D.O. Grievant responded by saying he logged off because of the vehicle problems he mentioned. When Lawson asked grievant where he was located when he logged off, grievant asserted that he was in the vicinity of the outage.

Lawson then showed grievant his FAS GPS Report, and pointed out the 0528 entry

that indicated GPS coordinates which correlated to a location slightly southeast of the City of Orland, the same location that he was when he logged off that day at 1244 hours.

I made a comment at that point that I was not sure where that location is, however, it appears that this is D P 's residence. I asked D: if he had anything to say at this point and D stated that he was waiting for a callback from Jose (who was the customer that he called in the previous interview) to see when the gate would be open and that he was still in the vicinity of where the down wire was when he logged off his FAS unit at 0528 hours. . . .

Lawson's report further reflects that he did some investigating on his own. Entering the GPS coordinates from the Report's 0528 entry, it took him to 6787 Elk Lane, off Road 19 in Orland, a location which he noted was "no where near the vicinity of the wire down order . . . that [grievant] was dispatched to on the morning of September 4." Lawson testified that grievant did not state during the interview that he had returned to Orland that morning.

Grievant maintained that he included the time he had spent at home on his time sheet because he thought it was permissible to include time spent on personal issues. In the past, he had gotten muddy working during storms, and was permitted to go home and change clothes while on the clock. Grievant testified that he did not tell Lawson that he had returned home in the two interviews because he was embarrassed, and that he now regrets the decision.

However, Lawson stated that employees must ask permission in such situations. If an employee goes home sick or to attend to personal issues, the time is properly recorded as sick leave time, and is not compensable. Grievant added that there was nothing for him to do at the site until the gate was unlocked, and that he was still in contact with the job while at home, making two phone calls related to the work job while there.

After the second interview, Lawson discussed the matter with higher management. A decision was made to refer the matter to Corporate Security to investigate whether grievant had falsified his time records. James Moore¹³ was responsible for conducting the investigation. He interviewed grievant for a final time on November 8, 2010.

According to Moore's Report, grievant notified dispatch at 5:15 that there was nothing more he could do and was leaving. At this point he soiled his clothes and went home to clean up and change. He signed off on the FAS when he arrived at his residence. Grievant reported getting a call between 6:20, while the cell record indicates 6:58. It was from the customer "Jose," informing him that gate was open. Grievant told Moore that the finished cleaning up and responded back to the scene.

When asked about his overtime claim for the period that he was home P. for about 1.5 hours, grievant maintained that it was not a falsification, but something that he believed he was allowed under the Contract to take the time to clean himself up and to finish going to the restroom. Lawson testified that he has no reason to believe that grievant was not telling the truth during this interview.

Upon completion of Corporate Security's investigation, Lawson again discussed the matter with upper management. It was decided that grievant should be terminated as a result of a violation of Section 22(a) of the Code of Safe Practices, "Electrical Hazards," by failing to ground, test, or clear (cut down) the downed line, thus creating a safety hazard. Grievant had attended a meeting roughly one year earlier, stressing that downed wires must not be left on the ground where members of the public could come into contact with them. It was also concluded that grievant violated the Code of Employee Conduct by

¹³Moore was a Corporate Security Investigator for the Employer prior to his retirement in February of 2010.

lying about his whereabouts on the morning of September 4, and by falsifying his time card.

The Code of Employee Conduct, USP 1, provides that employees must not:

- Forge endorsements, approvals or authorizing signatures for any payment, or knowingly process or approve false documents for payment.
- Knowingly enter, process, report, or approve false or misleading information.
- Obstruct or fail to cooperate in the conduct of an investigation.

POSITION OF THE EMPLOYER

The Employer had just cause to terminate grievant's employment. It is undisputed that grievant failed to comply with Company safety procedures at the scene of a power outage, then lied repeatedly during the Employer's investigation about his whereabouts. In addition, he claimed time spent at home as working time. Each of grievant's infractions standing alone are adequate to support summary termination. The grievance must therefore be denied.

