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Arbitrator - Mediator
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4 IN ARBITRATION PROCEEDINGS PURSUANT TO
5 AGREEMENT BETWEEN THE PARTIES

6
7 In the Matter of a Controversy

8 between

9 **INTERNATIONAL BROTHERHOOD OF**
10 **ELECTRICAL WORKERS, LOCAL UNION 1245,**

11 and

12 **PACIFIC GAS & ELECTRIC COMPANY.**

13 Involving the discharge of A R
14 Grievant.

} **OPINION AND AWARD**
} **OF BOARD OF**
} **ARBITRATION**

} **ARB. # 312**

14 This Arbitration arises pursuant to Agreement between INTERNATIONAL
15 BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 1245, hereinafter
16 referred to as the "Union," and PACIFIC GAS & ELECTRIC COMPANY, hereinafter
17 referred to as the "Company," under which BRENDA LEGGE and DOUG VEADER
18 were appointed Company Board Members on the Board of Arbitration ("Board"), F. E.
19 ED DWYER and JOE OSTERLUND were appointed Union Board Members, and
20 ALEXANDER COHN was appointed Neutral Board Member and under which a
21 decision by Board Majority is final and binding upon the parties.

22 Hearing was held on October 11, 2012, Vacaville, California. The parties were
23 afforded full opportunity for the examination and cross-examination of witnesses, the
24 introduction of relevant exhibits, and for closing argument. Post-hearing briefs were
25 received from the parties on or before December 26, 2012, and the matter was
26 submitted.

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1 APPEARANCES:

2 On behalf of the Union:

3 JENNY MARSTON, Esquire, Staff Attorney, IBEW,
4 Local 1245, 30 Orange Tree Circle, Vacaville,
California 95687.

5 On behalf of Company:

6 VALERIE SHARPE, Esquire, Legal Department,
7 PG&E, 77 Beale Street, Suite 3112, San Francisco,
California 94105.

8 **ISSUE**

9 Whether Grievant was discharged for just cause; and if
10 not, what shall be the remedy?

11 **RELEVANT PROVISIONS OF AGREEMENT**

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13 Title 7. MANAGEMENT OF COMPANY

14 7.1 MANAGEMENT OF COMPANY

15 The management of the Company and its business and the direction of its working
16 forces are vested exclusively in Company, and this includes, but is not limited to, the
17 following: to direct and supervise the work of its employees, to hire, promote,
18 demote, transfer, suspend, and discipline or discharge employees for just cause; to
19 plan, direct, and control operations; to lay off employees because of lack of work or
20 for other legitimate reasons; to introduce new or improved methods or facilities,
provided, however, that all of the foregoing shall be subject to the provisions of this
Agreement, arbitration or Review Committee decisions, or letters of agreement, or
memorandums of understanding clarifying or interpreting this Agreement.

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22 **RELEVANT PROVISIONS OF CODE OF CONDUCT**

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24 Company Records and Disclosures

25 Accurate records and disclosures are critical to PG&E meeting its legal, financial,
26 regulatory, and management obligations. Never misstate facts or omit material
information. Ensure that all Company records, disclosures, and communications are
27 full, fair, accurate, timely, and understandable. Never hide, alter, falsify, or disguise
the true nature of any transaction nor forge endorsements, approvals, or authorizing
28 signatures for any payment.

29 If you know that a record or disclosure is false or misleading, do not enter, process,
or approve it. Report the matter to your supervisor or other appropriate person.
Examples of company records and disclosures include:

- 1 Financial reports
- Expense Reports
- 2 Performance metrics reports
- Reports to government agencies or other public communications
- 3 Workers' compensation or other benefit-related information such as dependent eligibility
- 4 **Timecards**, including supporting materials to substantiate requests for time off (emphasis added)
- 5 Inspection reports
- Meter-reading data for the purposes of customer billing

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7 **FACTS**

8 The salient facts are not in dispute. In 2005, Grievant was hired by the
 9 Company as a lineman and later became a Compliance Inspector. On March 16,
 10 2011, he was terminated for falsification of time records in violation of the Company's
 11 Code of Conduct.