Grievant does not, and cannot, dispute that he engaged in all of the conduct that was relied upon in the decision to terminate his employment. He admitted that when he arrived at the scene of the downed line, he did not test or ground the line, and he did not clear it by cutting it. His failure to do so was a direct violation of section 22(a) of the Employer's Code of Safe Practice. His actions put the public at risk. There is thus no dispute that grievant engaged in the unsafe work practice that was cited as one of the bases for his termination.

It is further undisputed that grievant lied during two separate investigations regarding his whereabouts on the morning of September 4. He admitted that prior to his interview with Grabot, when he drove Lawson around, he was not truthful in describing his

whereabouts. He further admitted that on the two occasions he was interviewed as part of Lawson's investigation, he was not truthful. There can be dispute that grievant engaged in dishonesty and obstructed a Company investigation in violation of USP 1, as alleged.

It is further undisputed that grievant claimed and received overtime compensation for time that he did not actually work. Grievant stated on his timecard that he worked from roughly 5:00 a.m. to 7:30 a.m., when in fact he was at home during that time frame cleaning up. It cannot be disputed that he falsified his time records as alleged by the Employer.

The penalty of termination was clearly proportionate to the severity of the proven offenses. Each of the three bases for grievant's termination are recognized as being independent grounds for summary termination. By leaving an exposed wire on the ground, grievant created a serious safety hazard. He left a potentially energized line unattended in a location where members of the public could potentially gain access to it. Given the potentially catastrophic consequences of his actions, termination is the appropriate penalty. Arbitrators routinely hold that employers are justified in terminating employees for actions that pose safety hazards to other employees and/or members of the public. In *BHP Petroleum/Gasco Inc.*, 102 LA 321 (1998), Arbitrator Najita upheld the termination of a gas service technician who failed to identify a gas leak at a customer's home because he did not follow proper leak investigation procedures. In *Union Tank Car Co.*, 110 LA 1128 (1998), Arbitrator Lalka upheld summary termination of a seven year employee who violated an established safety procedure by improperly performing work on a tank car containing explosive substances. Likewise, in *Solae LLC*, 125 LA 349 (2008), Arbitrator Baroni upheld summary termination of an employee who violated lock out/tagout

procedures on a single occasion, due to potentially dangerous consequences of the violation. Grievant's unsafe work practices, standing alone, were serious enough to warrant summary termination.

Arbitrators also routinely hold that dishonesty during a company investigation is a sufficiently serious offense as to warrant summary termination. Offending employees are not entitled to progressive discipline in these circumstances. The Employer had just cause to terminate grievant solely on the basis of his repeated untruthful statements during the investigation.

Finally, falsification of records is universally recognized as grounds for summary termination. Such falsification severs the crucial bond of trust that must be maintained between employers and employees. Since each of the bases for grievant's termination are serious enough, standing alone, to warrant summary termination, grievant's undisputed commission of the acts demonstrates conclusively that the penalty of termination was proportionate to the seriousness of his offenses.

In addition, the penalty of termination was otherwise fair, reasonable, and non-discriminatory. There is no dispute that grievant had adequate notice of his performance expectations, including the expectation of honesty. While grievant presented several excuses for his actions, he also was unable to provide a valid explanation for his failure to comply with expectations. His contention that he could not cut down the wire because he could not access the location with his truck is undermined by his admission that he could simply drive his truck around the gate to the location of the wire. This excuse is thus entirely baseless.

Grievant's alternate claim that leaving the wire down did not present a threat to

public safety is also unavailing. It was possible for members of the public to access the area by circumventing the gate. Further, he was aware that a crew of workers would be responding to the scene. In any event, Troublemakers are not permitted to make discretionary judgments as to whether a downed line does or does not present a legitimate threat to public safety. There is thus no legitimate explanation or excuse for grievant's failure to comply with the Employer's safety policies and procedures on September 4.

Grievant also failed to present a valid excuse for lying about his whereabouts during the Employer's investigation. He claims that he left the scene of the downed wire due to a bout of diarrhea, which necessitated a trip home to clean up. While this claim, if true, is a reasonable basis for leaving the scene of a downed wire, it does not reasonably explain why he persisted in lying about his whereabouts. Embarrassment, even if understandable, does not remove an employee's duty to tell the truth during a Company investigation. Grievant could simply have called in at the time and said that he was ill and had to leave the scene, thereby avoiding any embarrassment. The more plausible explanation is that he simply went home to sleep, and, when confronted with the fact of his untruthful statements, concocted an explanation of his whereabouts that would potentially excuse his initial lying.

In any event, the reason that grievant lied about his whereabouts that morning are ultimately irrelevant. Lying during a Company investigation is simply not acceptable. The personal explanation does not excuse the falsification of time records. While grievant claimed that employees are permitted to change clothes at home if they get wet during storm outages, Lawson explained that the employee is required to record the time as sick time if at home with a health matter. Grievant undisputedly failed to do so. He never

claimed that he was unaware of this requirement. Therefore, based on the foregoing, the Employer respectfully requests that the grievance be denied in its entirety.

POSITION OF THE UNION

The Employer did not have just cause to terminate grievant's employment. It has failed to prove that grievant committed any safety violation. In addition, the Corporate Security report that was relied upon in the Employer's termination failed to determine whether grievant knowingly tried to deceive the Employer with respect to his time records. It ignored the fact that he was honest and forthcoming in the final investigative interview. Grievant, a long-term employee, at worst engaged in an isolated exercise of poor judgment. Summary discharge in lieu of progressive discipline was disproportionate to the nature of grievant's offenses. The grievance should therefore be sustained.

Grievant's conduct of leaving the dead line down in the weeds was not a legitimately punishable offense, let alone a dischargeable offense. The Employer claims that grievant left an electrical hazard where the public could access it. The record reflects that grievant de-energized the line, and no Employer representative with personal knowledge of the events of September 4 viewed the dead line as an "electrical hazard" accessible to the public. When he arrived at the scene, grievant tested the line, using the only available means at his disposal. He was unable to cut down the line at that time because he lacked the proper equipment, and the downed portion of the line was in a location that made it inaccessible to anyone. It was trapped in sixteen feet tall thorny weeds off an unmarked private access road, beyond a locked gate on private, rural property. There was absolutely no risk of the line being accessed by the public, particularly before sunrise.

Indeed, Baker, the Employer's own witness, acknowledged that the line was not an electrical hazard to the public. He testified that because of the steps that grievant took, "there

was no jeopardy to our system, beyond those fuses.” Further, Baker’s actions that morning make it clear that he did not regard the dead line in the weeds as an electrical hazard. He determined, as grievant did, that it was safe for him to leave the scene. He later viewed the site as secure enough for the fire department to be on scene without any PG&E personnel present. It is also clear that he was not concerned about the possibility of back feed, as he did not take any steps to investigate whether there were any generators that could produce back feed in the area. He did not do so because under law, the Employer would have been informed of the presence of any generators in the area. Grievant was also aware that there were no generators in the area, and thus that there was no potential danger of back feed.

The Employer’s own work procedure investigation concluded that grievant did not violate any work procedures. Indeed, no one from the Company who was on site on September 4 regarded grievant’s actions as a “big deal.” Both Little and the DO, who are also subject to the Code, concluded that grievant’s actions were not a big deal, and that there was nothing more grievant could have done prior to the gate being opened. Accordingly, the Employer has failed to demonstrate that grievant engaged in any safety violations on September 4 that warrant any discipline at all. These allegations cannot therefore be a legitimate basis for grievant’s summary discharge.