12 On February 6, 2011, Grievant was working pre-arranged overtime as a
 13 lineman out of the Richmond Service Center. Grievant and a co-worker, D.
 14 M..., were assigned to replace various streetlights throughout Richmond. For work
 15 he performed on February 6, Grievant signed and submitted a time card which
 16 contained five entries reflecting the time for which he claimed to be entitled to
 17 compensation. The entries are¹:

- 18 0600 - 0700 Drive Time In
- 19 0700 - 1100 Street Lights – Various Loc.
- 20 1100 - 1130 Lunch Time
- 21 1130 - 1530 Street Lights – Various Loc.
- 22 1530 – 1630 Drive Time Home

23 Because Grievant was working pre-arranged overtime, he was entitled to
 24 receive compensation for the hours he worked plus the time it took him to drive to
 25 work and back home. Grievant testified that the drive time between Richmond and
 26 Vacaville was chargeable to the job according to information he received from his
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28 ¹JX 3, Ex. 4.

1 supervisors, and that he routinely recorded drive time on other jobs the same way.

2 Grievant's supervisor, Joanne Peterson, approved and began processing the
3 February 6 time card.² On February 10, Peterson received information that caused
4 her to question the veracity of the February 6 time card. The Company's claims
5 department contacted Peterson regarding notice from a motorist who reported that,
6 on February 6 she was driving on Highway 80 in Fairfield when a shovel fell off a
7 Company truck and possibly damaged her car. The Company determined that
8 Grievant had likely been the driver based on information provided by the motorist.

9 Peterson reviewed Grievant's time records to confirm that he was working at
10 the time of the alleged incident. She then contacted Grievant who informed her that
11 on his way from Richmond to the Vacaville Service Center, when he was near the
12 weigh stations on Highway 80 in Fairfield, he noticed a woman driving next to him
13 motioning. Grievant told Peterson he thought something might be hanging off his
14 truck so he pulled off the freeway to investigate. Grievant also told Peterson he
15 inspected the truck for about 10 minutes, concluded nothing was hanging off his
16 truck, and then continued back to the Vacaville Service Center.

17 Company records show the customer called at 2:38 p.m. and the customer
18 later reported the incident took place 10-15 minutes prior to the call, or about 2:30
19 p.m. Because Grievant's time card indicated he was repairing street lights at that
20 time, the Company decided to conduct a more thorough investigation into the
21 accuracy of his time card.

22 On February 16, Peterson and Supervisor Louis Giles interviewed Grievant
23 regarding his time card. When Peterson asked Grievant why he stated on his time
24 card that he was working in Richmond on streetlight replacements until 3:30 p.m.
25 when, in fact, he was in Fairfield, he said he could not remember when he left the
26 Richmond yard. He later said he thought he left the yard at 2:00 p.m. Grievant did

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28 ²Peterson was not Grievant's supervisor on the overtime assignment. Joe Egan was Grievant's supervisor on that assignment.

1 not explain why he reported finishing work in Richmond at 3:30 p.m. when in fact, he
2 left for home at 2:00 p.m. Grievant also reported that he and Mr. [redacted], the employee
3 with whom he had replaced streetlights, left work at the same time. Based on
4 Grievant's statement in the interview and the fact that Mr. [redacted] reported on his time
5 card that he stopped working at 2:00 p.m., the Company concluded that Grievant had
6 actually left the Richmond yard at 2:00 p.m.

7 Grievant was terminated for falsification of his time card. Mr. [redacted] was neither
8 interviewed as part of the Company's investigation nor disciplined for his time card.

9 POSITION OF COMPANY

10 The grievance must be denied because Grievant was on notice of the
11 Company's policy prohibiting falsification of time cards. He admitted knowing the
12 Code of Conduct required him to complete his time cards accurately and that failure
13 to do so would be considered falsification of a time card.³ Falsification of a time
14 record constitutes summary discharge misconduct.

15 Grievant submitted a false time card on which he sought to obtain at least 30
16 minutes of overtime pay to which he was not entitled. The evidence shows Grievant
17 left work at 2:00 p.m. His time card records him arriving at home at 4:30 p.m.
18 Grievant offered no explanation for why it took him 2.5 hours to get home from
19 Richmond. Even accepting that Grievant had stopped in Fairfield for 10 minutes to
20 check his truck, this left at least 50 minutes unaccounted for in his alleged drive time
21 home. Grievant told the Company that when he got to Vacaville, he simply moved his
22 personal belongings from the Company vehicle to his personal vehicle which took
23 about 10-15 minutes. Even accepting Grievant's time estimates, he cannot explain
24 at least 30 minutes of time for which he sought to be compensated. Grievant has no
25 factual basis for his assertion that his incorrect entries on the time card were
26 unintentional.

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28 ³Tr. 85:19-86:3.