The Employer’s claim that grievant failed to cooperate with its investigation is also not an appropriate basis for summary discharge. The Employer relied only on the facts that supported its theory of the violation, and ignored contradictory and mitigating facts. It is acknowledged that grievant was initially untruthful during the Corporate Security investigation. However, he ultimately told the truth in his final interview, when he explained that he had to leave the scene because of a bout of diarrhea that he needed to clean up. The Employer failed to consider grievant’s eventual honesty, or his understandable reluctance to share all of the

circumstances given the embarrassing nature of the reason he had to leave. Some discipline is warranted for grievant's initial dishonesty; however, given the fact that he ultimately told the truth, and thus did not hinder the Corporate Security investigation, summary termination is too severe a penalty and does not comport with the principles of just cause.

The Employer has also failed to prove that grievant committed timecard falsification because it failed to conduct any evaluation of the sincerity of grievant's belief that he could claim the time. The policy in question requires that violations be "knowingly" committed. Grievant credibly testified that he sincerely believed that he could claim the time spent at home cleaning up. He had nothing more productive to accomplish at the job site. Further, employees have been allowed to return home to take care of similar personal issues such as cleaning up and changing into dry clothes during storm outage repairs. Grievant thus legitimately believed that it was appropriate for him to claim the time. The Employer never questioned or challenged grievant's belief, nor did it undertake any investigation into grievant's sincerity. The Employer has therefore failed to prove that grievant knowingly falsified his timecard.

Years of grievance precedent under the parties' Pre-Review Committee, Review Committee, and arbitration, indicates that a single instance of dishonesty or fraud should result in no discipline more serious than a written reminder, and certainly does not justify summary discharge. In PRC Case No. 12635, employees who committed multiple timecard falsifications were issued Written Reminders. In PRC Case No. 2188, a 29-year employee with prior discipline for work performance issues received a DML for mis-using Company time to perform personal business. The Committee noted that misuse of Company time "generally results in a Written Reminder and . . . a repeat of this type of behavior may result in the employee's discharge." The DML was accordingly reduced. Similarly, in PRC Case No. 1836, the grievant was given a written reminder for failing to request time off from a supervisor prior to taking the

day off.

If reinstated, grievant is not an employee whom the Employer would be unable to trust. Grievant, as a Troublemaker, worked primarily alone, and continued to work as usual for over three months after the incident that led to his termination. During this time, the Employer continued to trust him to respond to power outages and other emergencies in the field and to accurately record his time.

Grievant is a long term employee with a strong record, and has expressed remorse for his actions. Therefore, based on the foregoing, the Union respectfully requests that the grievance be sustained and grievant be reinstated and made whole.

DISCUSSION

The parties' Joint Statement of Facts as well as the evidence presented at the hearing establish that after responding to the scene of a power outage, grievant took certain remedial measures, then returned home. He recorded the time spent at his residence as time worked, to be paid at overtime rates. When subsequently asked about his whereabouts that morning, grievant gave a series of untruthful and purposefully misleading responses.

Company witnesses testified that the method grievant employed to mitigate the danger from the outage conflicted with Company protocol. The Company's assessment of the potential hazard created by the downed wire was based on a set of assumptions which made the possibility of any damage or injury somewhat remote. The principal danger cited was that to the public by electrocution caused by back feed. The hanging wire to which grievant was dispatched was located not on any sort of public thoroughfare, but on private, rural property to which access was limited. It was surrounded by 16-foot tall thistle. The possibility of back feed from generators operating in the vicinity was slight, given that there was no direct evidence that such was the case.

Grievant has many years of experience as a Qualified Electrical Worker. While his view of the situation may not have strictly conformed with Company procedures, it was not altogether unreasonable. He de-energized the line and placed the appropriate tag on it to advise others that the line was being worked on. Supervisors agreed that this was proper in all respects. Although the Company raised the possibility of back feed on the line, grievant testified without contradiction that he would have been notified if there were generators in the area that he should be concerned with. While there was some evidence that absent cutting the downed line or placing it out of reach, grievant should have remained in the area to warn others of the possible danger, grievant notified the DO that he was leaving the area, and received no contrary instructions.

The Company determined that grievant's actions could not be considered a work procedure error. It viewed them as a work performance problem which could appropriately be addressed by corrective discipline. Additionally, as noted in the Joint Statement, the Company acknowledged that the way in which grievant handled the downed wire, although a violation of accepted procedure, would not have resulted in termination.

Grievant's difficulties were compounded, however, by the way he chose to deliberately misrepresent exactly what he was doing after he left the site of the outage. Lawson noted that "the focus of the termination was for timecard falsification and impeding the investigation." Grievant offered a series of untruthful statements in an effort to conceal his actual whereabouts, repeating these statements no less than three different times. He also deliberately misled his supervisor, taking him around a fictitious route in an attempt to continue the deception. It was only after he was confronted by Corporate Security with irrefutable evidence that he was not where he was when he said he was there that he divulged the truth.

The Company stressed that grievant was not only dishonest in these particulars, but also

by claiming 1.75 hours of overtime compensation when he was not working, driving to and from his house, and remaining there for a period of time. The Company characterized grievant's overtime claim as a falsification of his time card. Of all the mis-steps grievant made that morning, this was considered by the Company to be among the most serious.

Offenses involving dishonesty are often viewed as the most severe, typically warranting severe discipline. Acts of dishonesty breach the trust which is fundamental to any employer-employee relationship. Within the particular context of grievant's job, that trust is an extremely vital element, as he is expected to perform his work independently, outside the presence of supervision.

The Employer bears the burden of proving by clear and convincing evidence that grievant was dishonest. The Employer conclusively demonstrated that grievant was untruthful when asked about what he was doing between 5:48 and 6:58 on the morning of September 4. This misconduct clearly obstructed the investigation in to events that day, and established that he failed to cooperate in that investigation. Nevertheless, grievant was also charged with another rule violation which the Company utilized to provide the strongest justification for the discharge: "knowingly" processing or approving false documents for payment, or "knowingly" entering, processing or approving false or misleading information.

Grievant's credibility was seriously undermined by the false and repeated statements he made to management about his conduct. His assertion that he was dealing with a bout of digestive distress that morning may thus be reasonably regarded with some skepticism. However, his claim does contain a hint of plausibility. It was undisputed that grievant was taking medication at the time which could cause the condition at issue. It is not unlikely that he would be embarrassed and reluctant to disclose what actually took place that morning. Accepting grievant's claim that he soiled himself, grievant was under the impression that he might consider

the time spent cleaning up as compensable. Lawson acknowledged in the Joint Statement that employees have been paid during storms when they return home to change into dry clothes.

As such, grievant's claim for overtime, though erroneous, was not "knowingly false." He had made a judgment that there was nothing further that he could do in Hamilton until the person with the key to the gate telephoned him. He advised the DO accordingly, and was in contact with his Employer during the period. The interval for which he claimed payment might therefore be viewed as standby time during which grievant was simply waiting to gain access to the property, and ready to return to the scene as soon as he learned that access was possible. Grievant's time card entries were not intentionally fraudulent, but the result of a mistaken belief. The Company has not therefore met its burden of proving that grievant made knowingly false entries on his time card, entries designed to obtain compensation to which he was not entitled.

In sum, the Employer has established that grievant failed to follow proper procedures when he responded to a downed wire, and that he obstructed and failed to cooperate in the conduct of an investigation into his activities on September 4 by offering information which was deliberately misleading and intentionally false. While the Union urges that grievant eventually demonstrated remorse and admitted that he had provided false information to the Company, it was only after he was confronted with the undeniable that he saw fit to correct himself. Nonetheless, the reasons advanced for the discharge were only proven in part. There was insufficient evidence to convincingly establish one major element, the time card falsification, which was presented to justify the discharge.