1 The Union has previously acknowledged, in Review Committee Decision Case
2 No. 20762, that summary termination was an appropriate penalty for an employee
3 who falsified a time card despite the employee's claim that he had correctly filled out
4 the time card.⁴

5 In sum, just cause exists for Grievant's termination. Theft of time is a serious
6 offense and termination is appropriate, whether the theft was 30 minutes or five
7 hours.

8 POSITION OF UNION

9 The grievance must be sustained and Grievant reinstated and made whole for
10 all losses in wages and benefits because the Company did not discharge Grievant
11 for just cause. Under grievance precedent, the Company is required to prove by clear
12 and convincing evidence that the Grievant knowingly falsified his timecard.⁵ The
13 Company did not meet this high burden.

14 The undisputed evidence supports every entry on Grievant's time card.
15 Grievant's time line is undisputed except for the Company's guesswork and
16 conjecture. Grievant left the Richmond Service Center at about 2:00 p.m.⁶ On his
17 way to Vacaville, he pulled off the freeway and spent about 10 minutes inspecting his
18 truck.⁷ In normal driving conditions, it takes about an hour to drive between the
19 Richmond and Vacaville Service Centers.⁸ Grievant spent 10-15 minutes on his end-
20 of-day routine after arriving at Vacaville. Grievant then drove immediately from
21 Vacaville to his home in Arbuckle which, the Company does not dispute, took about

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25 ⁴See, CX 2.

26 ⁵See, UX, Attachment A to Post-Hearing Brief.

27 ⁶Tr. 46:6-13.

28 ⁷Tr. 49:25-50:6.

⁸Tr. 49:2-10.

1 an hour.⁹ Adding up the time Grievant spent driving, inspecting his truck, and putting
2 it away in Vacaville, he spent a total of 2.5 hours in transit after he left the job site.
3 Thus, the total hours he claimed on his time card are accurate.

4 Grievant believed he was supposed to charge time driving to and from
5 Richmond in his work vehicle to the job. This is how he had always done it. Grievant
6 did not care whether the time was charged as drive time or to the job as it was paid
7 out of the same account at the same rate. Grievant was not counseled by
8 supervisors with authority over lineman – of which Peterson was not one – about
9 having arrived late or left early on February 6. Grievant was asked to work previously
10 authorized overtime the very next weekend which he did.

11 Finally, Arbitration Case No. 304¹⁰ is on point. The Company's reliance on
12 Review Committee Case No. 20762 is misplaced because that case involved time-
13 card fraud on twelve different assignments. Other PRC cases (Nos. 12635,¹¹ 2188,
14 and 1836) make clear that a single instance of misuse of Company time “generally
15 results in a Written Reminder . . .”

16 OPINION

17 The Company bears the burden to demonstrate that just cause exists for
18 Grievant's discharge. The just cause standard, generally, requires persuasive proof¹²
19 that the rules and/or policies alleged were violated and, if so, that under the totality of
20 circumstances, the penalty imposed is not excessive; i.e., outside the zone of
21 reasonableness for the proven misconduct. In addition, generally, the just cause
22 standard favors progressive discipline which affords an employee the opportunity to
23 modify behavior before more serious discipline up to and including dismissal is

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25 ⁹JX 3, p. 4 ¶ 14.

26 ¹⁰See, UX-A, Attachment to Post-Hearing Brief.

27 ¹¹Employees who made false entries for themselves on time cards received Written Reminders.

28 ¹²The Arbitrator understands the Union sees this as “clear and convincing evidence.”

1 imposed. Progressive discipline, however, need not always follow the counseling,
2 oral warning, written warning, suspension and discharge path in lockstep order. The
3 facts and circumstances in each case determine the appropriate level of discipline.
4 Moreover, progressive discipline concepts do not apply in the face of proven gross
5 misconduct which warrants summary dismissal in the first instance.

6 Without question, "theft" of Company product, property and/or time is most
7 often a summary discharge event when established. In fact, employees generally do
8 not have to be formally notified that, if they steal from the Company or one of its
9 customers, they will most likely lose their job. As usual, the fundamental issue turns
10 on the question of proof. Theft is a willful – not negligent – act. The record must
11 demonstrate that the employee charged understood what he/she was doing and
12 intended to do it.

13 It is not difficult to understand why the Company argues its case so vigorously.
14 Given the timing of the call-in complaint, the time card stating "Street lights – various
15 Loc." until 15:30 (3:30 p.m.) and Grievant's somewhat tardy recollection that he left
16 Richmond at 2:00 p.m., the falsification inference was raised. Further, the Company
17 sees a 30-minute unsupported overtime claim, even if Grievant's I-80 stop and the
18 end of work time are credited.

19 Each such case turns on its own facts and circumstances and, therefore, must
20 be decided on a case-by-case basis. On this record, the Board cannot find a willful
21 intent to steal time. First, Grievant's testimony that his supervisor(s) told him how to
22 make out the time card on an overtime day is unrebutted. More specifically, the
23 Company does not raise an issue with Grievant's 0700-1100 entry which also states
24 "Street lights – various Loc." This entry, for the morning of the same day, clearly
25 supports Grievant's testimony that he included the one-hour Vacaville-Richmond
26 drive in this entry as "on-the-job" time, as distinguished from commute time. Put
27 simply, the Board accepts Grievant's explanation on his method of time keeping.

28 Second, once Grievant's method of timekeeping on an overtime day is

1 accepted,¹³ the Company's position cannot stand. Clearly, there is no dispute
2 Grievant's travel time from home to Vacaville is about one hour and Vacaville to
3 Richmond is also about a one-hour drive. The citizen's complaint buttresses
4 Grievant's testimony that he pulled over on I-80 to check his truck for about 10
5 minutes. And, the Company does not really challenge the fact that Grievant, like
6 many employees driving to and from a fixed starting location (Vacaville) use some, in
7 effect, turn-in time at shift's end; e.g., here, 10-15 minutes. Accordingly, if Grievant
8 left Richmond at 1400 (2:00 p.m.), stopped for 10 minutes on the highway, used 10-
9 15 minutes at the Vacaville Service Center and then drove home, the total time is +/-
10 2 hours and 25 minutes. Put simply, +/- 5 – not 30 – minutes are at issue.

11 The record does not persuasively establish that Grievant intended to steal the
12 5 minutes. The necessary inference is that he negligently rounded up the time to
13 make the day end at an even point – 1630. Absent evidence that employees are
14 authorized to round up time on an overtime assignment, Grievant knew, or should
15 have known, that the Code of Conduct requires employees to file accurate records
16 including, *inter alia*, time cards. The following Award will put Grievant on notice that
17 time cards on an overtime assignment must be accurately completed.

18 The grievance is sustained in part and denied in part.

19 AWARD

- 20 1. Grievant was not discharged for just cause.
21 Grievant shall be reinstated to his former position
22 as soon as practical and his improper discharge
23 shall be converted to a Written Reminder. Grievant
24 shall be made whole¹⁴ for all losses in wages and
benefits, including seniority, from the first day he
was removed from service to and including the last
workday prior to his return to service.

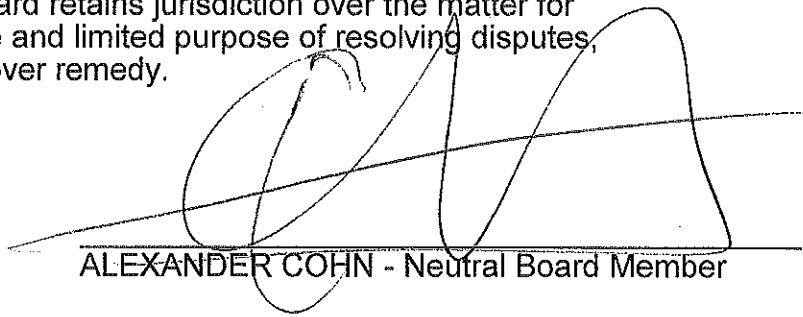
25 _____
26 ¹³If the Vacaville Service Center believes there should be another way of recording an overtime day
assignment, it can take the necessary steps to change the status quo.

27 ¹⁴Outside earnings and usual and customary deductions (taxes, etc.) will be deducted from the gross
28 make whole amount to establish a net make whole amount which shall be paid to Grievant as soon as
practical.

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2. The Board retains jurisdiction over the matter for the sole and limited purpose of resolving disputes, if any, over remedy.

DATED: February 12, 2013


ALEXANDER COHN - Neutral Board Member


~~(concur/dissents)~~


BRENDA LEGGE - Company Board Member


~~(concur/dissents)~~


DOUG VEADER - Company Board Member

~~(concur/dissents)~~


F. E. ED DWYER - Union Board Member

~~(concur/dissents)~~


JOE OSTERLUND - Union Board Member