Grievant's discharge will accordingly be overturned. The remaining offenses, especially those involving dishonesty, warrant a serious disciplinary response. In consideration of grievant's long years of manifestly satisfactory service, and the absence of any active discipline

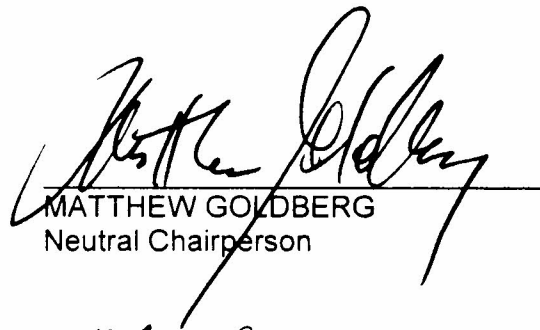
or similar offenses, his termination will be reduced to a Decision Making Leave, coupled with a Last Chance Warning which will subject him to immediate termination for any false statements or obstruction during a Company investigation.


AWARD


The grievance is denied in part and sustained in part. Grievant's discharge is reduced to a Decision Making Leave without back or benefits pay for the period between the date of the discharge and his reinstatement. He is to be reinstated immediately, with no loss of seniority. His reinstatement is conditional upon his signing of a Last Chance Warning notice as described above. The contents of the Warning are to be determined by the parties by mutual agreement. In no event should his reinstatement be delayed by either the drafting or execution of this notice.

The Neutral Chairperson retains jurisdiction for the purposes of interpretation and/or implementation of this Award.

Dated: November 7, 2011

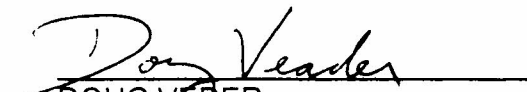

MATTHEW GOLDBERG
Neutral Chairperson

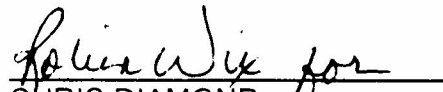

LANDIS MARTILLA
Union Board Member
Concur Dissent


KIT STICE
Union Board Member
Concur Dissent

Dated:

Dated:


DOUG VEDER
Company Board Member
Concur Dissent


CHRIS DIAMOND
Company Board Member
Concur Dissent

Dated: 11/21/11

Dated: 11/21/11

MATTHEW GOLDBERG
Arbitrator ♦ Mediator ♦ Attorney at Law
130 Capricorn Avenue
Oakland, California 94611

IN ARBITRATION PROCEEDINGS PURSUANT TO
AGREEMENT BETWEEN THE PARTIES

In the Matter of a Controversy between:)	
)	
INTERNATIONAL BROTHERHOOD OF)	OPINION AND AWARD OF THE
ELECTRICAL WORKERS, LOCAL 1245,)	ARBITRATION BOARD
)	
Union,)	SUPPLEMENTAL ORDER
)	
and)	
)	
)	
PACIFIC GAS AND ELECTRIC COMPANY,)	
)	
Employer.)	
)	
Re: [REDACTED] Dismissal)	
)	

Following the issuance of the November 7, 2011 Award in this case, certain questions were raised about the remedy ordered. A conference call was held among the parties and the Neutral Chairperson on December 1 for the purposes of clarifying that remedy. The Award will be revised consistent with those discussions.

REVISED AWARD

The grievance is denied in part and sustained in part. Grievant's discharge is reduced to a suspension without back pay or benefits. He is to be reinstated as of November 21, 2011, with no loss of seniority. Grievant is to be placed on a Decision Making Leave for one year following his reinstatement.

Grievant's reinstatement is further conditioned upon his signing a Last Chance Warning notice as described in the November 7, 2011 Award, which shall be effective for 60 (sixty) months after reinstatement. The contents of the Warning are to be determined by the parties by mutual agreement. In no event should his reinstatement be delayed by either the drafting or execution of this notice.

The Neutral Chairperson retains jurisdiction for the purposes of interpretation and/or implementation of this Award.

Dated: December 1, 2011



MATTHEW GOLDBERG
Arbitrator